

(1996) 02 MAD CK 0116

In the Madras High Court

Case No : C.R.C. No's. 428 and 429 of 1995

Measureall Engineering and Co. (P) Ltd., and Others

APPELLANT

Vs

Employees' State Insurance Corporation

RESPONDENT

Date of Decision : 19-02-1996

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(17), 86

Citation : (1997) 1 LLJ 534

Hon'ble Judges : N. Arumugham, J

Bench : Single Bench

Judgement

1. Heard. The only contention that has been dwelt as main plank for the admission of the revisions by the Bar is that the petitioners herein are not the Managing Directors, nor the Managers of the company by name, Measureall Engineering and Co. (P) Ltd., Coimbatore, and that, therefore, they have not come under the definition of Section 2(17) of the Employees' State Insurance Act, which deals with "principal employer" and which aspect has not at all been considered by the learned Judicial Magistrate, while passing the impugned orders on the petitions seeking discharge of the petitioners and also for dropping further proceedings. The above plea was discountenanced by Mr. P. Rajarnanickam, learned Counsel for the respondent, stating that the definition provided u/s 2(17), for "principal employer" under the Act, is neither wider nor too narrow, but it has spelt out particularly, the persons who are put in charge of the entire administration of the company, viz., the occupier or otherwise. If the definition section, as provided above, is understood properly, then the legal ratio decided by the Apex Court in Employees' State Insurance Corporation v. Gurdial Singh, 1993 83 FJR 96 may not apply and for the said reason alone, the revision is not maintainable, added to which, learned Counsel has also referred to the factual aspects of the case that the learned Magistrate has taken cognizance of the offence under the Employees' State Insurance Act and having identified the existence of the prima facie case, processes were issued and accordingly the petitioners entered appearance and charges ensued and it is, at this juncture,

always open for the court to conduct the enquiry u/s 202 of the Code of Criminal Procedure or to record the evidence of the witnesses produced on behalf of the prosecution and for any reason or ground, if anything is to be interfered with or brought to the knowledge of the court, then the remedy open to the petitioners is only Section 245 of the CPC and not otherwise. Urging so, the admission of these revisions was opposed.

2. In the context of the above rival contentions, I have perused the impugned orders passed by the learned Judicial Magistrate No. II, Coimbatore, in C.M.P. No. 5272 of 1994 in S.T.C. No. 2139 of 1994 and CrI. M.P. No. 5271 of 1994 in 25 C.C. No. 150 of 1994 and looked into the case records with the nuggets of the charges and the complaint. In order to appreciate and to give an answer for the points raised by the Bar for the respective parties, it has become necessary for me to extract the observations made by the learned judicial magistrate in the following words :

"In this case, the fourth accused, the Manager of the company whether a Factory Manager under the Factories Act or not has not been stated by the complainant in the complaint. He was simply arrayed as Manager of the first accused company. The reason for not stating so can be traced from the records filed before this court which shows that the fourth accused refused to furnish the Directors" list and also the persons who are responsible for supervision and control of the factory. Even to the show-cause notice, accused Nos. 2 to 4 never furnished who are the persons responsible for remitting the employers" and employees" share of contribution and to file returns. Hence, the fourth accused cannot be termed as Factory Manager until some evidences are let in or some documents are. Likewise, who is the occupier of the factory is not stated or furnished by both sides. The company who is the owner of the factory is arrayed as the first accused and is facing prosecution. Section 86A deals with every person who was in charge of and was responsible to the company in the conduct of the business of the company has to face prosecution. So, the complainant in his complaint to stated that accused. Nos. 2 to 4 are the persons who are in charge of and were responsible to the company for the conduct of the business of the company. Hence, accused Nos. 2 to 4 are facing prosecution.

The proviso to Section 86A clearly says that if the offence is committed without anyone"s knowledge or that any person exercised all due diligence to prevent the commission of such offence, then such person can avoid no punishment. So, as per the proviso, accused Nos. 2 to 4 can come forward before this court to state who is the person who was in charge of and was responsible to the company for the conduct of the business of the company and even if all the three accused, viz., Nos. 2 to 4, were in charge of and were responsible to the company, even then they can prove before this court that the offence was committed without their knowledge. Without doing so, the accused have now come forward with this application seeking total discharge not only for accused Nos. 2 and 3 but also for accused Nos. 1 and 4."

3. The very attempt made by the Bar is to seek the aid of a decision of the Supreme Court in *Employees' State Insurance Corporation v. Gurdial Singh*, 1993 (83) FJR 96, in support of his contention that the petitioners are the Managing Directors and Directors. But, however, for the sake of argument, even assuming it for a moment that if petitioners Nos. 1 and 2 are not coming within the definition of Section 2(17) of the Act, then the Bar is not in a position to say who is the actual person in charge of the management of the company as a whole, which would count the concept of the occupier under the definition. The phraseology adopted in the definition section for, "owner or occupier", includes the meaning of the Managing Agent of such owner or occupier, the legal representatives of a deceased owner or occupier and where a person has been named as the Manager of the factory under the Factories Act, 1948, the person so named. It would clearly mean that not only the Managing Agent or Managing director, but also a person in occupation are specified as Manager in general terms or otherwise. It is, therefore, under the circumstances, taking in conjunction with the wider meaning adopted in the definition clause above referred to, I find very immense force in the contentions raised by Mr. Rajamanickam, learned Counsel appearing for the respondent.

5. Having so accepted it and looking into the is gamut of cases, it is noticed that the learned Judicial Magistrate has taken cognizance of the offences and issued processes to the petitioners who consequently entered their appearance and at a later stage, the petitioners belatedly filed the petitions to recall the summons and for discharge under the relevant provisions of law. I had very many occasions to give my view that in the cases of this kind, at this stage, no discharge can be given, unless miraculous things have been brought to the knowledge of the Court so as to invite the grounds u/s 245(2) of the Code and otherwise certainly not. It is, therefore, imperative at this hour to note that it is always open for the accused to put forth their case before the Trial Court with regard to who is the proper person in charge of the company, i.e., either the Managing Agent, or the Manager or the Managing Director or someone else. Taking overall consideration of the matter on hand, I find that the impugned orders passed by the Judicial Magistrate are totally justifiable and cannot at all be controverted as there is no iota of ground envisaged or attempted by and on behalf of the Bar for the petitioner.

5. In the result, the revisions lack every merit and for all the said reasonings given above, the revisions fail and accordingly, they are dismissed.