

(1998) 11 MAD CK 0176
In the Madras High Court
Case No : A.A.O. No. 1028 of 1990

Prakash Match Industries

APPELLANT

Vs

Employees' State Insurance Corporation

RESPONDENT

Date of Decision : 30-11-1998

Acts Referred:

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

Citation : (2000) 2 LLJ 49

Hon'ble Judges : K. Gnanaprakasam, J

Bench : Single Bench

Advocate : P. John, for R. Ramasubramaniam Associates, for the Appellant;
Radha Srinivasan, for the Respondent

Judgement

K. Gnanaprakasam, J.—This civil miscellaneous appeal is directed against the order dated April 10, 1990, passed by the Employees' Insurance Court (Principal District Judge) Ramanathapuram at Madurai, in E.I.O.P. No. 9 of 1987.

2. The respondent-E.S.I. Corporation by an order dated July 24, 1987, passed u/s 45 of the Employees' State Insurance Act, 1948 (hereinafter called as "the Act"), called upon the appellant herein to pay contribution in respect of "wages" paid for the workers for frame-filling work done outside the factory premises. The appellant questioned the said order by filing a petition u/s 75 of the Act, before the Employees' Insurance Court in E.S.I.O.P. No. 9 of 1987. The respondent resisted the action of the appellant, on the ground that the employees were engaged in frame-filling work on piece- rate basis and they may work either within the appellant's factory premises or outside thereof, depending, upon the convenience of the parties. There is necessary and sufficient control and supervision over the work of these employees. Hence, the appellant is liable to pay the contribution.

3. The Employees' Insurance Court, by taking into consideration all the aspects of the case and materials placed before it, came to the conclusion that the appellant is liable to pay the contribution in respect of wages paid to the workers

engaged in frame-filling work. Aggrieved by the same, the employer, viz., Prakash Match Industries, has preferred the present appeal.

4. The learned advocate for the appellant has submitted that the "frame-filling" work and making of "inner and outer boxes" were done by outside workers at their own premises and they do not at all fall within the meaning of "employee" as defined u/s 2(9) of the Act and the said workers were working not only for the appellant factory, but also for other match factories situated in and around the appellant factory and there is no bar or prohibition of such workers in undertaking such work of the other establishments also and there is no relationship of "employer" and "employee" in between the appellant and the said category of workers and that, therefore, the order passed by the Employees' Insurance Court that those workers fall within the definition of Section 2(9) of the Act is not correct.

5. To sustain and support his submissions, he relied upon the case of Employees' State Insurance Corporation v. P.R. Narahari Rao. 1987 70 FJR 160 (Ker). This is a case, where a hotelier engaged casual workmen for short periods of time for catering contracts and the Kerala High Court held that those workers were "engaged" by the hotelier and they were not "employed" by the hotelier. The facts and principles in this case are not applicable to the case on hand. The appellant also relied upon the decision rendered by the Apex Court in the case of Calcutta Electric Supply Corporation Ltd. v. Subhash Chandra Bose 1992 80 FJR 301 wherein it was stated:

"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, nor 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."

It is further stated:

"The Act does not give its own definition of the word "supervision". Therefore, it must be construed in the context of the ultimate purpose the Act aims to serve and the object behind the Act, i.e. to extend sickness benefits and to relieve the employee from the occupational hazards consistent with the constitutional and human rights scheme ... The "supervision" in the fact situation is not the day-to-day supervision, but legal control, i.e., right to accept or reject the work done or maintenance effected... In the context of statutory interpretation of "supervision" under the Act, of the works undertaken under the contract, the interest of the workmen or the welfare scheme for the employees under the Act get interposed and call attention to, and need primacy ... The literal interpretation would feed injustice in perpetuity denying to the employees of sickness benefit, etc., under the Act, which would be avoided, less the purpose of the Act would be frustrated".

Hence, the word "supervision" has got to be viewed in a broader sense and in the said circumstances, one would definitely come to a conclusion that the appellant has been exercising supervision over the work done by those employees.

7. The learned advocate for the respondent has submitted that the materials are supplied only by the appellant for frame-filling work. Incidentally the evidence given on behalf of the appellant is also referred, wherein P.W.-1 has deposed that there are accounts to show how much they are paying daily wages to these workers. After completion of the work, they used to check whether work was done according to the raw materials supplied to them and if they are less, they used to shout at them and warn them that the quantity should not be reduced and if they do not rectify the same, they would even stop from the work and they would not give work further. They also used to maintain a record how much material have been handed over to the workers and the quantity returned by them. Above all, P.W.-1 accepted that they are giving bonus to these workers also. It is, therefore, argued that the appellant was exercising the right of supervision on the work done by those employees and they are also having the right of rejection of the produce done by these employees and, therefore, the relationship of master and servant exists in between the appellant and its workers, and the employees squarely fall within the definition of Section 2(9) of the Act.

8. The learned advocate for the respondent also relied upon the decision rendered by the Supreme Court in the case of P.M. Patel and Sons and Others Vs. Union of India (UOI) and Others, wherein it had an occasion to consider the definition of "employee". It was held:

"The real question is whether the "home workers" are entitled to that benefit. Clause (f) of Section 2 of the Act defines an "employee" to mean "any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor in or in connection with the work of the establishment." It will be noticed that the terms of the definition are wide. They include not only persons employed directly by the employer but also persons employed through a contractor. Moreover, they include not only persons employed in the factory but also persons employed in connection with the work of the factory. It seems to us that a home worker, by virtue of the fact that he rolls beedis is involved in an activity connected with the work of the factory. We are unable to accept the narrower construction sought by the petitioners that the words "in connection with" in the definition of "employee" must be confined to work performed in the factory itself as a part of the total process of the manufacture."

9. The Supreme Court also incidentally pointed out the decision rendered in Shri Birdhichand Sharma Vs. First Civil Judge Nagpur and Others, wherein it was held that the rolling of beedis was work of such a simple nature that supervision was not required all the time and it was sufficient if supervision was exercised at the

end of the day, through the system of rejecting defective beedis.

10. In the case of Silver Jubilee Tailoring House and Others Vs. Chief Inspector of Shops and Establishments and Another, wherein it was held that "there was a relationship of master and servant because of the right in the employer to reject the work done, and it reiterated that "the degree of control and supervision would be different in different types of work". In the present case, the right of rejection can similarly be said to represent the control and supervision exercised by the manufacturer over the beedis prepared by the home workers."

11. Considering all the aspects of the case, the Apex Court came to the conclusion that the home workers are employees within the definition contained in Clause (f) of Section 2 of the Employees' Provident Funds and Miscellaneous Provisions Act.

12. A Division Bench of our High Court in a batch of writ appeals W.A. Nos. 308 to 317 of 1996 (S.P. Abdul Rahim and Son v. Assistant Provident Fund Commissioner) had an occasion to consider the case of Ring Labellers. The Division Bench had considered the decisions in the cases of P.M. Patel and Sons v. Union of India, (supra) and Calcutta Electric Supply Corporation Limited v. Subhash Chandra Bose, (supra) and came to a conclusion that those employees were engaged in one of the stages in the manufacturing of beedis and as such, Ring Labellers are employed in the process of manufacturing of beedis. Therefore, those workers have got to be held as "employees".

13. I also had an occasion to consider a similar case of this nature in C.M.A. No. 110 of 1990 (Royal Match Industries v. E.S.I. Corporation) wherein, I held that the appellant was having a supervision and also the right to reject, if they are not done properly and thereby exercising control and supervision and the right to reject over the work done by the employee of the appellant. As such, the relationship of master and servant exists in between the appellant and its workers and the employees squarely fall within the definition of Section 2(9) of the Employees' State Insurance Act.

14. After taking into consideration all the aspects, I am unable to reach a conclusion, other than one, which has been rendered by the Employees' Insurance Court. In the said circumstances, I do not find any good or valid reason to interfere with the order passed by the Employees' Insurance Court. Hence, the findings of the Employees' Insurance Court are hereby confirmed.

15. In the result, the present appeal deserves to be dismissed and the same is hereby dismissed. But, however, there will be no order as to costs.