
(1970) 05 GAU CK 0002
In the Gauhati High Court
Case No : Misc. Appeal (F) No. 13 of 1965

M/s. Tara Chand Mohan Lal and Another	APPELLANT
Vs	
Employees State Insurance Corporation and Others	RESPONDENT

Date of Decision : 20-05-1970

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 2(13), 2(9), 75(2), 80

Citation : AIR 1971 Guw 65

Hon'ble Judges : P.K. Goswami, C.J.; D.M. Sen, J

Bench : Division Bench

Advocate : N.M. Lahiri and B.K. Das, for the Appellant; N.M. Ganguly, for the Respondent

Judgement

Goswami, C.J.—This appeal u/s 82(2) of the Employees State Insurance Act, 1948, hereinafter called "the Act", is by a firm of partnership under the name and style "Tara Chand Mohan Lal", owning a factory dealing in production of mustard oil and dhal. Appellant No. 2 is the Managing Partner.

2. An application was made by the Insurance Inspector u/s 75(2) of the Act praying for a decree for Rs. 3497/- being the employees' contribution in respect of 37 labourers working in the factory during the period 28-9-1958 to 31-12-1960. The Inspector paid a visit to the factory on 21-1-1963 and found "37 persons (employees) employed by the contractor for the purpose of weighing, drying, filling, loading etc., mustard seeds. M. Oil, soldering of tins of mustard oil etc., inside the premises of the factory". He recorded the names of these employees found working at the premises along with their Sardars, Topeswar Tewari and Loton inside the factory. He was in the factory from 12 noon to 2 P.M. and inspected the khata, attendance register and wage registers produced before him by the employers. According to him, these Sardars are immediate employers and Mohanlal and S. C. Jam are principal employers. The factory had submitted only partial returns but did not include these 37 employees in their - returns and hence this application for realisation of the

contribution on their account.

3. The factory denied the claim on various grounds and the only point now that requires consideration is whether these 37 persons were employees of the factory, entitled to claim employees' contribution under the Act. According to the factory, these persons were supplied by two Sardars in their mills for loading and unloading of the goods. They were employed by the Sardars and the payment was made to the Sardars by the factory. The Sardars used to engage different labourers on different dates.

4. The Corporation examined one witness, namely the Manager and the factory examined the Managing Partner Mohanlal and Sardar Loton Barai. Mohanlal admitted that he produced the records and registers before the Inspector at the time of inspection but did not produce them in Court. Certain account books namely Exts. A to E produced before the Court had not been placed before the Inspector. He stated that they made payments to the Sardars according to the amount of work done and used to pay on the basis of loading and unloading of bags. He even cannot remember whether Topeswar or Loton was present on the date of inspection. He stated that they had only 22 permanent labourers on the date of inspection, but did not deny that these 37 labourers were working in the factory on that date. He made a very significant concession in the evidence to the following effect:

When the labourers work in the factory it is done under the supervision of one of the partners. Anyone of the partners supervises the work, when there is work. All the labourers either permanent or casual supplied by the contractor work under the supervision of the partner. The names of labourers working within the fencing of the factory are kept in a register. I have not submitted the account of the labourers daily working in the mill. I have got such account."

He admitted to have paid the contribution of the employers and employees under the E. S. I, scheme for the permanent labourers alone. He, however denied the suggestion put to him that he did not maintain the names of the 37 labourers only to avoid the employees contribution. Loton Sardar stated that he used to work sometime in the mills of Mohanlal and also other mills. He used to receive payments of all the labourers and disbursed the same to them. He stated that "sometime I used to supply 2 (two), sometime 3 (three), sometime 6 (six) and sometime 8 (eight) labourers to D. W. 1 Mohanlal. I used to take the extra labourers from Bazar." He admitted in cross-examination that he supplied labourers to Mohanlal's mill for the last three or four years. He also admitted that Topeswar and Rajdeo Sardar worked in the mill of Mohanlal. He does not remember whether he saw the Inspector at the factory at the time of inspection. He also stated that he did not know if 50/60 persons worked in the factory daily. It appears from his evidence that he did not receive any commission for the supply of labourers in the mills. He, however, keeps no account of the amounts received from the mills. On the above evidence, the learned Court below came to the conclusion that the factory was liable for the claim.

5. Mr. Das, the learned Counsel for the Appellants, concedes that appeal lies to the High Court from an order of the Employees Insurance Court if it Involves a substantial question of law. He urges the following questions of law which he submits are substantial:

(i) That the 37 labourers are not employees within the meaning of Section 2(9) of the Act or under that section read with Section 2(13) of the Act;

(ii) that the claim is barred by limitation u/s 80 of the Act (since repealed by Act 44 of 1966).

These two questions are indeed substantial questions of law and we have heard the learned Counsel at length.

6. Regarding the first submission, it is necessary to read the material portion of Section 2 which runs as follows:

2. In this Act, unless there is anything repugnant in the subject or context,

(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;

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(13) Immediate employer" in relation to employees employed by or through him, means a person who has undertaken the execution, on the premises of a factory or an establishment to which this Act applies or under the supervision of the principal employer or his agent, or the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such of factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer. Mr. Das submits that the labourers are all casual labourers and as such are not employees within the meaning of Section 2(9), nor can they be said to be employees who are

employed by or through an immediate employer in the factory or under the supervision of the principal employer. From the evidence which we have set out above, it is clear that these 37 labourers were working for a considerable period in the factory under the supervision of the principal employer even if they were supplied by the Sardars. These workers are even admitted to be executing the work of loading and unloading of bags inside the factory under the supervision of the Partner. So the conclusion is irresistible on the evidence that these workers are employed by the factory along with the Sardars who even worked with them inside the factory. They are, therefore, directly employed by the principal employer in connection with the normal work of the factory. For the purpose of the instant case, to come within the definition of "employee1; u/s 2(9)(i), the person has to be employed for wages in the factory or in connection with the work of that factory and he must be directly employed by the principal employer on any work of the factory. All these conditions are fulfilled in the case of these, 37 employees and they therefore, are employees within the meaning of Section 2(9)(i) of the Act and the, factory is liable for the employees" contribution on their account The first submission of Mr. Das, therefore, fails.

7. Regarding the second submission, this point was not specifically taken in the Court below and is raised for the first time before his Court. The question is not purely a question of law, but may require evidence, oral or documentary, to substantiate the point. Besides, it is pointed out that Rule 17 of the Assam Rules under the Act provides for a limitation of three years from the date of the cause of action. Mr. Das wanted to challenge the vires of this Rule which, however, in absence of an appropriate application and notice to the Advocate General, we are unable to permit. We, therefore, overrule that objection.

8. In the result, the appeal is dismissed. We will, however, make no order as to costs.

D.M. Sen, J.

9. I agree.