
(2003) 01 MAD CK 0154

In the Madras High Court

Case No : Letters Patent Appeal No. 82 of 2000

Poonam Easwardas, Proprietrix, Kaleel Corporation

APPELLANT

Vs

Employees' State Insurance Corporation

RESPONDENT

Date of Decision : 09-01-2003

Acts Referred:

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

Citation : (2003) 1 LW 685

Hon'ble Judges : R. Jayasimha Babu, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : S. Sampathkumar, for the Appellant; Desappa, for the Respondent

Final Decision : Dismissed

Judgement

R. Jayasimha Babu, J.—The appellant is an exporter of garments. It buys clothes, and thereafter does cutting by a master tailor employed by it. It engages persons who work outside it's premises on machines owned by them or hired by them to stitch the clothes cut by the appellant's master tailor. The appellant also supplies thread and buttons for making the garments complete. It is evident that the work of the appellant as an exporter of garments cannot be undertaken successfully if the garments as a whole are not first produced. That work of producing a whole garment is done partly in the premises of the appellant wherein cutting is done and partly in the place where the workers carry out stitching. If the stitching is not done, there is no garment and ultimately there is no export.

2. It is under these circumstances that the authorities under the Employees State Insurance Act regarded the persons who did the work of stitching as persons who are required to be regarded as employees of the appellant on whom fell the liability of making contribution on the amount paid to these persons. The employer's claim that such persons were independent contractors on whom the employer exercises no control or supervision, was rejected by the authorities, but was accepted by the Employees State Insurance Court. That victory for the

employer was short-lived, as on appeal, the learned single Judge reversed the finding of the Employees State Insurance Court and held that such persons were, in fact, required to be regarded as employees of the appellant.

3. "Employee" is defined in Section 2(9) of the Employees State Insurance Act, 1948 as one who is employed for wages in or in connection with the work of a factory or establishment to which this Act applies and inter alia, as one who is employed directly or through an immediate employer on the premises of the factory or establishment 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 or incidental to the purpose of the factory or establishment.

4. It is evident from a perusal of this part of the definition that before a person can be regarded as an employee for the purpose of the Act under an employer, he must be one who is employed for wages and the employment must be in connection with the work of the factory or establishment and that when he is employed through an immediate employer in the factory or establishment or under the supervision of the principal employer or his agent, the work performed by such employee should ordinarily be part of the work of the factory or establishment or must be a work which is preliminary to the work carried on, or work which is incidental to the purpose of factory or establishment.

5. Here, the persons who stitched what had been given by the appellant's master tailor were performing the work which is part of the work of the establishment of the appellant, the work of the establishment being preparation of garments and their export. The work performed by those persons can also be regarded as preliminary to the work carried out by the exporter, as such manufacture of the garment is essentially a preliminary step to their export. The fact that they perform this work outside the premises of the appellant, on that score alone will not render them ineligible for being regarded as employees.

6. In case of persons who work outside the premises of the factory and are not directly employed by the employer from whom the contribution is sought to be collected, such employees must work under the supervision of the Principal employer or his agent. The question, therefore, is whether on the facts of this case, it can be said that the persons who perform the work of tailoring and who do so in a premises outside the factory premises, perform their work under the control and supervision of the appellant ?

7. The Supreme Court in the case of Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another, : considered a question, which is somewhat similar to the one which has been raised by the appellant here. The Court after an elaborate discussion of the decisions of the apex Court as also English Courts, inter alia, held that where an employer has the right to reject an end product which does not conform to the instructions of the employer and directs the worker to restitch it, "the element of control and

supervision as formulated in the decisions of this Court is also present."

8. The Court at paragraph 36 of the judgment elaborated on the importance of stitching in the preparation of garments. The Court observed,

"The reputation of a tailoring establishment depends not only on the cutter but also upon the tailors. In many cases, stitching is a delicate operation when the cloth upon which it is to be carried on is expensive. The defect in stitching might mar the appearance not only of the garment but also of its wearer. So when the tailor returns a garment, the proprietor has got to inspect it to see that it is perfect. He has to keep his customers pleased and he has also to be punctual which means that the stitching must be done according to the instruction of the employer and within the time specified. The degree of control and supervision would be different in different types of business. If an ultimate authority over the worker in the performance of his work resided in the employer so that he was subject to the latter's direction, that would be sufficient. In *Humberstone v. Northern Timber Mills* (1949) 79 CLR 389 Dixon, J. said:

"The question is not whether in practice the work was in fact - done subject to a direction and control exercised by an actual supervision or whether an actual supervision was possible but whether ultimate authority over the man in the performance of his work resided in the employer so that he was subject to the latter's order and directions."

9. Learned counsel for the appellant submitted that that decision should be read in the context of the facts of that case wherein it was found that employees in that case were carrying on work on sewing machines which had been supplied by the employer. Counsel submits that as in this case no such tools had been supplied to the persons who did the tailoring, that decision would be inapplicable to the facts of this case.

10. It is true that the Court did consider the fact of employer providing the tools to a person who used that tool to perform that work for the employer as an important factor, but the decision of the Court did not rest only on that ground. The Court, after holding that the supply of tools to the person who carried out the work which was necessary or incidental to the work of the employer shall be an important consideration in holding that the control and supervision lie with the employer, proceeded to hold that apart from that circumstance, the fact that the employer has the right to direct the employee to restitch the garment would itself establish that there exists an element of control and supervision as formulated by the decisions of the apex Court, and that would suffice to sustain a finding that such persons are employees for the purpose of the Act.

11. It is also necessary to notice what was further held by the Court in that case, namely, that even if the employees are not obliged to work for the whole day, and even if they are entitled to perform similar work for others, that would still not enable the employer to claim that such persons are not his employees. The Court observed that, "A person can be a servant of more than one employer. A

servant need not be under the exclusive control of one master." The Court also observed, "There is of-course no reason why a person who is only employed part time, should not be a servant and it is doubtful whether regular part time service can be considered even prima facie to suggest anything other than a contract of service....."

12. Having regard to the facts and circumstances of this case, the learned single Judge was right in holding that the employer-appellant is liable to pay contribution on the amounts paid to the persons who did tailoring work though such work was done outside the premises of the appellant and by using tools which did not belong to the appellant. The appeal is dismissed.