(1994) 10 OHC CK 0014

In the Orissa High Court

Case No : Misc. Appeal No. 183 of 1992

Orient Paper Mills APPELLANT

Vs

Regional Director, ESIC RESPONDENT

Date of Decision : 07-10-1994

Acts Referred:
Employees State Insurance Act, 1948 — Section 2(9), 82

Citation : (1996) 1 LLJ 1115 : (1995) 1 OLR 13

Hon'ble Judges : R.K. Patra, J

Bench : Single Bench

Advocate : J.N. Das and K.K. Jena, for the Appellant; P.P. Ray and N.M. Singhdeo, for the Respondent

Final Decision : Dismissed

Judgement

R.K. Patra, J.—This is an appeal u/s 82 of the Employees'' State Insurance Act, 1948 (hereinafter referred to as ''the Act'') filed by Orient Paper Mills challenging the validity of the order passed by the district Judge-cum-Employees'' Insurance court arising out of a petition filed u/s 75 of the Act for certain declarations.

2. Briefly stated, the case of the appellant (Orient Paper Mills) is that it is a factory located at Brajarajnagar in the district of Sambalpur duly registered under the Factories Act, 1948, being owned by M/s. Orient Paper and Industries Limited, an existing company under the Companies Act, 1956. The appellant is engaged in manufacturing of paper and paper board and is covered under the Employees'' State Insurance Scheme in respect of its workers/employees of muster roll and there is no dispute regarding their coverage, contribution or any other matter. It is the allegation of the applicant that the respondent, the Regional Director of the E.S.I. Corporation illegally and erroneously assessed a sum of Rs. 7, 19, 140/- towards contribution of employees in respect of four organisations with which the appellant is no way concerned. Those organisations are-

(i) Forest Organisation at Farm Road, Sambalpur;

(ii) Security Guards employed for security of the factory having been engaged by the Director of Secret Information and Detective Services, Calcutta;

(iii) employees of the Orient Club, Brajarajnagar; and

(iv) Employees of the contractors engaged outside the factory premises for cleaning, gardening and repairing of the buildings in the colonies.

The appellant claims that it is not the employer of the employees of the aforesaid four organisations and as such, it is not liable to pay any contribution as assessed. Accordingly it sought for the necessary declarations.

3. The respondent filed its objection before the Insurance Court contending, inter alia, that the appellant being an employer engaged in the manufacturing process of paper and paper-board and all the employees for whom the impugned assessment was made, were engaged in supply, transport and distribution of raw materials to the manufacturing unit and their engagement being incidental to the manufacturing process, and the appellant is bound to pay the contribution.

4. The appellant examined five witnesses on its behalf. Two witnesses were also examined for respondent. Besides oral evidence a number of documents were filed in support of their respective cases. The Insurance Court on consideration of the evidence has declined to accede to the prayer made by the appellant for the reasons mentioned in the impugned order.

5. Before going into the merits of different contentions raised by the appellant, let me note the scope of the present appeal. As already noted, there is an appeal u/s 82 of the Act. Sub-section (2) of Section 82 of the Act states that an appeal shall lie to the High Court from an order of Employees'' Insurance Court, if it involves substantial question of law which means that this court while exercising the appellate power u/s 82 of the Act cannot interfere with the finding of fact based on appreciation of evidence recorded by the Insurance Court. The question whether or not certain employees answer the description of ''employees'' in Clause 9 of Section 2 of the Act, is a pure question of fact. Keeping in view the scope of this appeal, let me proceed to consider the grievances of the appellant in respect of the four organisations for which the impugned assessment has been made.

(I) Forest Organisation situated at Farm Road Sambalpur.

It is the specific case of the appellant that this Forest Organisation is registered under the Orissa Shops and Commercial Establishment Act 1956 and is a separate entity. The service conditions of the employees working in the said organisation are different. The muster roll, books of accounts and rates of wages are also different. Since its very inception, this sort of things had been in existence when it was set up for extraction, afforestation collection and supply of bamboos. In the circumstances, there is no justification for extending the area of operation of the appellant to cover the establishment of the forest organisation. The stand of the respondent is that the appellant carries on business of manufacturing paper and paper-board and has a unit at Sambalpur for carrying on the job of afforestation, extractions, procurement of bamboos which forms integral part of manufacturing process of paper and paper-board. The supply, transport and distribution of raw materials to the manufacturing unit are preliminary and incidental one to the manufacturing process. As such, the employees engaged in the Forest Organisation are employees of the appellant.

Section 2(9) of the Act defines ''employees'' to mean any person employed for wages in or in connection with the work of a factory or establishment to which the 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 employees 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; [or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (62 of 1961), or under the standing order of the establishment; but does not include]..."

There is no dispute that the work of the Forest Organisation is afforestation, extraction, collection and supply of bamboos to the plant of the appellant for manufacturing paper and paper-board. The work of the employees working in the Forest Organisation although undertake the preliminary work, the same is integrally connected with the manufacturing process of paper and paper-board. With the raising of raw materials, the work ends in production of finished goods. It has been held by the apex Court in Delhi Cloth and General Mills Ltd. Vs. Shambhu Nath Mukherji and Others, that an employee although may be working within the factory or out-side the factory or may be employed for administration or for purchase of raw materials or for sale of the finished goods, he is included within the definition of ''employee'' in Section 2(9) of the Act.

The evidence of PW 3, the Deputy Forest Manager of the Forest Organisation clearly goes to establish that this organisation (Forest Organisation) is a part and parcel of the appellant. He has admitted in his cross-examination that the Forest Organisation does not pay income tax separately and it is paid by the Orient Paper Industries Ltd. In his cross-examination he has further admitted that the Forest Organisation is a branch of Orient Paper Mills and it has not been separately registered as Company. It would be profitable to quote his evidence in extenso:

"Our Forest Organisation does not pay income tax separately and it is paid by Orient Paper Industries Ltd. The Forest Manager is the appointing authority of employees and worker of our Forest Department. The Forest Manager is an employee of Orient Paper Industries. The Income Tax of the Forest Manager is deducted from his salary through the Orient Paper Industries Ltd. Our Forest Organisation supplied raw materials to the Orient Paper Mill Industries."

The said witness in paragraph 5 of the cross-examination has stated that:

"Our organisation is a branch of Orient Paper Mills Ltd. and we have not been separately registered as Company. We have engaged Chartered Accountant to maintain our accounts. Orient Paper Industries pays the bills of the Chartered Accountant of our organisation. Orient Paper Industries Ltd. and Orient Paper Mills consist of one entity under the Companies Act."

The above statements of PW 3 go to show that the Forest Organisation is a branch of the appellant having one entity and the employees of the Forest Organisation are the employees of the appellant. Besides this oral evidence, there are certain documents which unhesitatingly disprove the stand taken by the appellant with regard to the Forest Organisation. Ext. C is a letter dated March 27, 1985 written by the Assistant Regional Director to the Regional Director, ESI Corporation, Bhubaneswar. In the said letter the Assistant Regional Director has clearly mentioned that the Forest Organisation is engaged in procuring raw materials for the Orient Paper Mills and it is a raw materials procurement section of Orient Paper Mills. In the said letter there is further mention that the Forest Organisation has no income of its own and the entire expenditure including salary/wages are paid to its employees and are booked under the "Raw Material Procurement Account" of Orient Paper Mills. All the buildings and furniture of Forest Organisation are owned by the Orient Paper Mills and the repair of buildings is done at the cost of the Orient Paper Mills. There is further disclosure in the said letter that no Sales Tax is paid on supply of raw materials to Orient Paper Mills which is itself a proof that it is one of the departments/Sections of Orient Paper Mills and the Orient Paper Mills authorities have full control and command over the work of the Forest Organisation in as much as one Sri P.D.Bagari, Vice-President is in-charge of administration. The said letter Ext. ''C'' contains an enclosure, it being a letter written by the Deputy Forest Manager of the appellant to the Assistant Regional Director, ESI Corporation, Bhubaneswar. It was written on the letter pad which is as follows:

"ORIENT PAPER MILLS

(Proprietor; ORIENT PAPER & INDUSTRIES LIMITED)

FOREST ORGANISATION

Farm Road, Sambalpur - 768002 (Orissa)."

From the aforesaid evidence, both oral and documentary, it would appear that the Forest Organisation, Farm Road, Sambaipur is part and parcel of the appellant Orient Paper Mills. The conduct of the appellant in mixing up capital, finance, staff and management with the Forest Organisation goes a long way to establish that the Forest Organisation is not a separate entity.

(II) Security guards employed for security of the factory having been engaged by the Director of Secret Information and. Detective Services, Calcutta.

It was conceded on behalf of the appellant before the Insurance Court that the appellant has been making payment through the Director of Secret Information and Detective Services, Calcutta for employing security guards. The Security Services rendered by security guards, are thus on payment. Their services having been hired on payment, for the work connected with the appellant, the security guards as per description of ''employee'' as mentioned in Section 2(9)(iii) of the Act.

(III) employees of the Orient club, Brajarajnagar.

PW 1 was the Secretary of Orient club, Bra-jarajnagar. He has stated that one temple guest house and a club are provided by the appellant in favour of the club. The employees of the appellant are alone entitled to be members of the said club. The said restriction regarding membership is an indication that the club is under control of me appellant. If the club would have been a separate organisation having no connection with the appellant, there would not have been any restriction for membership of the club. The purpose of providing to the members of the club the above is obviously for getting better service from its employees. The entire wages of the employees in the club are borne by the appellant and booked under the head "Welfare Account" of the appellant. In view of the aforesaid evidence, the Insurance court has held that the workers employed in the Orient Club are doing the work incidentally for the purpose of the factory. I do not find anything wrong in the conclusion reached by the Insurance Court in this regard.

(IV) employees of the contractors engaged out-side the factory premises for cleaning, gardening and repairing of the buildings in the colonies.

The labourers employed by the contractors for cleaning, gardening, repair etc, are the agents of the principal employer i.e. appellant. The payments are made by the appellant and are booked under the head "cleaning and gardening account and building repairing account." It has beenheld by the Supreme Court in Regional Director, Employees'' State Insurance Corpn., Madras Vs. South India

Flour Mills (P) Ltd., that the workers employed for construction of work of additional buildings for the expansion of factory are employees within Section 2(9) of the Act in as much as their work is incidental or preliminary'' to or connected with the work of the factory or establishment. The employees engaged for cleaning, gardening and for repairing of the building are engaged in the work which is incidental and is connected with the work of the appellant. The Insurance Court has rightly negatived the claim of the appellant with regard to the employees of this organisation,

6. On perusal of the impugned order and the evidence on record I am of the opinion that the reasons ascribed by the Insurance Court in rejecting the petition of the appellant arc well founded which cannot be upset.

7. In the result, this appeal should be and is hereby dismissed.