
(2001) 04 RAJ CK 0119
In the Rajasthan High Court
Case No : .C.S.A. No's. 93 and 94 of 2001

Jodhpur Vidyut Vitran Nigam Ltd.

APPELLANT

Vs

Karamchari Rajya Beema Nigam and Another

RESPONDENT

Date of Decision : 09-04-2001

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(9)

Citation : (2003) 1 LLJ 104

Hon'ble Judges : Rajesh Balia, J;K.K. Acharya, J

Bench : Division Bench

Advocate : L.M. Lodha, for the Appellant; Sandeep Shah, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—Heard learned counsel for the parties.

2. This appeal is directed against the order passed by learned single Judge dated September 10, 2001 in S.B. Civil Misc. Appeal No. 154/2001 and S.B. Civil Misc. Appeal No 155/2001, which arose under Employees' State Insurance Act, 1948 in respect of an order passed by E.I. Court on an application made by the Board.

3. In these two appeals, by notification dated March 14, 1985 issued by the Central Government the provisions of Employees' State Insurance Act, 1948 (hereinafter called "The E.S.I. Act"), has been extended to Hanumangarh Junction and Hanumangarh Town. As a result of the said notification E.S.I. Scheme became applicable and operative in the aforesaid areas w.e.f. March 16, 1985.

4. After the extension of the provisions of the Act to the area of Hanumangarh Town and Hanumangarh Junction, the Inspector of the E.S.I. Corporation, inspected the premises of the Assistant Engineer, R.S.E.B. (O&M), Hanumangarh Town, in the presence of Shri Gurjeet Singh Arora, the then Assistant Engineer. After the inspection a notice was given to the appellant on August 19, 1985 to file the return in accordance with the proforma, which was attached with the

notice and was also asked to get the employees of the Board registered under E.S.I. Act.

5. A second notice dated August 29, 1985 was again issued to the Board by which the appellant was informed regarding the determination of the employee's contribution for the period from March 16, 1985 to June 30, 1986 amounting to Rs. 1,63,338.30 on ad hoc basis and the Board was asked to show-cause why the ad hoc assessment made may not be finalized for which September 10, 1986 was fixed for the hearing. On that date no reply was filed nor anybody appeared on behalf of the Board. The Corporation thereafter sent a certificate for the recovery of the said amount to the competent officer to be recovered as arrears of rent revenue.

6. It appears from the material referred in the order of the E.I. Court that a writ petition has been filed in 1987 about the applicability of the Act to the Board. We have been referred to a Bench decision of this Court passed in D.B. Civil Writ Petition 1249/1987; Rajasthan State Electricity Board v. Director General Employees State Insurance Corporation, which was decided on April 27, 1988. This writ petition was primarily concerned with increase in the remuneration limit for the purpose of increasing the operative field of E.S.I. Scheme and bring more employees within the ambit of E.S.I. Scheme, the workmen who were drawing the remuneration upto Rs. 1600/- per month instead upto Rs. 1000/- only as prior to January 27, 1985 were brought within the purview of benefit of E.S.I. when amendment was made in E.S.I. Act, 1948.

7. In pursuance of aforesaid amendment when a demand was raised for contribution in the first instance, the writ petitions were filed in this Court by employees challenging their coverage and certain stay orders were passed as a result of which no amounts were made as employees contribution for the period from February, 1985 to September, 1985. Ultimately one of the said writ petitions filed by the petitioner was withdrawn and in another writ petition interim order was vacated.

8. Before the Division Bench hearing the aforesaid writ petition the applicability of the Act and the extension of its provisions to the employees of the Board was not disputed. It was stated by the Division Bench that it is not disputed, that even the employees of the petitioner were so covered in the writ petition No. 1249 of 1987, the Board has primarily denied its liability to contribute the employer's share to the Corporation which it has not deducted under the order of this Court. This contention was repelled when the Court said that petitioner is bound to make payment of the employer's as well as employees' contribution to the respondents. This liability extends whether or not he has cared to deduct the employees' contribution from the wages or not.

9. Apart from this litigation, the aforesaid demand was raised against the appellant vide notice dated August 29, 1986 determining the employer's contribution on ad hoc basis, payable by the Board for the period from March,

1985 to March 1986 which resulted in final order dated October 6, 1986 calling upon the appellants to deposit Rs. 96,472.21 u/s 45A of the E.S.I. Act. It further appears that a notice dated June 24, 1986 has earlier been issued to the appellants by the Corporation thereafter by another order dated July 18, 1988 a further sum payable as contribution by the Board on account of employer's contribution as well as employees' contribution from April, 1986 to June 1986 was determined and a demand was raised.

10. As against these two demands, the two applications were filed before the E. I. Court on October 20, 1988. Application No. 2 of 99 is subject matter of Civil Misc. Appeal No. 154/2001 and Application No. 3 of 99 is subject matter of Civil Misc. Appeal No. 155/2001 corresponding to Special Appeal No. 94/2001 and 93/2001 respectively Injunction applications were also filed during the pendency of those two applications for staying the recovery of the said demands which was rejected by the E.I. Court, against which two Misc. Appeals were filed as S.B. Civil Misc. Appeal No. 24/91 and S.B. Civil Misc. Appeal No. 25/91 which was decided by a common order dated September 18, 1991. In that connection the Court found that the determination of the amount of employer's contribution was made after providing opportunity of hearing to the appellants for controverting the claim made by the Corporation for contribution to the E.S.I. Fund. It has also found in favour of the jurisdiction of E.S.I. Corporation to raise the demand and therefore, the order passed by the E.I. Court was not interfered with.

11. E.I. Court by its order dated August 29, 2000 rejected the applications moved by the Board and held that the Board is not entitled to get any relief against the aforesaid orders raising demand of E.S.I. Contribution against the Board as an employer in respect of its employees at Sub-station, Hanumangarh. The learned single Judge, as noticed above, did not agree with the contentions raised by appellants and dismissed the two appeals by common order dated September 10, 2001.

12. In support of this appeal, three contentions have been raised before us.

13. Firstly it has been contended that the Sub-station, Hanumangarh is not a factory within the meaning of Factories Act and therefore employees employed thereunder are not covered by the E.S.I. Scheme. Therefore the orders passed by the Corporation calling upon the appellants to contribute the E.S.I. funds are wholly without jurisdiction and cannot be sustained.

14. The second question raised by learned counsel is that since the Act does not apply to a factory or establishment belonging to or under the control of Government, where employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act. The provisions of Act do not apply to the establishment of the Board at all and.

15. Thirdly as a limb of the second contention it has been urged by learned counsel that since no E. S.I. Hospital or Dispensary was established in Hanumangarh Town for substantially long period, the period during which the

dispensary was not established in Hanumangarh by the E.S.I. Corporation to provide the benefits under the Act to the workmen of the Corporation at Hanumangarh Town, no contribution for that period can be claimed against the appellants by the Corporation.

16. At the outset, we may state that so far as the second and third contention are concerned, they are without laying any factual foundation necessary for raising such objection and therefore, the appellants cannot be allowed to raise such issues for the first time before this Court in this appeal at this belated stage as necessary material in that regard does not find place on record of proceedings.

17. In connection with the first contention it has been submitted by learned counsel that in terms of Sub-section (4) of Section 1, the Act shall apply to all factories, including the factories belonging to the Government. Therefore, the conditions precedent for the application of the Act is that the establishment concerned must be a factory before any provisions can be operated in respect of any establishment. Contention is further buttressed by inviting attention of the Court to Sub-section (12) of Section 2, which requires that any establishment in order to be called as a factory must have fixed premises, which may include in the precincts thereof and that the manufacturing process ought to be carried on in those premises for the purposes of the Act of 1948. The manufacturing process has been assigned the same meaning as it has been assigned in the Factories Act, 1948 u/s 2(k)(iii) of the Factories Act a place where energy is generated, transmitted and distribution falls within the scope of manufacturing process. The two provisions read together, contends Shri L.M. Lodha learned counsel, exclude a sub-station of State Electricity Board where there is no generation or transmission of power, essential ingredient of manufacturing process of energy or power, from the purview of the definition of the factory. Therefore, sub station being not a factory within the meaning of E.S.I. Act to which its provisions can be applied, the sub station at Hanumangarh does not invite applicability of the Act at all. Learned counsel, in this regard relies on a decision of the Supreme Court in the case of Workmen of Delhi Electric Supply Undertaking Vs. The Management of Delhi Electric Supply Undertaking,

18. On the other hand, it is contended by learned counsel for the respondents Mr. Shah that Scheme of Factories Act, 1948 is vitally different from the Scheme of Employees' State Insurance Act, 1948 and the operation of E.S.I. Act has much wider field than the operation of the Factories Act, 1948, While Factories Act, 1948 has been enacted only for the purpose of making law for regulating labour in factories, Employees' State Insurance Act has been enacted to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters, which operates beyond factory. It was urged that while Factories Act operates in relation to regulating the promotions of conditions of working and providing better working atmosphere within the factory to its worker employed thereat, Employees' State Insurance Act is a beneficial legislation for providing certain benefits of far wider

import and not confined to the factory premises itself but reach outside the factory in connection with the sickness, maternity and other injury.

19. In this connection definition of "worker" in the Factories Act, 1948 and the "employee" under the E.S.I. Act on whom the Act operates bring out the distinction vitally and clearly between the operative field of two Acts.

20. The Factories Act is applicable only in respect of the workers who are actually employed within the premises where the factory is situated. The field of E.S.I. Act, 1948 is not only in respect of the workers employed within the premises of the factory but also in respect of the employees who have been employed on any work of or incidental or preliminary to or connected with the work of the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere. This divergence in the area of the operation of the benefits falling under the two Acts to different range of employees makes a vital difference. While Factories Act's operation is confined to workers employed within the premises or precinct where factory is situated, the flow of benefit under E.S.I. Act is not confined to the employees working in the factory only, but also on employees who are employed in connection with working of factory or establishment whether in the factory premises or elsewhere. Therefore the definition of factory has to be read alongwith definition of "worker" while considering the provisions of Factories Act as defined thereunder and the definition of "Factory" has to be read with definition of "employee" to determine the operative field of the E.S.I. Act.

21. Learned counsel, in support of his contention has relied on decisions of Supreme Court in the case of Nagpur Electric Lights and Power Co. Ltd. Vs. Regional Director Employees State Insurance Corporation, etc., and in the case of Transport Corporation of India Vs. Employees' State Insurance Corpn. and Another,

22. Having given our thoughtful and anxious consideration to contentions raised before us and gone through the material that has been placed before us, we are of the opinion that these two appeals cannot succeed, and the contention about non-applicability of the E.S.I. Act to a sub-station of the Electricity Board which is engaged in the generation, transmission and transformation of the electricity power cannot be sustained.

23. The Scheme of the E.S.I. Act, 1948 leaves no room of doubt that for the purpose of finding out the applicability of the Act merely identifying a factory to which provisions of the Act have been extended does not bring an end to the enquiry, where its effect is reached. Once a factory is identified to fall within the precinct of the E.S.I. Act, the operative field extends to conferring the benefit to all the employees which are considered employees u/s 2(9) of the Employees' State Insurance Act, 1948 which reads as under:

2(9). "employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and -

(i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or

(ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment; but does not include-

(a) any member of [the Indian] naval, military or air forces; or

(b) any person so employed whose wages (excluding remuneration for overtime work) exceed [such wages as may be prescribed by the Central Government] a month:

Provided that an employee whose wages (excluding remuneration for overtime work) exceed [such wages as may be prescribed by the Central Government] a month at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period.

24. It is apparent from the aforesaid definition of an "employee" that the employee to whom the benefits of the Act are envisaged is not confined to such employee only who is employed within the precincts of the factory but is much wider and extends to any employee of the principal employer who has been engaged not only in the working of the factory but also at work incidental or preliminary to the work of the factory and even further to any work connected with the work of the factory or the establishment. It is not at all essential that engagement of such employee is within the four corners of the factory premises but he may have an employment elsewhere outside the factory. This wider platitude on which Act operates does not confine its applicability only to the factory premises as is the case where the question about the applicability of the Factories Act may be in question.

25. Apart from expressions "in connection with" and "employedelsewhere" in Sub-clause (1) another feature which invites attention in the inclusive part of definition which gives still wider look to the term is that it expressly includes

within the definition of employee amongst others any person employed in connection with sale or distribution of the products of factories establishment to which the E.S.I. Act applies.

26. It is not doubted, not even disputed, that the premises where electricity is generated and transformed is a factory. It is also not disputed and cannot be disputed that sub station of the Board are engaged in distribution of energy, generated and/or transformed at different premises, which conforms to definition of factory. Therefore, irresistibly it must be held that a person engaged in sub station is engaged in connection with distribution of electricity, the product, generation of which has taken place in factory.

27. The aforesaid distinction is further clear from the two decisions referred to by learned counsel which we have noticed above.

28. The first decision in order of chronology is one which has been relied on by learned counsel for the respondent and had arisen in the like circumstances, giving rise to like issues as has been raised before us the case of Nagpur Electric Light and Power Company Ltd. (supra). This case has arisen under the E.S.I. Act. The contention raised before the Supreme Court was the same that an employee employed at sub station of the Electricity Company was not governed by the provisions of the E.S.I. Act because a sub station independent of the factory where power is generated, is not a factory.

29. The Court while stating that the premises constituting a factory may be a building or open land or both, inside the same compound wall, there may be two or more premises; the premises used in connection with manufacturing process may constitute a factory and the other premises within the same compound wall may be used for purposes unconnected with any manufacturing process and may not form part of the factory. Referring to definition of factory under the Factories Act the Court said that the process of transforming electrical energy from a high to a low potential and the process of transmitting the energy through supply lines are both manufacturing process. Where in part of the premises occupied by the Company the two processes were carried on with the aid of power by means of electrical gadgets and other devices, and on the premises more than 20 persons were working and no part of the premises was used for purposes unconnected with the manufacturing processes, such a premises constituted a factory within the meaning of Section 2(12) of the Employees' State Insurance Act, 1948. The Court cautioned that every inch of the wider area over which the transmission lines were spread was not a factory and would not be affected so far as the applicability of the Act is concerned. After so defining the factory's meaning, about persons who are employed outside factory at sub station or zonal station, the Court categorically stated after referring to the definition of employee u/s 2(9) of the E.S.I. Act in comparison of Section 2(1) of the Factories Act, 1948, defining the worker that:

"It is to be seen that the definition of an employee in the Employees' State

Insurance Act is wider than that of a worker in the Factories Act. The object of the Factories Act is to secure the health, safety, welfare, proper working hours, leave and other benefits for workers employed in factories. The benefit of this Act does not extend to field workers working outside the factory.... The object of the Employees' State Insurance Act is to secure sickness, maternity, disablement and medical benefits to employees of factories and establishments and dependents' benefits to their dependents. The benefit of this Act extends inter alia to the employees mentioned in Section 2(9)(i) whether working inside the factory or elsewhere."

30. The definition of "employee" in Section 2(9) deals with three classes of employees. We are concerned with the class of employees mentioned in Section 2(9)(i). The Courts below concurrently found, and in our opinion, rightly, that all the workers of the disputed categories are persons employed for wages in or in connection with work of the Company's factory and are directly employed by the company on work of or incidental to or connected with the work of the factory. Some of them do the work in the factory and some work elsewhere, but they are all employees within the meaning of Section 2(9)(i).

31. The Court said that a person can be employed within the meaning of Section 2(9)(i) if it is in connection with the work of the factory and none of them is employed in any separate establishment unconnected with the work of the factory, all workers of disputed categories, whether they work in factory or elsewhere, are employees within the meaning of Section 2(9)(i) of the Employees' State Insurance Act, 1948. In this connection the Court further accepted that the assistant engineer, supervisor, electricians, and overseers who are engaged in the erection and maintenance of the electricity supply lines connected with the transmission of power, the cable jointer, maistries, linemen, coolies, and wiremen employed for inspection of the supply lines, digging pits and erecting poles for laying distribution mains and service lines, all these persons are employed in connection with the work of the factory engaged in generation or transformation of power.

32. The Court stated in unequivocal terms:

"Some of the employees working outside the factory, but their duties are connected with the work of the factory. They are, therefore, employees within the meaning of Section 2(9)(i). Some are employed in the sub-stations. It is the common case that the sub-stations are not independent factories. The sub-stations attendants attend to work which is directly connected with the work of the factory at the main station. They are therefore employees within the meaning of Section 2(9)(i)."

33. In our opinion this decision of the Supreme Court clearly distinguishing the scheme of the Factories Act in terms of applicability of said Act vis-a-vis the E.S.I. Act, and clinches the issue in favour of the respondents that a sub-station of the Electricity Board which is engaged in distribution and maintenance of the

service lines cannot be ousted from the purview of the E.S.I. Act.

34. We may now examine whether the decision to which learned counsel or the appellant has laid stress and in which Nagpur Electricity Company Ltd. (*supra*) has been referred to strikes a different note in the case of Workmen of Delhi Electric Supply Company (DESU) case which is a later decision.

35. In the DESU case (*supra*) the question which has arisen before the Court was that workmen concerned who were raising certain demands as workers of a factory and governed by the Factories Act were in fact workers of a factory and entitled to benefit under Factories Act, 1948 and Rules framed thereunder. That is to say the question was directly relating to the benefits available to the workmen under the Factories Act by the provisions of the Factories Act and did not relate to the category of workmen who were required to be examined in connection with the benefits flowing from E.S.I. Act with which we are concerned or any other Act made for the benefit of the labour.

36. It is while examining the issue under the Factories Act the Court said after referring to the definition of "manufacturing process" in the Factories Act in Section 2(k)(iii) which include "generating, transforming or transmitting power" and the definition of "Factory" u/s 2(m) of Factories Act, according to which a factory means any premises including the precincts thereof - (i) whereon ten or more workers 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. From the definition of the "Factory" under Factories Act, it is clear that there must exist a premises where a manufacturing process is carried on. The Court found as a fact that the functions of workers at sub- stations appear to be to maintain the existing lines for generation, transmission and transformation of power in their respective areas, to attend to installation and other incidental matters when a new connection has been given to a consumer. It cannot be said that any manufacturing process either takes place in the sub- stations or in the zonal stations and they do not specify the definition of "Factory" u/s 2(m) of the Factories Act.

37. Firstly, we may recall the finding dependent not on premise whether "generation, transmission and transformation" of power takes place at the same place but was dependent on type of work which is being discharged, which was held to be maintenance of existing lines, the transmission, generation and transformation of power was held not to fall within the definition of "manufacturing process" as to describe such sub-station as the factory.

38. More relevantly the Court referred to Calcutta decision in the case of Calcutta Electric Supply Corporation Ltd. Vs. Employees State Insurance Corporation, which again was a case arising under E.S.I. Act between the Calcutta Supply Electricity and the Employees" State Insurance Corporation raising the same question which has been raised before us, which has given the extended - meaning to the factory for the purposes of invoking the provisions of the E.S.I.

Act, its application to the substations as has been later on held by Supreme Court in Nagpur Electricity Company's case (supra). The Court did not say that the Calcutta decision is erroneous but made it clear that the decision of the Calcutta High Court holding the power stations or generating stations and connected sub-stations and other ancillary establishments are to be considered as one unit, was arrived at by the learned Judges when construing the expression "employee" u/s 2(9) of the Employees' State Insurance Act, 1948. A reading of that definition clearly shows that its ambit was very wide.

39. The question in DESU case (supra) was whether overtime remuneration payable to a workman under Factories Act and Rules or Scheme framed thereunder it was available to workman employed at a sub-station as workman employed in factory. The Court was not considering the case whether employees employed at a sub-station are the workmen employed in connection with work of a factory and under the purview of E.S.I. Act as was directly before the Apex Court and answered in Nagpur Electric Supply Co. 's case in favour of the Corporation.

40. We are therefore of the opinion that ratio of DESU case (supra) does not militate against the conclusion to which we have reached.

41. The same principal has been again enunciated by the Apex Court in the case of Transport Corporation of India v. Employees' State Insurance Corporation and Anr., (supra). The Court approved the principal test to connect the workmen and employer under the Act to ensure health of the employee being covered under the Act is that the employee is engaged in connection with the work of the factory. The employee need not necessarily be the one integrally or predominantly connected with the entire business or trading activities. The true test is control by the principal employer over the employee. That test alone is the relevant test. The connection between the factory and its predominant products sold or purchased in the establishment or regional offices are irrelevant and always leads to denial of welfare benefits to the employees under the Act. When there is a connection between the factory and the finished products which are sold or distributed in the regional offices or establishment and principal employer has control over employee, the Act becomes applicable. In coming to this conclusion the Court referred to its earlier decisions in the case of Kirloskar Brothers Ltd. Vs. Employees' State Insurance Corpn., and in the case of Nagpur Electric Light & Power Co. Ltd. v. Regional Director ESI Corporation (supra) and in the case of Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation,

42. Report further reiterated that it is a piece of social legislation intended to confer specified benefits on workmen to whom it applies, and so, it would be inappropriate to attempt to construe relevant provisions in a technical or narrow sense.

43. This position cannot be disputed. But in dealing with the plea that the

Section will be liberally construed, we cannot overlook the fact that the liberal construction must ultimately flow from the words used in the Section. If the words in the Section are capable of two constructions one of which is shown patently to assist the achievement of the object of the Act, Courts would be justified in preferring that construction to the other which may not be able to further the object of the Act.

44. In the aforesaid circumstances, we are of the opinion that there is no merit in the contention of the learned counsel for the appellant that merely because it is a sub-station where there is no generation of power takes place but only transmission of energy through supply lines is served and the maintenance of the supply lines is carried out, it cannot be considered as a factory and persons employed thereof are not governed by E.S.I. Act. In fact it cannot be disputed and denied that even if sub-station of the Board is not a factory, but the persons employed there are in connection with the factory where electricity is generated and transformed and transmitted by serving as intermediary station for distribution of electricity and maintaining of supply lines, which has enough nexus to bring within the ambit of E.S.I Act.

45. Accordingly, this appeal fails and is hereby dismissed.

46. No order as to costs.