

Esic Vs. Tamil Nadu Handloom Weavers Co-op. Society Ltd.

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Court : Andhra Pradesh

Decided On : Mar-31-1989

Reported in : (1993)IIILLJ414AP

Judge : Amareswari and Syed Shah Mohd. Quadri, JJ.

Acts : Employees' State Insurance Act, 1948 - Sections 1(5)

Appeal No. : A.A.O. No. 210 of 1982

Appellant : Esic

Respondent : Tamil Nadu Handloom Weavers Co-op. Society Ltd.

Advocate for Def. : M. Panduranga Rao, Adv.

Advocate for Pet/Ap. : I.A. Naidu, Adv.

Disposition : Appeal allowed

Judgement :

Amareswari, J.

1. This appeal is filed by the Employees' State Insurance Corporation under Section 82(2) of the Employees' State Insurance Act, 1948 against the order of the Employees' Insurance Court, Hyderabad in E.S.I. Case No. 12 of 1981 dated 31.12.1981.

2. The short question that arises for consideration is whether the Employees' State Insurance Act is applicable to the Regional and Sales Offices of the Tamil Nadu Handloom Weavers' Co-op. Society Limited, Vijayawada and the levy of contribution is legal.

3. The Tamil Nadu Handloom Weavers' Cooperative Society Limited has its Head Office at Madras and a Regional Office at Vijayawada. It has several branches in the State of Andhra Pradesh. 55 employees are working in the various branches and sales Emporiums. According to the Society, the Regional Office does purely administrative work. They do not do any business of sale and hence the notice issued by the Corporation stating that the Act is applicable is untenable.

4. The Corporation filed a written statement contending that there are 59 employees working in the Regional Office and State Emporiums, that the Regional Office at Vijayawada supervises the work of the other Offices and Sales Emporiums and controls their functions and as there are more than 20 persons working for wages and the sale of handloom cloth is effected in the sales emporium, it is covered by the provisions of the Employees' State Insurance Act.

5. On a consideration of the material on record, the Employees' Insurance Court held that no sales are effected in the Regional Office and hence the Act does not apply. It is the validity of this order that is challenged in this appeal.

6. Under Section 2(9) of the Employees' State Insurance Act, 'employee' is defined. It is as follows: -

'2(9):- 'employee' means any person employed for wages in of 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 purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment.'

It is seen from this definition that 'employee' must be a person who is employed for wages in or in connection with the work of a factory or establishment to which the Act applies. The question is whether this is an establishment to which the Act applies. Section 1 (4) says that the Act shall apply, in the first instance, to all factories including factories belonging to the Government other than seasonal factories. Section 1(5) says that the appropriate Government may, in consultation with the Corporation and after giving six months' notice of its intention of so doing by notification in the Official Gazette extend the provisions of this Act or any of them, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. Section 1(4) has admittedly no application as the respondent is not a factory. Then the only question is whether it is an establishment for the purpose of the Act. Under Section 1(5) the Government is vested with the power to extend the provisions of the Act to any other establishment. In exercise of this power, the Government issued G. O. Ms. No. 788, Health, dated 25.9.1974 and G.O. Ms. No. 297, Health, dated 25.3.1975 extending the provisions of the Act to Hotels, Restaurants and Shops, etc.

7. It is contended that the respondent-establishment is a shop within the meaning of this Notification and hence covered by the provisions of the Act.

8. 'Shop' is not defined under the Employees' State Insurance Act. It is however defined under Section 2(21) of the A.P. Shops and Establishments Act, 1966 which reads as under :-

'2(21):- 'Shop' means any premises where any trade or business is carried on where services are rendered to 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 declare to be a shop for the purpose of this Act but does not include a commercial establishment". As per this definition, any premises used in connection with such trade or business is a shop.

9. But it is contended that the definition in one enactment cannot be taken as a guiding factor in construing the provisions of another enactment and for this purpose, the learned Counsel for the respondent relied upon *E.S.I. Corporation, Hyderabad v. Brooke Bond (I) Ltd.* 1978 LIC 367 in which it is held that the expression 'Shop' cannot be construed with reference to the definition of 'Shop' in the Andhra Pradesh Shops and Establishments Act and that the Employees' State Insurance Act and the A.P. Shops and Establishments Act do not cover the same subject matter.

10. In this decision, it is pointed out that in the absence of any definition in the Act, it is only the popular meaning that should be given to that word and that popular sense means the sense with which people are conversant with the subject matter with which the statute is dealing.

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.

12. In shorter Oxford English Dictionary, the expression 'Shop' means 'a house or building where goods are made or prepared for sale and sold . It also means a 'place of business' or 'place where one's ordinary occupation is carried on'. In ordinary parlance a 'shop' is a place where the activities connected with buying and selling of goods are carried on. The evidence in this case shows that the sales are effected in the Emporiums, and the administration work is carried on in the Regional Office and it is the administrative office that controls and supervises the sales in the various emporiums. It is therefore clear that the activities carried on in the Regional Office are trading activities though goods are not actually sold and delivered to the purchaser in the Office. In our opinion, the delivery of goods to the purchaser need not take place at the premises. Selling of goods is only one aspect of the trading activity. Negotiations, carrying on the survey of the goods, arranging for the delivery of the goods are all trading activities. Hence the Regional Office which carries on the administration and supervised the business in the various branches and sales Emporiums is a 'shop' as the activities carried on there relate to the sale of goods. In our view, the Insurance Court placed a very narrow interpretation on the expression 'Shop' by confining 'shop' to a place where goods are actually stored or delivered pursuant to a sale. While construing a welfare legislation like the Insurance Act, 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.

13. In this connection, we may refer to a decision of the Supreme Court in S.L.P. Civil No. 6765 of 1985 dated 18.8.1987, 1988 (1) LLJ 235 International Ore and Fertilizers (I) Pvt. Ltd. v. Employees' State Insurance Corporation in which it is held that the word 'shop' used in the Notification under Section 1(5) of the Act by the State of Andhra Pradesh must be construed 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 and that the delivery of goods sold to the purchaser is only one aspect of the trading activities.

14. Applying this principle to the facts of the present case, we hold that the respondent's premises is a shop within the meaning of the Notification and the Act and the provisions of Employees' State Insurance Act apply. 15. We allow this

appeal and set aside the judgment of the Employees' Insurance Court and uphold the validity of the impugned action of the Corporation. There shall be no order as to costs.

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