
(1983) 03 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : F.A.O. No. 389 of 1980

M/s. W.H. Deeth Ballabgarh and Company	APPELLANT
Vs	
Employees State Insurance Corporation	RESPONDENT

Date of Decision : 15-03-1983

Acts Referred:

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

Citation : (1983) 03 P&H CK 0007

Hon'ble Judges : Gokal Chand Mital, J

Bench : Single Bench

Advocate : O.P. Goyal, for the Appellant; K.L. Kapur, for the Respondent

Final Decision : Dismissed

Judgement

Gokal Chand Mital, J.—On W.H. Deeth, Ballabgarh and Company, the Employees State Insurance Corporation (hereinafter called the Corporation) levied contributions. The industrial concern challenged the levy on the ground that they had employed less than 20 persons and therefore, they were not covered by The Employees' State Insurance Act, 1948, (hereinafter called the Act). The Corporation contested the petition and pleaded that the State of Haryana published a notification u/s 1 (5) of the Act whereby the provisions of the Act were extended to industrial establishments which had employed 10 or more persons in a factory run with power and to the factory which was being run without power if it had employed 20 or more persons Under the Act, the industries, having 10 or more employees and running with power, were amenable to the provisions of the Act by virtue of the said notification; and the industries which had employed 20 or more persons and were being run without power were also brought within the ambit of the Act. Therefore, it was pleaded that since the industrial concern had employed more than 20 persons and was not using power was covered by the provisions of the Act. The Court below dismissed the application of the industrial concern on the basis of the notification issued by the State in pursuance of the power contained u/s 1 (5) of the Act. This is appeal by

the industrial concern in this Court.

2. Shri. O.P. Goyal, Advocate, appearing for the industrial concern, has argued that the notification issued by the State Government u/s 1(5) of the Act is ultra vires the definition of factory contained in Section 2(12) of the Act. Being a central piece of legislation, the notification issued by the State Government could not run counter to it and on this basis either Section 1(5) of the Act is ultra vires or the notification issued by the State Government is ultra vires the Act and should not be given effect to. Three High Courts have considered this matter in *Sunder Paper Box Company and Anr. v. State of Orissa* 1977 Lab. J.C 1213, *The Regional Director Employees' State Insurance Corporation v. Kidiyoor Janardhan Rao* AIR 1979 Kar 146 and *M/s Sadaf Enterprises v. Regional Director, Employees State Insurance Corporation, Kanpur* 1981 Lab. 1. C. 409. I have gone through these decisions and am in complete agreement with the view taken therein that Section 1(5) of the Act or the notifications issued under that section are not ultra vires the Act, or the definition of factory as contained in Section 2(12) of the Act. It is true that because of the definition of factory, the Act would be applicable to such industrial concerns which used power and employed 20 or more persons. The Parliament left it open to the State Government by virtue of Section 1(5) to extend the Act to such establishments which are carrying on industrial, commercial agricultural or other work. Under the present notification, the Act has been extended to the industrial concerns having 10 or more persons which are running with power and to the industrial concerns which are running without power but having 20 or more persons in employment. Hence, in view of the aforesaid decisions, neither the provisions of Section 1(5) of the Act are ultra vires nor the notifications issued under that section.

3. For the reasons recorded above, there is no merit in this appeal and the same is hereby dismissed but without any order as to costs.