(1998) 03 AP CK 0050

In the Andhra Pradesh High Court

Case No : AAO No. 719 of 1992

Souther Agencies APPELLANT

Vs

Andhra Pradesh Employees State Insurance Corporation RESPONDENT

Date of Decision : 17-03-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 21
Employees State Insurance Act, 1948 — Section 1(5), 14, 15, 2(12), 2(9)
Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 — Section 2

Citation : (1998) 3 ALD 15 : (1998) 2 ALT 731 : (1998) 2 APLJ 201

Hon'ble Judges : Umesh Chandra Banerjee, C.J;J. Chelameswar, J;B. Subhashan Reddy, J

Bench : Full Bench

Advocate : Mr. G. Krishna Murthy, for the Appellant; Mr. B.G. Ravindra Reddy, for the Respondent

Judgement

Umesh Chandra Banerjee, C.J.

1.The Employees'' State Insurance Act, 1948 being one of the most comprehensive legislations in the field of social security to safeguard the interest of the working section of the people of the country has, however, its origin as early as 1927 at the Tenth Session of the International Labour Conference of the International Labour Organisation, This beneficial piece of legislation, however, owes its effectiveness to the various amendments effected from time to time so as to meet the requirements and necessities of changing structure of the society and to subserve the basic intent of the legislature, namely, conferment of benefit on to a section of the people of the country, who cannot be ascribed to be affluent in nature. The need was felt, as noticed above, as early as 1927 and since then the legislature thought it fit to assist the society, so that people in general will have the benefit of a beneficial piece of legislation.

2. Ours is a country, which cannot by no stretch be termed to be affluent in

nature. Even after fifty years of independence, a sizeable section of the people are not in a position to have two square meals a day and safe drinking water. It is on this basic realities of life in this country, that the law courts shall have to interpret a beneficial legislation so as to ameliorate as far as practicable, the living conditions and the stark realities of life. Poverty has turned out to be a feature of our life and law courts have no other option but to proceed on the basis thereof so that conferment of benefit as is available be made available to its maximum, though however, within the parametres of the existing law to the less affluent section of the society. Beneficial legislations, therefore, have to have an interpretation of widest possible amplitude so that the intent of the legislature is given a full play. Narrow pedantic approach or restrictive meaning cannot but be termed to be an unjustifiable interpretation of a beneficial piece or legislation. We in the law courts must have to have the broadest possible outlook and view so that persons of lower strata may be conferred with some benefit in this hard realities of life.

3. The decision of the Supreme Court in the case of M/s. International Ore and Fertilizers (India) Pvt. Ltd. Vs. Employees'' State Insurance Corporation, lends support to the observation as above. The Supreme Court observed: ".. While construing a welfare legislation like the 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.''"

4. Having discussed the law on the subject as above, let us now advert to the contextual facts briefly. Before so doing, however, it would be worthwhile to note at this juncture that this full bench matter has arisen by reason of an order of the Division Bench for the purpose of determination of the following question:

"Whether the head office/administrative office of the appellant at Rajahmundry can be regarded as ''shop'' for the purpose of applicability'' of notification issued by the State Government in G.O.Ms.No. 187 (Labour.II) dated 2-3-1978?"

Be it placed on record that the Division Bench, however, made an observation to the effect that if the head office is not covered by the notification, all the shops run by the appellant-firm cannot be aggregated for the purpose of coverage under the Act. Be it noted here that the question, as above, is the focal point for consideration in this matter.

5. Turning on to the contextual facts, it appears that the appellant is a partnership firm having its head office/administrative office at Rajahmundry. On the relevant date, the firm was running six shops at various places, including the one at Rajahmundry. The records depict that these shops deal in consumer goods, such as Godrej Products, Usha fans, etc. The records further depict that the Regional Director of the Employees'' State Insurance Corporation sent a communication to the appellant on 4-6-1983 intimating therein that the head office and the branches are to be covered under the Employees'' State Insurance

Act as the numerical strength of employees exceeded twenty persons. The notice, noted above, expressly recorded that the head office also do come within the ambit the Act, in spite of the factum that it was dealing only with the administrative work. The notice directed that the appellant was, therefore, required to comply with the provisions of the Act and to make contributions as required by the legislation. Shortly after the notice as above, the facts depict that certain amount of correspondence ensued between the parties culminating in an application under Sections 76 and 77 of the Act seeking a declaration that the provisions of the Act do not have any manner of application to the administrative office and its shops so far as the appellant is concerned. The Employees'' State Insurance Court at Rajahmundry, however, upon consideration of the facts was pleased to reject the same and in pursuance whereof an appeal was filed, which is the subject-matter of this Full Bench reference by reason of existence of divergent views expressed by this Court on the issue.

6. On a perusal of the order of the Employees'' Insurance Court, it appears that the head office and the branches constitute single entity and there is, as a matter of fact, unity and integrity of purpose amongst them. The Court referring to the definition of ''employee'' under the Act, held that persons employed in any branch of the establishment cannot be termed or viewed as a separate class of employees and since the number of persons employed in the head office and the shops exceed twenty in number, the Act has its fullest application. The factum of separate registration of different branches of the appellant''s shops under the Shops and Establishments Act was stated to be immaterial. It is this finding, however, of the learned Court which is under challenge before the appellate Bench and the principal contention being that the administrative office of the appellant-firm cannot by any stretch be termed to be a ''shop'' and as such the notification under the Act, 1948 has no manner of application and the notice cannot be termed to be valid and ought to be declared as totally unenforceable and by reason therefore should be quashed and set aside.

7. The statutory definition given to the word ''employee'' u/s 2(9) appears to mean, "any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies". The Amendment Act of 1956 (Act No.44 of 1956), however, brings on to the statute book the following:

"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 products of, the factory or establishment; but does not include-

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

(b) any person so employed whose wages excluding remuneration for overtime work exceed one thousand and six hundred rupees a month:..."

8. The above noted definition, therefore, on a plain reading, unmistakably depicts that the word ''employee'' means and implies employment in connection

with the work of a factory, that is to say of any work necessary for the factory and for augmenting of revenue of the concerned. The legislative clarification as introduced by way of an amendment clarifies the situation to the effect that the word ''employee'' should be understood to mean also a person, who is employed for wages in regard to any work connected with the administration of the factory or purchase of raw materials or for distribution or sale of the products. It, therefore, appears that the 1956 amendment has given a much wider meaning and the law Courts ought also to give effect to the legislative intent and ought to interpret the word in its proper spirit and manner as has been thought of by the Legislature while engrafting the Amendment Act, 1956 in the statute book.

9. The principal contention, raised in opposition to the applicability of the Act is that the appellant firm''s administrative office cannot be termed to be a ''shop'' within the meaning of the Shop Act (the Andhra Pradesh Shops and Establishments Act, 1988: Act No.20 of 1988). Before dealing with this aspect of the matter, however, a look at Section 14 of the Employees'' State Insurance Act would be convenient. Section 14, as above, provides that the Employees'' State Insurance Act shall apply to all factories other than the seasonal factories and Section 2(12) provides the definition of the word ''factory'' which means, ''any premises including the precincts thereof whereon twenty or more persons arc employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or ordinarily so carried on but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed''.

10. It has been the contention of the appellant that on the wake of the Legislative desire reflected above, the question of appellant''s shop being termed to be an establishment within the meaning of the Act does and cannot arise, since there is, in fact, no manufacturing process carried on. But this restriction cannot be said to be of any application in the contextual facts by reason of issuance of a notification by the Andhra Pradesh Government on 2-3-1978 being G.O.Ms.No. 187 (Labour.II) with the approval of the Central Government. There is no dispute that the notification noted above categorically brings within the ambit of the Act, 1948 all establishments pertaining to hotels; restaurants; shops; motor transport establishments; newspaper establishments where twenty or more persons are employed or were employed'' on any day preceding twelve months. The categorisation effected in terms of the notification does not have nay manner of application, excepting, however, ''shops''. The issue, therefore, arises as to the meaning to be attributed to the expression ''shop'' and it is the definite contention of the appellant that the administrative office of the appellant at Rajahmundry cannot be ascribed to be a ''shop'': while it is true that the expression ''shop'' should be understood to mean with its grammatical agnets and cognets and in its ordinary parlance. But, we have here in this State a legislation, which as in no uncertain terms defined the expression ''shop''. Incidentally, the expression ''shop'' has not been defined in the Employees'' State Insurance Act, but has been defined under the Shop Act as noticed above and

the issue arises whether in fact such a definition as provided under the Shop Act is to be engrafted on to the Employees'' State Insurance Act in the matter of applicability of the Employees'' State Insurance Act to an establishment or the ordinary English meaning ought to be attributed therein without taking recourse to the meaning attributed under the Shop Act. The word ''shop'' in common acceptation mean and imply, ''a building or a room in which goods arc sold and a place for employment or other business activity''.

11. As regards the definition of ''shop'' as given under the Shop Act, the word ''shop'' as given under the Shop Act, the word ''shop'' means and implies, ''any premises wherein trade or business is carried on or where services are rendered to the customers and includes a shop run by a co-operative society, an office, a store room, godown, warehouse or work place, whether in the same premises or otherwise, used in connection with such trade or business and such other establishments as the Government may, by notification, to declare be a shop for the purposes of this Act, but does not include a commercial establishment''. The word ''commercial establishment'' has also been defined in the Shop Act- ''Commercial establishment'' within the meaning of Section 2(5) means, ''an establishment which carries on any trade, business, profession or any work in connection with or incidental or ancillary to any such trade, business or profession or which is a clerical department of a factory or an industrial undertaking or which is commercial or trading or banking or insurance establishment and includes an establishment under the management and control of a co-operative society, an establishment of a factory or an industrial undertaking which falls" outside the scope of the Factories Act, 1948, and such other establishment as the Government may, by notification, declare to be a commercial establishment for the purposes of this Act but does not include a shop''. It is, therefore, clear on perusal of the definition Section under the Shop Act that these two expression, namely, ''shop'' and ''commercial establishment'' are not mutually inclusive in nature, but the other way round and to put it straight they are mutually exclusive; one does not embrace the other, and both these two expressions have two separate meanings attributed by the Legislature and the Law Courts cannot but have to record the legislative intent in regard thereto in treating these two establishments differently and not as one and the same nor one to be used in place of the other. They are independent and have no semblance of similarity by reason of the definite statutory meaning attached thereto. This observation, however, finds support from a Special Bench decision of this Court in the case of Lipton India Limited v. Government of A.P. 1978 Lab.I.C. 196.

12. It is in this context, the observations of the Division Bench of this Court in the case of E.S.I.Corpn., Hyderabad v. Brooke Bond (India) 1978 Lab.I.C. 367 also ought to be noted:

"We agree with the Insurance Court that the expression ''shop* in this item cannot be construed with reference to the definition of ''shop'' in the Andhra

Pradesh Shops and Establishments Act. It is true that some light may be thrown on the meaning of a word in a statute by reference to the same word in an earlier statute dealing with the same subject-matter. But in this case it cannot be said that the Employees'' State Insurance Act and the Shops and Establishments Act cover the same subject-matter. They were enacted by two different legislature for different purposes. The former is an enactment of the Central Legislature intended for providing certain benefits to employees in case of sickness, maternity and injury in the course of employment, etc. The Andhra Pradesh Shops and Establishments Act is a law relating to regulation of conditions of work and employment in shops, commercial establishments and other establishments. Further Employees'' State Insurance Act was enacted in 1948 much earlier to the Andhra Pradesh Shops and Establishments Act and it cannot be said that any provision in the earlier Act should be considered with reference to the later Act. It is no doubt true that the G.O. under the State Insurance Act was issued after the Andhra Pradesh Shops and Establishments Act, by the State Government in exercise of the powers conferred u/s 15 of the Employees'' State Insurance Act. In C. Duraivelu Mudaliar, Trustee and Dharmakartha of Sri Apparswami Temple Vs. The Corporation of Madras, , it was observed that it is a fallacious process of interpretation to take a word in a particular Act and clothe that word with the same meaning when found in a different context in a different Act. It is necessary to observe caution in construing a word by adopting the meaning ascribed to the word in other Acts. We agree with the Court below that apart from the source of power from the two enactments being distinctly different, the two enactments have no identity of purpose and are intended to deal with different situations and different sets of circumstances. Further, as pointed out by the court below there arc indications in the G.O. itself that item 3(iii) of the G.O. should not be interpreted in the light of the Andhra Pradesh Shops and Establishments Act. In the impugned G.O. item 3(vi) is "Newspaper establishment as defined in Section 2(d) of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955". It is seen that wherever it was intended that the definition in another Act should govern, it is expressly provided in the G.O. If it was intended that expression ''shop'' should carry the same meaning as in the Andhra Pradesh Shops and Establishments Act, the item would have been worded in a manner similar to item 6 making express reference to Section 2(21) of the A.P. Shops and Establishments Act. For these reasons we agree with the Court below that the definition of ''shop'' in the Shops and Establishments Act cannot govern the meaning of the word ''shop'' occurring in item 3 of the impugned GO."

13. There is, therefore, no doubt that the definition of ''Shop'' in the Shops and Establishments Act cannot be introduced with the same vigority in the notification issued under the State Insurance Act and we do record our concurrence with the observations of the Division Bench in Brooke Bond''s case (supra) to the extent that the definition of ''shop'' in the Shop Act cannot govern the meaning of the word ''shop'' occurring in item 3 of the impugned

Government Order.

14. While it is true that a statutory meaning as given in the Shop Act cannot be said to cover the Government notification in the State Insurance Act, but, then, some meaning shall have to be attributed to the word ''shop'' and it is on this count that the ordinary meaning attributed to the word shop and its common acceptation thereof ought to be taken note of and it is in this context the observation of the Supreme Court seem to be very apposite. The Supreme Court in the case of International Ore and Fertilisers, (supra) in more or less an identical situation in no uncertain terms observed, though, of course in the facts of the matter under consideration before the Supreme Court, that 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 Supreme Court went on to observe that the delivery of the goods sold to the purchaser is only one aspect of the trading activities. Negotiation of the terms of sale, carrying one 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 Supreme Court finally observed:

".. The premises where business is carried on by the petitioner is undoubedly a shop as the activities that are carried on there relate only to the sale of goods which are imported into India."

and it is on this perspective that the factual matrix in the matter under consideration ought to be noted as is available on the records. The evidence of P.W.1 is candid enough to record that the chief functioning of the administrative office at Rajahmundry is to supervise and to monitor the functioning of the shops and to have an overall control over the staff The records depict the following strength of staff:

Place Strength of employees Nature of work done

(1) (2) (3)

1. Head office 6 Administrative Conducling sales in the show room

2. Rajahmundry Sales Office 10

3. Kakinada Branch Office 8 -do-

4. Visakhapalnam Branch Office 9 -do-

5. Vizianagaram Branch Office 5 -do-

6. Srikakulam Branch Office 5 -do-

7. Eluru Branch Office 6 -do-

8. Bhimavaram Branch Office 5 -do-

9. Khammam Branch Office 5 -do-

10. Warangal Branch Office 6 -do-

15. Be it noted that in terms of the notice in regard to applicability of the E.S.I. Act to the head office and all the branches, the appellant on 13-04-1983 vide its letter No.PPR/MVR/89/681/83 addressed to the Regional Director, Employees'' State Insurance Corporation, Hyderabad, did write:

"In this connection we wish to bring to your notice once again that all our Branches and Rajahmundry Sales Office were separately registered under the Shops and Establishments Act. In no shop there were employees exceeding even 10 members. Besides the Head Office at Rajahmundry is neither a Shop nor an Establishment but purely an Administrative Office. So, you cannot club all the shops together to make the Act applicable to our shops spread over in different Districts so also you cannot club the Head Office with our shop at Rajahmundry."

16. Admittedly there is a Rajahmundry Sales Office having an employment strength often (10) and the Head Office is also situated at Rajahmundry having an employment strength of six(6) employees, though, however, dealing with the administrative matters. The further admitted fact is that this particular organisation has its branches all over the State as above conducting sales in the Show Room with an administrative office or Head Office at Rajahmundry. The Head Office supervises and admittedly monitors the functioning of the shops and is having an overall control over the entire staff. The financial impact of the head Office is also borne by the sales offices. It therefore cannot be said to be an organisation different from that of the Branches or there being no nexus between the Head Office and the Branch Offices.

17. In our view, in the event of there being some facilities in regard to the commercial activities of an organisation, the same cannot but be termed to be a shop. The activities though, however, ought to be connected with the buying and selling of goods so as to attain its commercial effectively and in that event the place cannot but be termed to be a ''shop''.

18 Incidentally this court in the case of Employees State Insurance Corporation vs. Weavers Co-op. Society 1989 (3) ALT 296, after noticing the Brooke Bond''s case (supra) observed:

"11. In order to determine what exactly is the connotation of the Shop with reference to the E.S.I Act, it is necessary to refer to the object and purpose of this legislation. The Act is a social security legislation and was enacted for the purpose of securing certain benefits to the employees in case of sickness, maternity and employment injury. In interpreting any provision of this Act, the Court is bound to give effect to the intendment and the purpose. Section 38 states that "subject to the provisions of this Act, all employees in factories or establishments to which this Act applies shall be insured in the manner provided by this Act. Having regard to the purpose of the Act, the expression "shop" in our opinion should be given a liberal and wide meaning."

19. The last noted Bench decision of this Court also did notice the judgment of the Supreme Court in the case of International Ore and Fertilisers (P) Ltd., (supra) and came to the conclusion that the notification u/s 1(5) of the Act by the State of Andhra Pradesh must be construed so as to attribute a meaning to the word ''shop'' as a place where activities connected with the buying and selling of the goods are carried on and it is not necessary that delivery of goods to the purchaser should take place at the premises since delivery of goods sold to the purchaser is only one aspect of the trading activities.

20. We do find cogent reasons to record our concurrence with the observation of the latest decision of this Court in the case of Weaver''s Co-op. Society (supra). The golden cannon of interpretation of statutes specially in regard to a beneficial piece of legislation is that the interpretation which favours the subject covered by the legislation should always be adopted in the event of there being possibility of having two views in regard thereto. In short, therefore, if two views are possible, one tending to support the object of the statute ought to be adopted so that the intent of the legislature gets judicial recognition in the matter of implementation of a beneficial piece of legislation. The legislature is supposed to know the requirement of the society and with this supposed knowledge, the legislature enacts and it is an obligation bounden, so far as the law courts arc concerned, to give effect to the intent of the legislature and, it is precisely for this reason, in a long catena of decisions it has been held that the validity of statutes ought to be presumed unless expressly declared to be so by reason of violation of the constitutional provision by the law courts. The validity of the statute is always accepted unless a contrary is shown or proved and it is with this basic objective law courts ought to interpret a beneficial piece of legislation so as to give its full play as otherwise law courts would be acting contrary to the need of the society which is neither permissible nor warranted. The acceptance of the view as expressed in Weavers'' Co-op. Society case (supra) is by reason of the fact that unnatural or unreasonable meaning has been attributed to the expression ''shop'' under the State Insurance Act. It does not extend the ordinary meaning, neither one need to attribute any extended meaning to the word ''shop''. It is the normal common english parlance and the meaning understood in common acceptation.

21. In our view, in the contextual facts, it is reasonably possible to construe the word ''shop'' so as to include the activity of the appellant herein.

22. The English courts in no uncertain terms observed that in order to constitute a shop there must be some structure of a more or less permanent character and it must be "something more than a mere place for sale; it imports a place for storing also where the commodities admit of storing.'''' Reference may be made in this context to the two decisions of Queen''s Bench Division, the first being per Mellor J., in the case of Hooper v. Kenshole, 2 Q.B.D. 127 and the other being Mchok v. Davies, 1 Q.B.D. 59.

23. The word ''shop'' has to be interpreted in the setting and context in which it is to be found in the State Insurance Act. The meaning to be attributed shall have to be on the basis of the object of the Act in order to give due weightage to the justice of the situation as intended by the Legislature.

24. In the view as above, we do not sec any difficulty being presented by the Bench decision of this Court in Weaver''s Co-op. Society (4 supra). On the Contrary, the view taken and adopted seem to be in consonance with the legislative intent.

25. In any event, the Supreme Court in a very recent decision in the case of Kirloskar Brothers Ltd. Vs. Employees'' State Insurance Corpn., laid down that the true test is the control by the Principal employer over the employee and that test alone would be the relevant test. The Supreme Court observed:

"10. In expanding economic activity in liberalised economy Part IV of the Constitution enjoins not only the State and its instrumentalities but even private industries to ensure safety to the workman and to provide facilities and opportunities for health and vigour of the workman assured in relevant provisions in Part IV which are integral part of right to equality under Article 14 and right to invigorated life under Article 21 which arc fundamental rights to the workman. Interpretation of the provisions of the Act, therefore, must be read in the light of not only the objects of the Act but also the constitutional and fundamental and human rights referred to hereinbefore.

10. The Principal test to connect the workmen and employer under the Act to ensure health of the employee being covered under the Act has been held by this Court in Hyderabad Asbestos Cement Products Ltd. Vs. Employees Insurance Court and Another, i.e., the employees are engaged in connection with the work of the factory. The tests of predominant business activity or too remote connection are not relevant. The employee need not necessarily be the one integrally or predominantly connected with the entire business or trading activities. The true test is control by the principal employer over the employee. That test alone will be the relevant test. The connection between the factory and its predominant products sold or purchased in the establishment or regional offices are irrelevant and always leads to denial of welfare benefits to the" employees under the Act. When there is connection between the factory and the finished products which are sold or distributed in the regional offices or establishment and principal employer has control over employee, the Act becomes applicable. The test laid down by the Orissa High Court, namely, predominant business activity i.e., sate or distribution of the goods manufactured in the factory at Deewas, is not a correct test. It is true that this Court in the SLP arising from the Orissa High Court judgment, declined to grant leave holding it to be one of peculiar facts."

26. Having regard to the recent pronouncement of the Supreme Court as above, there cannot, thus, be any manner of doubt that in the contextual facts, the

employees in the administrative office as well as branch offices being under the control of the principal employer cannot be denied of the opportunity of being covered under the Act.

27. In the premises, we are unable to record our concurrence with the submissions of the appellant herein and we answer the Full Bench reference in the affirmative. The appellant is directed to comply with the provisions of the Employees State Insurance Act within a period of eight weeks from the date of making over the certified copy of this order and in default whereof, however, the authorities under the Employees State Insurance Act will be at liberty to take such step or steps in accordance with law.

28. It is clarified, however, that as regards the employees who have already retired from the service without there being any contribution account of state insurance, the company would be at liberty to take appropriate steps in accordance with law before the appropriate forum upon notice to the concerned employees.

29. The C.M.A. is, thus, dismissed, hi the facts of the matter under consideration we, however, direct the parties to bear their own costs.