(1976) 11 CAL CK 0026

In the Calcutta High Court

Case No : Matter No. 458 of 1973

Sen-Raleigh Ltd. APPELLANT

Vs

Employees'' State Insurance Corporation and Others RESPONDENT

Date of Decision : 09-11-1976

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

Citation : AIR 1977 Cal 165 : (1977) 34 FLR 292

Hon'ble Judges : Sankar Prasad Mitra, C.J;Salil Kumar Datta, J;Sabyasachi Mukharji, J

Bench : Full Bench

Advocate : P.P. Ginwalla, Arijit Chowdhury and Jatin Ghose, for the Appellant; Arun Dutt and Dipak Basu, for the Respondent

Final Decision : Dismissed

Judgement

Sankar Prasad Mitra, C.J.—In our judgment delivered today in Matter No. 175 of 1973 (Cal) (India Jute Co. Ltd. v. The Regional Director, West Bengal Region Employees'' State Insurance Corporation) we have held that where the head office and the factory are situate at different places the employees in the head office who are engaged in any type of work specified in Section 2(9) of the Employees'' State Insurance Act, 1948, as it now stands, are ''employees'' within the meaning of the Act. In this case it has been urged before us that the head office of Sen-Raleigh Ltd., is in Middleton Row in Calcutta but the factory is in Asansol. The Act applies to Calcutta but not to Asansol. In the circumstances, the employees in the head office who are engaged in any type of work mentioned in Section 2(9) of the Act would not be employees within the meaning of the Act.

2. On behalf o? the respondents our attention has been drawn to various notifications issued in the Gazette of India from time to time on the applicability of this Act. On the 1st September, 1948, Chapters I, III and VIII of the Act came into force in all the Provinces in India. The Gazette publication was made on the 31st August, 1948. As we have pointed out in our aforesaid judgment Sub-

section (3) of Section 1 in Chapter I of the Act provides that the Act shall come into force on such date or dates as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and ''for different States'' or different parts thereof (the words within quotations were substituted by Act 53 of 1951, Section 2, for "for different States".)

3. It is pursuant to the above provision that the Gazette Notification of 31 August, 1948, was published. The charging sub-section is Sub-section (4) of Section 1 in Chapter I. It prescribes that that the Act shall apply, in the first instance, to all factories (including factories belonging to the Government) other than seasonal factories.

4. This shows that on the 1st September, 1948, Chapters I, II, III and VIII of the Act became applicable to all factories throughout India irrespective of location. The headings of these Chapters respectively are (a) preliminary, (b) corporation, Standing Committee, and Medical Benefit Council (c) Finance and Audit and (d) Miscellaneous. Sections 44 and 45 (Employers to furnish returns etc; Inspectors their functions and duties) were brought into force in all part ''A'' states with effect from the 1st April, 1950.

5. On the 24th November, 1955, Chapter VA became applicable to the whole of India except the State of Jammu and Kashmir. This Chapter provides for Transitory Provisions. During the transitory period every principal employer had to pay to the Corporation a special contribution subject to the other provisions in the Chapter.

6. On 14 August, 1955, Chapter IV (except Sections 44 and 45), Chapter V and Chapter VI (except Sections 76(1), 77, 78, 79 and 81 of the Act came into operation with respect, inter alia, to the Calcutta Municipal areas. These Chapters deal respectively with (a) contributions, (b) benefits and (c) adjudication of dispute and claims. The marginal notes of Sections 44, 45, 76, 77, 78, 79 and 81 are respectively as follows:--

1. Employers to furnish returns and maintain registers in certain cases.

2. Inspectors, their functions and duties.

3. Institution of proceedings.

4. Commencement of proceedings.

5. Powers of Employees Insurance Court

6. Appearance by legal practitioners and

7. Reference to High Court.

7. In 1966, Section 2(9) was amended, as we have seen, by Act 44 of 1966, which came into force on 28 January, 1966. By this amendment an exhaustive definition was prescribed for the word "employee",

8. After the amendment came into force on the 29th May, 1968, the Regional Director, Calcutta, wrote to Messrs. Sen-Raleigh and Co. Ltd., Kannyapur, Post Office Asansol, Burdwan, inter alia, as follows:--

"That as per definition of the term ''employee'' laid down in Section 2 (9) of the E. S. I. (Amendment) Act, 1968 the employees of your head office situated at Mercantile Building, Calcutta-1, are also now covered within the meaning of Section 2 (9) of the Act with effect from 28th January 1968 i. e., the date from which the amendment came into force. You are requested to please confirm that necessary action with regard to registration of your head office employees and deduction/payment of contribution in respect of them have been taken up by you," (Vide pages 16 and 17 of the Paper Book).

9. It appears, therefore, that Chapter IV and Chapter V of the Act became applicable to the head office of Sen-Raleigh Ltd. on the 14th August, 1955; but the State Insurance Corporation did not make any demands till the amended definition of ''employee'' came into force. In other words, after the definition was amended the provisions relating to ''contributions'' and ''benefits'' except as hereinbefore stated, became applicable to the employees of Sen-Raleigh Ltd. working in its head office in Calcutta who were covered by the amended definition in Section 2 (9).

10. On the 3rd September, 1968, the Regional Director, Calcutta, again wrote to Sen-Raleigh and Co. Ltd. as follows:--

"It has been reported by this office Insurance Inspector who visited the Head Office of your factory that the following amount has been paid to the Head Office Staff for the period from 28th January 1968 to 30th June 1968 but no Employers'' Special Contribution on the same has been paid.

Period. Total Wages Bill. ESE due. 28-1-68 to 31-3-68 Rs. 47,323.39 Rs. 355.30 1-4-68 to 30-6-69 Rs. 67,044.10 Rs. 503.00 TOTAL Rs. 858.30 Employers'' Special Contribution as shown above may please be paid immediately." (vide pages 18 and 19 of the Paper Book.)

11. In this letter the Regional Director has demanded "Employers'' Special Contribution" from 28 January, 1968 to 30 June, 1968. "Employers'' Special Contribution" has been provided for in Section 73-A in Chapter VA of the Act which deals with "Transitory Provisions". Section 73-A is in these terms:

"73A. (1) For so long as the provisions of this Chapter are in force, every principal employer shall, notwithstanding anything contained in this Act, pay to the Corporation a special contribution (hereinafter referred to as the Employers'' Special Contribution) at the rates specified under Sub-section (3).

(2) The Employers'' Special Contribution shall, in the case of a factory or establishment situate in any area in which the provisions of both Chapters IV and V are in force, be in lieu of the Employers'' contribution payable under Chapter IV.

(3) The Employers'' Special Contribution shall consist of such percentage, not exceeding 5% of the total wage bill of the employer, as the Central Government may, by notification in the Official Gazette, specify from time to time.

Provided that before fixing or varying any such percentage the Central Government shall give by like notification not less than two months'' notice of its intention so to do and shall in such notification specify the percentage which it proposes to fix or, as the case may be, the extent to which the percentage already fixed is to be varied,

Provided further that the Employers'' Special Contribution in the case of factories or establishments situate in any area in which the provisions of both Chapters IV and V are in force shall be fixed at a rate higher than that in the case of factories Or establishments situate in any area in which the provisions of the said Chapters are not in force.

(4) The Employers'' Special Contribution shall fall due as soon as the liability of the employer to pay wages accrues, but may be paid to the Corporation at such intervals within such time and in such manner as the Central Government may, by notification in the Official Gazette, specify, and any such notification may provide for the grant of a rebate for prompt payment of such contribution.

Explanation.-- Total Wage Bill in this section means the total wages which have accrued due to employees in a factory or establishment in respect of such wage periods as may be specified for the purposes of this section by the Central Government by notification in the Official Gazette."

12. We have seen that Chapter VA came into operation in the whole of India except Jammu and Kashmir on the 24th November, 1951. It ceased to have effect, we have been told, on the 1st July, 1973.

13. In the instant case, the Employees'' State Insurance Corporation by the Regional Director''s letter of the 3rd September, 1968, demanded Employers'' Special Contribution from 28 January, 1968 to 30 June, 1968, We do not think that this demand is unjustified inasmuch as on the facts stated above the Regional Director is entitled to demand the Employers'' Special Contribution upto 30 June, 1973.

14. In the writ petition Sen-Raleigh Ltd., has challenged, the notice dated the 29th May, 1968 at pages 16 to 17 of the Paper Book, We have quoted above the relevant portions of this notice. It seems to us that this is a valid notice in view of the amended definition of Section 2 (9) and the various notifications referred to above which brought into operation different Chapters of the Act in different areas in India.

15. The result is that this application is dismissed. All interim orders, if any, are vacated. There will be no order as to costs.

Sabyasachi Mukharji, J.

16. I agree.

Salil Kumar Datta, J.

17. I agree.