(1966) 10 KAR CK 0006

In the Karnataka High Court

Case No : Misc. First Appeal No. 124 of 1966

The Employees'' State Insurance Corporation — APPELLANT

Vs

B.M. Lakshmanamurthy — RESPONDENT

Date of Decision : 14-10-1966

Acts Referred:

Employees State Insurance Act, 1948 — Section 2 (17) (i), 2 (9) (ii), 75 (2)

Citation : AIR 1967 Kar 196 : (1967) 14 FLR 322 : (1967) 1 MysLJ 318

Hon'ble Judges : K.S. Hegde, J;K. Bhimiah, J

Bench : Division Bench

Advocate : V.K. Govindarajulu, for the Appellant; E.S. Venkataramiah, for the Respondent

Judgement

Bhimiah, J.—The above appeal arises out of the order passed by the Employees'' State Insurance Court at Bangalore, in Application No. 16 of 1964 rejecting the application filed by the appellant u/s 75(2) of the Employees'' State insurance Act, 1948. to be hereinafter called the ''Act'', for the recovery of employees'' contribution payable by the respondent-factory

2. The application was filed by the Employees'' State Insurance Corporation through its Manager against the respondent-factory to recover a sum of Rs. 8,893 for the period commencing from 27-7 1958 to 31-1-1964, being the employees'' contribution payable by the principal employer, viz., respondent-factory, for the benefit of the workers employed by the Immediate employers.

3. The respondent is a partnership firm constituted by two brothers by name Laxmanamurthy and Srinivasamurthy. The respondent-factory manufactures and exports polished granite memorial stones. The factory is situate at the South End area, Basavangudi, Bangalore. Ex. P 1 is the plan and the entire area shown in the said plan belongs to the respondent-firm. There are two areas marked In the plan In the area marked ''A'', employees numbering 35 work directly under the respondent-firm which pays employees'' contribution for them; in the area marked ''B1, about 50 workers have been employed by two contractors, Sri

Chidambarachari and Shankarasubbachari. The respondent''s lorry drivers bring granite from the surrounding areas and unload them outside the portions ''A'' and ''B'' which place also belong to the respondent. The contractors get them to the portion ''B'' for cutting purposes Those stones are cut and dressed in ''B'' portion of the plan and sent to the ''A''1 portion of the factory where they are designed, polished and thereafter exported The appellant has laid claim for contribution from the respondent in respect of those employees also as their principal employer.

4. The learned Judge, while deciding the question whether the two contractors are only Immediate employers within the meaning of Section 2(13) of the Act and the workers employed by them can be construed as workmen falling within the meaning of Section 2(9)(ii) of the Act. has come to the conclusion that Chidambarachari and Shankarasubbachari cannot be considered as immediate employers within the meaning of Section 2(13) of the Act: they are independent contractors; hence. respondent-factory cannot be considered as the ''principal employer''; consequently that factory is not liable to pay any employees'' contribution for the benefit of the workers employed by the contractors. Thus he rejected the claim of the appellant. It is against this order that the above appeal has been filed

5. In this appeal mainly two questions arise for determination Firstly whether the respondent-factory is the ''principal employer'' as defined in Section 2(17)(i) of the Act Secondly, whether persons working under them are employees within the meaning of Section 2(9)(ii) of the Act.

6. Sri Govindarajulu. the learned Advocate for the appellant, contended that the two contractors are immediate employers falling within the definition of ''immediate employer'' in Section 2(13) of the Act, and that the workers employed by them are employees falling within the definition of ''employees'' in Section 2(9)(ii) of the Act He further contended that the learned Judge was wrong in rejecting the claim of the appellant in spite of having given the following findings:--

"All that can be said to have been proved In this case is that the contractors are doing some work which would be the foundation for the work that is finally done by the respondent "

He argues that the workers employed by the contractors are for the execution of the work which is ordinarily part of the work of the respondent-factory, and that the portion ''B'' in which these workers are employed is part of the building in which the respondent-factory is situate. There is force in those contentions.

7. Section 2(13) of the Art defines ''immediate employer'' thus:

"(13) ''immediate employer'' in relation to employees employed by or through him means a person who has undertaken the execution "n the premises of a factory or an establishment to which this Act applies or under the supervision of the principal employer or his "agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of. any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer "

The meaning of employees is found in Section 2(9)(ii) of the Act which reads thus:

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

(i) * * * * * (ii) who is employed by or through an immediate employer on the premises of the factory or establishment of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment of which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) *** * * but does not include

(a) any member of the Indian Naval. Military or Air Forces, or

(b) any person employed on a remuneration which in the aggregate exceeds four hundred rupees a month "

8. It is also relevant to note the definition of ''factory'' under the Act

Section 2(12) of the Act defines the expression ''factory'' as under:

"(12) "factory" means any premises including the precincts thereof whereon twenty or more persons are working or were working 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 is ordinarily so carried on but does not include a mine subject to the operation of the Indian Mines Act 1923 (IV of 1923) (or railway running shell "

9. Section 2(17)(i) of the Act defines ''Principal employer'' thus--

"(I7) "Principal employer" means-- (i) in a factory. The owner or occupier of the factory and includes the managing a Rent of such owner or occupier, the legal representatives of a deceased owner or occupier, and where a person has been named as the manager of the factory under the factories Act. the person so named "

10. According to the definition ''immediate employer'' in relation to employees employed b him, is a person who has undertaken the execution, on the premises of a factory, to which the Act applies, of the whole or any part of any work which is ordinarily part of the work of the factory or is preliminary to the work carried on in, or incidental to the purpose of. any such factory

11. In the instant case, it is not disputed that the provisions of the Act apply to the respondent-factory In fact they are paying contributions for the benefit of their employees What was disputed by Sri E. S. Venkataramiah for the respondent is that the two contractors have registered their factory as an independent factory after 1963 haying taken on lease some portions of ''B'' premises, they are themselves principal employers falling within the meaning of Section 2(17) of the Act. However. the above argument of Sri Venkalaramaiah does not apply at least to the period prior to 1963 since the two contractors had not registered their factory earlier to 1963. eX. P 1 makes it abundantly clear that ''B'' portions of Ex P. 1 are within the premises of respondent factory marked as ''A'' in Ex. P I There is a wall separating the two with a door in between. Further the recitals in Ex P. 2 leave no doubt about the conclusion that the two contractors have employed workers to do the work in the factory premises of the respondent-factory

12. The following are the findings of fact given by the learned Judge:--

"All that can he said to have been proved by the applicant corporation in this case i; that R Ws. 2 and 3 work at a place belonging to the respondent and execute part of the work which is necessary to manufacture the final finished product for sale All that can be sak to have been proved in this case is that the contractors are doing some work which would be the foundation for the work that is finali done by the respondent."

13. According to the finding of the learned Judge the contractors are executing the work. viz.. cutting and dressing the stones which is ordinarily part of the work of the factory viz., designing and polishing for the purpose of export

14. From the foregoing, it is clear that the contractors have been executing the work which is ordinarily part of the work of the factors and that within the premises of the respondent-factory It is immaterial if the contractors have separately registered the factory or not so long as they are executing the work which is ordinarily part of the work of the respondent-factory It may be TO evade the payment of employee''s contributions that such an arrangement is agreed to by the parties. The learned Judge, having given correct findings of fact based on evidence, has misdirected himself and has wrongly applied the law in reaching the conclusion that Chidambarachari and Shatikarasubbachari cannot be considered as ''immediate employers'' within the meaning of Section 2(13) of the Act. It is a wrong conclusion based on erroneous interpretation of law Hence it is unsustainable. The contractors are therefore held to be the immediate employers within the meaning of Section 2(13), as the respondent-factory is ''principal employer'' u/s 2(17) of the Act as con tended by Sri Govindarajulu. For the above reasons we answer the first question in the affirmative.

15. With regard to the Second question the learned Judge has not given any express finding in the course of his order

16. The fact that the workers in question are employed by the contractors for

cutting and dressing the stones is not disputed. According to the definition of Section 2(9)(ii) of the Art. ''employees'' means any person employed in connection with the work of a factory through an immediate employer on the pre mises of the factory on work which is ordinarily part of the work of the factory.

17. Sri E. S. Venkatramaiah. the learned Advocate for the respondent, strongly relied upon the words ''in connection with the work of a factory'' found in Section 2(9) of the Act and argued that the employees in question are employed in a separate registered factory and therefore they do not come within the meaning of Section 2(9)(ii) The language of Section 2(9)(ii) does not appear to justify the contention of Sri Venkalaramaiah. His interpretation ignores the vital ingredient namely, the work which is ordinarily part of the work of the respondent-factory. is being done by these employees As long as the manufacturing process carried on by the employees is in connection with the work of the respondent factory within the premises of the respondent-factory, it is immaterial even if the immediate employer has registered his factory separately

18. We have in the evidence of P.W I Sri P K. Shama Rao. that the work of the respondent-factory consisted of manufacturing granite stones for export The raw stones left all over the surrounding area were moved to the premises marked ''B'' in the plan Ex. P. 1. Fifty persons were working at that spot They were employed by two or three contractors. Those workers cut and dress the stones He found there sand blasting machines belonging to the respondent-factory and electric blower Power was used in those machines After the stones are cut and dressed, they are removed to the premises ''A'' for designing and polishing Final touches are then given to them in the premises ''B'' They are again brought back to premises ''A'' for packing and dispatching Promises ''A'' and ''B'' belong to the partners of the respondent-factory with a wall separating the two premises, but connected by a door which appears to have been closed.

19. This evidence remains unchallenged in the course of cross-examination. There is evidence to show that the employees are employed in connection with the work of the respondent-factory Therefore, we are unable to accept Sri Venkataramaiah''s contention as sound The employees in question fall within the meaning of Section 2(9)(ii) of the Act We answer the second 170 question also in the affirmative

20. In view of the above findings, we hold that the respondent-factory is liable under the law to pay employees'' contribution and the appellant is entitled to recover the same.

21. For the reasons stated above, the order passed by the Court below is hereby set aside Suit is decreed as prayed for The appeal is allowed with costs throughout

22. Appeal allowed