

(1985) 03 RAJ CK 0022

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 260 of 1984

Shakti Enterprises

APPELLANT

Vs

Employees State Insurance Corporation

RESPONDENT

Date of Decision : 11-03-1985

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 40, 72, 75

Citation : (1985) 2 WLN 360

Hon'ble Judges : Dinker Lal Mehta, J

Bench : Single Bench

Judgement

Dinker Lal Mehta, J.—The miscellaneous appeal has been preferred by M/s Shakti Enterprises against the decision of the Employees State Insurance Court, Ajmer dated 7th April, 1983, in ESI Case No. 6 of 1978, u/s 75 of the Employees State Insurance Act.

2. The petition so preferred before the ESI Court is against the demand which was raised against the appellant by the Regional Director, ESI, Jaipur. The first point in dispute was whether the canteen and cycle stand is covered u/s 2(9) of the ESI Act or not ? The second point in dispute was whether the labourers engaged for the construction work of the building or other ancillary parts are covered by the provisions of Section 2(9) of the Act.

3. Mr. Bafna, counsel for the appellant, has vehemently submitted with full force at his command that Section 2(9), which reads as under, does not apply to the labourers engaged for the purpose of construction:

2(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 purpose of raw materials for, or the distribution or sale of the products of, the factory or establishment; but does not include)

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

(b) any person so employed whose wages (excluding remuneration for over time work) exceed (one thousand rupees) amount;

Provided that an employee whose wages (excluding remuneration for over time work exceeds one thousand rupees) 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.

4. Mr. Bafna with all fairness has conceded that after the decision of the Supreme Court in *Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation*, the question stands finally determined against him and the persons who are working in canteen and cycle stand are covered under the definition of employee given in Section 2(9) of the Act.

5. Section 2(9) provides that "employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies. The object of the Act is to safeguard the interest of the laborers and the workers and for this reason special provision has been made in Section 40 of the Act that the principal employer shall pay in respect of every employee, whether directly employed by him or by or through an immediate employer. Thus both the employers have been made liable for the payment of employee's contribution. Thus, the impediment which was there in the matter of giving the benefit to the workers has been washed away by making the principal employer responsible for the payment of the fund, though he may not be immediate employer. Now, under the law, the contribution can be realised from the principal employer as well as the immediate employer and both are equally responsible for the payment of the contribution. Mr. Bafna points out that this Court while interpreting the provision of Section 2(9) in *Alcobex Metals (P) Ltd. v. Union of India and Ors.* 1974 WLN 433, has held that the factory engaged in the new construction work for the factory cannot be taken to be the employees within the meaning of Section 2(9) of the Act. The construction work is not the regular work of the petitioner

company but is merely a casual work. Thus, this Court while interpreting the provisions of Section 2(9) of the Act held that the worker who is employed for a casual work cannot be considered as a worker as defined u/s 2(9) of the Act.

6. In the case of *Royal Talkies, Hyderabad v. ESI Corporation* (supra) the definitions in Sections 2(9), 2(7) and Section 40 were considered by the Supreme Court. Their Lordships of the Supreme Court held as under:

The primary test in the substantive clause being thus wide the employees of the canteen and the cycle stand may be correctly described as employed in connection with the work of the establishment. A narrower construction may be possible but a larger ambit is clearly imported a purpose oriented interpretation. The whole goal of the statute is to make the principal employer primarily liable for the insurance of kindred kinds of employees in the work or are merely in connection with the work of the establishment.

7. Thus, from the case cited above, it is clear that the words "in connection with the work of an establishment" have been given a wider interpretation by the Supreme Court. The words, "in connection with the work of an establishment" represents for a wide variety of workmen which may not be employed in the establishment to engage in connection with the work of an establishment. Construction of a building for cinema or for the additions and alterations is a work carried out in connection with the establishment of a cinema and taking into consideration the view expressed by the Hon'ble Supreme Court, it can easily be said that the law laid down by this Court does not hold good in the light of the decision of the Supreme Court in *Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation*,

8. Maintenance of cinema building in a proper condition is a must, regularly every year or at a time fixed by the Government. Under the rules the owner has to obtain a no-objection-certificate from the Public Works Department, Medical & Health Department and other departments. Whitewash is necessary for the building, especially cinema building. Any work which is ancillary, incidental or has relevance to or linked with the object of the establishment falls within the purview of Section 2(9) and the employee is entitled to get the benefits of the ESI Act. Construction is a part of the building. Remodelling, repairs and white-wash is ancillary, incidental or has relevance to or linked with the object of the establishment of cinema. It is an amenity or facility for the customers who frequently visit the cinema for the purpose of seeing the films. The question is not whether without the proper maintenance of the building additions or alterations, or the amenity or the facility the establishment of cinema cannot be carried on. But the question is whether such amenity or facility, even peripheral may be, has not a link with the establishment. I am of the view that the construction, additions and alterations, white-wash and colouring of the cinema building is ancillary, incidental or has relevance to or link with the object of the establishment, of the cinema. Thus, the labour who is casually employed in connection with the establishment for the purpose of white-wash additions and

alteration, colouring, etc., of the cinema building is an employee who does some work which is ancillary, incidental or has relevance to or link with the object of the establishment. Without the proper maintenance of the cinema building the customers, i.e., the persons visiting the cinema or seeing films will not be satisfied with the amenity or facility required for the proper maintenance of the cinema building. Thus, it is having a link with the establishment.

9. In *Bareilly Holdings Ltd. Vs. Their Workmen*, the Supreme Court held that the object of Section 72 of the Employees State Insurance Act is evidently to discourage employers from using the benefits provided under the E.S.I. Act as an excuse or justification for reducing or discontinuing the benefits available to the workmen under their conditions of service on the ground of similarity between the two types of benefits.

10. Their Lordships have considered that the benefits which are available under the ESI Act should be given a wider interpretation for the benefit of the workers, and the definition which is beneficial for the downtrodden sector of the society should be interpreted for the benefit of those for whose benefit the legislation has been enacted. The Punjab and Haryana High Court in *Employees' State Insurance Corporation, Chandigarh v. Oswal Woollen Mills Ltd., Ludhiana* 1980 L .I.C. 1064 held that even a person casually employed in a factory or establishment is within the ambit of the definition spelt out in Section 2(9) of the Act.

11. Thus, after the decision of the Supreme Court and the interpretation given by the various High Courts it can safely be said that a casual labour employed in connection with the establishment may be for the construction work of the part of the building or for the remodelling or additions and alterations of the building falls within the definition of Section 2(9) of the Act and such worker is entitled for the benefits of the ESI Act.

12. I do not find any force in this appeal and the same is summarily