

(1992) 01 KAR CK 0004
In the Karnataka High Court
Case No : M.F.A. No. 1946 of 1991

M/s Graphite India Ltd.

APPELLANT

Vs

E.S.I. Corpn.

RESPONDENT

Date of Decision : 07-01-1992

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 45 A, 75

Citation : (1992) 2 LLJ 125

Hon'ble Judges : Venkatachala, J;Vasanth Kumar, J

Bench : Division Bench

Judgement

Venkatachala, J.—Scope ambit of sub-clause (c) of clause (22) of Section 2 of the Employees' State Insurance Act, 1948 (for short "the Act"), arise for our consideration and decision in this appeal.

2. Employees' State Insurance Corporation (for short "the Corporation") by its order dated April 18, 1990 made u/s 45-A of the Act, determined the contribution payable by M/s. Graphite India Ltd., the principal employer, towards its 14 employees employed in its factory between April 1988 and September 1988, at Rs. 10,805-15 and demanded payment of that amount. The principal employer made an application u/s 75 of the Act before the Employees' State Insurance Court at Bangalore (for short "the Court") questioning its liability to pay the contribution to the Corporation as determined in the said order in respect of its 14 employees. The contention advanced by the principal employer to pay contribution to the Corporation as determined in the said order in respect of its 14 employees was based on its view that a sum of Rs. 10/- per month, which was paid as monthly Washing Allowance to each of its 14 employees, it was includible in the wages payable to each of such employees, the amount of wages payable to each of them would exceed Rs. 1,600/- per month and that would disentitled the Corporation from claiming contribution respecting those employees. That contention was resisted by the Corporation on the plea that the sum of Rs. 10/- paid as Washing Allowance to each of the employees cannot be

included in the wages of each of them, but has to be excluded because of the provision in sub-clause (c) of clause (22) of Section 2 of the Act and if so done, the amount of wages payable to each of them would not exceed Rs. 1,600/- per month and hence the principal employer cannot escape its liability to pay contribution to the Corporation respecting such employees. Consequential controversy being considered by the Court, the same was resolved in favour of the Corporation and against the principal employer on the constriction placed by it on the scope of sub-clause (c) of clause (22) of Section 2 of the Act, by its order dated May 20, 1991. It is the correctness of the said order that has been questioned in this appeal. It is how the need has arisen to decide this appeal with reference to the question which is adverted to by us at the outset.

3. Clause (22) with its sub-clause (c) of Sec-2 of the Act which bears on the question, reads :

(22) "Wages" means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off and other additional remuneration, if any, paid at intervals not exceeding two months, but does not include -

(a)

(b)

(c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or

(d)

Any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment covered by sub-clause (c) above cannot be included in wages covered by clause (22) of Section 2 of the Act, becomes apparent from a reading of sub-clause (c) and (22) above. If the monthly Washing Allowance payable to its 14 employees by the principal employer falls, within the scope and ambit of sub-clause (c) of clause (22) of Section 2 of the Act, the same cannot be included in the monthly wages payable to the employees of the principal employer is not a matter which could admit any doubt. Therefore, what needs to be seen is whether the monthly Washing Allowance payable to each of the employees of the principal employer falls within the scope and ambit of sub-clause (c) of clause (22) above. Hence, need arises to find as to what exactly is the nature of Washing Allowance paid to the 14 employees of the principal employer.

4. Entitlement of the employees of the principal employer to Washing Allowance having been based on a settlement reached between the principal employer and its employees, the clause therein which entitles the employees to the benefit of Washing Allowance from the principal employer, reads :

"8 (iv) It is agreed that washing allowance will be revised to Rs. 10.00 per month. Any workman who has not attended work in the entire month will not be eligible for this allowance."

From the language employed in the above clause providing for entitlement by an employee to the Washing Allowance from the principal employer, it becomes evident that the employee (workman) would become entitled to Rs. 10/- per month as Washing Allowance as a part of his wages if he attends to the work during the entire month. The Washing Allowance payable to an employee could be only for defraying his expenses to be incurred for washing of the dresses which he has to use in the course of his work, becomes apparent as the same is linked to his working in the factory of the principal employer during the entire month. If the Washing Allowance payable under the settlement by the principal employer to each of its employees (workmen) working in its factory, is for defraying the expenses of washing of the dresses or clothes used by each of them when they attend to the work, it becomes obvious that such allowance would be a sum paid to the employee employed by the principal employer in its factory and the same cannot be regarded to have been paid for anything except to defray special expenses entailed on the employee by the nature of his employment in the principal employer's factory or establishment. Hence, the monthly Washing Allowance of Rs. 10/- paid by the principal employer to its employees squarely falls under sub-clause (c) of clause (22) of Section 2 of the Act having regard to its wide scope and ambit.

5. If the monthly Washing Allowance of Rs. 10/- payable to each of the 14 employees concerned by the principal employer is not included in the wages of each of the employees during the relevant period, for which contribution is claimed by the Corporation, would not exceed Rs. 1,600/-, and therefore the principal employer cannot escape its liability to pay contribution in respect of such employees.

6. However, learned Counsel for the appellant-principal employer, relying upon a Division Bench decision of this Court in *Hind Art Press, Mangalore Vs. E.S.I. Corporation and Another*, contended that allowance payable to the workmen or employees by the principal employer towards lunch during the working days has since been regarded as wages coming under clause (22) of Section 2 of the Act, Washing Allowance must also be regarded as included in wages falling thereunder and if so done, the amount of wages payable to the 14 of its employees by the principal employer in the instant case would exceed Rs. 1,600/- per month and hence the principal employer need not pay the contribution on that account. We have gone through that decision. It is seen therefrom that the decision has proceeded on the undisputed fact that sum payable towards Lunch Allowance to the employees concerned therein formed part of the "wages" falling in clause (22) of Section 2 of the Act and not the wage falling in sub-clause (c) thereof. When that is the position, the decision relied upon by the learned Counsel for the appellant cannot be of any assistance

in advancing the case of the principal employer.

7. In the result, we dismiss this appeal.

8. Having regard to the nature of the controversy decided in this appeal, we do not propose to award costs.

9. The decision in this appeal, we make it clear, cannot come in the way of the appellant-principal employer claiming refund of any amount paid to the Corporation respecting its employees, without being liable to pay such contribution under the Act.