

P.K. Mohammad Pvt. Ltd., Cochin vs Esi Corpn. on 19 August, 1992

Equivalent citations: (1993)ILLJ482SC

Author: Lalit Mohan Sharma

Bench: Lalit Mohan Sharma, S. Mohan, N. Venkatachala

JUDGMENT

Lalit Mohan Sharma, J.

1. The learned Counsel for the respondent has, in support of his stand, placed reliance on several decisions of this Court and the High Courts in which the notification in identical terms has been construed in the way as is suggested on behalf of the Corporation. Although Mr. Bobde, learned Counsel for the appellant, has advanced an argument, which on the face of it, appears to be attractive, I think that in view of the consistent interpretation of the notification which has been followed in the country, the question should not be reopened for fresh consideration. Accordingly, I agree that all these appeals should be dismissed but without costs.

S. Mohan, J.

2. These appeals can be dealt with by a common judgment since the question of law to be decided is one and the same. It is enough if we note the facts in Civil Appeal No. 2599 of 1980.

3. The appellant is a company incorporated under the Companies Act. It has its registered office at Jew Town in Mattancherry. It is engaged in the business of clearing and forwarding at the Port of Cochin situated in Willingdon Island. It is authorised to transact its business at the Cochin Custom House under the terms of I Section 202 of the Sea Customs Act read with the Rules made thereunder and a licence was issued under the said provisions.

4. The appellant received a notice dated January 3, 1975 enclosing certain notification whereby the Employees State Insurance Act (hereinafter referred to as the Act) was extended to certain classes of establishments specified in the Schedule wherein 20 or more persons are employed or were employed during that period. The appellant replied that it did not fall under the purview of the said notification. Therefore, the appellant was not liable to comply with any of the provisions of the Act. Another letter dated September 8, 1975 was received by the appellant calling it upon to furnish certain details. This was replied to by a letter dated September 20, 1975 whereunder the details were

furnished. Thereafter a notice dated November 7, 1975 with which were enclosed certain printed forms, was received by the appellant. The appellant replied on November 18, 1975 denying liability to pay any contribution under the Act. The stand of the appellant was that the company does not come within the notification dated September 18, 1974 as the appellant was not a shop and was carrying on business of clearing and forwarding at the Cochin Port. In reply to the said letter the appellant received a letter dated December 9, 1975 stating that the Insurance Inspector who visited the appellant found 20 persons employed in the shop. It was functioning as shipping, clearing and forwarding agents. The appellant served the customers. Therefore, it was a shop within the dictionary meaning of the term and called upon the appellant to submit the returns.

5. Contending that the appellant does not render any service to customers at its office, it was merely carrying on clearing and forwarding business by processing the documents at Custom House, no service being rendered at the appellant's office establishment, it was urged that it could not be called a shop within the dictionary meaning. An application was moved under Section 75 of the Act before the Employees' Insurance Court, Calicut to decide the dispute and to hold that the appellant was not a shop within the purview of the Act and, therefore, the Act itself was inapplicable.

6. Objections were preferred on behalf of the Regional Director, Employees' State Corporation, that in view of the notification dated September 18, 1974 supplemented by the other notifications dated December 2, 1974 and March 22, 1975, the appellant's business would fall within the ambit of the said notifications. The Government of Kerala issued those notifications with a view to extend benefits to the employees working in other sections of organised labour such as shops and establishments.

7. The Employees Insurance Court by a judgment dated January 29, 1977 in E.I.C. No. 1/76 held that the appellant would be covered with effect from six months after December 21, 1974. In the result, the appellant was brought within the notification. Against this order, M.F.A. No. 75 of 1977 was preferred to the High Court of Kerala. A Division Bench by its judgment dated June 25, 1979, following its earlier judgment, held that the term "shop" as understood in the scheme of the Act is not merely a place where the business of purchase and sale takes place but it is a place where there is commercial activity arising from customer service. In that sense, the establishment of the appellant has to be understood to fall within the purview of the term "shop". Accordingly the appeal was dismissed. Hence, the civil appeals, leave having been granted by an order dated November 3, 1980.

8. Mr. Bobde, learned Counsel for the appellants, would raise the following submissions. 5

9. The Act primarily applies to factories. Of course, the Act could be extended to other establishments by means of a notification. In the instant case a notification dated September 16, 1974 catalogues six establishments, one of which is shop. Though "shop" would take within it other establishments like hotels or restaurants yet they have come to be specifically mentioned. In view of that enumeration of other establishments in contradiction to shops the word "shop" must be held to relate to a place where commercial activity of buying and selling merchandise takes place, otherwise the enumeration of other establishment becomes meaningless. 2

10. As to what is the meaning of "shop" could be gathered from Wharton's Law Lexicon 14th Ed. 929 and Words and Phrases Legally Defined 2nd Ed. 73.

11. The next submission of the learned Counsel is in view of the fact that the notification specifically enumerates the other establishments, the intention has been clearly brought out 3 not to give a wider meaning of the term "shop", as otherwise the term "shop" itself would be enough to cover other establishments like hotels, restaurants, cinemas etc. From this point of view, the activity carried on by the appellant 2 merely processing the document at the customs clearing house without rendering any service to the customers at the appellant's office or establishment cannot be said to fall within the meaning of "shop". Therefore, the approach of the High Court and the authorities would require to be set aside. It must be held that the notification has no application to the appellant's business.

12. In opposition to this, Mr. Goswamy, learned Counsel appearing on behalf of Employees State Insurance Corporation, would submit that the word "shop" is wide in its amplitude. It means a place where any kind of commercial activity is pursued and where services are rendered to the customers. In so far as the appellant is carrying on the business of clearing and forwarding and rendering service which are part of carrier's job certainly it will be a shop. It caters to the needs of exporters and importers. It is a systematic commercial activity or an economic activity. Hence, it would be a shop within the meaning of the notification. Merely because every establishment may fall within the scope of the term "shop" as enumerated, it does not, in any way, restrict the meaning of the word "shop". The object of enumeration is to envelop as many establishments as possible without leaving room for any doubt. Where, therefore, the word "shop" alone would be enough to cover " the activities of the appellant, it is not necessary to further enumerate and specifically bring within the scope of the notification the activities of the appellant. Regard must be had in this connection that this is a social welfare legislation. This Court had always taken the view that as far as permissible the endeavour of the Court must be to cover those employees than to deny the benefit of these provisions. In support of these submissions the cases in *Hindu Jea Band, Jaipur v. Regional Director, Employees State Insurance Corporation, Jaipur* etc 1987-I-LLJ-502 and *International Ore & Fertilizers (India) Pvt. Ltd. v. Employees State Insurance Corporation* 1988-I-LLJ-235 are cited. Thus it is submitted that no exception could be taken to the impugned judgment.

13. Mr. A.T.M. Sampath, learned Counsel appearing for the appellant, adopts the arguments of Mr. Bobde while the respondent opposes in the same vein.

14. The Employees State Insurance Act is an Act to provide certain benefits to employees in case of sickness, maternity and employment injury and make provision for certain other matters in relation thereto. The Act is an outcome of a policy to provide remedy for the widespread evils arising from the consequences of national 5 poverty. Indeed, it is a piece of social security.

15. Under Section 1(4), in the first instance, it is made applicable to all factories. The Act envisages the extension of benefit to the employees in other establishments or class of establishments, industrial, commercial, agricultural or otherwise. The extension of benefit is to be done by means of a notification by the appropriate Government. Thus the benefits conferred by the Act cover a large

area of employees than what the Factories Act and the akin legislations intended. The conclusion is inescapable that it is a welfare legislations. The endeavour of the Court should be to place a liberal construction so as to promote its object to which a reference has been made.

16. In the instant case, the impugned notification runs as follows:

GOVERNMENT OF KERALA No. 228877/E2/73/LBR LABOUR (E) DEPARTMENT TRIVANDRUM, Dt. 18.9.74 NOTIFICATION S.R.O. In exercise of the powers conferred by Sub-section (5) of Section 1 of the Employees' State Insurance Act, 1948 (Central Act 84 of 1948), the Government of Kerala, in consultation with the Employees' State Insurance Corporation and with the approval of the Central Govt. hereby give notice of its intention to extend the provisions of the said Act to the classes of the Establishments specified in the Schedule annexed hereto, on or after March 23,1975.

Description of establishments:

Areas in which the establishments are situated:

The following establishments wherein twenty or more persons are employed for wages on any day of the preceding twelve months, namely:

i) Hotels;

ii) Restaurants:

iii) Shops:

iv) Road Motor Transport establishments:

v) Cinema including preview theatres;

vi) Newspaper establishments as defined in Section 2(d) of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (5 of 1955).

1. Trivandrun, Navaikulam and Pazhayakunnumel (Kilimanoor) in Trivandrum District;
2. Quilon, Kundara, Chathannur, Kottarakara, Punalur and Sasthamcotta in Quilon District;
3. Alleppey, Kayamkulam and Shertalal in Alleppey District;
4. Kottayam town in Kottayam District;
5. Ernakulam and Cochin in Ernakulam District;

6. Trichur town in Trichur District;

7. Palghat town in Palghat District;

8. Kozhikode town in Kozhikode District; and

9. Cannanore town, Tellicherry and Baliapatnam in Cannanore District in the State of Kerala By order of the Governor, Sd/-

U.Mahabala Rao, Secretary to Government.

17. As it could be seen, six kinds of establishments wherein 20 or more employees are or were employed for wages on any day of the preceding 12 months would fall within the scope of the notification. Item 3 says "shops". Therefore, the argument is while "shop" could cover the other establishments like hotels or restaurants in view of the specific enumeration, the activities of clearing and forwarding carried on by the appellant unless specifically enumerated cannot be brought within the word "shop". This argument takes us to the meaning of "shop".

18. Wharton's Law Lexicon 14th Ed. Page 929:

Shop, a place where things are kept for sale, usually in small quantities, to the actual consumers. By Shops Act, 1912, Section 19, 'shop' includes, any premises where any 'retail trade or business' is carried on; 'retail trade or business' includes the business of a barber or hairdresser, but not the sale of programmes, etc., at places of amusement.

19. Words and Phrases Legally Defined 2nd Ed. 73:

"Shop" includes dwelling-house and warehouse, or other place of business, or place where business is transacted.

"Shop" includes any premises, and any vehicle, stall or place other than premises, on or in which any retail trade or business is carried on.

20. It has also come up for consideration in the rulings of this Court while interpreting a similar notification. In Hindu Jea Band, Jaipur (supra) it was held thus (p.504):

The first contention urged in support of the 3 petition is that since the petitioner was not selling any goods in the place of its business but was only engaged in arranging for musical performances on occasions such as marriages etc, its business premises cannot be called a 'shop'. We do not agree with the narrow construction placed by the petitioner on the expression 'shop' which appears in the notification issued under Section 1(5) of the Act which is a beneficent legislation. The word "shop" has not been defined in the Act. A shop is no doubt an establishment (other than a factory) to

which the Act can be extended under Section 1(5) of the Act provided other requirements are satisfied. In Collins English Dictionary the meaning of the word 'shop' is given thus: "(1) a place esp. a small building for the retail sale of goods and services and (ii) a place for the performance of a specified type of work; workshop." It is obvious from the above meaning that a place where services are sold on retail basis is also a shop. It is not disputed that the petitioner has been making available on payment of the stipulated price the services of the members of the group of musicians employed by it on wages. We, therefore, hold that the place where the petitioner has been carrying business is a shop to which the Act is applicable by virtue of the notification referred to above. The first contention, therefore, fails.

21. Again, in *International Ore & Fertilizers (India) Pvt. Ltd. v. Employees' State Insurance Corporation* (supra) the following useful observations are found (pp. 237-238):

The word "shop" is not defined in the Act or in the notification issued by the State Government. According to the 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 the buying and selling of goods are carried on. The evidence produced in the case shows that the petitioner is carrying on its business at its business premises in Secunderabad. At that place the petitioner carries on the commercial activity facilitating the emergence of contracts of sale of goods between its foreign principals and the State Trading Corporation/Minerals and Metals Trading Corporation of India. It arranges for the unloading of the goods under its supervision and for the survey of the goods dispatched by its foreign principals at the ports on behalf of its foreign principals and on the goods being delivered to the Central Government it collects the price payable by the Government and remits it to its foreign principals. All these activities are directed and controlled from its premises at Secunderabad. It is thus clear that the activities carried on by the petitioner constitute trading activities although the goods imported from abroad are not actually brought to the said premises and delivered to the purchaser there. In our opinion it is not actually necessary that the delivery of the goods to the purchaser should take place at the premises in which the business of buying or selling is carried on to constitute the said premises into a "shop". The delivery of the goods sold to the purchaser is only one aspect of trading activities. Negotiation of the terms of sale, carrying on of the survey of the goods imported, arranging for the delivery of the goods sold, collection of the price of the goods sold etc. are all trading activities. The premises where business is carried on by the petitioner is undoubtedly a shop as the activities that are carried on there relate only to the sale of goods which are imported into India. The petitioner acts as the agent of its foreign principals who are the sellers. The petitioner directs and controls all the activities from the premises in question. If orders are received at a place which ultimately fructify into sales and the resulting trading activity is directed from there that place comes to be known as a

"shop". In our view the Employees' Insurance Court placed a very narrow interpretation on the expression "shop" while upholding the contention of the petitioner by confining "shop" to a place where goods are actually stored and delivered pursuant to a sale. We agree with the decision of the High Court that while construing a welfare legislation like the Act and the notification issued thereunder a liberal construction should be placed on their provisions so that the purpose of the legislation may be allowed to be achieved rather than frustrated or stultified.

22. In this case, the argument advanced on behalf of the appellant is slightly different namely, other kinds of establishments which can easily fall within the definition of "shop" have been enumerated. Hence, a specific enumeration, so as to include the appellant's business activity, is to be insisted upon. In our considered view, this argument cannot be accepted. First of all, merely because other establishments which are akin to shop are enumerated, it does not, in any manner, oblige us to give a narrow meaning to the word "shop" nor does it any way dilute the meaning of "shop". As rightly contended by the learned Counsel for the respondent, the object is to envelop as many establishments as possible without leaving any room for doubt. That is precisely what the notification intends to do.

23. The appellant is carrying on stevedoring, clearing and forwarding operations. Clearing the documents, even if it be in the custom house, is necessary for the export or import of goods. These services form part of the carrier's job. It cannot be gainsaid that the appellant is rendering service to cater the needs of exporters and importers and others who want to carry the goods further. Therefore, it is a shop carrying on a systematic economic or a commercial activity. This would be enough to bring the appellant without specifically enumerating the specific activities carried on by the appellant. Merely because shop has been enumerated along with other similar establishments we do not think any further specific enumeration is necessary to cover the appellant. Thus we reject the contentions raised on behalf of the appellant.

24. The appeals stand dismissed. There shall be no order as to costs.