

(1982) 08 BOM CK 0042

In the Bombay High Court

Case No : Misc. Petition No. 181 of 1979

Fariyas Hotels Pvt. Ltd.

APPELLANT

Vs

State of Maharashtra and another

RESPONDENT

Date of Decision : 31-08-1982

Acts Referred:

Constitution of India, 1950 — Article 14

Employees State Insurance Act, 1948 — Section 1, 1(2), 1(3), 1(4), 1(5)

Citation : (1983) 1 LLJ 24

Hon'ble Judges : S.P. Bharucha, J

Bench : Single Bench

Judgement

1. This writ petition challenges the notification dated 18th September, 1978 issued by the State Government, respondent 1, under S. 1(5) Employees' State Insurance Act, 1948 (hereinafter referred to as the Act). The impugned notification extends the provision of the Act inter alia to hotels employing 20 or more employees within the limits of the Municipal Corporation of Greater Bombay.

2. It is common ground that, by reason of notification issued by the Central Government under S. 1(3) of the Act, the Act had then come into force over an area of the State of Maharashtra greater than the Municipal limits of Greater Bombay.

3. On 31st December, 1973 the Employees' State Insurance Corporation, respondent 2 wrote to respondent 1 suggesting that the Act should be extended to cover the categories of establishments therein mentioned, which included hotels. The letter suggested that such extension need not cover all sectors of employment or all areas simultaneously.

4. On 23rd September, 1974 respondent I wrote to the Secretary, Ministry of Labour & Employment, Government of India, that respondent I was considering the Issue of a notification under S. 1(5) of the Act announcing its intention to extend the Employees' State Insurance Scheme to inter alia, hotels employing 20 or more workers. The letter solicited the approval of the Central Government

under S. 1(5) of the Act to the extension of the Scheme "to all or any of the establishments specified above in all or any of the areas in the State where Chapters IV and V of the E.S.I. Act, 1948 are in force." On 1st October, 1974 the Central Government wrote to respondent 1 on the subject of the extension of the Scheme to new sectors of employment. The letter conveyed the approval of the Central Government under S. 1(5) of the Act "to the extension of the provisions of the Act by the State Government of Maharashtra to the following : (a) ... (b) ... and (c) hotels ..."

5. On 7th November, 1974 respondent 1 issued a notification under S. 1(5) giving notice of its intention to extend the provisions of the Act to the classes of establishments specified in the Schedule. The Schedule consisted of two columns : the first stating the description of the establishments and the second stating the areas. Item 3 of the Schedule mentioned hotels wherein 20 or more persons were employed or had been employed for wages on any day of the preceding 12 months, inter alia, in Bombay. By a corrigendum dated 1st February, 1975 the Schedule was amended so that the areas in which the establishments were situated was now stated to be "all areas of the State where Chapters IV and V of the Employees' State Insurance Act, 1948, are in force."

6. On 18th September, 1978 respondent 1 issued the impugned notification. The notification stated that respondent 1 in consultation with respondent 2 and with the approval of the Central Government, and after having given six months' notice as required under S. 1(5), extended all the provisions of the Act to the classes of establishments mentioned in the Schedule. The schedule contained two columns; the first stating the classes of establishments and the second the areas. In item 3 of column 1 hotels wherein 20 or more employees were employed or had been employed for wages on any day of the preceding 12 months were included. In item 1 of column 2 the area specified was the area within the limits of the Municipal Corporation of Greater Bombay.

7. On 25th November, 1978 petitioner 1 a hotel, filed returns under the Act under protest. On 5th January, 1979 a demand for justice was made by it. The petition was filed on 12th January, 1979.

8. Central to the dispute in the petition are the provisions of S. 1 of the Act. Section 1 is reproduced :

"1. (1) This Act may be called the Employees' State Insurance Act, 1948.

(2) It extends to the whole of India.

(3) It shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this act and for different States or for different parts thereof.

(4) It shall apply, in the first instance, to all factories (including factories belonging to the Government) other than seasonal factories.

(5) The appropriate Government may, in consultation with the Corporation and where the appropriate Government is a state Government, with the approval of the Central Government, after giving six months' notice of its intention of so doing by notification in the Official Gazette, extend the provision of this Act or any of them, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise."

9. It was contended by Mr. Chinoy, learned counsel for the petitioners, that the impugned notification was ultra vires the powers of respondent 1 under S. 1(5) of the Act. He submitted that under S. 1(5) the appropriate Government had power only to specify other establishments or classes of establishments, that is to say, classes of establishments having regard to the nature of their activities, not their situation. This was clear from the scheme of S. 1. The authority having power with regard to the application of the Scheme to different areas was the Central Government under sub-s. (3), whereas the authority having power with regard to the the nature or type of establishment was the appropriate Government under Sub-s. (5) In sub-s. (3) the words used were "for different States or for different parts thereof" but these words did not occur in sub-s. (5) The words "any other establishment or class of establishments" appearing in sub-s (5) were referable to establishments other than factories mentioned in sub-s (4). These words could have no reference to the geographical situation. The notification of intention and the impugned notification also referred separately to class of establishments and area, which showed that the concept of the one was different from the concept of the other in so far as sub-s. (5) was concerned. Where the Act had been extended to a particular area under sub-s. (3) the exclusion of that area by a device such as the impugned notification amounted to an encroachment upon the powers of the Central Government under sub-s. (3)

10. Mr. Chinoy incorporated as part of his argument the reasoning contained in the judgment in the case of *Kodiyoor Janardhan Rao v. State of Karnataka* (W.P. No. 12175 of 1977, D/-17-11-1978) of a single Judge of the Karnataka High Court. He fairly mentioned that the judgment had been overruled by a Division Bench of the Karnataka High Court. He, however, submitted that the reasoning contained in the learned single Judge's judgment was more acceptable.

11. It was contended by Miss Sikandar on behalf of respondent 1 and by Mr. Jaykar on behalf of respondent 2 that respondent 1 had power under S. 1(5) to classify establishments either on the basis of the nature of the work carried out therein or on the basis of geographical situation, or on the basis of both. Therefore, under Sub-s. (5) respondent 1 would apply the provisions of the Act to all parts of the State or to part or parts thereof. By the impugned notification respondent 1 had classified establishments on a geographical basis, and this did not fall outside the scope of the expression "establishments or class of establishments" in sub-s. (5). The Act, they submitted, was piece of social legislations and should be interpreted in the light of its object.

12. I read S. 1 of the Act to provide this, sub-s. (1) gives the name of the act.

Sub-s. (2) states that it shall extend to the whole of India. Sub-s. (3) states that it shall come into force on such date or dates as the Central Government may by notification appoint and different dates may be appointed for different provisions of the Act and for different States or for different parts thereof. Sub-s. (1) provides that the Act shall apply in the first instance to all factories.

13. The power to bring the Act into force is vested in the Central Government. It may be brought into force piecemeal. It may also be brought into force on different dates in different States and even in different parts of a State. Once it has been brought into force in any area, it applies to all factories therein.

14. Under sub-s. (5) the appropriate Government is given certain powers. Sub-s. (1) of S. 2 defines the appropriate Government to be, in respect of establishments under the control of the Central Government or a railway administration or a major port or mine or oilfield, the Central Government and in all other cases the State Government. Under sub-s. (5) the State Government may, in consultation with the Employees' State Insurance Corporation and with the approval of the Central Government, and after giving six months' notice of its intention of so doing by Gazette notification, extend the provisions of the Act or any of them "to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise". Under sub-s. (5) the State Government is empowered if it has consulted with respondent 2 secured the approval of the Central Government, and given 6 months' notice of its intention so to do by Gazette notification, extend the provisions of the Act or any of them to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

15. The power given by sub-s. (5), therefore, is to extend the provisions of the Act or any part thereof. It is to extend the provision within the area or areas in which the Act or part of it has already been brought into force under sub-s. (3). It is to extend the provisions to any other establishment or class of establishments, that is to say, to an establishment or class of establishments other than factories, to which the Act or part of it already apply by reason of sub-s. (4). This seems to me clear also from the context in which the words "industrial, commercial, agricultural or otherwise" appear.

16. Emphasis was laid by Miss Sikandar on the words "or otherwise". As she read it, sub-s. (5) gave power to extend the provision of the Act to any other establishment or class of establishments or otherwise. She submitted, therefore, that the appropriate Governments had the power to extend the Act to establishments classified on a geographical basis. In my view, the words "or otherwise" must be read in the context of the words "class of establishments, industrial, commercial, agricultural". So read, the power given is to extend the provisions of the Act having regard to the nature of operations carried out in the establishments and not having regard to their geographical location.

17. Under the scheme of S. 1 the Central Government must decide where the

provisions of the Act must be brought in force. When the Central Government brings them into force in any area, they apply automatically to all factories. The appropriate Government may after conforming with the provisions of sub-s. (5) extend the provisions of the Act brought into force in any area by the Central Government to establishments of an industrial or commercial or agricultural nature or to establishments of any other nature in the area. The provisions of the Act having already been brought into force in that area, sub-s. (5) does not empower the appropriate Government expressly or by implication to restrict the extension to establishments within only a part or parts of that area.

18. Great emphases was laid, quite rightly, by counsel for the respondents upon the Division Bench judgment of the Karnataka High Court aforementioned *The Regional Director, Employees' State Insurance Corporation v. Kodiyoor Janardhan Rao* AIR Kant 146 . In that case a notification was issued on 18th February, 1976 by the Karnataka Government under S. 1(5) of the Act. It extended the provisions of the Act to restaurants and hotels only in Dharwar and some other places in the State, though the Act had also been extended elsewhere in State by notifications issued from time to time under S. 1(3). The petitioner, a partner in a restaurant situated at Dharwar, contended that the notification was invalid as the State Government was not authorised to extend the provisions of the Act to a class of persons situated in a portion of a large area in which the Act had already been brought into force. The learned single Judge had accepted this contention and had quashed the notification. The question before the Division Bench in appeal was whether the notification was void by reason of the fact that it was not extended to all parts of the State to which the Act had been extended. The Division Bench quoted the observations of the Supreme Court in *Basant Kumar Sarkar and Others Vs. Eagle Rolling Mills Ltd. and Others*, It then expressed the reasons why it was of the view that the expression "class of establishments" occurring in S. 1(5) clothed the appropriate Government with the power to specify establishments on a geographical basis. I quote : (At p. 148)

"The expression "any other establishment or class of establishments" to which the appropriate Government intends to extend the Act may be classified either on the basis of the nature of the establishments or on the basis of their geographical situation or on the basis of both of them. To put it in other words if the State Government proposes to extend the Act to hotels and restaurants, it can extend to hotels and restaurants situated in all parts of the State to which the Act has been extended under S. 1(3) or to hotels and restaurants situated in a specific part or parts of the State. A classification made on geographical basis would not fall outside the scope of the expression "class of establishments". While interpreting the Act the Courts should bear in mind the difficulties involved in extending the Act simultaneously to all establishments situated throughout the State. Before extending to all establishments throughout the State, the Corporation has to build the necessary infrastructure by providing the necessary funds, building hospitals and employing the necessary personnel to administer

the Act effectively. It may not be possible to visualise before hand the financial and other implications involved before the Corporation gains experience by enforcing them as pilot projects. After gaining such experience in administering the Act as pilot projects in certain small areas, it would be possible for the appropriate Government to extend it to other establishments situated in other geographical areas. It would be manifestly unreasonable to construe S. 1(5) of the Act as laying down that the appropriate Government should either extend the Act to all establishments of a specified nature throughout the state at the same time or not extend it to any such establishment at all. We are of the view that the expression "class of establishments" occurring in S. 1(5) does clothe the appropriate Government with the power to classify establishments to which the appropriate Government wishes to extend the Act on geographical basis also even though the Act may have been brought into force throughout the State by notification issued under S. 1(3) of the Act."

19. The affidavit made on behalf of respondents 2 and 3 states that against the said decision of the Division Bench (of the Karnataka High Court) the matter was taken to the Supreme Court and the Supreme Court, after hearing counsel for the parties, passed this order dated 14.1.1980, "upon hearing counsel, the court dismissed all the writ petitions"; and it is submitted that the Division Bench judgment has been confirmed by the Supreme Court. In the course of his argument Mr. Jaykar drew my attention to an order sheet of the Supreme Court. The order sheet relates to two petitions. It says "These matters were called on for hearing today" i.e. 14th January, 1980. No other papers or proceedings of the writ petitions concerned have been produced by the respondents. It is clear that the reference in the affidavit and the order sheet relates not to an appeal before the Supreme Court but to writ petitions. The submission that the judgment of the Division Bench of the Karnataka High Court has been affirmed by the Supreme Court is not substantiated.

20. It would be convenient to refer to the judgment in Basant Kumar's case (Supra) at this stage. The question before the Supreme Court was whether S. 1(3) of the Act suffered from the vice of excessive delegation. It was in this context that the Supreme Court observed that sub-s. (3) was not an illustration of delegated legislation but could properly be described as conditional legislation. The Supreme Court set out the scheme of the Act. It observed that in the nature of things it would be impossible for the legislature to decide in what areas and in respect of what factories the Act should be applied. A scheme of this kind, though very beneficent, could not be introduced in the whole of the country at once but needed careful experimentation in stages and in different phases. Inevitably, the question of extending the benefits contemplated by the act had to be left to the discretion of the Government. It is important to note that the Supreme Court was not dealing with sub-s. (5).

21. To turn back to the judgment of the Karnataka Division Bench, it appears that it proceeded upon the basis that it should bear in mind the difficulties

involved in extending the Act simultaneously to all establishments situated throughout the State. It observed that it was manifestly unreasonable to construe sub-s. (5) as laying down that the appropriate Government should either extend the Act to all establishments of a specified nature throughout the State at the same time or not extend it to any such establishment at all. With great respect to the learned judges, the ordinary rule of construction is to intend the legislature to have meant what is expressed. The intention must be deduced from the language itself. Deducing the intention of the legislature from the words used in S. 1. I have no doubt that the legislature intended to confer upon the appropriate government under sub-s. (5) the power only to extend the provisions of the Act to establishments other than factories classified upon the basis of the nature of the operations carried out therein situated within the areas in which the Central Government had, by virtue of the power contained in sub-s. (3), already brought the Act into force. With great respect, I am, therefore, unable to follow the said judgment of the Karnataka High Court.

22. Miss Sikandar drew my attention to a judgment of a Division Bench of the Allahabad High Court in *M/s. Sadaf Enterprises v. Regional Director, Employees' State Corporation* 1981 LIC 490. The contention before the court was that the provisions of S. 1(5) suffered from the vice of excessive delegation. The court observed the sub-s. (5) merely left it to the appropriate Government in situations where it was considered appropriate to extend to employees of establishments other than factories the benefits made available to factory workers by the Act. This seems to suggest that the learned Judges felt that the classification under sub-s. (5) could not be on a territorial basis. In any event, the judgment does not assist the respondents.

23. Mr. Jaykar referred to an authority of the Kerala High Court which laid down that a liberal construction should be given to social legislation. It is a principle which requires no authority to back it. In *Poona Industrial Hotel Ltd. v. I. C. Sarin* 1980 LIC 100 , also cited by Mr. Jaykar, this court was concerned with whether a hotel was a factory. It appears that by the time the matter was argued the notification impugned in the petition before me had been issued. It was submitted on behalf of the petitioners in that matter that the issuance of the impugned notification showed that even respondent 1 was aware that a hotel was not a factory. The court held that it could not so conclude. This judgment does not assist in the solution of the present controversy. Mr. Jaykar referred to the decision of the Supreme Court in *State of Madhya Pradesh Vs. Bhopal Sugar Industries Ltd.*, This was a case involving the classification of the Bhopal region in the State of Madhya Pradesh for the purposes of income tax. The contention was that the classification was invalid. There is no challenge to classification here.

24. Coming as I do to the conclusion that the impugned notification is beyond the powers of the respondent 1 under S. 1(5) it becomes unnecessary to deal with all but one of the other submissions of Mr. Chinoy. I refer to that one submission because it may be said to throw some light on the prior submission.

25. It was submitted by Mr. Chinoy that the impugned notification did not comply with the requirements of S. 1(5) in that the approval of the Central Government had not been obtained specifically to the class of establishments consisting of hotels employing more than 20 persons and situated within the limits of the Municipal Corporation of Greater Bombay as it should have been. On 23rd September, 1974 respondent I wrote to the Central Government announcing its intention to extend the Scheme inter alia to hotels employing 20 or more persons. It solicited the approval of the Central Government to the extension of the Scheme to such establishments "in all or any of the areas in the State". On 1st October, 1974 the Central Government replied on the subject of the extension of the scheme to new sectors of employment. It conveyed the approval of the Central Government under S. 1(5) "to the extension of the provision of the Act by the State Government of Maharashtra to ... hotels" There is nothing in that letter which gives the approval of the Central Government to the extension of the act specifically to hotels employing 20 or more persons situated in specific areas of the State. I cannot accept the contention of counsel on behalf of the respondents that it is implicit that such approval was given. In fact, the phraseology of the letter indicates that no approval was, advisedly, given to the extension of the provisions of the Act by the State Government to restricted areas. In any event, it is clear that the Central Government was not asked to and did not approve the extension of the provisions of the Act to hotels employing 20 or more persons within the Municipal limits of Greater Bombay or any other stated area.

26. I may mention that it was also Mr. Chinoy's submission that the impugned notification did not comply with the requirements of S. 1(5) because the approval of the Central Government had been obtained even before the notification of intention had been published and also because respondent 2 had not been consulted with regard to the extension of the Act to hotels employing 20 or more persons within the Municipal limits of Greater Bombay. He also submitted that the impugned notification was discriminatory and violated the provisions of Art. 14 of the Constitution.

27. Having regard to what I have held, the impugned notification dated 18th September, 1978, Ex-F to the petition, is quashed and set aside. There shall be no order as to costs.

28. On Mr. Jaykar's application I stay the operation of this order until 18th October, 1982; the interim order passed in this petition will continue to operate until then.

29. Petition allowed.