
(1984) 12 AP CK 0023
In the Andhra Pradesh High Court
Case No : A.A.O. No. 43/80

Modi Rubber Ltd.

APPELLANT

Vs

The Regional Director, ESI Corporation

RESPONDENT

Date of Decision : 05-12-1984

Acts Referred:

Employees State Insurance Act, 1948 — Section 1(5), 2(9), 38

Citation : (1985) 2 APLJ 100 : (1988) 1 LLJ 9

Hon'ble Judges : Seetharam Reddy, J; Ramaswami, J

Bench : Division Bench

Judgement

Seetharam Reddy, J.—The only question that falls for determination in this appeal is whether the employees, who are admittedly more than 20 in number in the godown-cum-sale office of the petitioner's company are covered by the Employees' State Insurance Act, 1948 and if so whether the company is liable for contribution.

2. The facts in a nutshell are the appellant-company, Messrs Modi Rubber Limited, has got its registered office at Modinagar, whereas it has its main factory at Modipuram. After manufacturing the commodities out of rubber, it conveys the same to its premises at Hyderabad, styled as Depot-cum-sale office, and from that premises it supplies the commodities to the distributors after receiving moneys due. The State Government issued a notification u/s 1(5) of the ESI Act governing the said premises under sub-clause (iii) of item 3 of the notification. Thereupon the Corporation issued a notice holding that the godown-cum-sales office at Hyderabad is liable for insurance contribution as it has engaged admittedly more than 20 employees. This was resisted and ultimately the E.I. Court, on an application being filed, held firstly that the contention of the Corporation that the petitioner is a branch of the Head Office situated at Modinagar and since the Head Office is covered by the Act, the branch also must be said to be covered, cannot be upheld, and therefore, that contention was rejected. Secondly, the E.I. Court however held on the basis of the evidence let

in that the actual sales are undertaken in the premises of the petitioner-appellant as the tyres and tubes are not distributed at the doors of the dealers, but they are actually collected at the premises after payment of money. It also further held on the basis of Ex. R. 1 and R. 3 that the petitioner-appellant was prepared to get itself covered and to comply with the provisions of the Act at least from June, 1976. In fact, the petitioner started deducting employees' contributions from their wages, from January 1979. In view of those circumstances for E.I. Court ultimately held that the petitioner is a "shop" and not a godown nor a "depot" as claimed by it.

3. Now Sri Krishnamurthy, the learned counsel for the petitioner advanced an argument, which ex facie though is eloquent, that if the main factory is not covered by the Act and in as much as by extension of the deeming provision, the employees engaged in the branch office cannot also be equally covered, the provision enacted u/s 1(5) should be constructed as not to nullify the effect of decisions given on the construction placed on the provisions enacted in Section 2(9) read with Section 38 of the Act. We apprehend, we are unable to accede to the said submission. Before adjudicating, the relevant provisions may be set out.

Section 1(5) :- "The appropriate Government may, in consultation with the corporation, and where the appropriate Government is a State Government, with the approval of the Central Government, after giving six months" notice of its intention of so doing by notification in the official gazette, extend the provisions of this Act or any of them, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise."

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Section 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, 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 five hundred rupees a month.

Provided that an employee whose wages (excluding remuneration for overtime work) exceed five hundred rupees 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."

Section 38 :- "All employees to be insured. Subject to the provisions of this Act, all the employees in factories or establishments to which this Act Applies shall be insured in the manner provided by this Act"

4. Very fairly the learned counsel for the appellant submitted that he is not going to question the finding of the E.I. Court that from the nature of the circumstances, fully fortified by the evidence, it is a shop where the transaction of sale takes place and, therefore, the only main question is whether the provision of Section 1(5) of the Act contemplate a situation where it can be given effect to notwithstanding the limited definition laid down in Section 2(9) without doing any violence to the very purpose behind Section 2(9) of the Act.

5. True, Section 2(9) of the Act and the decisions of this Court as well as the Supreme Court, contemplate a situation where the expression "employee" working in any factory or establishment 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 and the object is quite obvious from this provision, namely, a benefit which is extended to the employees working in the main factory or establishment, as the case may be, will have to be automatically extended to the employees working in all the branches wherever they were established, whether they are within the area of operation or outside the area of operation of the Act, notwithstanding the fact that the number of employees is less than 20. In our undoubted view, this is one of the aspects deliberately contemplated by the legislature and so wherever the main factory or establishment is covered, its branches also will be, by way of corollary, covered. But this positive aspect will not deter the court from construing and giving effect to the provisions enacted in Section 1(5) of the Act, more so in the absence of any explicit provision in the Act that wherever the main factory is not covered by the Act a branch also should not be covered even under the powers conferred under the provisions enacted in Section 1(5) of the Act. In the absence of such provision, we are unable to see any fetter on the powers conferred on the State Government for extending the benefit explicitly postulated u/s 1(5) to such of these other establishments wherein the employees engaged are 20 or more in number, even though the parent unit is not covered. In fact, if we construe narrowly we will be defeating the very purpose of the Act itself.

Legislature, in our view, has covered deliberately such of these areas where a branch may not be covered in view of the fact that the main office is not covered by the ESI Act, will nevertheless be covered under the powers given to, the State Government. In fact, the policy is very well laid down in the very Section itself and before seeking to cover any establishment the State Government has, before issuing a notification, to consult the Central Government and give due notice to the establishment as well.

6. From the foregoing, it is therefore quite manifest that the restricted interpretation which the learned counsel for the petitioner wants us to place upon the provisions enacted in Section 1(5) of the Act cannot be acceded to as it will be repugnant to the very provisions and will be stultifying the very aim and object of the legislature. The appeal is dismissed. No costs.