
(1992) 04 KAR CK 0025
In the Karnataka High Court
Case No : M.F.A. No. 357 of 1992

Reunion Engg. Co. Pvt. Ltd.

APPELLANT

Vs

E.S.I.C.

RESPONDENT

Date of Decision : 01-04-1992

Acts Referred:

Employees State Insurance Act, 1948 — Section 1 (5), 2 (12), 2 (9), 45 A, 82

Citation : (1992) 65 FLR 192 : (1993) 1 LLJ 31

Hon'ble Judges : N. Venkatachala, J;B. Jagannatha Hegde, J

Bench : Division Bench

Advocate : Sri Sreevatsa, Associates, for the Appellant; M. Papanna, for the Respondent

Judgement

Venkatachala, J.—This is an appeal filed u/s 82 of the Employees' State Insurance Act, 1948 (for short "the Act"), by the branch office of Reunion Engineering Company Ltd., at Premises Nos. 106 and 107, Midford House No. 1, Midford Gardens, Bangalore, questioning the correctness of the order dated November 28, 1991 made in E.S.I. Application No. 77 of 1987 by the Employees' Insurance Court at Bangalore (for short "the Insurance Court"), by which it (the branch office of Reunion Engineering Company Ltd.) is held to be a shop, that is, an establishment, to which the provisions of the Act are extended by Government of Karnataka, by Notification No. SWL 371 LSI 87, dated January 5, 1985, issued under sub-section (5) of Section 1 thereof (for short "the Notification").

2. Facts lie in a narrow compass—By its letter dated January 31, 1985, Karnataka Regional Office of the Employees' State Insurance Corporation at Bangalore (for short "the Corporation") sought to obtain information from the branch office of the Reunion Engineering Company Limited (the appellant) as to its activities to find out whether it is a "shop", to which the provisions of the Act had been extended by the notification. The information furnished thereto by the appellant was to the effect that its work was confined to carrying out the electrical

contracts and its employees, in the months of January and February of 1985, were 32 in number. The information furnished thereto also indicated that the appellant's electrical contracts involving electrical installations and erection works, had to be done outside their office and at job sites, buildings and factories and, therefore, the employees had to be sent out to such places for carrying out electrical contract works. However, in that letter, by which information had been furnished, it was contended by the appellant that its activities not being connected with any manufacturing process, it cannot be treated as an "establishment" - "shop", to which the provisions of the Act had been extended by the notification. Thereafter, the Corporation, by the order dated September 23, 1987 made by its Deputy Regional Director u/s 45-A of the Act, treated the appellant as a "shop", to which the provisions of the Act had been extended by the notification and fixed the contribution payable at 7.25 percent on the assumed wage of Rs. 880 per month for each of its employees said to be 36 in number for the period commencing from January 27, 1985 and ending with March 31, 1987 the total contribution having been computed at a sum of Rs. 60,099-48. When the sum so fixed by the said order was sought to be recovered from the appellant as arrears of land revenue, it made an application in E.S.I. Application No. 77 of 1987 before the Insurance Court disputing its liability for contribution determined u/s 45-A of the Act. That application was contested by the Corporation. Evidence adduced in support of the application by the appellant consisted of documentary and oral evidence of the appellant's Manager. The evidence contained in the documents clearly showed that the appellant (branch office) was entering into electrical contracts to carry out electrical works for others in their factories and buildings, through its employees. Its Manager, in the course of his oral evidence, stated that though his branch office undertook electrical contracts and carried out electrical works in factories and other places of the customers, what was being done by the branch office was, according to him, sale of works contract service and not sale of goods, either wholesale or retail. It was also stated by him that in his Bangalore branch office, about 40 to 50 persons were employed, out of whom only 50% comprised of skilled technicians, while others comprised of administrative staff like Cashiers, Secretaries and Accountants. His explanation as to what he meant by services sold in electrical contract works, was the sale of services relating to the preparation of drawings and project details by the branch office done before under-taking such contract works. There was also evidence adduced by the Corporation which comprised the inspection report of the Corporation's Inspector and his oral evidence.

On appreciation of the evidence adduced by either side, the Insurance Court, by its order date November 28, 1991 found that the appellant was a "shop" specified in the notification and, as such, the provisions of the Act had been extended to it and, consequently, dismissed the application of the appellant. It is that order, the correctness of which is questioned in the present appeal filed by the appellant.

3. Sri H. B. Datar, learned Senior Advocate, contended before us that the decision of the Supreme Court in *Hindu Jea Band, Jaipur Vs. Regional Director, Employees' State Insurance Corporation, Jaipur*, which has ruled that even a place where services are rendered or performed will be a shop, should be confined to a situation where the services are sold to any person who wants to avail of the same and were made available on payment of a stipulated price with no variation according to the volume, nature, quality and complexity of the work involved in the matter and if the application of the ruling in *Hindu Jea Band's* case, (supra) is so confined, the branch office of the Reunion Engineering Company Ltd. (the appellant) cannot be a shop as envisaged in the notification and, in that event, the provisions of the Act cannot be extended to the appellant's branch office. He sought to support his contention by placing reliance on the decision of the Bombay High Court in *Employees' State Insurance Corporation Vs. Dattaram Advertising (Private) Ltd.*, and the decision of the Kerala High Court in *Waves Advertising and Marketing (P.) Ltd. v. Deputy Labour Commissioner* (1991) 79 FIR 195.

4. Sri. M. Papanna, learned counsel for the Corporation, on the other hand, contended that the ruling of the Supreme Court in *Hindu Jea Band's* case, (supra) cannot be confined as is sought on behalf of the appellant, but has to be understood as the one not intended to confine its limits to "shops" where sale of goods or services takes place as is held in the decision of the Bombay High Court and the Kerala High Court, relied upon on behalf of the appellant. The Bombay High Court and the Kerala High Court, according to him, could not have sought to confine the ruling of the Supreme Court to the situations envisaged by them if the later ruling of the Supreme Court in *M/s. International Ore and Fertilizers (India) Pvt. Ltd. Vs. Employees' State Insurance Corporation*, of the same Division Bench of the Supreme Court which had been rendered on the heels of *Hindu Jea Band's* case, (supra) where it had been pointed out that a shop included as an establishment among others in the notification issued under sub-section (5) of section 1 of the Act, had to be given the meaning which would serve the object sought to be achieved by the Act.

5. In the light of the rival contentions of learned counsel appearing for the appellant and the Corporation, what requires our examination is whether the branch office of the appellant would fall within the purview of "shop" included in the notification under sub-section (5) of Section 1 of the act.

6. The notification, in so far as it is material for our purpose, reads :

"In exercise of the powers conferred by sub-section (5) of Section 1 of the Employees State Insurance Act, 1948, after giving six months notice as required thereunder, vide the Government of Karnataka Notification No. SWL 134 LSI 76, dated December 19, 1976 published in the State Gazette (Extraordinary) dated February 19, 1976, the Govt. of Karnataka hereby appoints January 27, 1985 as the date on which all provisions of the said Act shall extend to the classes of establishments and in the areas specified in the Schedule annexed hereto :

SCHEDULE

Description of Name of Area in which establishments the center establishments are situated ----- 3. Shops, road motor Bangalore 1) Area covered by transport City and suburbs the municipal limits establishments, of the Corporation of cinemas including City of Bangalore. preview theatres and newspaper establishments 2) Area covered by the which are employing or following villages of were employing twenty or Bangalore North, more persons for wages Bangalore South, on any day of the Nelamangala and preceding twelve months. Hosakote Taluks."

As could be seen from the notification, the material portion of which is excerpted above, "shop" which are employing or were employing 20 or more persons for wages on any day of the preceding twelve months situated within the area covered by the municipal limits of the Corporation of the City of Bangalore, are "establishments" to which the provisions of the Act are extended.

7. As it cannot be disputed that the "shops" which are employing or were employing 20 or more persons for wages on any day of the preceding twelve months situated in the area covered by the Municipal limits of the Corporation of the City of Bangalore, must fall within the class of "establishments" envisaged under sub-section (5) of Section 1 of the Act, if all the provisions or any of the provisions of the Act are/is to be extended to them by a notification issued by the Government, it would be necessary to know the nature of establishment, to which the provisions of the Act could be extended.

8. Legislative guidance in that regard, since it becomes available in sub-section (5) of Section 1 of the Act, the same is excerpted :

"(5) The appropriate Government may, in consultation with the Corporation and where the appropriate Government is a State Government, with the approval of the Central Government, after giving six months" notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, to any other establishment, or class establishment, industrial, commercial, agriculture or otherwise."

As is seen from the provision in the above sub-section, the Legislature has empowered the appropriate Government in consultation with the Corporation, and where the appropriate Government is a State Government, with the approval of the Central Government to notify the "establishment" or class of establishments, to which the provisions of the Act are to be extended. That the establishment or class of establishments, to which the appropriate Government may extend the provisions of the Act or any of them, need not be confined to industrial, commercial, agricultural or the like, becomes clear from the word "otherwise" employed at the end of the sub-section.

As the word "otherwise" is used in the sub-section with a view to enable the appropriate Government to extend the provisions of the Act or any of them, to

establishments which need not necessarily be carrying on industrial, commercial, agricultural or the like activities, it becomes necessary for us to understand the meaning of the word "otherwise" found in the sub-section having regard to the object sought to be achieved by the Act.

9. When we see the preamble to the Act, it declares that it is an Act intended to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provisions for certain other matters in relation thereto. As the definition of "employee" in sub-section (9) of Section 2 of the Act states as to who are the employees that are to be given the benefits envisaged under the Act, it is excerpted :

"(9) "employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and,

(i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or

(ii) who is employed by or through an immediate employer on the premises of the factory or establishment or 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 the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service;

and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the product of, the factory or establishment or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment; but does not include -

(a) any member of the Indian naval, military or air force; or

(b) any person so employed whose wages excluding remuneration for overtime work exceed such wages as may be prescribed by the Central Government a month :

Provided that an employee whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government a month at any time after and not before the beginning of the contribution period, shall continue to be an employee until the end of that period."

The definition shows that the benefits of the Act are intended to be conferred not only on employees working in any factory or establishment, but also elsewhere,

and comprehends the work of every type done by him including the administrative work, provided such employee's wages does not exceed the limit prescribed by the Central Government. Under the scheme of the provisions of the Act, the employee, who does not get monthly wages exceeding the wages prescribed by the Central Government, becomes the insured person making the employer as well as the employee to contribute certain amounts to the Corporation for being put in a fund called the "Employees" State Insurance Fund" to be held and administered by the Corporation. That fund could be augmented by the grants made by the Central Government or the State Government or local authority or any individual or body, whether corporate or not. But, that fund is required to be expended for (1) payment of certain benefits to employees and their families and to provide for medical treatment and attendance to insured persons and where medical benefits are extended to the families of insured persons, to provide for the same in accordance with the provisions of the Act and defray the charges and costs in connection therewith; and (2) establishment and maintenance of hospitals, dispensaries and other institutions and providing of medical and other ancillary services for the benefit of the insured persons and, where the medical benefit is extended to their families, their families. Thus, when the object sought to be achieved by the Legislature, as seen from the scheme of the provisions in the Act, is the welfare of low paid employees working in establishments - industrial, commercial, agriculture or otherwise - the word "otherwise" employed in sub-section (5) of Section 1 of the Act in its context being a word of wide amplitude, should receive such interpretation which would advance the object sought to be achieved by the Act and not impede such object. The appropriate Government, which is delegated with the power or authority under sub-section (5) of Section 1 of the Act in the matter of specifying the establishments, to which the provisions or any of the provisions of the Act have to be extended, when it issued a notification specifying "establishment" employing 20 or more persons for wages on any day of the day of the preceding twelve months as the establishments to which the provisions of the Act have to be extended, the "shops" specified as establishments in a notification so issued cannot receive a restrictive antiquated meaning, but has to receive an expansive meaning, keeping in view the variety of activities carried on in such shops in the modern-day context. It is such meaning needed to be given to such "shops" specified in notifications issued under sub-section (5) of Section 1 of the Act, which appears to have made the Supreme Court in *Hindu Jea Band*'s case (supra) regard a place where the services of musicians are sold, to be a "shop" envisaged in similar notification and in *International Ore and Fertilizers P. Ltd.*, (supra), regard a place where trading activity of importing goods is carried on, to be a "shop" specified in a similar notification. Therefore, it is difficult for us to agree with the Insurance Court that the branch office of the appellant, that is, the place which admittedly, has employed more than 20 persons on wages and which is carrying on business in electrical contracts of customers in their factories, buildings and work sites, has to be regarded as a "shop" specified in the notification.

10. In *Hindu Jea Band's* case (supra), the Supreme Court had to find whether a notification issued under sub-section (5) of Section 1 of the Act by the Rajasthan State Government specifying shops in which twenty or more persons had been employed for wages on any day of the preceding 12 months, took within its purview *Hindu Jea Band*, Jaipur, which had employed 23 persons on wages during the relevant period. The contention raised there on behalf of *Hindu Jea Band* was that it was not a "shop" coming within the purview of the shops specified under the said Rajasthan State Government notification, in that, it was not selling any goods in the place of its business, but was only engaged in arranging musical performances on occasions, such as marriages, etc. That contention was negated by the Division bench of the Supreme Court by observing thus (at page 504) :

"We do not agree with the narrow construction placed by the petitioner on the expression "shop" which appears in the notification issued u/s 1(5) of the Act which is a beneficent legislation. The word "shop" has not been defined in the Act. A shop is no doubt an establishment (other than a factory) to which the Act can be extended u/s 1(5) of the Act provided other requirements are satisfied. In *Collins English Dictionary*, the meaning of the word "shop" is given thus : "(i) a place esp. a small building for the retail sale of goods and services and (ii) a place for the performance of a specified type of work; workshop". It is obvious from the above meaning that a place where services are sold on retail basis is also a shop. It is not disputed that the petitioner has been making available on payment of the stipulated price the services of the members of the group of musicians employed by it on wages. We, therefore, hold that the place where the petitioner has been carrying on business is a shop to which the Act is applicable by virtue of the notification referred to above."

If regard is had to the emphasised portion of the above observations made by the Supreme Court, those observations, we have no doubt, would support the view we have taken that the branch office of the appellant is a "shop" in that, the services of its employees are sold for doing electrical contract works for others inasmuch as those services are to be rendered for a price stipulated under the terms of the contract relating to electrical works.

11. But, the said observations of the Division Bench of the Supreme Court, it was submitted by learned counsel for the appellant, cannot be extended to the sale of services not available for purchase on a retail basis and for a stipulated price because of varying volume, nature and complexity of the work, purchase of which is sought, as held by the Division Bench of the Bombay High Court in *Employees' State Insurance Corporation v. Dattaram Advertising (Private) Ltd.*, (supra), and followed by a Division Bench of the Kerala High Court in *Waves Advertising and Marketing (P.) Ltd. v. Deputy Labour Commissioner*, (supra). We feel that the understanding of the emphasized observations made by the Division Bench of the Supreme Court in *Hindu Jea Band's* case, (supra) by the Bombay High Court and the Kerala High Court was what was unintended by the Division

Bench of the Supreme Court rendering that decision, becomes clear from the decision of the Supreme Court, which had been rendered by the very same Division Bench in *International Ore and Fertilisers (India) Pvt. Ltd. v. Employees' State Insurance Corporation*, (supra) on the heels of the decision of *Hindu Jea Band's* case (supra). The facts in *International Ore and Fertilizers (India) Pvt. Ltd.'s* case. (supra) were that the petitioner therein was a limited company carrying on the business of Secunderabad and at some places in India, such business being importing of fertilisers, representing some foreign principals for sale of such fertilizers in India. In course of that business, petitioner used to obtain tenders from the State Trading Corporation/Minerals and Metals Trading Corporation of India and passed them on to its principals abroad for negotiations to be completed between the principals and the State Trading Corporation/Minerals and Metals Trading Corporation of India. When once the deals were completed fertilizers used to arrive at Indian ports for being delivered to the Central Government. The business of the petitioner there was to supervise the unloading of the goods, conduct survey of such goods, to ascertain their condition to find out whether there was any shortage in the consignments to avoid future dispute as to the quality and the quantity of the goods delivered. The petitioner had employed about 27 persons on wages for carrying on the said works of supervising unloading of goods, conducting the survey of goods and noting the shortages relating to those goods. The contention urged before the Supreme Court was that when goods were not actually delivered in the premises in which the petitioner had its establishment, the said establishment could not be treated as the "shop" which is referred to in item 3 of the Government notification issued under sub-section (5) of Section 1 of the Act. In dealing with that contention, it has been observed by the Supreme Court, thus (at pages 237 and 238) :

"... The word "shop" is not defined in the Act or in the notification issued by the State Government. According to the Shorter English Oxford Dictionary, the expression "shop" means "a house or building where goods are made or prepared for sale and sold". It also means a "place of business" or "place where one's ordinary occupation is carried on". In ordinary parlance a "shop" is a place where the activities connected with the buying and selling of goods are carried on. The evidence produced in the case shows that the petitioner is carrying on its business at its business premises in Secunderabad. At that place the petitioner carries on the commercial activity facilitating the emergence of contracts of sale of goods between its foreign principals and the State Trading Corporation/Minerals and Metals Trading Corporation of India. It arranges for the unloading of the goods under its supervision and for the survey of the goods despatched by its foreign principals and on the goods being delivered to the Central Government it collects the price payable by the Government and remits it to its foreign principals. All these activities are directed and controlled from its premises at Secunderabad. It is thus clear that the activities carried on by the petitioner constitute trading activities although the goods imported from abroad are not

actually brought to the said premises and delivered to the purchaser there. In our opinion, it is not actually necessary that the delivery of the goods to the purchaser should take place at the premises in which the business of buying or selling is carried on to constitute the said premises into a "shop". The delivery of the goods sold to the purchaser is only one aspect of trading activities. Negotiations of the terms of sale, carrying on of the survey of the goods imported, arranging for the delivery of the goods sold, collection of the price of the goods sold etc., are all trading activities. The premises where business is carried on by the petitioner is undoubtedly a shop as the activities that are carried on there related only to the sale of goods which are imported into India. The petitioner acts as the agent of its foreign principals who are the sellers. The petitioner directs and controls all its activities from the premises in question. If orders are received at a place which ultimately fructify into sales and the resulting trading activity is directed from there that place comes to be known as a "shop". In our view the Employees' Insurance Court placed a very narrow interpretation on the expression "shop" while upholding the contention of the petitioner by confining "shop" to a place where the goods are actually stored and delivered pursuant to a sale. We agree with the decision of the High Court that while construing a welfare legislation like and Act and the notification issued thereunder a liberal construction should be placed on their provisions so that the purpose of the legislation may be allowed to be achieved rather than frustrated or stultified. There is no doubt that the establishment of the petitioner of Secunderabad is a "shop" where selling activity is carried on and by virtue of notification issued by the State Government, the Act became applicable to it ..."

12. From the above observations of the Supreme Court, it becomes clear that the "shop" specified as an "establishment" in the notification issued by the appropriate Government under sub-section (5) of Section 1 of the Act, need not be confined to a place where sale of goods or services become available on retail basis and for a fixed price, as has been held by the Bombay High Court in *E.S.I. Corporation v. Dattaram Advertising (Private) Ltd.*, (supra) and the Kerala High Court in *Waves Advertising and Marketing (P.) Ltd. v. Deputy Labour Commissioner*, (supra). Hence the contention of Shri Datar that the branch office of the appellant cannot be a "shop" because goods or services are not available there for purchase on retail basis and for a fixed price as is held in the aforesaid decisions of the Bombay High Court and the Kerala High Court, cannot succeed.

13. The other question raised for our decision in this appeal is whether the appellant's shop which did not have been 20 or more employees who were drawing wages, which makes them entitled to the benefit of the provisions of the Act, can be regarded as an "establishment" to which the provisions of the Act should be applied. There is no provision in the Act which states that 20 or more of its employees who will be getting monthly wages in a sum which entitles them to get the benefit of the Act. Our attention was drawn by learned counsel for the appellant to the provision in Section 2(9)(iii)(b) of the Act. That provision states as to who are the employees not included within the definition of "employee"

therein, thus :

"(b) any person so employed whose wages (excluding remuneration for overtime work) exceed such wages as may be prescribed by the Central Government a month."

In our view, the said provision, to which our attention was invited, does not bear at all on the question under consideration. That provision is intended to excluded certain employees from the benefit of the Act by stating that employees, who get the monthly wages exceeding the amount prescribed therein, will not be entitled to the benefit of the provisions of the Act. The said provision does not state that to attract the application of the provisions of the Act, 20 or more persons, who are the employees, must all get the monthly wages of an amount falling short of the amount prescribed by the Central Government. In fact, on a question similar to the one which had been raised in the case of Mysore Paints and Water Proof Ltd. v. Employees" State Insurance Corporation (1973) 44 FJR 28 , a Division Bench of this Court, relying upon the view of the Bombay High Court in Bank Silver Co. v. Employees" State Insurance Corporation, (1964 II LLJ 591), held that in order to compute the 20 persons mentioned in Section 2(12) of the Act, it is not necessary that all those 20 persons should be "employees" as defined in Section 2(9) of the Act. What is said by the Division Bench of this Court in relation to a factory, with which we respectfully agree, is equally applicable to the case of the any other establishment or class of establishments which may be notified under sub-section (5) of Section 1 of the Act, as those which would attract the application of the provisions of the Act.

14. The remaining question is whether the appellant should be afforded an opportunity to establish before the Insurance Court as to the number of employees with him for whom contribution under the Act is liable to be paid. An application has been made on behalf of the appellant in this regard. As we have seen from the proceedings before the Corporation as also before the Insurance Court, the controversy was confined to an examination as to whether or not the place of business of the appellant is a "shop". It looks as if the appellant, in this zeal to establish that the place of its business is not a "shop", has failed to produce the evidence as regards the employees who are drawing the monthly wages below that prescribed by the Central Government, for whom contribution is liable to be paid to the Corporation. The Corporation has proceeded to fix the liability for contribution by the appellant on the premise that there were 36 employees for whom contribution was liable to be paid, in that they were getting monthly wage of Rs. 880. This has been probably done by the Corporation, in that, the necessary correct information in that regard was not made available by the appellant. Though the appellant may not be very much justified in not making available the said information, having regard to the facts and circumstances of the case, as contended by the learned Counsel for the Corporation, we feel that ends of justice would require that an opportunity to the appellant must be granted to establish before the Insurance Court as to how

many of its employees in its "shop" are drawing less than the monthly wages prescribed by the Central Government, so as to enable the Insurance Court to fix the contribution liable to be paid by the appellant to them within the period to be stipulated.

15. In the result, we allow this appeal partly and remit the appellant's application, which is filed in this appeal, to the Insurance Court for deciding the only question of the number of the employees for whom the contribution is liable to be paid by the appellant to the Corporation, however, directing the appellant to deposit Rs. 60,099.48 with the Corporation, which amount shall be subject to the adjustments to be made finally, depending upon the decision of the Insurance Court.

16. The parties shall appear, without any further notice in the matter, before the Insurance Court on June 2, 1992.