**(1993) 05 OHC CK 0003**

**In the Orissa High Court**

**Case No :** Misc. Appeal No. 89 of 1988

Regional Director, Employees' State Insurance Corporation — APPELLANT

Vs

Satyabadi Press — RESPONDENT

**Date of Decision :** 13-05-1993

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

**Citation :** (1993) 2 OLR 490

**Hon'ble Judges :** G.B. Pattnaik, J

**Bench :** Single Bench

**Advocate :** D. Mishra, for the Appellant; D.P. Mohanty, for the Respondent

**Final Decision :** Allowed

## Judgement

G.B. Pattnaik, J.—This is an appeal u/s 82(2) of the Employees'' State insurance Act (hereinafter referred to as ''the Act'') against the judgment of the Insurance Court, Cuttack in Insurance Misc. Case No. 4/78.

2. The question for consideration in this appeal is whether the conclusion of the Insurance Court that the Satyabadi Press and ''The Samaj'' are the two distinct units is at all sustainable in law. The employees working in the establishment of ''The Samaj'' were not covered under the definition of ''employee'' u/s 2(9) of the Act until the said definition was amended in the year 1968. After the definition was. amended the officers of the Regional Director, Employees'' State insurance Corporation held some enquiry and then demanded contribution in respect of the employees serving in ''The Samaj from the Satyabadi Press for the period 29-1-1968 till December, 1976. As the contribution amount was not p3id certificate proceeding was initiated. The management of the Satyabadi Press appeared before the Certificate Officer disouting the demand, in question and then filed an application before the Insurance Court u/s 75 of the Act contending inter alia that ''The Samaj'' an independent establishment having no connection with the Satyabadi Press though both were situated within one compound. It was also stated that after the State Government issued notification u/s 1(5) of the

Act including the Newspaper establishment under the provisions of the Act. the Samaj organisation had voluntarily making contribution under the Act for safeguarding the '' interest of its employees. But the Satyabadi Press could not be made liable to make payment in respect of the employees of ''The Samaj'' from 1968. The insurance Court had disposed of the said application in favour of the Satyabadi Press. The Reqional Director had come up in appeal against the said decision in M.A.2408 That appeal was disposed of and the order of the Insurance Court had bean set aside and the matter had been remitted back to the Insurance Court for reconsideration. it had been indicated in the said order that the decision of the Supreme Court in Shri Narakesari Prakashan Ltd. and Others Vs. Employees'' State Insurance Corporation and Others, should be borne in mind. It was indicated by this Court while remanding the matter that the important considerations should be waived for a decision whether the employees of ''The Samaj form an integral part of the Satyabadi Press or not which was the unit of ownership ; unit of employment ; management under one person ; existence of the two units within one and the same premises and the main object of the Press as indicated in the Trust deed itself. After the matter went back on remand, the learned Insurance Court framed two issues relying upon the decisions of the Supreme Court in Hyderabad Asbestos Cement Product Ltd. v. Employees Insurance Court and Anr. AIR 1978 SC 1958. The Insurance Court held that unless and until some commercial nexus was established besides the unit of ownership, the employees of ''The Samaj'' could not be treated to be the employees of the Satyabadi Press, After scrutinising the evidence of PWs 1 to 5 and Exts. 1 to 37 as well as on scrutinising the evidence of three witnesses on behalf of the Corporation and Exts-A to U, proved on there behalf, the Insurance Court came to the following conclusions ;

(i) the daily Samaj is printed in the Satyabadi Press since long before the dispute without any deviation,

(ii) The Gopabandhu Process, ''The Samaj'', The Satyabadi Press and the Gopabandhu Type Foundry have their own offices and establishments within one compound going by the name "Gopabandhu Bhawan".

(iii) The Manager of M/s. Satyabadi Press holds his office going by the name ''The Samaj'' Office'' ;

(iv) That the manager for all the four enterprises was one and the same ;

(v) That the Chairman of alt the four is the Editor-in-Chief of the newspaper ''The Samaj'' ;

(vi) That ''The Samaj'' has been registered under the Orissa Shops and Commercial Establishments Act whereas the Satyabadi Press was registered under the Factories Act ;

(vii) For the purpose of Central Excise and Orissa Sales Tax, The Samaj and the Satyabadi Press are independently registered ;

 

(viii) That each unit is managed by an independent manager of its own ;

(ix) That Muster rolls for the employees of each unit are being maintained separately ;

(xi) Accounts of business for each of the units is being separately maintained and audited ;

(xii) That the Satyabadi Press levied demand against the establishment of The Samaj for payment of the printing charges and The Samaj meets its demands from its own earning made from advertisments made in the Newspaper.

Thereafter on examining the Will executed by late Gopabandhu Das (Ext. G) on the strength of which the Servants of the People Society acquired right over the Press and ''The Samaj'' the Insurance Court came to the conclusion that there was no unit of ownership between ''The Samaj'' and the Satyabadi Press. It further held that though the management of both the institutions, namely, the Samaj and the Satyabadi Press had been entrusted to the one and the same organisation, that is, ''The Servants of People Society''. But the Servants of People Society had been scrupulously maintaining the independent existence of the Satyabadi Press and ''The Samaj''. Finally the Insurance Court came to the conclusion that in the absence of commercial link between The Samaj'' and the Satyabadi Press, the demand upon Satyabadi Press for contribution towards employees of The Sarmj was not in accordance with law as envisaged under the Act. It also held that the Servants of People Society became the trustee in respect of the Satyabadi Press and in respect of Samaj became the owner. So far as the question of limitation is concerned, however, the Insurance Court came to the conclusion that the demand cannot be said to be barred by limitation. On the question of service of notice, the Insurance Court came to hold that the Corporation having failed to prove service of notice u/s 45-A'', levy under Sec, 45 B was bad in law and, therefore, the demand in question would not be tenable. The application of the Satyabadi Press having been allowed and the demand in question having been set aside by the Insurance Court,, the present appeal has been preferred by the Corporation.

3. Mr. Mishra appearing for the appellant contends that in view of the findings of the insurance Court, itself, on analysis of the evidence on record in paragraph-11 of the impugned order, the ultimate conclusion that the Samaj is an independent unit having no link with the Satyabadi Press is unsustainable in law. He further contends that the Insurance Court misconstrued the Will Ext. G in coming to the conclusion that there is no unit of ownership of the S3maj and the Satyabadi Press.

4. Mr. Mohanty appearing for the respondent, on the other hard, contends that the Insurance Court having examined all the relevant materials and having recorded its conclusion bearing in mind the law laid down by the Supreme Court and no substantial question of law being involved, the appeal is not maintainable and the conclusions cannot be interfered with.

5. Before examining the correctness of the rival submissions, I think it appropriate to notice some of the decisions of the Apex Court in this regard. I may also observe that the Employees, State Insurance Act is a piece of social security enactment and the Act provides for amelioration of the conditions of employment of workers. It seeks to furnish security to the workers of different organisations covered by the Act against certain risks to which the workers are exposed. Benefits tike sickness, cash benefit, maternity benefit, disablement and dependnt''s benefit, medical care and treatment at different hospitals and Dispensaries are some of the benefits conferred upon an workman covered under the Act,

6. The question whether the two units are one or separate came up for consideration before the Supreme Court in the case of Management of Pratap Press, New Delhi Vs. Secretary, Delhi Press Workers'' Union and Its Workmen, when a claim of bonous had been made Their Lordships of the Supreme Court came to hold that the most important test was that of functional intergrality meaning thereby such of finance, employment and labour. The Court has to consider how far there was ''"functional intergrality" meaning thereby such functional interdependence that one unit could not exist conveniently and reasonably without the other and on the further question whether in matters of finance and employment the employer has actually kept the two units distinct or intergrated. Their Lordships held that where the same owner owned a press and published a newspaper which was printed in the press and there was nothing to show that the owner had mixed up the capital of the two, the profits of the two and the labour force of the two units, it must be help that the press and the newspaper were distinct and separate industrial units.

7. In Shri Narakesari Prakashan Ltd. and Others Vs. Employees'' State Insurance Corporation and Others, , the question as in the present case strictly came up for consideration in relation to Section 2(9)(i) of the Act as amended by Act 44 of 1966 and the question before the Court was whether the members of editorial and administrative staff of printing press publishing newspaper are employees within the meaning of Section 2(9)(i). Their Lordships of the Supreme Court, after analysing Section 2(9) of the Act came to hold that the employees in the administrative or editorial sections of the printing press are employed in connection with the work of the Printing Press which is ''factory'' and ''therefore, they are to be treated as employees under Sec, 2 (9) of the Act even though no notification is issued u/s 1(5) of the Act. Their Lordships of the Supreme Court repelled the argument on behalf of the management that the person employed in a managerial or administrative capacity being covered by the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 will not be covered by the Employees State Insurance Act and held the effect of one Act, namely, Employees State Insurance Act cannot be controlled by the provisions of another Act, namely, the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act unless the provisions in one have bearing on the provisions of the other. In the said case the learned Judges observed that a

 

printing press established for the purpose of publishing a Newspaper cannot effectively function at all without the services of the members of the editorial staff being made available almost till the time the newspaper comes out of the printing machine. They virtually constitute an integral part of the newspaper press and they are employed in connection with the work done at the printing press. The members of the editorial staff clearly fall under Clause (i) of Section 2(9) of the Act,

8. This being the position of law let me now examine the Will executed by fate Gopabandu Dash who was the owner of both Satyabjdi Press and the Samij, Under the Will the Satyabadi Press and the Samaj are handed over to the Servants of the People Society on whom the testator had full faith and the object of handing over the Press to the Society was that a permanent institution of the society will continue in Orissa. It was indicated that the Society will spend all its proceeds on the social, educational, moral and political uplift of Orissa. While handing over the Press and the Samaj no distinction had been made by the testator and, therefore, the Insurance Court committed gross error in coming to the conclusion that the Servants of People Society was made the owner of the Samaj and the trustee of the Satyabadi Press. Such conclusion is based on a thorough misreading of the Will Ext. G. On going through Ext. G, I am of the considered opinion that the owner had not made any distinction between the Samaj and the Satyobadi Press while handing over the same to the Servants of People Society under the Will in question. Standing Order No. 15 which has been quoted by the Insurance Court clearly indicates that the employees of the four units, namely, editorial unit, the Samaj (administrative unit), Satyabadi Press which consists of Newspaper establishment and Commercial Printing establishment and Gopabandhu Type Foundry, are liable to be transferred from one job to the another, from one section to the another, from one unit to another unit and from the workshop in General Administration and vice versa without any change in the condition of service/Then again Standing Order No. 4 indicates that Satyabadi Press consists of the Newspaper establishment and Commercial Printing establishment. It has been further found by the Insurance Court itself on the evidence of PWs 1 to 5 that Satyabadi Press and the Samaj are within one conmound going by the name Gopabandhu Bhawan and the Manager of Satyabadi Press holds his office going by the name the Simaj Office and the General Manager is one and the same. Further the Chairman is the Editor-in-chief of the Newspaper, the Samaj. it is also established from the evidencs of the Inspector, opposite party witness No. 1 that the General Manager, Factory Manager, Accountant and the Cashier of both the units are the same and the Samaj and Satyabadi Prees are interlinked. On the aforesaid materials and findings, 1 have no hesitation to come to the conclusion that the Samaj constitutes an integral part of the Satyabadi Press and the employees engaged in the Samaj are employed in connection with the work done in the Satyabadi Press and, therefore, the employees of the Samaj would come within the definition of Section 2(9) of the Employees'' State Insurance Act, 1918. The conclusion of the

 

Insurance Court on that score is based upon thorough misreading of the relevant materials as discussed above and thorough misconception and the same, therefore, cannot be sustained.

9. So far as the finding of the Insurance Court under issue No. 3 is concerned, the Insurance Court has held that no notice u/s 45-A of the Act having been established, levy under Sec, 45-B is bad in Iaw. But on examining Section 45-A and Section 45-B, I fail to understand wherefrom the Insurance Court came to the conclusion about non-service of notice. Section 45-A does not take away the effect of Section 75(1-A). The question whether the employees of the Samaj would be the employees of the Satyabadi Press and, therefore, would be governed by the provisions of the Act was to be determined on the application filed by the Satyabadi Press itself investing the jurisdiction of the Insurance Court u/s 75(1) and that application has been disposed of which is under challenge in the present appeal. In this content reference to Section 45-A or 45-B is wholly in it. The determination made by the Corporation u/s 45-A is final so far as the Corporation is concerned but it is not final so far as the employer is concerned, if the employer chooses to challenge the same by filing an application u/s 75 of the Act. In the present case concerned with the legality of the order passed by the Insurance Court on the application filed by the employer u/s 7a. The finding of the Insurance Court under issue No. 8, therefore, is wholly unsustainable in law and the same is accordingly quashed. In the net result, therefore, the demand by the Regional Director of the Employees State Insurance Corporation is valid and the application filed by the Satyabadi Press u/s 75 is liable to be rejected. This appeal is allowed. No costs.

 