

(2000) 02 MAD CK 0075
In the Madras High Court
Case No : A.A.O. No. 680 of 1992

Premier Polytronics Ltd.

APPELLANT

Vs

Assistant Regional Director, Employees' State Insurance Corporation

RESPONDENT

Date of Decision : 22-02-2000

Acts Referred:

Apprentices Act, 1961 — Section 2
Employees State Insurance Act, 1948 — Section 2(9)

Citation : (2001) 90 FLR 10 : (2001) 1 LLJ 1293

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : T.S. Gopalan, for the Appellant; G. Desappan, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Sivasubramaniam, J.—This appeal is directed against the order of the District Judge, Coimbatore, in E.S.I.O.P. No. 113 of 1986. The petitioner/ company before the Employees' Insurance Court is the appellant in the above appeal.

2. A notice u/s 45-A of the Employees' State Insurance Act, 1948, dated May 6, 1986, was directed against the appellant herein calling upon the company to pay a specific amount with interest at 6 per cent for each day of further default from the date of the order. It was stated in the notice that subsequent to the earlier notice to show cause and inspection of the factory on July 4, 1983, the factory was treated as covered with effect from February 16, 1983, and the employer was advised to comply with the provisions of the Employees' State Insurance Act (hereinafter called "the Act"). But even after the inspection on February 27, 1984, and the subsequent clarification, the employees designated as apprentices who are not apprentices governed under the Apprentices Act, 1961, were not covered under the Act, and there was no proper response from the employer. The employer's representative who called on the Assistant Regional Director, had agreed to pay the contribution. But this was not complied with and accordingly

the Inspector had visited the factory on February 14, 1985, and it was found that the employees who were designated as apprentices were actually not trainees or apprentices. Hence, the order u/s 45-A of the Act. Prior to the passing of the order, in response to the show cause, the employer had replied that they were not liable to pay contribution with reference to the apprentices.

3. In the reply by the employer, it was contended that they have a full-fledged scheme of apprenticeship in their factory with duly certified standing orders and regular classes, were also conducted one day in a week for all the apprentices and for the rest of the days they were being given the job training. The progress of their learning of the work and efficiency was also periodically assessed by the supervisors. It was further contended that they are manufacturing highly sophisticated electronic equipment and the said persons are suitably trained before they are actually employed. Therefore, according to the employer, the concerned employees were apprentices who do not come under the purview of the Act.

4. Aggrieved by the order passed by the Corporation u/s 45-A of the Act, the present original petition was filed before the Employees' Insurance Court, Coimbatore, under Sections 75 to 78 of the Act. It was contended that the report of the Inspector was not based on proper facts and they were merely based on surmises, which cannot be accepted. A copy of the report was not furnished to the employer and, therefore, the report cannot be relied upon by the Corporation. It was further stated that the employer relied upon the Standing Orders, and the Apprentices Scheme, and the appointment order in order to prove that the persons concerned during the relevant period were only apprentices. Reference was also made to clause 3(d) of the Standing Orders. The Apprentice Scheme clearly envisaged payment of stipend during the period of apprenticeship and that the newly recruited persons shall be apprentices for a period of 36 calendar months and that they are also expected to show progress in learning the work. There was also no guarantee of employment after the completion of the apprenticeship. The Corporation erred in thinking that no regular classes were conducted pursuant to the scheme. In the counter filed by the Corporation, it was contended that for deciding as to whether a worker was an apprentice or not, the actual terms of employment and the nature of duties assigned to them were relevant to be considered. The so-called apprentices were actually employees though they were named as apprentices. The fact that the amounts which were paid to them were duly entered in the accounts of the petitioner as wages itself would sufficiently prove that they were under the regular employment of the petitioner-company. The report of the Inspector was not based on surmises. They were based on facts only. Apart from the regular inspection by the Inspectors they also inspected the establishment on June 12, 1985. The Inspector (Vigilance) had inspected and submitted a report and the employer cannot pretend ignorance of the said inspection. The respondent was fully convinced that there are no apprentices and all the employees were only regular workers. Therefore, the order passed by the respondent was perfectly

justified.

5. On a consideration of the said contentions and evidence produced before it, the Employees' Insurance Court held that the employees concerned were only the regular staff of the company and they were not apprentices. With the result, the petition filed by the employer was dismissed. Hence, the present appeal.

6. Learned counsel for the appellant very strenuously contends that the nature of the employment and the work discharged by the employees concerned would clearly establish that they were only apprentices and they were also classified only as apprentices.

7. Reliance is placed on the following judgments in support of his contention that an apprentice cannot be considered as an employee so as to require payments under the Act. In *The Employees' State Insurance Corporation and Another Vs. The Tata Engineering and Locomotive Co. Ltd. and Another*, , the Supreme Court held that having regard to the definition of "employee", Section 2(9) of the Employees' State Insurance Act in contrast with the definition of "apprentice" u/s 2(a) of the Apprentices Act, it was held that the apprentices were specifically excluded from the definition of an employee. Therefore, according to learned counsel, there was no scope to consider the apprentices as employees.

8. In *The Poly Clinic, Nagercoil Vs. Regional Commissioner, Employees Provident Fund, Tamil Nadu and Others*, a learned single judge of this Court following the judgment of the Supreme Court in *ESI Corporation v. Tata Engineering and Locomotive Co. Ltd.* (supra) held that apprentices are not employees as defined under Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

9. Reference was also made to a judgment in *Regional Provident Fund Commissioner v. P.W.C. Co. (P)Ltd.* 1992 (1) LW 288. In that case, while interpreting Section 2(f) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, it was held that after the amendment to the said provisions with effect from August 1, 1988, by virtue of the amendment, the definition of an "employee" would include any person who was engaged as an apprentice, not being an apprentice under the Apprentices Act, 1961, or under the Standing Orders of establishment.

10. It is not disputed that the question whether an individual designated as apprentice was an employee or not for the purpose of the applicability of the provisions of the Employees' State Insurance Act, the test is whether they are actually engaged as apprentices or whether they are given regular duties and paid normal wages. The liability under the Act does not depend upon the nomenclature used by the employer or the designation given to the employees.

11. Therefore, we have to only consider whether the authority under the Act as well as the Employees' Insurance Court had sufficient materials to come to the conclusion that the workers concerned were regular employees and not apprentices. In this context, the following extract from the report of the

Inspector is relevant:

"During the course of my inspection, I examined this aspect regarding the coverage of the women employees who are called apprentices by the employer. In this connection, it is relevant to state that the above employer manufactures electronic equipment systems by assembling various components meant for textile mills. In particular they manufacture the following three types:

1. Card auto leveller which is used in the carding machine of textile mills.
2. Yarn cleaner which is used to ensure uniform quality of yarn in respect of thickness, etc.
3. Auto sorter which is also used for sorting yarn of different grades.

The various components required for the above equipment systems are imported from their Swedish Collaborators. The factory at] Coimbatore assembles these various components and sells the final products to their customers. In the work of assembling the women employees are actively associated."

12. Therefore, it is seen that on ascertaining of actual state of affairs and based on facts, it was concluded that the employees were actively associated with the production work and they were not merely trainees.

13. The Employees" Insurance Court had also taken into account other facts as well as the fact that as against the strength of the permanent employees of 25, the employer had represented that there were 87 apprentices receiving training. The Employees" Insurance Court has rightly come to the conclusion that the contention of the employer that all of them are apprentices cannot be accepted. It is irresistible to conclude that the very production and existence of the establishment depended on the so-called apprentices.

14. The lower Court has also recorded a specific finding on examination of the facts and circumstances that in the absence of the so-called apprentices, the employer cannot turn out the normal production. It was specifically found that they have the major role in the production of the materials. The Court below has also found that they are not approved apprentices under the provisions of the Apprentices Act, 1961, and no Standing Orders had also been filed in evidence to show that they are governed by any specific Standing Orders of scheme for imparting training.

15. Therefore, as a question of fact, the Employees" Insurance Court having come to the conclusion that the employees were not the apprentices on the basis of reasonable materials and there is no contra material on the basis of which the said finding could be set aside by this Court.

16. In the result, there are no grounds to interfere in this appeal and the same is dismissed. No costs.