Transport Corporation Of India vs Employees' State Insurance ... on 5 November, 1999

Equivalent citations: AIR 2000 SUPREME COURT 238, 1999 AIR SCW 4340, 2000 LAB. I. C. 203, 2000 (1) UJ (SC) 287, 2000 (1) UPLBEC 1, 2000 (1) SRJ 195, 2000 UJ(SC) 1 287, (1999) 9 JT 12 (SC), 1999 (9) JT 15, 1999 (4) LRI 911, 1999 (9) ADSC 329, 2000 (1) SCC 332, 2000 LAB LR 113, 1999 (7) SCALE 63, (2000) 1 MAD LJ 128, (2000) 1 ANDHWR 144, (2000) 1 CURLR 38, (1999) 83 FACLR 970, (2000) 1 LABLJ 1, (2000) 1 LAB LN 70, (2000) 1 SCT 232, (2000) 1 SCJ 418, (2000) 1 SERVLR 323, (2000) 1 UPLBEC 1, (1999) 9 SUPREME 370, (1999) 7 SCALE 63, 2000 SCC (L&S) 121, 2000 (1) BOM LR 660, 2000 BOM LR 1 660

Bench: S.B. Majmudar, M. Jagannadha Rao, M.B. Shah

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           CASE NO.:
Appeal (civil)  810 of 1995

PETITIONER:
TRANSPORT CORPORATION OF INDIA

RESPONDENT:
EMPLOYEES' STATE INSURANCE CORPORATION AND ANR.

DATE OF JUDGMENT: 05/11/1999

BENCH:
S.B. MAJMUDAR & M. JAGANNADHA RAO & M.B. SHAH

JUDGMENT:
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JUDGMENT 1999 Supp(4) SCR 393 The Judgment of the Court was delivered by S.B, MAJMUDAR, J. The Transport Corporation of India, which is a public limited company, incorporated under the Indian Companies Act, 1956, has brought in challenge the decision of Division Bench of the High Court of judicature at Bombay, on grant of special leave to appeal. The question posed for our consideration in this appeal moved against the Respondents Employees' State Insurance Corporation and its officers is a short one. It is the contention of the appellant that even though its head office, being a registered office, situated at Secunderabad in the State of Andhra Pradesh, was covered by the provisions of the Employees' State Insurance Act, 1948 (hereinafter referred to as `the Act'), its branch office located at Bombay in the State of Maharashtra, was not governed by the provisions of the Act. According to the appellant, the notification issued by the State of Andhra Pradesh, in exercise of its powers as an `appropriate Government' under Section 1 (5) of the Act extending the same to road motor transport establishments, cannot by itself, cover the appellant's branch at Bombay during the relevant time when the State of Maharashtra had not issued any such

notification covering road motor transport establishments in the earmarked areas situated in that State. It is the case of the appellant that its Bombay branch was got covered by the Act only pursuant to the subsequent notification issued by the State of Maharashtra on 10.3.1989 where-under road motor transport establishments situated in Bombay in the earmarked areas mentioned in Scheduled-II of the said notification were subjected to the sweep of the Act.

The dispute in the present case between the parties arose on account of the fact that on July 29, 1986, the Deputy Regional Director, Employees' State Insurance Corporation, Bombay served show cause notice upon the appellant to explain as to why the contributions should not be paid by it for a period commencing from May, 1981 and ending with November, 1985 in respect of its branch office at Bombay. The appellant filed reply claiming that the contribution was paid from August 1, 1985 onwards under protest but the branch of the appellate in Bombay was not covered by the Act during the relevant period. The Deputy Regional Director passed an order dated September 8, 1988 in exercise of powers under Section 15. A of the Act assessing contribution for the period commencing from May, 1981 to July, 1985. It was held that once the main establishment in Andhra Pradesh is covered by the notification issued by the State of Andhra Pradesh, then the branches of the establishment, wherever they are situated, also stood covered. Under the circumstances, the appellant moved the High Court of Bombay in Writ Petition No. 931 of 1989 challenging the legality of the order passed by the Employees' State Insurance Corporation. The learned Single Judge at Bombay High Court by his judgment dated 30.4.1993 held that the appellant's establishments in the State of Maharashtra were not covered by the notification issued under Section 1(5) of the Act by the State of Andhra Pradesh. Accordingly, the learned Single judge quashed the impugned order dated September 8, 1988 passed by the authorities functioning under the Act whereby the appellant was called upon to contribute Rs. 2,09,914, along with interest.

The aforesaid decision rendered by the learned Single Judge was carried in appeal by the Employees' State Insurance Corporation-Respondent no. 1, herein, before the Division Bench of the High Court by way of a writ in Appeal No. 732 of 1993. The Division Bench, speaking through Pendse J., (as he then was), accepted the appeal and took the view on interpretation of the relevant provisions of the Act that once the head office was covered by the notification issued by the State of Andhra Pradesh, it being the main establishment, its branches which carried on the work of the main establishment, got covered by the sweep of the said notification and, therefore, the provisions of the Ac! were rightly pressed in service by the authorities functioning under the Act against the appellant so far as its Bombay branch employees were concerned. The writ appeal was, accordingly, allowed and the judgment of the learned Single Judge was set aside. However, instead of entirely quashing the impugned order passed under Section 45-A of the Act by the Deputy Regional Director, the proceedings were remitted back to the deputy Regional Director only for the purpose of quantifying the amount of contribution and the amount of interest to be paid thereon by the appellant. As noted earlier, it is the aforesaid judgment of the Division Bench that is made the subject matter of the present appeal before this Court.

RIVAL CONTENTIONS:

Shri Pai, learned sensor counsel for the appellant, vehemently contended that the Division bench of the High Court has patently erred in law in taking the view that the notification issued by the State of Andhra Pradesh under Section 1(5) for covering the appellant's establishments in Andhra Pradesh could have automatically made applicable the provisions of the Act to its branch at Bombay. That as the State of Maharashtra had not issued appropriate notification for covering the undertakings carrying on transport business in the State of Maharashtra as per Section 1(5) of the Act during the period, notification of Andhra Pradesh Government could not be pressed in service for covering the employees working in the Bombay branch of the appellant, That the view taken by the Division Bench, in substance, amounted to giving extra-territorial jurisdiction to the State of Andhra Pradesh enabling it to cover the establishments functioning in other States. It was also submitted by Shri Pai, that the term `establishment' should be construed in the light of the term `factory' as found in the very same Act and as factories governed by the Act have geographical nexus, similarly establishment functioning in different parts of the country had also geographical nexus. That merely because the head office of the company situated in Andhra Pradesh got covered by the Act, its branches functioning in various parts of the country could not automatically get covered by the Act. That the term `establishment' envisages activities being carried out at a fixed location and which have a nexus with the geographical setting of such establishment in the concerned States and, accordingly, each branch of the establishment was a separate unit and hence the branches of the appellant functioning in different parts of the country had to be separately dealt with by independent notifications, if any, to be issued by the States concerned where these branches were located. That the State of Andhra Pradesh cannot be an `appropriate government' for enabling it to issue any notification having extra-territorial operation so far as the Bombay branch of the appellant was concerned. Shri Pai, in support of his submissions, relied upon various decisions of this Court to which we will make reference, hereinafter.

Learned counsel for. the respondent, on the other hand, tried to support the decision under appeal, In the light of the aforesaid rival contentions, the following points arise for our consideration:

1. Whether the notification issued by the State of Andhra Pradesh under Section 1(5) of the Act covering the transport undertakings of the appellant, whose registered head office was situated in Secunderabad in the State of Andhra Pradesh, could automatically cover its branch located at Bombay in the State of Maharashtra; and

2. Whether for the purpose of applicability of the Act to the appellant's Bombay branch, a separate and independent notification was required to be issued by the State of Maharashtra under Section 1(5) of the Act?

For deciding the aforesaid points for consideration, it is necessary to have a look at the relevant statutory provisions holding the filed.

STATUTORY FRAMEWORK The Employees' State Insurance Act, 1948 is enacted to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provisions for certain other matters in relation thereto Sub-section 2 of Section 1 of the Act lays down that: "It extends to the whole of India"

> It is, therefore, obvious that it is a Central Act, which the Parliament intended to operate throughout the country.
>
> Sub-section 4 of Section 1 of the Act lays down as follows:
>
> "It shall apply, in the first instance, to all factories, (including factories belonging to the Government other than seasonal factories)."

We are not concerned with the proviso to Sub-section 4 of Section 1. However, Sub-sections 5&6 of Section 1 of the Act are relevant for our present purpose. They are, therefore, extracted as under.

> "5. The appropriate Government may, in consultation with the Corporation and where the appropriate Government is a Stale Government, with the approval of the Central Government, 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 Secunderabad in the State of Andhra Pradesh, could automatically cover its branch located at Bombay in the State of Maharashtra; and
>
> 2. Whether for the purpose of applicability of the Act to the appellant's Bombay branch, a separate and independent notification was required to be issued by the State of Maharashtra under Section 1(5) of the Act?
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> "5. The appropriate Government may, in consultation with the Corporation and where the appropriate Government is a Stale Government, with the approval of the Central Government, 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 "NOTIFICATIONS BY GOVERNMENT HEALTH, HOUSING AND MUNICIPAL ADMINISTRATION DEPARTMENT (HEALTH) EXTENSION OF EMPLOYEES STATE INSURANCE SCHEME TO FACTORIES, SHOPS, COMMERCIAL ESTABLISHMENTS, HOTELS ETC.
>
> CONFIRMED (G.O.Ms.No,297, Health, 25th March, 1975) In exercise of powers conferred by Sub-section (5) of section 1 of the Employees State Insurance Act, 1948 (34 of 1948), the Government of Andhra Pradesh, after giving six months' notice as required thereunder by the Government of Andhra Pradesh Notification issued in G.O.Ms.No.788, Health, dated 25th September, 1974 and published in the A.P. Gazette No.315, dated September 25, 1974, hereby extends with effect from the 30th March, 1975, all the provisions of the said Act to the classes of establishments specified in Col. (1) of the Schedule below situated in the areas specified in Col. (2) thereof:
>
> SCHEDULE Description of Areas in which the Establishments Establishments are situated.
>
> (1)_____(2)_____
>
> 1. Xxxxx xxxxxx xxxxxx
>
> 2. Xxxxx xxxxx xxxxx HYDERABAD ANDSECUNDERABAD
>
> 3. The following establishments 1. Municipal Corporations of Hyderabad limits of the whereon twenty or and Secunderabad; Secunderabad cantonment.

more persons are employed, or were employed for wages on any day of the preceding twelve months, namely-

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(i)      Hotels;
(ii)     Restaurants;                                    X xxxxxxxxxx
(iii)    Shops;
(iv)    Road Motor Transport establishments;
(v)     Cinemas including preview theatres; xxx xxxx
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_____ The thrust of sub-section 6 of Section I is to the effect that even if the appellant's road

motor transport establishment-head office at Secunderabad having employed twenty or more persons during the relevant time got covered by the Act, if subsequently the number of employees so employed fell below twenty, the applicability of the Act would continue for the benefit of the employees of the appellant's concern. We may now turn to the relevant definitions as found in the Act. Section 2 is a definition section. Sub- section 1, thereof, defines "appropriate Government" to mean:

> "... in respect of establishments under the control of the Central Government or a railway administration of major part of a mine or oil- field, the Central Government, and in all other cases the State Government."

It is, therefore, obvious that as the appellant's establishment was not under the control of the Central Government or a railway administration etc., it was the State Government which was the `appropriate Government' for deciding the applicability of the Act to the appellant's concern. There is no dispute between the parties that so far as the appellant's registered office, being head office at Secunderabad in Andhra Pradesh was concerned, it got validly covered by the appropriate notification issued by the State of Andhra Pradesh under Section 1(5). But the dispute is whether that notification could automatically cover within its sweep the Bombay branch of the appellant's establishment. For deciding this question, the definition of the term `employee' as found in Section 2 (9) is required to be noted. It reads as under:

> "employee" means any person employed for wage 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 work of, the factory or establishment, whether such work is done by the employee in this factory or establishment elsewhere, or
>
> (ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under 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 is entered into a contract of service;

and include 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, [or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 or under the standing orders of the establishment; but does not include.]"

XXX XXX

XXX

(Emphasis supplied)

The term `factory' is defined in Sub-section (12) of Section 2 to mean:

> "....any premises including the precincts thereof -
>
> (a) whereon ten or more persons are 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 is ordinarily so carried on, or
>
> (b) whereon twenty or more persons are 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 without the aid of power or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed;"

As noted earlier, the Act, which is a Central Act having all India operation, covers from the very inception, factories situated in any part of India. So far as the term `establishment' is concerned, it is not defined under the Act, but the term `employee' as defined under the Act has a direct connection with the term `establishment' in which he or she may be employed for wages in or in connection with the work of the establishment. The term `principal employer' as found in Section 2 (9) (i) defining `employee' is also required to be noted in this connection. Sub-section 13 of Section 2 defines the term `immediate employer'. The said term is defined as under:-

> "13. "immediate employer" in relation to employees; employed by or through him, means a person who has undertaken the execution, on the premises of a factory or an establishment to which this Act applies or under the supervision of the principal employer or his agent, to 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 service of an employee who has entered into a contract of service with him are temporarily lent or let out on hire to the principal employer [and includes a contractor]."

It becomes at once clear that if a person is employed on wages in connection with the work of establishment to which the Act applies and if the establishment is `immediate employer' of such a person under whose supervision he has to undertake the work and can be said to be employed by or through the establishment concerned, the immediate employer, being such establishment, under whose supervision or under whose agent's supervision the employee works will get covered by the sweep of the Act. The term `principal employer' is found in Sub-section 17 of Section 2, Sub-clause

(ii) & (iii), thereof, defines `principal employer' as under:-

"(ii) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where on authority is so appointed the head of the Department;

(iii) in any other establishment, any person responsible for the supervision and control of the establishment.

Xxx xxx
xxx"

A conjoint reading of Sub-sections 9, 13, & 17 of Section 2, therefore, clearly shows that if the head office or the registered office of the appellant is controlling its Bombay branch, the employee working in its Bombay branch can obviously be treated to be an `employee' working under the supervision of the principal employer or his agent. Consequently, once such `principal employer' like the appellant, having head office at Secunderabad in the State of Andhra Pradesh, is covered by the sweep of the Act, automatically employees working in its branches, may be anywhere in India, including the branch at Bombay would get covered by the sweep of the Act. That would be the direct consequence of the applicability of the Act by the notification of the `appropriate Government', namely, the Andhra Pradesh Government under Section 1(5) of the Act. It is not in dispute that the Andhra Pradesh Government was the `appropriate Government' so far as the appellant's head office situated at Secunderabad was concerned. It is easy to visualise that if the head office of the appellant was not situated in Andhra Pradesh but in any other State say Tamil Nadu or Gujarat, then the `appropriate Government' in that case would have been either Tamil Nadu or Gujarat, But once its head office, being registered office, is admittedly situated in Andhra Pradesh, it was only that `appropriate Government' which could apply the provisions of the Act to all its employees whether working at the head office or any of its branches in any part of the country, being the very limb and interconnected organs of the very same establishment of the appellant. Once the provisions of the Act got applied to the appellant's establishment by virtue of the aforesaid notification issued by the State of Andhra Pradesh, the appellant becomes liable to be registered under the Act as per Section 2A, which lays down as follows:

"2A. Registration of Factories and establishments- Every factory or establishment to which this Act applies shall be registered within such time and in such manner as may be specified in the regulations made in this behalf."

The other relevant Section is found in Chapter-IV of the Act which deals with Contributions. Section 38 of Chapter IV lays down as follows:

"38. All employees to be insured. Subject to the provisions of the Act, alt the employees in factories or establishments to which this Act applies shall be insured in

> the manner provided by this Act," Once the definition of the term `employee1 as found in Section 2(9)(i), read with the inclusive part thereof, is read in juxtaposition with Section 38, it becomes at once clear that as the appellant's establishment, namely, road motor transport establishment is covered by the Act, all its employees, whether working in the head office or at its branch offices in any part of the country, including the State of Maharasthra, would get entitled to be insured as per the beneficial provisions of Section 38. Section 39 deals with Contributions to be made by the employer and the employee concerned. Sub- section I of Section 39 lays down as under:-
>
> "39. Contributions:- I. The contribution payable under this Act in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as the employer's contribution) and contribution payable by the employee (hereinafter referred to as the employees' contribution) and shall be paid to the corporation,"

It has also to be kept in view that the present Corporation functioning under the Act is a Central Corporation known as Employees' State Insurance Corporation, which was established by the Central Government under Section 3 of the Act and it has all India operation. It operates through its various regional office spread over the country. It cannot be seriously disputed that employees working at the appellant's branch at Bombay are employees of the Appellant-Corporation. Shri Pai, learned senior counsel for the appellant, fairly stated that they are definitely employees of the company but his only grievance is that because they are functioning at the Bombay branch, which is a separate entity having a separate regional manager and administrative staff, those employees working at the Bombay branch cannot be said to be `employees' of the appellant's establishment. It is this contention which falls for consideration in the light of the statutory scheme. Section 40 in Chapter-IV deals with the primary liability of principal employer to pay contribution in the first instance. Sub- section 1 thereof provides as follows:-

> "1, The principal employer shall pay in respect of every employee, whether directly employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution."

When Section 40(1) is read in the light of the definition of the term `immediate employer* as found in Section 2 (13) and the term `principal employer' as found in Sub-section 17 (iii) of Section 2, it would be clear that the appellant, being the principal employer of the employees at Bombay branch, cannot escape from its liability to pay contribution, in the first instance, even though the Bombay branch employees are employed by the immediate employer, being local agent of the appellant principal employer stationed at Secunderabad in Andhra Pradesh. In fact, so far as the appellant is concerned, employees of its Bombay branch, even though working under its local manager, have a direct nexus with the appellant being the principal employer or the main employer who can be said to be directly employing the employees at the Bombay branch. In fact there is no immediate employer in between the appellant on the one hand and its Bombay branch employees on the other. The question of immediate employer would arise only when the employees are working under a

contractor who carries out the work of the principal employer under the contract. On the facts of the present case, therefore, we are not concerned with any such immediate employer. So far as the employees at Bombay branch are concerned, for them, the appellant is the employer and they are the employees and, therefore, they will be directly governed by Sections 38 & 39 of the Act.

Chapter-V deals with the benefits available to the insured employees. These are beneficial provisions and represent a statutory scheme of insurance which gives the insured employee sickness benefits, periodical payments to an insured women in case of confinement or miscarriage or sickness arising out of pregnancy etc. and also periodical payments to an insured person suffering from disablement as a result of an employment injury and various other benefits laid down by Section 46 of the Act. Sickness benefits to the insured employees are provided by Section 49 of the Act. Maternity benefits are provided by Section 50 of the Act. Disablement benefits are provided by Section 51 of the Act. Section 51-A to 51-D deal with the benefits available in case of accidents arising in course of employment. These benefits represent a benevolent statutory scheme for the welfare of employees working in factories and establishments covered by the sweep of the Act. Apart from the scheme of the Act and the relevant statutory provisions of the Act to which we have referred to until now, we may also turn to the Employees' State insurance (General) Regulations, 1950 framed by the Employees* State Insurance Corporation in exercise of its power under Section 97 of the Act. The terms `employer' and `employer's code number' are defined by Sections 2 (g) and (h) of the Regulation which read as follows:

> "(g) "Employer" means the principal employer as defined in the Act" (h) "Employer's Code Number" means the registration number allotted by the appropriate Regional Office to a factory or establishment for the purposes of the Act, the Rules and these Regulations,"

The term `factory or establishment' is defined by Regulation 2(i) to mean a factory or establishment to which the Act applies. It was brought to our notice that so far as the appellant is concerned, it has got employer's code number because it is covered by the sweep of the notification issued by the State of Andhra Pradesh as its registered office is situated in Secunderabad in Andhra Pradesh. We are also informed that the branch at Bombay is given a sub-code number. It, therefore, becomes obvious that so far as the employer's code number is concerned, it is given only to the appellant, being governed by the Act, having its head office at Secunderabad in Andhra Pradesh which admittedly is within the sweep of the notification issued by the State of Andhra Pradesh. Chapter-II of the said Regulation deals with collection of contributions, etc. Regulation 10-B provides as follows;

> "10-B. Registration of Factories or Establishments, (a) The employer in respect of a factory or an establishment to which the Act applies for the first time and to which an Employer's Code Number is not yet allotted, and the employer in respect of a factory or an establishment to which the Act previously applied but has ceased to apply for the time being, shall furnish to the appropriate Regional Office not later than 15 days after the Act becomes applicable, as the case may be, to the factory or establishment, a declaration of registration in writing in Form 01 (hereinafter referred to as Employer's Registration Form)"

When we turn to Form-0l prescribed in Appendix A to the Regulations, we find that the name of the factory or establishment and full registered address and employers code no. etc. are to be mentioned in the form. Location of the establishment is found at item no. 4 of the said form which deals with the State and the District and the town or village where the establishment is situated. Item no. 11 of the said Form-01 requires the establishment to furnish information whether any branch office of the establishment is functioning for sale, purchase advertisement and their business at places other than the place mentioned at item 4 or anywhere in India. This clearly shows that information regarding branch office of such establishments functioning in any part of India has also to be furnished by the establishment seeking employer's code number. Various Notes are provided as part of the said statutory Form-0l. Note (7) deals with the term `employee' which reads as follow:

> "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 xxx xxx xxx"

Sub-para (iii) of Note (7) is also relevant for our present purpose and it, amongst others, lays down that the term `employee' would include:

> "...any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof with the purchase of raw materials for or 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 Force, or
>
> (b) any person so employed whose wages (excluding remuneration for over-

time work) exceeds one thousand six hundred rupees a month."

Regulation 26 deals with return of contributions to be sent to appropriate office and lays down as follows;-

> "26, Return of contributions to be sent to appropriate officer:-
>
> (1) Every employer shall send a return of contributions in quadruplicate in Form 6 alongwith receipted copies of challans for the amounts deposited in the Bank, to the appropriate office by registered post or messenger, in respect of all employees for whom contributions were payable in a contribution period, so as to reach that office...."

When we turn to Form-6, we find the requirement of mentioning of employer's code number and name of the local office, name of the establishment and details about the period for which the contribution is remitted to the office of the Corporation. Details of the employers' and employees' share of contributions in respect of the insured persons are also to be given in the prescribed Form. When this Form-6 is read with Sections 38, 39 and the definition in Section 2 (9) defining the `employee' and Section 2 (17) dealing with `principal employer', it becomes at once clear that the appellant, being the main employer of its employees working in the Bombay branch, would squarely get covered by the relevant provisions of the Act and the Regulations framed thereunder. It would be liable to collect and remit the relevant contributions of the employees and the employer to the authorities to enable the employees at its head office and its branches to get the medical benefits as insured persons covered by the benevolent scheme of the Act. In the light of the aforesaid statutory scheme there is no escape from the conclusion that the employees of Bombay branch of the appellant's establishment would get covered by the beneficial sweep of the Act or not, expressly in the light of well established factual data on the record of this case.

Before we deal with the judgments on which reliance was placed by learned counsel for the respective parties, it is necessary to clear the factual background. The appellant-Corporation, which has its registered head office at Secunderabad in the State of Andhra Pradesh, has Bombay branch being one of its branches, apart from there being a chain of other branches in the rest of the country with which we are not concerned in the present proceedings. So far as the Bombay branch is concerned, a clear finding of fact is reached by the High Court in its impugned judgment to the effect that the business carried on by the appellant is transport of goods and materials all over the country and the nature of this business is such that it cannot be carried on only by the establishment at Andhra Pradesh without dependence on its branch offices. The goods are loaded at various places and in various branches spread over the country and also unloaded at various places. The branch office register the orders, accept the goods and materials to be transported from Bombay and to be received at Bombay. It is, therefore, obvious that the transport business carried on at the principal office as well as at its branch office is totally interdependent. In the light of the aforesaid factual position, which is well established on record, we have to consider whether the branch office at Bombay is a limb and part and parcel of the parent establishment, being the main establishment at Secunderabad, which is directly covered by the provision of the Act pursuant to the notification issued under Section 1(5) of the Act by the Andhra Pradesh Government. Learned senior counsel for the appellant Shri Pal has produced additional documents before us in support of his contentions that the Bombay branch is an independent entity. However, a close look at the said documents itself shows that it is not so. The very first page of the compilation shows that B. Lugani & Associates, Chartered Accountants, entrusted with the preparation of accounts by the appellant have issued a certificate dated J 8th November, 1998 which shows that though they are the internal auditors of the Delhi region of the appellant and though they are preparing expenses and income account of the regional office at Delhi, the annual balance-sheet of the appellant is prepared by consolidation of the trial balance-sheets of all the regional offices of the appellant. Meaning thereby, the consolidated balance-sheet showing the business and activities of all the branches is prepared comprehensively for the appellant on all India basis. The Annual Report of 1996-97 issued by the registered office at Secunderabad also shows comprehensive activities of the appellant throughout India and would naturally include the working of all the branches. A consolidated balance- sheet is also prepared,

accordingly. Even the Memorandum of Association of the appellant-company shows, amongst its various Objects:

> Object no.2:
>
> "To carry on the business of public carriers, transporters and carriers, goods, passengers, merchandise, corn-commodities, and other products and goods and luggage of all kinds and description in any part of India and elsewhere, on land, water and air by any conveyances whatsoever".

(Emphasis supplied) Rest of the objects also deal with the permissible activities of the appellant-Corporation all throughout India which naturally would be through its branches spread over various parts of the country. None of the objects is confined only to the working and activities of the head office at Secunderabad or for that matter confined merely to the territorial limits of the State of Andhra Pradesh. It, therefore, becomes obvious that the appellant concern is a concern which operates on all India level through its branches which are its part and parcel and are its own limbs. It is through the branches that its main objects as an all India public carrier, get fructified and achieved. May be, for accounting purposes, different branches may be maintaining separate accounts regarding administrative set up under the local offices, but ultimately complete control, supervision and management is by the principal head office at Secunderabad. All the activities of the appellant-Corporation are obviously carried out through the active working and co-operation of all the branches and the employees working at these branches. Even a copy of general power of attorney produced with the additional documents shows that the regional managers controlling the branches in different regions of the country have to act only on the basis of the general power of attorney given to them by the appellant-Corporation and the appellant-Corporation is stated as the principal, while the power of attorney holders regional managers are shown as merely its agents at regional offices under which the branches work, obviously for carrying out the essential objects and purposes of the appellant-Corporation itself. All this factual data which remains well sustained and admitted on record, leaves no room for doubt that the branches of the appellant, though spread over different parts of the country, are part and parcel of the main establishment of the company which remains the `employer' and the employees in different branches remain its `employees'. We asked a pointed question to the learned senior counsel for the appellant Shri Pai as to whether employees working at the head office in Secunderabad could be transferred to any of its branches, on instructions, he stated that they can be transferred by their consent. That shows that there is unity of relationship between the employees working in different branches and those working at the head office on the one hand and the management of the appellant-Corporation on the other. It is easy to visualise that if learned senior counsel for the appellant Shri Pai is right, then an employee working at the head office in Secunderabad may get ail the benefits under the Act but once he is transferred to a branch, maybe with his consent, he would lose such benefit if the branch is not covered by the separate notification under Section 1(5) by the concerned State Government within whose jurisdiction the concerned branch is located. That would create a totally anomalous and incongruous situation which is contra-indicated by factual data on record. There is a complete integrality of working of the employees in different branches and those working in the head office vis-a-vis the single and solitary management being the appellant-Corporation. Learned senior counsel for the

appellant, Shri Pai on our query also fairly stated that all these employees working in different branches of the appellant-Corporation, maybe situated within the State of Andhra Pradesh or outside, are all employees of the appellant- Corporation, In view of this admitted position on record, there is no escape from the conclusion that once the appellant-Corporation having its registered head office at Andhra Pradesh is governed by the Act, its branch offices would also automatically get covered by the sweep of the Act by the very same notification.

At this stage we may mention one submission very vehemently put forward by Shri Pai. He stated that if the Andhra Pradesh Government, being `appropriate Government' has thought it fit to apply the Act to the appellant's concern at Secunderabad and which would naturally cover branches of the appellant at least in the State of Andhra Pradesh, if the same notification is stated to have covered branches of the appellant situated in other State then such a notification would have extra territorial operation, which will be beyond the ambit, scope and authority of the Andhra Pradesh Government. The Andhra Pradesh Government cannot act as `appropriate Government' vis-a-vis branches situated in other States for which the `appropriate Government* will be the concerned Government within whose territories the branches are situated. He also submitted that if such an extra-territorial operation of the Andhra Pradesh Government's notification is countenanced, then an unworkable situation may arise. He submitted by way of illustration that once the State of Andhra Pradesh thinks it proper to apply the Act to the appellant's undertaking in Andhra Pradesh and if the State of Maharashtra does not think it fit to apply the Act to the appellant's undertakings in the State of Maharashtra and, therefore, does not issue notification under Section 1(5) for covering the transport establishments in the State of Maharashtra then the application of the Act to the Bombay branch would go against the very intention of the Maharashtra State Government which would be the `appropriate Government' for all the establishments situated within the State of Maharashtra. That this would also amount to pre-empting the independent decision of Maharashtra State Government by the Andhra Pradesh Government and it would result in conflicting situations and may also amount to discrimination as the Bombay branch of the appellant concern carrying on transport business will be governed by the Act while a similar transport business concern having its head office only in Maharashtra State may not be governed by the Act, though the employees may be doing the same type of transport work in such concerns.

The aforesaid apprehension and the difficulties envisaged by learned senior counsel for the appellant Shri Pai are more imaginary than real. Reason is obvious. If the Maharashtra Government being `appropriate Government', does not think it fit to apply the Act to transport undertakings in the State of Maharashtra by exercising powers under Section 1(5) of the Act, it would only mean that those independent establishments carrying on transport business in the State of Maharashtra may not be governed by the Act but such a situation would cover only those transport undertakings whose head office and registered offices and branches are situated within the State of Maharashtra. They would form entirely a different class of establishments as compared to the undertakings similar to the appellant's undertaking which are covered by the sweep of the notification issued by the `appropriate Government' like the Andhra Pradesh Government where their head offices are situated and which would, cover all the branches in different parts of the State and outside the State, being part and parcel of the very same establishment. It is easy to visualise that the Act applies to all factories wherever situated in India. That is the legislative intention. But so far as the other

establishments are concerned, the `appropriate Government' within whose territorial jurisdiction the main establishment is situated, meaning thereby, its head office being registered office is located will get covered by the sweep of the notification issued by such `appropriate Government' acting as delegate of the legislative power entrusted by the Parliament to it. Once the appropriate Government exercises that power, all the establishments situated within the. territories of that State will get covered by such a notification. Their branches within the State, admittedly, will be covered by the sweep of the notification read with the proviso of Section 1(5) of the Act. So far as the branches situated outside the State are concerned, if the establishment is covered by the notification being situated within the territories of the State and if on facts it is found that such outside branches have functional integrality with the activities of the main establishment and are directly under the control and supervision of the main establishment, it could not be said that such notification issued by the State has any extra territorial operation. It has only territorial operation. Meaning thereby, it covers within its sweep all establishments situated within the State and covered by (he notification and also automatically covers all the branches situated outside the State which are factually found to be mere appendages and limbs and part and parcel of the very same establishment. The Act seeks to bring in its sweep by notifications issued from time to time by appropriate State Governments all the relevant establishment which are required to be covered by the sweep of the Central Act having all India operation. The contention of learned senior counsel for the appellant Shri Pai that such a notification would have extra-territorial operation cannot, therefore, be countenanced.

Equally unsustainable is his other grievance that if the State of Maharashtra does not apply the Act to the transport undertakings situated within that State then an anomalous situation would arise so far as the Bombay branch of the appellant is concerned. It is obvious that the Bombay branch of the appellant, being part and parcel of the main establishment, covered by the Act will stand entirely on a different footing and will form a separate class of establishments as compared to those transport establishments which are not covered by the Act by any notification of `appropriate Government' and whose head office and branches are situated within the State of Maharashtra. Such independent establishments may not get covered by the Act in the absence of appropriate notification under Section 1(5) to be issued by the State of Maharashtra. They will form entirely a different class. There is no question of equals being treated unequally under such circumstances. Before leaving the discussion on this aspect, we may usefully refer to two Constitution Bench judgments of this Court which had occasion to consider the question regarding extra- territorial operation of even legislative enactments. In the case of State of Bihar and Other v. Smt. Charusila Dasi, AIR [1959] SC 1002, the question before the Constitution Bench of this Court was whether the Bihar Legislature had legislative competence to enact the Bihar Hindu Religious Trusts Act for covering the properties of public trust situated in Bihar simultaneously with all the properties of the trusts situated outside the State of Bihar. Repelling the contention that such an Act which tried to bring within its sweep properties of public trust situated outside Bihar, though the trusts were situated within the State of Bihar had extra- territorial operation, it was observed by the Constitution Bench speaking through S.K. Das J., as under:

> "It is now well settled that there is a general presumption that the legislature does not intend to exceed its jurisdiction, and it is a sound principal of construction that the Act of a sovereign legislature should, if possible, receive such an interpretation as will

make it operative and not inoperative Case law Referred.

> Section 3 of the Bihar Act makes the Act applicable to all public religious trusts, that is to say, all public religious and charitable institutions within the meaning of the definition clause in S.2(1) of the Act, which are situated in the State of Bihar and any part of the property of which is in that State. In other words, both conditions must be fulfilled before the Act can apply. As this is the true meaning of S.3 of the Act, none of the provisions of the Act have extraterritorial application or are beyond the competence and power of the Bihar Legislature. Undoubtedly, the Bihar Legislature has power to legislate in respect of, to use the phraseology of item 28 of the Concurrent List, charities, charitable institutions, charitable and religious endowments and religious institutions situated in the State of Bihar and in so legislating it has power to affect trust property which may be outside Bihar but which appertains to the trust situated in Bihar." Similar view is taken by another Constitution Bench judgment of this Court in the case of The State of Bihar and Others v, Bhabapritananda Ojha, AIR (1959) SC 1073. The same reads as follows "Two conditions must be fulfilled for the application of the Act-(a) the religious trust or institution itself must be in Bihar and (b) part of its property must be situated in the State of Bihar. Those two conditions are fulfilled in case of the Badyanath temple; the temple is in Bihar and the properties belonging to the temple lie mainly in Bihar though there are some properties in the present State of West Bengal."

It must, therefore, be held that once the factual data clearly points out that the Bombay branch of the appellant concern was a limb of the appellant concern covered by the Act and all its activities were appertaining to the main objects and purposes of the appellant-Corporation and through this branch the appellant was carrying on its activities on an integrated basis, it must be held that once the appellant was governed by the Act on account of the notification issued by the appropriate Government, namely, the State of Andhra Pradesh under Section 1(5) of the Act, and on which there cannot be any dispute, automatically the said notification took in its sweep all such branches of the appellant situated even outside the State of Andhra Pradesh which were having complete functional integrality with the main activities of the establishment, namely, the appellant concern. In fact, but for the branches and their activities, the appellant cannot effectively discharge its objects and purposes for which it is incorporated as seen from its object referred to earlier. Consequently, the apprehension voiced by learned senior counsel for the appellant, Shri Pal, on the score of extra territorial-operation of the notification in question cannot be countenanced nor can the question of supposed arbitrariness or discrimination between the employees of the appellant's branch at Bombay and employees of other transport establishments not governed by the Act could effectively survive for consideration.

Now it is time for us to deal with the judgments to which our attention was invited by learned counsel for the respective parties. Before we consider the decisions of this Court, it is appropriate to refer to a decision of the Division bench of the Andhra Pradesh High Court in the case of E.S.I.C. Hyderabad \. Southern Eastern Roadways, LLJ vol.2, 1983 at 396. The question before the Division Bench of the High Court in that case was as to whether the notification applying the Act to a branch

of a transport company situated at Visakhapatnam in Andhra Pradesh whose head office was at Calcutta could make available to the employees of the branch benefits of the Act even though head office was not covered by the Act. It becomes at once clear that this was a converse case wherein the head office was not governed by the Act as the West Bengal Government had not issued any notification for governing the parent establishment at Calcutta but it was the branch which was governed by the Act because it was situated in Andhra Pradesh State which had issued the notification in question. It was held by the Division Bench, speaking through Rama Rao J., that even if the head office was not governed by the Act, so far as the branch was concerned, because the Act was applicable to the employees working therein the benefit of the Act could not be denied to the employees of the branch within the limits of Andhra Pradesh State. Dealing with the statutory provisions of the Act and the beneficial provisions thereof, the following pertinent observations were made in paragraph 8 of the Report. The same read as follows:

> `The Employees' State Insurance Act is aimed at conferring benefits on employees in case of sickness, maternity and employment injury. S.38 of the Act mandates that all the employee in the factories or establishments shall be insured. The initial and vital endeavour should be to identify the beneficiaries or the employees for insurance. It is well settled that the employees in head office as well as the branches are comprehended within the ambit of the coverage of the Act. The branch office is only an appendage to the head office and the branches are located in the place or State where the head office is situated or other places outside the States also to measure up to the expansion or diversification of the business or undertaking. Each branch is an off-shoot of the head office and cannot be considered to have an independent entity as all the transactions ultimately funnel into head office and the entirety of transactions of the head office and branches as well are reflected by the head office as one unit. The infrastructure for the maintenance and running all the branches flows from the same capital source and the streams of business by all the units will be ultimately pooled. It is not in dispute that the branches carry on the identical business and transactions. Each branch is a component of the main office and all the branches are miniatures of the main office and as such cannot be considered as separate and independent entities."
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> In our view, the aforesaid observations on the scheme of the Act for covering the activities of head office and branches of the establishment are well sustained. In the light of the statutory scheme envisaged thereunder, there is no escape from the conclusion that each branch, having functional integrality and being under the direct supervision and control of the parent office, would be part and parcel of the main establishment and all such branches have to be treated as miniatures of the main office. They cannot be considered as separate independent entities on the factual data in the present case on which there is no dispute between the parties. As discussed by us earlier, there is no escape from the conclusion that the Bombay branch is an appendage and part and parcel of the main establishment at Secunderabad and is almost a shortened mirror image thereof.

In this connection, we may also usefully refer to a decision of three Judge bench of this Court in Kirloskar Brothers Ltd. v. Employees State Insurance Corpn, AIR (1996) SC 3261. The question before this Court in the aforesaid decision was as to whether the main office of a factory once governed by the Act would automatically result in covering its regional or branch offices which are situated in a different State even when its branch offices or regional offices were not carrying on any manufacturing process and could not be treated to be independent factories. It was contended before this Court that the branch offices which are merely distributing or selling the goods manufactured by the factory situated in other State could not be covered by the sweep of the Act only because the parent factory was covered by the Act, Rejecting this contention, this Court in para 11 of the Report held as under:

"The principal test to connect the workmen and employer under the Act to ensure health to the employee being covered under the Act has been held by this Court in Hyderabad Asbestos case, AIR (1978) SC 356, i.e., the employee is engaged in connection with the work of the factory. The test of predominant business activity or too remote connection are not relevant. The employee need not necessarily be the one integrally or predominantly connected with he entire business or trading activities. The true test is control by the principal employer over the employee. That test will alone 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 ever employee, the Act becomes applicable. The test laid down by the Orissa High Court, namely, predominant business activity, i.e., sale or distribution of the goods manufactured in the factory at Deewas is not a correct test. It is true that this Court in the special leave petition arising form the Orissa High Court judgment leave was declined holding it to be of peculiar facts."

Approving the view expressed by the Andhra Pradesh and the Karnataka High Courts it was held in that case that though the appellant before this Court had its registered office at Poona for sale and distribution of its products from its three factories-one situated at Kirloskarvadi, second at Karad in the State of Maharashtra and the third one at Dewas in the State of Madhya Pradesh, employees of sale or distribution office were also covered by the sweep of the Act being appendages and fully controlled by the parent factory. The aforesaid decision squarely gets attracted on the facts of the present ease. It is pertinent to note that it was held in the aforesaid case that though the branch offices being sales and distribution offices of the appellant factory were themselves not factories they were also covered by the sweep of the Act as the principal office, being the factory, was held covered. Almost identical is the situation in the present case. The ratio of this decision holding that Act would apply to a factory in one State and, therefore, will automatically apply to its sales offices in other States even though they themselves are not factories, will equally apply to cases of establishments covered by the Act as per notification issued by the appropriate Government as delegate of central legislature and which notification would automatically cover the branches of such establishments

functioning outside the State but as integral part of the same establishment. Once the registered office or the principal office of the appellant is covered by the Act, all its branches in any part of the country would be covered by the Act, if such branches are under the supervision and ultimate control of the principal office at Secunderabad, as factually found herein-above.

Our attention was also invited to a two judge bench decision of this Court in Hyderabad Asbestos Cement Products Ltd. v. Employees Insurance Court & Am. Etc. etc., [1978] 1 SCC 194.

While interpreting the term "employees" in a factory, this Court, on construction of Section 38 of the Act, took the view that zonal offices and branch offices of the factory would also be covered by the Act. Following the earlier decision of this Court in Nagpur Electric Light & Power Co. Ltd. v. Regional Director, Employees State Insurance Corporation, [1967] 3 SCR 92, it was held that:

> "...any employee who is connected with the work of the factory would be an employee under Section 2(9) whether he works within the factory or outside its premises. The section, after its amendment on January 28, 1968 by Act 44 of 1966 includes any person employed for wages on any work connected with the administration of the factory or any part, department or branch thereof or with the purchase of raw-materials or for the distribution or sale of products of the factory. Thus, work connected with the administration of the factory, the purchase of raw-material and the distribution or sale of products are brought into the scope of the definition. After the amendment, therefore, the plea that an employee employed in connection with the administration of the factory or with the purchase of raw-materials or distribution or sale of products does not fall within the definition cannot be raised. Reading the relevant sections as a whole, the word "employee" would, therefore, include not only persons employed in the factory but also persons connected with the work of the factory. The employee may be working within the factory or outside it, or may be employed for administrative purposes or purchase of raw-materials or for the sale of finished goods and all such employees are included within the definition of employee".

This decision of the two Judge bench of this Court was relied upon in the three Judge bench decision of this Court in Kirloskar Brothers Ltd. v. Employees' State Insurance Corpn., (supra) as noted earlier.

The aforesaid settled legal position, therefore, shows that as per Section 2(9) of the Act an employee of the establishment whether working within the precincts of the main establishment or outside, if carrying on the work of the establishment would be covered by the sweep of the Act moment the main establishment is covered by the Act. It is easy to visualise that after the aforesaid amendment by Act 44 of 1966 Section 2(9) would cover employees working anywhere in branches in connection with the purchase of raw- materials or distribution or sale of products or dealing with administration of the establishment though stationed outside the precincts of the main establishment. Accordingly, the employees who were connected with the administration of the Bombay branch of the appellant-Corporation would be covered by the sweep of Section 2(9) after

the aforesaid amendment. If that is so, it would be too incongruous to contend that though the administrative staff of the Bombay branch would be covered, employees actually working for the establishment and directly connected with its main function namely, transport of goods throughout the country and inspecting the goods to be despatched for the appellant from Bombay to outside stations and also connected with receipt and unloading of goods coming from outside Bombay for being further carried within the State of Maharashtra or outside, would not be covered by the sweep of the Act, Such an incongruous and contradictory situation cannot be countenanced by the scheme of the Act especially in the light of clear wording of the definition Section 2(9) along with its relevant attended provisions.

The very same definition of the term `employee' as per Section 2(9) of the Act fell for consideration of a two Judge bench decision of this Court in Royal Talkies, Hyderabad & Ors. v. Employees State Insurance Corporation, [1978] 4 SCC 204. The question before the Court in that case was whether the persons employed in canteens and cycle stands of cinema theatres could be said to be governed by the Act when the establishment covered by the Act was cinema theatre itself. Repelling the contention that employees of the canteen and cycle stand could not be treated to be employees of parent establishment namely, cinema theatre itself, it was held by Krishna Iyer, J., speaking for the Court, that the Manager of the cinema theatre would be treated to be the principal employer of these workmen also. Considering the express provision of Section 2(9) of the Act, it was observed as under:

> "...The word "employee" as defined in Section 2(9) contains two substantive parts. First he must be employed "in or in connection with the work of an establishment". The expression "in connection with the work of an establishment" represents a wide variety of workmen who may not be employed in the establishment but may be engaged only in connection with the work of the establishment. Some nexus must exist between the establishment and the work of the employee but may be a loose connection. In connection with the work of an establishment' only postulates some connection between what the employee does and the work of the establishment. He may not do anything directly for the establishment; he may not do anything statutorily obligatory in the establishment; he may not even do anything which is primary or necessary for the survival or smooth running of the establishment or integral to the adventure. It is enough if the employee does some work which is ancillary, incidental or has relevance to or link with the object of the establishment..."

It becomes, therefore, obvious that once it is found that the employees of the Bombay branch undertake transport of goods to and from Bombay which is the main work of the principal establishment at Secunderabad in Andhra Pradesh, moment the main office in Andhra Pradesh is covered by the Act, the Bombay branch which is an integral part of the commercial activities of the appellant, cannot be held to be outside the sweep of the Act.

We may also refer to a three Judge bench decision of this Court in Nagpur Electric Light & Power Co, Ltd. v. Regional Director, Employees State Insurance Corporation etc, (supra) wherein this Court had an occasion to examine the width of the definition "employee" as found in Section 2(9) of

the Act in connection with the factual matrix wherein persons doing non- manual work outside the factory premises claimed to be covered by the sweep of the Act by being treated as employees of the factory. Emphasising the term "employee in connection with the work of the factory" it was held that "AH the employees of the disputed categories clerks or otherwise were employed in connection with the work of the factory, that is to say, in connection with the work of transforming and transmitting electrical power. Some of the employees were not engaged in manual labour. But a person doing non-manual work can be an employee within the meaning of S.2(9Xi) if he is employed in connection with the work of the factory. The duties of he administrative staff are directly connected with the work of the factory."

In view of the aforesaid well established legal position, therefore, it has to be held that as it is seen that the main work of the appellant- Corporation is to engage in transportation of goods to and through its various branches to different parts of the country, the Bombay branch facilitating and directly connected with this main activity of the principal office and working under the complete control and supervision of the appellant's main office, cannot be treated to be beyond the sweep of the Act once employees at Bombay branch are held to be `employees' of the appellant-Corporation. It could not be held on facts of this case that the Bombay branch was functioning as a separate and independent entity not being controlled or supervised by the Secunderabad principal office so as to enable the appellant-Corporation to contend before the authorities that its Bombay branch was not its limb and was an independent establishment by itself as if it was run by some independent transport company.

Before parting with the discussion on this point, it is necessary to keep in view the salient fact that the Act is a beneficial piece of legislation intended to provide benefits to employees in case of sickness, maternity, employment injury and for certain other matters in relation thereto. It is enacted with a view to ensuring social welfare and for providing safe insurance cover to employees who were likely to suffer from various physical illnesses during the course of their employment. Such a beneficial piece of legislation has to be construed in its correct perspective so as to fructify the legislative intention underlying its enactment. When two views are possible on its applicability to a given set of employees, that view, which furthers the legislative intention should be preferred to the one which would frustrate it. It is difficult to appreciate how it could be contended by the appellant with any emphasis that an employee working at its head office in Secunderabad would be governed by the beneficial sweep of the Act as admittedly the head office employees are covered by the Act, but once such an employee, whether working on the administrative side or connected with the actual transportation of goods, if transferred to the Bombay branch even with his consent, cannot be governed by the beneficial provisions of the Act.

Dealing with this very Act, a three Judge bench of this Court in the case of The Buckingham and Carnatic Co. Ltd. v. Venkatiah & Anr., [1964] 4 SCR. 265, speaking through Gajendragadhar, J., (as he then was) held, accepting the contention of the learned counsel Mr. Dolia, that:

> "....It is a piece of social legislation intended to confer specified benefits on workmen to whom it applies, and so, it would be inappropriate to attempt to construe the relevant provisions in a technical or a narrow sense. This position cannot be

> disputed. But in dealing with the plea raised by Mr. Dolia that the section should be liberally construed, we cannot overlook the fact that the liberal construction must ultimately flow from the words used in the section. If the words used in the section are capable of two constructions one of which is shown patently to assist the achievement of the object of the Act, courts would be justified in preferring that construction to the other which may not be able to further the object of the Act..."

As we have already seen earlier, the express phraseology of Section 2(9) of the Act defining an `employee' read with Section 38 of the Act clearly projects the legislative intention of spreading the beneficial network of the Act sufficiently wide for covering all employees working for the main establishment covered by the Act even though actually stationed at different branches outside the State wherein the head office of he establishment is located. In any case, the said construction can reasonably flow from the aforesaid statutory provisions. If that is so, any other technical or narrower construction, even if permissible, cannot be countenanced, as that would frustrate the legislative intent underlying the enactment of such a beneficial social security scheme.

In the result, the impugned decision rendered by the Division Bench of the High Court cannot be found fault with and remains well sustained on the statutory scheme as applicable to the admitted and well established facts on record. The appeal, accordingly, fails and is dismissed with costs quantified at Rs. 20,000.