(1987) 01 OHC CK 0001

In the Orissa High Court

Case No : Miscellaneous Appeal No. 240 of 1981

Regional Director, Employees' State Insurance Corporation APPELLANT

Vs

Satyabadi Press RESPONDENT

Date of Decision : 06-01-1987

Acts Referred:
Employees State Insurance Act, 1948 — Section 1(5), 11, 2(9), 38, 39

Citation : (1987) 63 CLT 260

Hon'ble Judges : G.B. Patnaik, J

Bench : Single Bench

Advocate : Suresh Chandra Patnaik, for the Appellant; D.P. Mohanty, for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—This is an appeal against the order of the learned District Judge, Cuttack, who is the Employees'' State Insurance Court under the Employees'' State Insurance Act, 1948 (hereinafter referred to as the "Act").

2. Respondent, the Management of Satyabadi Press, Gopabandhu Bhavan, Cuttack, filed an application u/s 75 of the Act contending therein that the demand made by the Regional Director, Employees'' State Insurance Corporation, amounting to Rs. 2,09,063.40 paise as the arrear contribution in respect of ''The Samaj'' for the period from 28-1-1968 to 31-12-1976 is illegal and unconstitutional and, at any rate, the Satyabadi Press cannot be made liable since the Press and The Samaj are two distinct units. This application filed by the management of the Press was registered as Insurance Misc. Case No. 4 of 1978. Objection on behalf of the present Appellant was filed inter alia on the ground that the Press and The Samaj are situated within one campus and are under one management and are the creatures of the one and the same Will executed by late Pandit Gopabandhu Das and the Press is utilised for the purpose of publication of the daily newspaper ''The Samaj'' which was the main object of the Press and, therefore, they cannot be treated to be two distinct units.

3. The learned Insurance Court framed as many as 9 issues and on consideration of the materials on record has come to the conclusion that there is no unity of employment between the two organisations though as a matter of fact. ''The Samaj'' is printed in the Press. It has further been found that there has been no co-relationship between the management of the Press and that of ''The Samaj'' so as to treat them as an integrated whole and consequently the two cannot be construed to be one unit. The learned Court ultimately has come to the conclusion that ''The Samaj'' is not an integral part of the Satyabadi Press and therefore, the establishment of ''The Samaj'' is not included in the establishment of the Press. On the question of limitation also, the learned Court came to the conclusion that the application was not barred by time. On the question of res judicata the Court answered in favour of the Corporation. On these findings, the Court decreed the petition declaring that the demand as per item No. 7 of Ext. C is illegal and accordingly quashed the same. It is this order of the Court which is being impugned in the present appeal.

4. Mr. Patnaik, the learned Counsel for the Appellant, contends that the learned court below committed serious error of law in not construing the materials on record properly which would unequivocally indicate that the Press and ''The Samaj'' are closely inter-related being under the management and control of one person and having been dedicated and established by one person, the main object of the Press being to publish a daily newspaper for the upliftment of the Oriya people and in that view of the matter, the ultimate conclusion of the Court below cannot be sustained. Mr. Mohanty, the learned Counsel for the Respondent, on the other hand, urges that there has been proper appreciation of the evidence on record and the conclusion arrived at by the court below is unassailable and accordingly this appeal deserves to be dismissed.

5. Before examining the correctness of the rival submissions, it would be profitable to note certain provisions of the Act. The Employees'' State Insurance Act, 1948 is a piece of social security enactment. So far as India is concerned, such social security legislation is of a fairly recent origin and it is only in 1923, the first of its type was introduced being the Workmen''s Compensation Act, 1923. After the commencement of the second World war in 1939, several conferences of labour ministers were held which ushered the idea that legislation should be made for amelioration of the conditions of employment of workers in several industries and it is with that objective, the Government of India introduced the Bill in Dominion legislature which emerged out as the Employees'' State Insurance Act, 1948. It cannot be denied that social security is one of the fundamental needs of the present day. It is the security that the society furnishes through appropriate organisation against certain risks to which the members are exposed. The Employees'' State Insurance Act is far more wider than the Workmen''s Compensation Act and enlarges the scope of compensation. The scheme envisaged under the Act is one of compulsory state insurance providing for certain benefits in the event of sickness, maternity and employment Injury to workmen employed in or in connection with the work in factories other than

seasonal factories. The Act purports to confer sickness cash benefit, maternity benefit, disablement and dependant''s benefit medical care and treatment at different hospitals and dispensaries as well as adjudication of disputes and claims by Workmen''s State Insurance Court in respect of insured workmen. The Act has been amended from time to time to meet the requirements of the changing society. u/s 11 of the Act, it has been made applicable to whole of India and Sub-section (5) of Section 1 empowers the appropriate Government in consultation with the Corporation to extend the provisions of this Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. In exercise of this power, by notification dated 22-1-1960, the factories within the municipal limits of Cuttack were brought under this Act. There is no dispute between the parties that the Satyabadi Press is under the purview of the aforesaid Act. Section 2(9) defines "employee" to mean any person employed for wages in or in connection with the work of a factory or establishment to which the Act applies. Section 38 makes it obligatory for all the employees in factories or establishments to which the Act applies to be insured in the manner provided under the Act. Section 39 deals with the contributions payable under the Act. Section 40 provides for the liability of the principal employer to pay contribution. Section 75 enumerates the nature of disputes to be decided by the Employees'' Insurance Court. Section 82 is the provision for appeal to the High Court against an order of an Employees'' Insurance Court if it involves a substantial question of law. Broadly, we are concerned with the aforesaid provisions in the present appeal.

6. The bone of contention between the parties is as to whether the employees working for ''The Samaj'' which is a daily newspaper can be said to be the employees working under the Satyabadi Press for the purpose of the Act or not and if the answer is in the affirmative, then undoubtedly, the contribution of the employees working for ''The Samaj'' has not been paid by the management of Satyabadi Press. Certain admitted facts which emerge from the materials on record may now be noted. Late Gopabandhu Das was the owner of the Press called Satyabadi Press and he bequeathed the same to the Servants of the People Society whose object was to enlist and train national missionaries for the service of the mother land. The object of the bequeathment was that the Society will manage the Press and spend all its proceeds on the social, educational, moral and political upliftment of Orissa and along with the Press the publication of ''The Samaj'' was also handed over to the Servants of, the People Society. The Satyabadi Press and the daily Samaj both are located in the newly constructed Gopabandhu Bhavan, ownership of both of which vests in the Society in terms of the will executed by late Gopabandhu Das and it was being managed by one life member of the Society Shri Fakir Charan Das. The materials on record are to be examined in the context of application of the provisions of the Act under the aforesaid premises.

In one of the recent cases of the Supreme Court in Shri Narakesari Prakashan Ltd. and Others Vs. Employees'' State Insurance Corporation and Others, .

Justice Venkataramiah after examining the different provisions of the Act held:

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. Members of the editorial staff virtually constitute an integral part of the newspaper press and they are employed in connection with the work done at the printing press. It is so even in the case of the administrative staff. While the members of the editorial staff of a printing press publishing newspaper fall under Clause (i) of Section 2(9), the members of the administrative staff fall under the clause containing the words ''includes any person employed for wages on any work connected with the administration of the factory''. But the person employed for wages in the administrative section and the editorial section of the printing press publishing Newspaper are therefore employees as defined in Section 2(9) even though no notification is issued u/s 1(5) making the Act applicable to those sections. The fact that such a notification has been issued, either as a matter of abundant caution or on a wrong understanding of the true implication of the definition in Section 2(9) is irrelevant....

(Quoted from the Headnote)

The facts and circumstances of the present case have to be examined in the context of the aforesaid observations of the Supreme Court to find out whether ''The Samaj'' and its employees are included within the Satyabadi Press as forming an integral part of the same or not. It is also equally well settled that while examining the lis between the parties, one should bear in mind as to whether there is unity of ownership; unity of employment; management under one person; existence of the two units within one and the same premises and all other relevant considerations like the main object of the Press are also to be considered. A bare reading of the impugned judgment shows that the learned court below has not applied its mind to the aforesaid tests and has not examined the materials to scrutinise the problem from the aforesaid stand point. In that view of the matter, I would set aside the impugned judgment and remit back the matter to the learned District Judge who is also the State Insurance Court to re-hear the matter and dispose of the same in accordance with law bearing in mind the observations of the Supreme Court referred to earlier as well as all other relevant considerations. It is also made clear that if the parties want to adduce any further evidence in this case, the learned District Judge would give them the opportunity of leading further evidence in the matter.

7. In the result, therefore, the impugned order of the learned District Judge-cum-State Insurance Court is set aside and the matter is remitted back to him for re-disposal in accordance with law. This appeal is accordingly allowed, but there would be no order as to costs.