
(2007) 03 MP CK 0083
In the Madhya Pradesh High Court

National India Rubber Workers Ltd.

APPELLANT

Vs

Employee's State Insurance Corporation and Another

RESPONDENT

Date of Decision : 13-03-2007

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 75, 82

Citation : (2007) 3 LLJ 1014

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.—The order passed in this appeal shall also govern the disposal of connected two miscellaneous appeals i.e., M.A. No. 768/2003 National India Rubber Works Ltd., Katni v. The Employees State Insurance Corporation and Anr. and M.A. No. 606/2003 (National India Rubber Works Ltd., Katni v. Employees State Insurance Corporation and Anr.

2. The instant appeal, has been filed u/s 82 of the Employees State insurance Act, 1948; (in short "the Act"). The appellant company is registered under the Indian Companies Act, 1926 having its registered office at Katni and is also having a factory. The appellant company is engaged in the business of manufacturing of articles made of Rubber used in surgical, medical and Laboratory, Soda Water Accessories and also article which are used in various industrial units such as Vehicle Factory, Jabalpur. Ordnance Factory, Jabalpur ITI, Railway etc.

3. According to the appellant in its factory premises, there are various process of manufacturing, mixing, moulding, extruding, vulcanizing, buffing etc. end there are approximately 200 number of workers working in the factory premises. Admittedly, the provisions of the Act are applicable to the workers in the company premises engaged by, the appellant company and according to the learned Counsel, the company has been regularly depositing its contribution

arising out of the liability under the Act with respect of their workers employed in the factory for last, several years.

4. The manufacturing process in the factory starts from mixing of raw rubber with chemicals. Thereafter, the mixture gets through different processes known as moulding, extruding, vulcanizing and after which the product undergo finishing process and then packed and dispatched to its destiny. All these processes are being carried out in the factory premises of company connected with the work, of the factory, contribution for the workers engaged therein have been regularly and sincerely paid by the company to the respondent corporation.

5. The contention of learned Counsel for the appellant is that the demand notice which has been given in regard to the cutting and polishing of the rubber items which was challenged in the ESI Court and which has also, been filed as Annexure A-2 to A-4 in this Court is without jurisdiction because in regard to the cutting and polishing the rubber item is being given on contract basis to the different contractors and the company has no connection in that regard. The company has also no supervision in that regard. The contractors engage their own workers to carry out the work and after cutting and polishing the items, the same is given to the appellant company and therefore since the appellant company is not supervising the work done by the employees of the contractors, therefore, the appellant company would not come under the ambit and sweep of "immediate employer" in terms of Section 2(13) of the said Act. It has also been put forth by learned Counsel for appellant that those contractors' employees would not come under the ambit and sweep of definition of "employee" as envisaged u/s 2(9) of the said Act.

6. By strongly placing reliance on the decision of Supreme Court in C.E.S.C. Limited and Others Vs. Subhash Chandra Bose and Others, , it has been argued by learned Counsel for the appellant that the ordinary dictionary sense "to supervise" means to direct or oversee the performance of operation of an activity and to oversee it, watch over and direct. It is work under eye and gaze of someone who can immediately direct a corrective and tender advise. The contention of learned Counsel is that since all these activities are not being done, by the appellant company and since these activities are done totally by the contractors, therefore, the employees of the contractors cannot be said to be the employees of the appellant company and their ESI contribution not required to be paid by the company.

7. By placing reliance on the decision of Gujarat High Court in Regional Director, E.S.I. Corporation Vs. Patel Printing Press, it has been argued that the necessary repair of the building which is carried out in the factory premises is not having any nexus with the nature of the production and the output of the product which is admittedly a rubber equipment and therefore no contribution towards ESI is required to be paid to the persons who carry out the necessary repairs and who are not the employees of the company and are the employees of contractors.

8. On the other hand Sri Sanjay Lal, reamed counsel for the respondent/corporation submits that no document was filed by the appellant in the ESI Court in order to substantiate their contention and, therefore, the ESI Court rightly dismissed the application of appellant which was filed u/s 75 of the Act in order to quash Annexure P-1 which was demand by the Corporation.

9. Having heard learned Counsel for the parties, I am of the view that this appeal deserves to be allowed and the impugned demand which was submitted as Exhibit P-1 in the ESI Court which are also filed in this appeal 1 as Annexure A-2 to A-4 deserve to be quashed.

10. It would be appropriate to quote para 4 I or the application filed u/s 75 of the Act before the ESI Court by the appellant which reads thus:

4. That, the applicant provided work to independent individuals outside the premises of applicant Factory. These outsiders are totally independent and a separate legal entity, having no nexus whatsoever with the applicant industry which has no control or supervision over them. They are free to perform the given jobs at their own convenience and will. In short they do not function on the dictates of the applicant.

The reply of this para filed by the Corporation is as under:

Vernacular matter omitted

11. On reading the averments made in para 4 of the application file by the appellant and its reply conjointly, it is gathered that indeed the respondents have admitted that the work of cutting, polishing and finishing is being done through contractors. Nowhere it has been denied by the respondents in their reply that the appellant company is having any nexus whatsoever in regard to the work done by the 4 employees of the contractors nor they have any control or supervision over them. Since, there is specific averments in that regard in the application, there should be a specific reply in that respect and in absence of specific denial, it would be deemed that these facts are admitted to 4 the respondent Corporation. Apart from this, Jagdish Prasad Shamrna who at the relevant point of time was serving on the post of Assistant Office Superintendent in the appellant company since 1963 has categorically 5 given his evidence is (Annexure A-7) before the ESI Court that he work of cutting, polishing and repair work of the building is being carried out from other organization like contractors. He has specifically stated that the company is not having any supervision or control over the employees of the contractor and in that regard the company is also having request sanction from the Central Exercise Department, This evidence of company stands un rebutted because there is no cross-examination in that 1 regard. Apart from this, no one has been examined by the respondent/ Corporation to rebut the evidence of the company. The Supreme Court in the case of C.E.S.C. Ltd. and Ors. v. Subhash Chandra Bose and Ors. (supra) has categorically held as under C.E.S.C. Limited and Others Vs. Subhash Chandra Bose and Others, at p. 480:

14. ...In the ordinary dictionary sense "to supervise" means to direct or oversee the performance or operation of an activity and to oversee it, watch over and direct. It is work under eye and gaze of someone who can immediately direct a correct and tender advice. In the textual sense supervision of the principal employer or his agent is on "work" at the places envisaged and the word "work" can neither be construed so broadly to be the final act of acceptance or rejection of work, not so narrowly so as to be supervision at all times and at each and every step of the work. A harmonious construction alone would help carry out the purpose of the Act, which would mean moderating the two extremes. When the employee is put to work under the eye and gaze of the principal employer, or his agent, where he can be watched secretly, accidentally or occasionally, while the work is in progress, so as to scrutinize the quality thereof and to detect fault therein, as also put to timely remedial measures by directions given, finally leading to the satisfactory completion and acceptance of the work, that would be supervision for the purposes of Section 2(9) of the Act. It is the consistency of vigil, the proverbial a stitch in time saves nine. The standards of vigil would of course depend on the facts of each case.

12. The Supreme Court has further clarified in para 19 as under C.E.S.C. Limited and Others Vs. Subhash Chandra Bose and Others, at p. 483:

19. ...To the Division Bench of the High Court it was obvious that the Regional Director of the ESIC had nowhere found that there was actual supervision, either by the CESC or its duly appointed agents, over, works which were performed by the employees of the electrical contractors. All that has been found is that the said works on completion were checked by the CESC and then accepted. Checking of work after the same is completed and supervision of work while in programme is not the same. These have different perceptions. Checking of work on its completion is an activity, the purpose of which is to finally accept or reject the work on the touchstone of job specifications. Thereafter, if accepted it has to be paid for. Indisputably electrical contractors had to be paid on the acceptance of the work. This step by no means is-supervision exercise. Neither can it be the terminating point of an agency when the interests of the so-called principal and the so-called agent become businesslike. Besides, the High Court has found that the work done by the employees was under the exclusive supervision of the electrical contractors or competent supervision engaged by them under the terms of the contract and the licence. By necessary implication supervision by the CESC or its agents stood excluded. Supervision rested with persons holding valid certificates of competency for which a register of supervision was required under the licences to be maintained. Under the contractors, the electrical contractors cannot in one breath be termed as agents of the CESC, undertaking supervision of the work of their employees and innately under the licence to have beforehand delegated that function to the holder of the certificate of competency. Thus we hold that on the terms of the contract read with or without the terms of the licence, no such agency, factually or legally, stood created on behalf of the CESC in favour of the electrical contractors, and none could be as that would

violate the statutory scheme of distinction well marked u/s 2(a) of the Act. The supervision taken was to fulfil a contractual obligation simpliciter and we leave it at that level.

13. The decision of Supreme Court in C.E.S.C Ltd. and Ors. v. Subhash Chandra Bose and Ors. (supra) is squarely applicable in the present case, because in the present case also no supervision is being carried out by in a appellant company as it is clear from the evidence of Jagdish Prasad. Sharma which is unconnected on this point and Corporation has not given any evidence in rebuttal and therefore I am of the view that in the peculiar facts and circumstances of the present case, the employees of the contractors would not come under the ambit and sweep of "employee" as envisaged u/s 2(9) of the Act and the appellant company is not required to give its ESI contribution for them.

14. So far as the carrying out necessary repair of building is concerned, I am placing reliance on the decision of Regional Director, ESI Corporation v. Patel Printing Press (supra) in which it has been held that the wages paid to employees of contractor for construction of building, since construction activity was not in connection with the work of establishment, therefore, the demand of contribution was not legal.

15. Since the appellant is not supervising "the Work of the employees of the contractors, therefore, I am of the view that the appellant company would not come under the ambit and sweep of "immediate employer" as envisaged u/s 2(13) of the said Act, nor those employees of the contractors would come under the ambit and sweep of "employee" as defined u/s 2(9) of the Act.

16. For the reasons stated hereinabove this appeal succeeds and is allowed. The impugned order passed by ESI Court is hereby set aside and the demand notice issued by respondents is hereby quashed. Looking to the facts and circumstances of the case the parties are directed to bear their own costs.