
(1966) 01 P&H CK 0030
In the Punjab And Haryana At Chandigarh

Ishar Dass and Another

APPELLANT

Vs

Employees' State Insurance Corporation

RESPONDENT

Date of Decision : 10-01-1966

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 75, 82

Citation : (1967) 2 LLJ 550

Hon'ble Judges : P.C. Pandit, J

Bench : Single Bench

Judgement

P.C. Pandit, J.—The Employees' State Insurance Corporation filed a petition u/s 75(2) of the Employees' State Insurance Act (35 of 1948) for the recovery of contributions against Ishar Dass, manager and principal employer of Free India Surgical Works, E-46, Industrial Area, Jullundur City. The case of the petitioner was that Free India Surgical Works was a factory covered by the Employees' State Insurance Act and since they had not deposited the contribution for the period 1 January to 30 September 1964, they were liable to pay the same. The contribution was calculated on the ad hoc basis at Ra. 495. The main objection of Free India Surgical Works was that their concern was not a "factory" as defined in the Employees' State Insurance Act, as they did not employ more than twenty persons and some of them, who were alleged by the petitioner to be working there, were not their employees, but were working Independently in the adjoining building, which had been rented out to two of these workers by them.

2. This petition was tried by the Employees' State Insurance Court, Jullundur, who framed the following issues on the pleadings of "the parties:

(1) Is respondent 2 (Free India Surgical Works) a factory covered under the Employees' State Insurance Act ?

(2) To what amount of employees' contribution is the applicant entitled ?

3. The Inspector of the Employees' State Insurance Corporation visited the premises and he found 22 persons working In the factory though only the

presence of 13 persons was marked in their registers. He prepared a list of the remaining 9 workers, which he marked A-2, and got it signed by them. The owners of the factory stated at that time that those persons were working on contract basis and were not their employees. This factory was situated in plot E-46 and the adjacent building on plot E-47 also belonged to the owners of this factory. This building was alleged to have been taken on rent by Harbans Lal and Chaman Lal, who were also found working under the owners of Free India Surgical Works.

4. Both the parties led evidence to prove their respective contentions. The Employees' State Insurance Court rejected the evidence produced by the owners of Free India Surgical Works and came to the conclusion that Harbans Lal, Chaman Lal, etc., were not independent industrialists but were workers employed by Free India Surgical Works for whom they were found working by the Insurance Inspector. He then came to the conclusion that Free India Surgical Works was a "factory" within the meaning of this word in the Employees' State Insurance Act and decided issue (1) in favour of the Employees' State Insurance Corporation. Since there was no serious dispute about the amount claimed as contributions, the Corporation was granted a decree for Rs. 495 with costs against Free India Surgical Works. Aggrieved by this order, the present appeal has been filed by Free India Surgical Works u/s 82 of the Employees' State Insurance Act.

5. A preliminary objection has been raised by the learned Counsel for the respondents that this appeal should be dismissed on the short ground that no question of law as contemplated by Section 82 was involved in the order under appeal.

6. The relevant part of Section 82 runs thus:

82. (1) Save as expressly provided in this section, no appeal shall lie from an order of an Employees' Insurance Court.

(2) An appeal shall lie to the High Court from an order of an Employees' Insurance Court if it involves a substantial question of law...

7. The sole question for decision before the Employees' Insurance Court is whether Free India Surgical Works was a "factory" or not. The definition of the word "factory" as given in Section 2(12) of the Employees' State Insurance Act is as under:

"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 (4 of 1923), or a railway running shed.

The only point of dispute between the parties was whether twenty or more

persons were working in this factory or not. The finding of the Employees' Insurance Court was that there were more than twenty persons working in these premises and hence it was a "factory." This is a pure finding of fact based on appreciation of evidence. Even if it might be an erroneous finding of fact based on misappreciation of evidence, it could not be said that any substantial question of law was involved in the order of the Employees' Insurance Court. What is a substantial question of law has been answered by the Supreme Court in *Sir Chunilal V. Mehta and Sons, Ltd. Vs. The Century Spinning and Manufacturing Co., Ltd.*, as under:

The proper test for determining whether a question of law raised in the case is substantial would be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so, whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest Court or the general principles to be applied in determining the question are well-settled and there is a mere question of applying those principles or that the plea raised is palpably absurd, the question would not be a substantial question of law.

Applying the rule of law laid down in this authority, it cannot be said that any substantial question of law was involved in the instant case.

8. It was contended by the learned Counsel for the appellant that all the persons working on their premises were not their "employees."

9. In the first place, the definition of the word "factory" given in the Act does not say that the persons who are working on the premises must be the employees and it was so held in a Bench decision of this Court in *Chaman Singh v. Employees' State Insurance Corporation*, *Amritsar* 1061 I L.L.J. 314; and, secondly, the finding of fact given in the present case by the Employees' State Insurance Court, however, was that all the persons working on the premises were their employees. There is thus no force in this contention.

10. It was then submitted that proper issues had not been framed in this case.

11. No such point was raised before the Court below nor in the grounds of appeal filed in this Court. This contention also, therefore, has no substance.

12. The result is that this appeal fails and is dismissed, but with no order as to costs.