

(1960) 09 CAL CK 0014
In the Calcutta High Court
Case No : A.F.O.O. No. 289 of 1958

Indrapuri Studio Private Limited and Another	APPELLANT
Vs	
Employees" State Insurance Corporation	RESPONDENT

Date of Decision : 19-09-1960

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(12), 40

Citation : AIR 1961 Cal 381 : (1961) 2 ILR (Cal) 441 : (1961) 2 LLJ 306

Hon'ble Judges : P.N. Mookerjee, J;N.K. Sen, J

Bench : Division Bench

Advocate : A.D. Mukherjee, Amulya Kumar Mukherjee and Santosh Kumar Bhattacharjee, for the Appellant; Amiya Kumar Mookerjee, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Mookerjee, J.—On April 2, 1957, the Regional Director of the Employees" State Insurance Corporation, Calcutta, applied before the Employees" Insurance Court, West Bengal, at Calcutta, for recovery of a sum of Rs. 2,128/- as "employees" contribution" from opposite party No. 1, Messrs. Indrapuri Studio Private Ltd., and opposite party No. 2, the "principal employer", he being the Manager of the aforesaid Company. The application was made u/s 75(2) of the Employees" State Insurance Act, 1948, and the claim was for the period August 14, 1955 to December 31, 1956.

2. The application was contested by both the respondents opposite parties whose principal objections were:

1. That the company opposite party No. 1 was not a "factory" and, accordingly, the Act had no application to the case, and the opposite parties had no liability thereunder;

2. That the opposite parties had no liability under the Act for the "employees" contribution" and, in any event, they, not having deducted any amount from the wages and salaries of the employees on account of the said contribution, could

not be made to pay any amount on that account.

3. Both the above contentions were rejected by the learned Judge, who constituted the original Tribunal, -- the Employees' Insurance Court, --under the Act and he allowed the application of the Regional Director and made an order, directing the opposite parties to pay to the said applicant the amount of Rs. 2128/- as "employees' contribution" for the period August 14, 1955, to December 31, 1956, with costs. From this order, the present appeal has been filed by the two opposite parties.

4. In arguing the appeal, Mr. Apurbadhan Mukherjee has urged both the above contentions. We are, however, unable to accept any of the said submissions of Mr. Mukherjee and, in our opinion, this appeal should fail.

5. Of the above two questions, the, second one may, conveniently, be disposed of first, Chapter IV of the Act (The Employees' State Insurance Act, 1948) is the chapter on "contributions". In it, Section 39 provides for the two kinds of contributions, the "employer's contribution" and the "employees' contribution" and for payment of the same to the Corporation according to certain rates and certain units of time, prescribed therein. Under this section, read alone, the liabilities for the above two kinds of contribution are on the two respective parties, namely, the employer and the employees. But, then follows Section 40, which expressly enacts that both the above types of contributions are to be paid, in the first instance, by the employer with right to recover the "employees' contribution" from the wages of the particular employee or employees for the particular period. In Section 40, the statute gives a clear mandate and categorically imposes an obligation on the employer to pay both the contributions in the first instance, subject to a right of re-imbursement from the employee or employees concerned in regard to his or their portion or portions of the same. This section (Section 40) further provides, in Sub-section (5), that the expenses of remitting; the contributions to the Corporation should be borne by the employer, thus making it clear beyond dispute in the proceeding or aforesaid contest that, vis-a-vis the Corporation, the liability for both the above types of contributions is of the employer, -- at least, in the first instance. That being so, it is idle to contend that, the employer not having deducted the "employees' contributions" from their (the employees') wages, he cannot be made liable for the same. He cannot, certainly, take advantage of his own negligence or omission: That would be allowing him to defeat the Act by not availing himself of a right thereunder and seeking, on that ground, to avoid his statutory obligation. In this view, it is also no answer to say that the employer may not find it possible to recover the contribution or contributions in terms of the Act. Whether he has lost the right in that respect is not a matter, on which we need pronounce in the present case, but that is irrelevant, so far as his primary liability u/s 40 is concerned. We would, therefore, in agreement with the, Tribunal below, reject this contention of the appellants opposite parties.

6. We take up, then, the more important point, arising under the first head. This

contention has been made in several branches. The principal argument, however, has been that the appellant Company is not a "factory" for purposes of the above Act and, therefore, that statute cannot apply to this case. "Factory" is defined in the Act (The Employees' State Insurance Act, 1948) in Section 2(12) in the following terms:

"2(12) "factory" means any premises including the precincts thereof whereon twenty or more persons are working or were working 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 but does not include a mine subject to the operation, of the Indian Mines Act, 1923 (IV of 1923) (or a railway running , shed):

The expressions "manufacturing process" and "power" shall have the meanings respectively assigned to them in the Factories Act, 1948 (LXIII of 1948);"

For the meaning of the expressions "manufacturing process" and "power" in the aforesaid definition, we are referred by the last part of the Section (Section 2(12)) to the "Factories Act", which defines the said terms as follows:

"2 (k) "manufacturing process" means any process for--

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal or

(ii) pumping oil, water or sewage, or

(iii) generating, transforming or transmitting power, or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels;

2 (g) "power" means electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal agency;"

On the above statutory definition or definitions, we have, no doubt in our mind that the Company appellant No. 1 is a "factory" within, the meaning of the Employees' State Insurance Act. It is undisputed, on the evidence in this case, that, in the premises, where the appellants' studio in question is located, more than 20 persons are working on any day and were working on any day during the relevant preceding period of 12 months. As a matter of fact, at no time, less than 70 persons worked in the studio. The first condition is thus clearly satisfied. All that remains now is to find whether the appellants' studio carries on a "manufacturing process" with the aid of "power".

7. On this part of the case, the admitted position is (1) that the appellants have and had 70 employees who work and worked in the aforesaid studio, as stated

hereinbefore, and whose wages and salaries are and were paid by the appellants; and (2) that those employees include electricians, carpenters and coolies, cameramen and sound recorders, who combine in the matter of shooting and production of films, which operations are done with their aid and with the aid of electric current, cameras, sound-recording machines and other necessary apparatus and instruments. This, in our opinion, is sufficient to satisfy all the terms and ingredients of "manufacturing process" and "power" and "factory" required under the aforesaid definitions of the said two terms, and thus to affirm the conclusion that the appellants' studio is a "factory" within and for purposes of the Employees' State Insurance Act.

8. A point was raised by Mr. Apurbadhan Mukherjee that the finding in this case ought to be otherwise as the appellants do not carry out the shooting or production of films but lease out the studio to other film producers for the purpose. It is clear, however, that the men, employed for the aforesaid purposes, are the appellants' employees, whose salaries and wages are paid by them, and the fact is, even taking it at the best for the appellants, that their services, along with the studio, are lent to the producers. The position, however, still remains that, in the appellants' studio, the "process" is carried on as above and for the above purposes with the aid of the appellants' employees, numbering more than 20. That, in our opinion, in the particular facts of this case, sufficiently makes the disputed studio a "factory" under the above Act. It is necessary to add here that the mere fact that the finished film is turned out elsewhere or the finishing touches are imparted to the produced films at some other places would not affect the above position, as, admittedly, the raw films are turned into cinema films in the appellants' studio, and, with certain finishing touches, given or imparted elsewhere, become finished products, complete and ready for use on the screen. The major part of the process of converting a raw film into a finished cinema film is, obviously, done in the appellants' studio and that is enough for purposes of the definition of "manufacturing process", -- at least, under Clause (i) of the relevant Section 2(k) which includes "treating or adapting any article or substance with a view to its use". The raw film is the substance or article, which is treated or adapted by the above process, carried out in the appellants' studio, with a view to its use as the ultimate finished product, namely, finished cinema film.

9. We do not deem it necessary to refer to any of the cases, cited before us during argument, as none of them appears to be strictly relevant on the point or points before us; nor do we deem it necessary to refer to the admitted position that the appellants' studio was registered as a "factory" under the Factories Act as the definition there of the term "factory" is much wider. What we have said, however, in the preceding paragraphs, is sufficient to show that the said studio is a "factory" under the Employees' State Insurance Act.

10. In the above view, we overrule all the above contentions of Mr. Apurbadhan Mukherjee.

11. It follows, then, that this appeal must fail; it is accordingly, dismissed with costs.

N.K. Sen, J.

12. I agree.