

(2001) 03 MAD CK 0090
In the Madras High Court
Case No : L.P.A. No. 29 of 2001

Soft Beverages (P) Ltd.

APPELLANT

Vs

E.S.I. Corporation

RESPONDENT

Date of Decision : 12-03-2001

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(9), 82

Citation : (2000) 87 FLR 968 : (2001) 2 LLJ 701 : (2001) 2 MLJ 440

Hon'ble Judges : K. Narayana Kurup, J;A. Ramamurthi, J

Bench : Division Bench

Advocate : K.V. Anantakrishnan, for the Appellant;

Final Decision : Dismissed

Judgement

K. Narayana Kurup, J.—This L.P.A. is directed against the judgment of the learned single Judge, confirming the order of the E.I. Court in E.S.I.O.P. No. 10 of 1990, holding that the workers concerned were employees of the appellant company.

2. The brief facts necessary for the disposal of this appeal are as follows:

According to the appellant company, they are engaged in the manufacture and distribution of soft drinks under the trade name of "Torino". The concern is covered under the Factories Act and the appellant have been remitting the Employees' State Insurance contribution in respect of their regular employees. But, occasionally, for the purpose of loading and unloading sugar, new bottles etc. purchased from the manufacturers, the appellant used to engage some outside workmen, who are said to be independent and self-employed. A show-cause notice was issued by the E.S.I. Corporation claiming contribution from the appellant to the tune of Rs. 17,019 for the period from January, 1985 to December, 1987 in respect of the amount paid towards loading and unloading charges. The appellant submitted a reply contending inter alia that the persons engaged for loading and unloading are self-employed and they are not

employees of the appellant within the meaning of Section 2(9) of the Employees' State Insurance Act (Act 34-of 1948). The E.I. Corporation filed a written statement contending inter alia that the loading and unloading work was the regular work of the appellant and the appellant disburses wages periodically to the employees and in that view, it is incorrect to allege that the employees were engaged only occasionally and that they were self-employed persons. The specific case of the Corporation was that the nature of the work was regular in the appellant's factory. On a consideration of the rival contentions, the E.I. Court held that the workers concerned were discharging the work relating to the appellant and as such, those persons were employees of the appellant company and in that view, sustained the demand raised by the E.S.I. Corporation. Aggrieved by the order of the E.I. Court, an appeal has been preferred before the learned single Judge of this Court u/s 82 of the Act. Before the learned single Judge, the appellant reiterated the contentions raised before the E.I. Court. A further contention was raised that the appellant have no control over the employees and therefore, they cannot be made liable to pay any contribution. Learned single Judge, after adverting to the various contentions raised by the appellant and on a consideration of the relevant decisions rendered by the Apex Court as also by other Courts, negated the contentions raised by the appellant and upheld the order of the E.I. Court in the following terms and hence, this L.P.A.: :

"It is settled proposition of law that Section 2(9) of the E.S.I. Act is wide enough to include casual employees also. Section 2(9)(i) specifically includes employees who are directly employed by the principal employer, whether such work is done by the employee in the factory or establishment or elsewhere. In the present case, though in the argument learned counsel for the appellant has stated that the concerned employees come along with the lorries for delivery of the raw materials and that they go away after the loading and unloading work is over, it is not consistent with the very pleading by the appellant. In paragraph No. 5 of the petition before the E.I. Court, it has been specifically stated that sometimes for the purpose of loading and unloading sugar, new bottles from the manufacturers, the petitioner engages some outside loadmen. Again in paragraph No. 7 it is stated that the appellant concern occasionally engage self-employed loadmen for the purpose of loading and unloading new bottles. Therefore, on facts, it is clear that the concerned employees were employed only by the appellant company itself and not either by independent contractor or employed by the owners of the lorry or suppliers. Therefore, on the said fact alone, the judgments cited by learned counsel for the appellant are rendered inapplicable."

3. Before us also, learned counsel for the appellant reiterated his contentions raised before the E.I. Court and the learned single Judge of this Court. However, we are afraid, we cannot grant the imprimatur of this Court to the aforesaid contentions. The appellant company has no case that the employees are not employed for a work which is unconnected with the work of their establishment.

It is not their case that they are not exercising any supervisory control over the said persons. Of course, the period of employment may be short or it may be on daily wages. Still, there is no fetter calling the person engaged as employee especially when the engagement is in connection with the manufacturing process or procedure which are integral and incidental to the employment. In such a situation, there may not be any justification for denying the employees of the benefit due to them under the Act, on a hyper-technical plea as the one raised by the appellant before us to the effect that there is no contract of service but only contract for service.

4. In the aforesaid view, both the learned single Judge and the E.I. Court, in our considered opinion, rightly negated the contentions raised by the appellant and saddled them with liability to pay the contribution. That apart, u/s 82 of the Act, an appeal shall lie from an order of the E.I. Court only if it involves substantial question of law. We find no question of law much less substantial question of law arising for consideration in this L.P.A. Besides, the question whether or not certain employee answers the description of "employee" in Clause 9 of Section 2 of the Act is a pure question of fact *Oriental Paper Mills v. Regional Director, E. S. I. Corporation* 1995 I LLJ 1115 (Ori).

5. Accordingly, we confirm the orders impugned in this L.P.A. and dismiss the same.