
(2003) 08 AP CK 0064
In the Andhra Pradesh High Court
Case No : CMA No. 1199 of 1998

J.D. Electronics	Vs	APPELLANT
E.S.I. Corporation and Others		RESPONDENT

Date of Decision : 04-08-2003

Acts Referred:

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

Citation : (2004) 1 ALD 652 : (2004) 2 LLJ 653

Hon'ble Judges : G. Yethirajulu, J

Bench : Single Bench

Advocate : P. Nageswara Sree, for the Appellant; R.N. Reddy, SC for Respondent Nos. 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

G. Yethirajulu, J.—This appeal is preferred by the petitioner in E.I. Case No. 15 of 1996 on the file of the Employees Insurance Court-cum-Chairman, Industrial Tribunal-I, Hyderabad questioning the order dated 26-2-1998 and praying to set aside the same.

2. The appellant is a partnership firm dealing in electronic goods at Hyderabad. The name of the appellant is M/s. J.D. Electronics. They sell electronic goods. The shop is located in Door No. 4-1-825, Jawaharlal Nehru Road, Hyderabad. There are two more firms viz., M/s. J.D. Services and M/s. J.D. Leasing Company Ltd., functioning in the same building with the same door number. The family members are partners of these three firms. J.D. Services is a firm meant to undertake repairs of the electronic goods, checking of the functioning of the electronic goods sold. J.D. Leasing Company Limited is a company established to finance the customers for purchase of electronic goods. The officials of E.S.I. Corporation passed orders stating that these three firms are run by the same management and there is functional integrality among the firms functioning in the same building and as they engaged more than 20 employees at a time, they are liable to pay contribution under the Act. Accordingly an intimation was sent

to the appellant on 10-12-1985 covering the appellant establishment with effect from 11-4-1983. It was discovered from the purview of the Act with effect from 1-10-1986. Again the Assistant Regional Director passed orders on 16-5-1996 directing the appellant to pay Rs. 23,015/- as contribution for the period from May 1993 to March 1994. The appellant approached the E.I. Court questioning the validity of the said order. When the E.I. Court dismissed the petition holding that the appellant is liable to pay the contribution for the period in question, the appellant being aggrieved by the said order preferred this appeal contending that the appellant establishment has nothing to do with M/s. J. D. Services and J.D.Leasing Company Ltd., that they are separate entities, that there is no functional integrality between them, that there is no transfer of employees, that there are no joint business transactions, that though they are situated in the same building, they are separately functioning in all respects, that the appellant establishment never engaged 20 or more employees at any time, therefore, the appellant will not come within the purview of the Employees' State Insurance Act, 1948 ("the Act" for brevity) and it is not liable to pay any contribution towards employees insurance.

3. The point for consideration is whether the appellant establishment M/s. J.D.Electronics clubbed with M/s. J.D. Leasing Company Ltd. and M/s. J.D. Services do not come within the purview of the Employees' State Insurance Act and whether it is not liable to pay contribution under the Act?

Point:

4. In order to test whether the three establishments can be treated as one unit to bring them within the purview of the Act for the purpose of collecting contribution towards employees insurance, the following have to be considered:

- (1) ownership of the establishments,
- (2) control and supervision, (3) finances,
- (4) management and employment,
- (5) geographical proximity, (6) general unit of purpose and functional integrality

5. The Inspector of Employees Insurance Corporation visited the appellant's premises on 4-7-1994 and found the following:

6. The appellant J.D. Electronics is a partnership firm formed on 1-4-1992 under Ex.P.22-Partnership deed. One D.C. Setia and his two sons Vikas Setia and Prakash Setia are its partners. It refers to the partnership from 1-8-1982. The appellant firm was covered by E.S.I. Act in 1983 and discovered in 1986.

7. The company J.D. Leasing Limited was registered under the Companies Act on 14-10-1986 at Ahmedabad and Ex.P.29 Memorandum of Articles of Association. In the said firm the Directors are D.C. Setia, Vikas Setia, Prakash Setia, their wives Suresh Devi Setia, Manju Setia, Sangeeta Setia and Akash Setia, the youngest son of D.C.Setia.

8. J.D. Services is a partnership firm with Akash Setia, Smt. Suresh Devi Setia w/o.D.C. Setia, Smt. Sangeeta Setia w/o. Prakash Setia as Directors, under the partnership deed dated 1-4-1992. After the death of Smt. Suresh Devi Setia, the remaining partners entered into a fresh partnership deed dated 16-9-1993 to continue the business.

9. The appellant establishment started selling electronic goods and components in the building D.No. 4-1-825. J.D.Leasing Limited started to carry on the business of selling electronic goods on hire purchase basis. All the three establishments are in the same building occupied by three firms consisting of two halls. Staff of the three units are sitting and conducting business in one hall. There is a common entrance to all the establishments. The partnership deeds and Articles of Association of the companies refer to one building only. The registration certificate issued by the Labour Department to J.D. Leasing Limited also refers to the same door number. The registration certificate issued by the Labour Department in respect of J.D. Leasing Limited also refers to the same door number. The rubber stamp of J.D. Services contains the same door number and the same stamp was put on challans and other documents to indicate the address of the firm. One Mr. P.C. Bengani the executive is managing the affairs of the three firms. He produced the attendance registers and wages registers of the three firms for the period from April, 1992 to June, 1994. The three companies have given the common code number for different debit and credit entries. Code No. 40201 was given for the three units for the salaries and bonuses; Code No. 40204 was given for security guards by J.D. Electronics and J.D. Leasing Limited. There are entries regarding payment of money from one unit to another unit.

10. The Deputy Director on production of records verified them and found the following:

"J.D. Electronics employed six persons for wages for the month of April 1994. It paid Rs. 24,651/- for April 1994 to M/s. J.D. Services for delivery, installation and demonstration of electronic items to the customers of J.D. Electronics. J.D. Leasing Limited is attending to the work of the appellant establishment for verifying the instances of hire purchases, their paying capacity etc, while undertaking sale of electronic items, both on cash and hire purchase basis. M/s. J.D. Leasing limited is also undertaking the trade of financing the hire purchasers of the appellant establishment in undertaking the job of delivery, installation and demonstration of the items sold by the appellant establishment."

11. The Deputy Regional Director, therefore, came to the conclusion that the employees of J.D. Services and J.D. Leasing Limited are to be counted for the purpose of covering the appellant establishment under E.S.I. Act. Accordingly, he passed an order, pending verification of complete records against which the appellant approached the E.I. Court, Hyderabad.

12. The appellant did not produce all the records before the Inspector at the time of inspection on 4-7-1994 and Mr.Mengani who was looking after the affairs of all

the three establishments refused to take the copy of inspection note, therefore, it was sent by post to the appellant. Later the appellant sent a reply stating that the ledger cash book and vouchers are confidential documents which cannot be looked into by the Inspector. After several reminders the Accountant of the appellant produced some records for one year and took them back within a short time and did not produce the vouchers at least for one year. The observation of the Inspector that one Mr. P.C. Bengani is managing the affairs of the three firms and produced the Attendance and Wages Registers of all the three firms from April 1992 to June 1994 is an indication that there is integrality of management of all the three firms and they have to be counted as employees of the appellant.

13. The object of the Employees State Insurance Act, 1948 is to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provisions for certain other matters in relation thereto. This Act is a beneficial piece of social security legislation in the interest of labour and the provisions of the Act will be construed to promote the scheme and to avoid the mischief. Although the Employees' State Insurance Act is a pre-constitutional legislation, it is a post-independent measure and shares the passion of the Constitution for social justice. Articles 38, 39, 41, 42, 43 and 43A of the Constitution show the concern for workers and their welfare. Since independence, the legislative motivation is found in expression in many enactments. We are concerned with one such law designed to confer benefits on this weaker segment in situations of distress as is apparent from the Preamble. The machinery for state insurance is set up on the shape of a Corporation and subsidiary agencies. All employees in factories or establishments are sought to be insured against sickness and allied disabilities, but the funding, to implement the policy of insurance, is by contributions from the employer and the employee. In view of the complexities of modern business organization, the principal employer is made primarily liable for payment of contribution "in respect of every employee, whether directly employed by him or by or through an immediate employer". Of course, where the employee is not directly employed by him but through another "immediate employer", the principal employer is empowered to recoup the Contribution paid by him on behalf of the immediate employer. There is an Inspectorate to supervise the determination and levy of the contributions. There is a chapter prescribing penalties; there is an adjudicating machinery and there are other policing processes for the smooth working of the benign project envisaged by the Act. The benefits belong to the employees and are intended to embrace as extensive a circle is feasible. In short, the social orientation, protective purpose and human coverage of the Act are important considerations in the statutory construction, more weighty than mere logomachies or grammatical nicety.

14. The learned Counsel for the appellant cited certain judgments of the Supreme Court and various High Courts to impress upon this Court that the appellant firm and the other two firms are distinct and separate and there is no functional integrality between the three firms.

15. In *Joint Director, E.S.I.C. v. L.D. Bhawe and sons* 1999 (3) LLJ 300 (Bom.), the Bombay High Court while considering the scope of Section 1(5) of the Employees State Insurance Act, 1948 held that while clubbing different establishments for the purpose of the Act, the tests laid down by the Supreme Court in *A.C.C. Ltd. v. Workmen* 1960 (1) LLJ 1 (SC), has to be applied and each has to be decided on its own merits.

16. In *Ebrahim Currim and Sons v. R.P.F.C. and Anr.* 1994 (1) LLJ 369 (Bom.), the Bombay High Court while dealing with Section 2A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 in order to test the question whether there is functional integrality between two units held that no single test is conclusive to decide this question and the Court has to consider with great care how far there is functional integrality, that the unit cannot exist conveniently and reasonably without the other and on the further question whether the matters of finance and employment the employer has actually two units distinct or integrated. The mere fact of common ownership by itself is not sufficient to satisfy the test of functional integrality. Similarly the mere fact of supply of raw material or purchase of raw material from the factory by the petitioner or sale of finished goods by the petitioner would not satisfy the test of functional integrality. All the relevant tests must be considered and applied before deciding the issue as to the applicability of Section 2A of the Act or the functional integrality between the two units.

17. In *Karachi Bakery v. R.P.F. Commissioner* 1990 (2) LLN 630 (AP), a Division Bench of this High Court considered the scope of Section 2(f) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. In the said case, the appellant bakery employed six full-time and five part-time employees. It entered into agreements with two other bakeries for supply of bakery products to it. Raw material of the products were supplied to the other bakeries by the appellant-bakery. The agreement did not provide supervision or control over the quality of products supplied. The Provident Funds Commissioner sought to apply the Act to the appellant establishment on the view that if the appellant had entered into contract with two other bakeries for supplying certain bakery products to the appellant, the employees of the said two firms, who are 18 in number, should be treated as employees of the appellant firm inasmuch as the said contracts are in connection with the business of the said firm and fall within Section 2(f) of the Act. The Division Bench on the basis of the above facts held that the other two firms were treated as independent units, therefore, the employees of those independent units engaging their own labour for their purposes of manufacture of separate products, cannot be brought u/s 2(f) of the Act. On excluding the employees of the other two firms the total number of employees employed by the appellant will be below 20, therefore, the Act is not applicable to it.

18. The learned Counsel for the appellant also cited a judgment of the Gujarat High Court in *H.M. Patel and Anr. v. K.C.D. Gangwani and Ors.* 1997 (1) LLJ 895 (Guj.), wherein a learned Single Judge held that since there was no material to

show any relationship with or ownership of or control by the petitioner towards the diamond cutters and polishers carrying on the business in the same premises, the provisions "of the Employees" Provident Fund and Miscellaneous Provisions Act, 1952 are not applicable to make contribution under the Act.

19. The learned Counsel for the respondents submitted a set of decisions which I wish to refer briefly:

20. In *Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation*, , the Supreme Court while considering the scope of Sections 2(9), 2(17) and 40 of the Employees' State Insurance Act, 1948, held that the reach and range of the definition of "employee" in Section 2(9) is apparently wide and deliberately transcends pure contractual relationships. Section 2(9) contains two substantive parts. Unless the person employed qualifies under both, he is not an "employee". Firstly, he must be employed "in or in connection with" the work of an establishment and nexus must exist between the establishment and the work of the employee, but it may be a loose connection. Merely being employed in connection with the work of an establishment in itself does not entitle a person to be an employee.

21. The Supreme Court on noticing the employees of cycle stand and canteen run in the cinema theatre by the contractors held that the employer is liable to their contribution under the E.S.I. Act.

22. In *A.C.C. Ltd. v. Their Workmen* 1960 (1) LLJ 1 (SC), while considering the question whether the limestone quarry formed part of the establishment known as Chaibasa cement works within the meaning of Section 25-E(iii) of the Industrial Disputes Act, 1947, the Supreme Court held that unity of ownership, unity of management, supervision and control, unity of finance and employment, unity of labour and conditions of service of workmen, functional integrality, general unity of purpose and geographical proximity were the tests which the Court has to apply to the facts of each and every case and come to the conclusion whether two units are distinct or integrated.

23. In *Andhra Cement Company Ltd., Vijayawada v. R.P.F. Commissioner Hyderabad and Anr.* 1998 (2) LLJ 453 (AP), a single Bench of this High Court held that in order to hold that different units are constituents of one establishment certain salient features like unity of ownership, management and control, unity of employment, conditions of service, functional integrality and general unity of purpose must be satisfied.

24. In *Bhaskara Ceramic Industries v. Regnl. P. F. Commissioner A.P* 1991 Lab IC 1138 a Division Bench of this High Court held that clubbing of the units and treating the employees employed by those undertakings as the employees of the employer is justified.

25. From the above legal position it is clear that the clubbing of the units may be under different circumstances, and whether the employees of those units are

under the same employer or not is a question of fact which has to be decided on the basis of the material available on record. Therefore, it has to be considered whether the tests laid down by the Supreme Court in A.C.C. Ltd. (supra) are applicable to the facts of this case to hold whether there is functional integrality between the three units and to test whether the Act is applicable to the appellant establishment,

26. From various instances of functional integrality mentioned in paras 4 to 12, it is clear that the J.D. Leasing Company Ltd. and J.D. Services are meant primarily for the convenience and comfort of the customers visiting the J.D. Electronics Shop (appellant establishment). Though in a few cases the persons incharge of the other two units are allowing the general public also to get their works done. This circumstance does not by itself indicate that J.D. Services is thrown open to general public like other shops for getting their electronic equipments repaired, therefore, it can be safely concluded that J.D. Services and J.D. Leasing Company Limited are meant to co-ordinate with the business of J.D. Electronics to facilitate the customers to have all services at one place which will ultimately enable the appellant to attract more customers and to improve the business turnover of the appellant firm. The report of the Inspector and the observations of the Deputy Regional Director, E.S.I. Corporation are clearly indicating that the appellant did not produce all the records to enable them to verify whether the other two units are not integral part of the appellant establishment as contended by the appellant. In the absence of the appellant placing sufficient material to show that they are distinct and separate independent units, there is no scope to reject the view taken by the authorities of the Corporation in making the appellate liable to pay the contribution for the welfare of the employees. After going through the order of the industrial Tribunal i.e., the Employees Insurance Court I am convinced that the Tribunal rightly came to the conclusion that the appellant establishment comes within the purview of the ESI Act. I do not find any grounds to interfere with the said order.

27. In the result, the appeal is dismissed confirming the order of the EI Court dated 26-2-1988, but under the circumstances without costs.