
(2002) 12 AP CK 0041
In the Andhra Pradesh High Court
Case No : CMA No. 704 of 1997

Hotel Flora

APPELLANT

Vs

Employees State Insurance Corporation

RESPONDENT

Date of Decision : 20-12-2002

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(12), 82(2)

Citation : (2003) 6 ALD 494

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : C. Niranjan Rao, for P. Nageswara Sree, for the Appellant; Vemuri Venkateswara Rao, for the Respondent

Final Decision : Allowed

Judgement

G. Yethirajulu, J.—This appeal is directed against the Order dated 30-12-1996 of the Employees State Insurance Court, Hyderabad in E.I. Case No. 13 of 1995 directing to bring the appellant-Hotel within the purview of the Employees State Insurance Act, 1948 (for short "the Act").

2. The facts leading to the direction of the Employees State Insurance Court are briefly as follows;

3. The appellant is a Hotel situated at A.C. Guards, Hyderabad wherein tea and readymade snacks procured from outside are sold. The appellant engaged 5 or 6 persons only per day. The said workers are not engaged regularly. There is no relationship of master and servant between the appellant and the workers. Except the Supervisor, there is no worker appointed on regular basis. The appellant is not using any power in the manufacturing process. The Insurance Inspector visited the Hotel on 14-3-1991 and found 7 workers only. The Insurance Inspector again visited the Hotel on 5-10-1994 in the absence of the Proprietor and included in the list of workers, the customers and persons running independent business outside the Hotel premises. The appellant sent a reply to

the inspection notice of the Inspector that there were never 10 or more workers in the Hotel. Therefore, the Hotel cannot be covered under the Act. The appellant requested to declare that the Act is not applicable to the Hotel. The respondent representing the Employees State Insurance Corporation resisted the petition by contending that when the Insurance Inspector visited the Hotel on 5-10-1994 the Proprietor was absent. No record was produced before him. When he counted the workmen, they were 11 in number. He prepared a visit note containing the names of the workers and obtained their signatures on it. He also noticed liquid gas cylinder being used for manufacturing process. The Hotel comes within the purview of the Act. The appellant is, therefore, liable to pay contribution. Hence, the petition is liable to be dismissed.

4. On the basis of the above averments made by both parties, the Employees State Insurance Court taken up an issue whether the establishment of the appellant comes within the purview of the Act, for consideration.

5. The appellant in order to prove his case examined the Proprietor of the Hotel as P.W.1 and marked Exs.PI to P16. The respondent examined R.Ws.1 to 3 and marked Ex.R1 - Preliminary Inspection Report. The Insurance Court, after taking into consideration the evidence adduced by both parties, came to a conclusion that the evidence of the Insurance Inspector established that there were 11 employees working in the Hotel and further observed that the Hotel comes within the purview of the Act and the coverage will be quashed, if the appellant engages less than 10 persons and not using power in the manufacturing process. By expressing the above view, the Insurance Court held that the appellant-Hotel comes within the purview of the Act and the appellant has to pay the contribution after filing necessary returns. The appellant being aggrieved by the judgment of the Employees State Insurance Court preferred this appeal challenging its validity and legality.

6. The point for consideration is whether the appellant-Hotel comes within the purview of the Act ?

7. The appellant is contending that he is not manufacturing any food items at the Hotel premises and he is bringing them from outside for service to the customers. He further stated that he engaged only 5 or 6 employees at a time and at the time of inspection of the Insurance Inspector also there were not more than 5 or 6 workers. He further stated that he did not use electricity for any manufacturing purpose. Therefore, the Hotel cannot be brought within the purview of the Act. The Insurance Inspector, who visited the premises, categorically noted in his visit note, the details of the persons who were working in the hotel and the wages they are receiving. He also obtained the signatures of 11 persons against their names, who were said to be working at the time of his inspection.

8. Before considering the aspect whether the Hotel comes within the purview of the Act, it is appropriate to extract Section 2(12) of the Act, which reads thus:

" "Factory" means any premises including the precincts thereof-

(a) Whereon ten or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, or

(b) Whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (Act No. 35 of 1952) or a railway running shed;

9. Under Clause (a) of Sub-section (12) of Section 2 of the Act, if there are 10 or more workers in a factory and when it is utilizing the electricity for manufacturing process, it comes within the purview of the Act. Under Clause (b), if there are 20 or more persons employed at any time within a period of 12 months preceding the date of inspection for the purpose of manufacturing process even without the aid of power, such factory can also be brought within the purview of the Act. The evidence adduced by both parties do not indicate that the appellant was taking the aid of power for any manufacturing process. On the other hand, the inspection note of the Inspector is that the appellant was using liquid gas for manufacturing process. In view of the above circumstances, it can be safely concluded that this case do not attract Section 2(12) of the Act. Therefore, the appellant-Hotel cannot be brought within the purview of the Act.

10. The learned Counsel for the appellant submitted that the Government of Andhra Pradesh by exercising the powers u/s 1(5) of the Act, issued a Government Order bringing Hotels also which are engaging workers about 20 or more in number. But, in view of the above finding, there is no necessity to give a separate finding on this aspect.

11. In order to satisfy that there is a substantial question of law as required u/s 82(2) of the Act for the maintainability of the appeal, I wish to refer to a judgment of a Single Judge of the Allahabad High Court reported in Kalpana Kala Kendra v. E.S.I Corporation 1985 Lab I.C. 763, wherein it was observed as follows:

".....A fact, which is a jurisdictional fact, can certainly be raised even in an appeal u/s 82 of the Act....The question whether power is an integral part of manufacturing process is a jurisdictional fact in the present case..... If power is not used, the provisions" of the Act would not be attracted as the establishment concerned would not, then, be a factory within the meaning of Section 2(12).Hence, a finding of the Insurance Court that power was being used in the manufacturing process, if not supported by any evidence, would be liable to be set aside in an appeal u/s 82."

12. In view of the above judgment, the question whether the Act is applicable to

a Hotel which engaged 11 workers and carried on the manufacturing process without the aid of the power, can definitely be treated as a substantial question of law. Hence, I find no hesitation to hold that the appeal is maintainable in law.

13. In the light of the foregoing discussion, I find force in the grounds of appeal. Accordingly, the judgment of the Employees State Insurance Court dated 30-12-1996 in E.I Case No. 13 of 1995 is set aside by holding that in view of the strength of workers noticed by the Insurance Inspector on 5-10-1994, the appellant-Hotel do not come within the purview of the Act.

14. In the result, the Civil Miscellaneous Appeal is allowed. No order as to costs.