Hyderabad Asbestos Cement Products Ltd vs The Employees Insurance Court & Anr on 2 December, 1977

Equivalent citations: 1978 AIR 356, 1978 SCR (2) 345, AIR 1978 SUPREME COURT 356, 1978 (1) SCC 194, 1978 LAB. I. C. 307, 1978 U J (SC) 1, 1978 (1) SCWR 80, 1978 (1) LABLN 322, 1978 REV LR 191, 52 FJR 367, 36 FACLR 128, 1978 2 SCR 345, 1978 (1) LABLJ 181

Author: P.S. Kailasam

Bench: P.S. Kailasam, V.R. Krishnaiyer

PETITIONER:
HYDERABAD ASBESTOS CEMENT PRODUCTS LTD.

Vs.

RESPONDENT:
THE EMPLOYEES INSURANCE COURT & ANR.

DATE OF JUDGMENT02/12/1977

BENCH:
KAILASAM, P.S.
BENCH:
KAILASAM, P.S.
KRISHNAIYER, V.R.

CITATION:
1978 AIR 356 1978 SCR (2) 345
1978 SCC (1) 194
CITATOR INFO :
R 1984 SC1916 (7)

ACT:
Employees State Insurance Act 1948-Sec. 2(9) & 2(1), 38-Whether employees not working in the factory but employed in connection with the work of the factory are covered by the act.

HEADNOTE:
The appellant Company has a factory situated at Sanatnagar where asbestos sheets are manufactured. The Company has zonal sales offices in various cities. In the State of Andhra Pradesh they have such zonal offices at Vijayawada and Vizagapatnam. There are employed in the zonal office at

Vijayawada who do the work of canvassing for the sale of products manufactured in the factory located at Sanatnagar. The appellant contended that the zonal offices are establishments and are not factories and, as such, do not fall within the scope of the Employees State Insurance Act, 1948. The High Court negatived the contention of the appellant.

The appellant in an appeal by certificate granted by the High Court contended that the Act makes a distinction between a factory and an establishment and that the zonal offices and branch offices are in the nature of establishments and cannot be brought within the purview of factories. In order to bring an employee within the scope of the Act it was submitted he should not only be an employee within the meaning of section 2(9) of the Act but also he should be an employee of the factory as defined in section 2(12) of the Act. The scheme of the Act and particularly section 38, which is the charging it was sub-mitted section would indicate that the Act was intended to cover only employees in factories and employees who are connected with the work of the factory. The respondents supported the judgment of the High Court.

Dismissing the appeal held :

1.The object of the enactment is to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. Section 2_(9)' defines employee to mean any person employed for wages in or in connection with the work of a factory or establishment to which the Act applies and includes any person employed for wages on any work and includes 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. The latter part of the definition was added by the Amending Act 44 of 1966. [348 B, F, G, 349 C]

Nagpur Electric Light & Power Co..Ltd. v. Regional Director Employees State Insurance Corporation Etc. [1967] 3 SCR P. 92 Employees' State, Insurance Corporation with its Regional Office at Combatore v. Ganpathia Pillai and Ors. A.I.R. 1961 Mad. 176, referred to.

2.The amendment was made for the purpose of covering cases which were held to be outside the scope of section 2(9) by the decisions of Bombay and Madras High Courts. The amended section 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. It is clear that the work connected with the administration of the factory, the purchase of raw materials and the distribution of sale of products are brought within the scope of the definition. [353 H, 354 A-B]

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3.The court negatived the contention that only employees who are employed in the factory are required to be insured and not employees employed in connection with the work of the factory. The court held that employees employed for administrative purposes or for purchase of raw materials, or for sale of the finished goods if employed in connection with the work of the factory are Included within the definition of employees. [352 A-D]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 652 of 1976. From the Judgment and Order dated 5-12-1975 of the Andhra Pradesh High Court in Writ Petition No. 2907/74 and Appeal by Special Leave from the Judgment and Order dated 9- 11-1976 of the Calcutta High Court in Matter No. 631 of 1973 and From the Judgment and Order dated 21-6-1976 of the Andhra Pradesh High Court in Writ Appeal No. 286/76 and CMP Nos. 8014/76 and 7030, 7853, 7854 and 12195 of 1977. Sachin Choudhary and Naunit Lal for the Appellant in CA 652/76.

Shanker Ghose and D. N. Gupta for the Appeallant in CA 1314/77.

Naunit Lal, Kailash Vasudev and Miss Manju Jetley for the Appellant in C.A. 900 of 1977.

G.P. Pai, O. C. Mathur and D. N. Mishra for the Intervener- Voltas.

Sachin Choudhary, Anil Diwan, O. C. Mathur and D. N. Mishra for the Intervener in Hindustan Lever.

O.C. Mathur, D. C. Shroff and D. N. Mishra for Intervener Rallia India Ltd.

Anil Diwan, D. C. Shroff and O. C. Mathur for the Intervener--Merch Shop & Dhome of India. D.C. Shroff and I. N. Shroff for the Intervener-I.C.I. (India) P.Ltd.

S.N. Kacker, Sol. Genl., K. N. Bhat and Girish Chandra for Respondent No. 2 in CA 652/76 and RR in CA No. 1414 and 900/77.

The Judgment of the Court was delivered by KAILASAM, J. These appeals raise the same question of law and may be dealt with together and can be disposed of by a common judgment.

Civil Appeal No. 652 of 1976 is filed by the Hyderabad Asbestos Cement Products Ltd. by certificate granted by the High Court of Andhra Pradesh by an order dated 2nd April, 1976. The appellant company is a factory situated at Sanatnagar Where asbestos sheets are manufactured. The company has Zonal Sales, Offices in various States Offices at Vijayawada and Visakhapatnam. We are concerned with the Vijaywada Zonal Office. There are employees in the Zonal Office who do the work of canvassing for the sale of products manufactured in the factory located at Sanatnagar. It is

contended that the Zonal Offices are establishments and are not factories and as such do not fall within the scope of the Employees' State Insurance Act, 1948. The High court negatived the contention of the appellant. Civil Appeal No. 900 of 1977 is, by a certificate granted by the Andhra Pradesh High Court to the appellant, M/s. Foods, Fats & Fertilisers Ltd., Tadepalliguden, West Godavari District. The appellant is having a factory at Tadepalligudem in West Godavari district where rice bran, oil, alvitone and cattle food etc. are being manufactured. The appellant is also having an administrative and export office at No. 115B.N. S. C. Bose Road, from where rice bran, textile yarn etc. are ,exported to foreign countries. The administrative work is also carried ,on in the Madras office in relation to the business of the company. It was contended that the employees of the company at the Madras office are not employees under the Employees' State Insurance Act, 1948. The High Court of Andhra Pradesh following its decision in W.P. No. 2907 of 1974 against which Civil Appeal No. 652 of 1976 is preferred, dismissed the petition and granted a certificate.

Civil Appeal No. 1314 of 1977 is an appeal by M/s. Union Carbide (India) Ltd. against the decision of a Bench of the Calcutta High Court 'in Matter No. 631 of 1973 by special leave granted by this Court. The appellant is a public limited company carrying on business in the manufacture and sales of diverse consumer products such as finished batteries, flashlights, Arc carbons, Chemicals and Plastics and also in pesticide and processing and export of shrimp. For carrying on the business of the company the company operates factories all over India. Right of do man units have been placed under the Calcutta General Office which is situate at 1-Middleton Street, Calcutta. According to the appellant, the Calcutta General Office of the company is concerned with managing the affairs of the company in general and with laying down the broad policies in respect of the business of the eight 'factories and falls within the meaning of West Bengal. Shops & Establishments Act. The High Court rejected the plea of the appellant holding that the employees in question fall under the Employees' State 'Insurance Act.

Apart from the three appellants, several companies, Voltas Ltd., Hindustan Lever Ltd., Rallis India Ltd., Merck Sharp and Dohme of India Ltd., and Indian Chemical, Industries were all permitted to appear as interveners. The main contentions that were put forward in these appeals are that the Act maintains a distinction between a factory and an establishment and that the Zonal Offices and Branch Offices with which we are concerned in these appeals are in the nature of establishments and cannot be brought within the purview of factories. It was next contended that in order to bring an employee within the scope of the Employees' State Insurance Act, he should not only be an employee within the meaning of section 2(9) of the Act but also that he should be an employee of a factory as defined in section 2(12) of the Act. It was submitted that the scheme of the Act and particularly the charging section, section, 38. would indicate that the Act was intended to cover only employees in 1 factories and not employees who are connected with the work of the factory.

For appreciating the contentions of the appellants it is necessary tot set out the relevant provisions of the Employees' State Insurance Act. The object of the enactment is to provide, for certain benefits to, employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. Section 1, subsection (4) provides 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) provides that the appropriate Government may in consultation with

the Corporation and where the appropriate Government is a State 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 any other establishment or class of establishments, including commercial, agricultural or otherwise. While sub-section (4) to section 1 provides that the Act shall at the first instance apply to all factories other than seasonal factories, sub-section' (5) empowers the Government after giving six months' notice by notification in the Official Gazette to extend the provisions of the Act to any establishment or class of establishments. Before the Act is made applicable to an establishment the procedure envisaged under subsection (5) will have to be followed. It is admitted that the Government have not issued any notification as provided in subsection (5) and therefore the Act is not made applicable to any establishment. The plea on behalf of the appellants is that in, the circumstances the word "employee" should only be confined to employees who are employed in factories and not to employees who are employed in establishments. The submission is that employees in Zonal Offices for sale of manufactured' goods and employees in administrative offices are not employees, of the factory.

Section 2(9) defines "employee' as follows "employee" means any person employed for wages, in of, in connection or 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 x x x x x

(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; but does not include-

x x x x The definition as it originally stood under clause (i) applied to a person employed for wages by a person directly employed by the principal employer on any work of, or incidental or preliminary to, or connected with the work of the factory of establishment, whether such work is done by the employee in the factory or establishment or elsewhere. By an amendment by Act 44 of 1966 the words "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 the purchase (A raw materials for, or the distribution or sale, of the products of, the factory or establishment., but does not include" for the words "but does not include" were added to (iii). 'The scope of the word "employee" as defined before the amendment came to be considered by the Supreme Court in Nagpur Electric Light & Power Co., Ltd. vs. Regional Director Employees State Insurance Corporation, Etc.(1) The company in that case, carried on the work of transforming and transmitting electrical energy. There was dispute between the company and the respondent, Employees' State Insurance Corporation, as to whether certain employees of the company like engineers,

draughtsmen, clerks, accountants, etc. were employees within the meaning of section 2(9) of the Employees' State, Insurance Act. The court hold that all the employees of the disputed categories clerks or otherwise, were employed in connection with the work of the factory, that is to say, with the work of transforming and transmitting electrical power, and a person doing non-manual work can be an employee if he is employed in connection with the work of the factory and the duties, of the, administrative staff are also, directly connected within the work of the factory. The court also held that few employees who worked outside the factory but whose duties were connected with the work of the factory, the scope of the definition of the word "employee" the Court held that the assistant engineers, supervisors, electricians. and overseers are engaged in the erection and maintenance of the electricity supply lines connected with transmission of power. The cable jointer, mistries, linemen, coolies and wiremen are employed for inspection of the supply lines, digging pits, erecting poles for laying distribution mains and service lines. The attendants in-charge of the substations look after the transformation and transmission of power. The motor drivers and cleaners are employed for carrying materials and tower ladders in trucks for maintenance of the supply lines. The telephone operators attend to the telephone calls for ,ill the departments. The menial staff is required to, do miscellaneous work including be, cleaning of the

(i) [1967] 3 SCR P 92.

office compound. The motor car staff is employed to look after the cars employed in the administration section. All these employees, clerical or otherwise, are employed in connection with the work of the factory, that is to say, in connection with the work of transforming and transmitting electrical power." The Court proceeded to observe that few employees who work outside the factory have their duties connected with the work of the factory. The law therefore is clear 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 promises. The question arose whether the employees whose work was to sell the products of the factory would be called employees of the factory and as to whether persons employed purely on the administrative side of the Mills and sale of finished goods could come within the purview of the definition, of "employee" under section 2(9) of the Act. In (Employees' State Insurance Corporation, Bombay vs. Raman (Chittur Harihar Iyer) (1), Gajendragadkar J., as he then was, held that to satisfy the requirement's of section 2 (9) (i) it must be shown that the employee was employed in any work of, or incidental or preliminary to, or connected with the work of the, factory. As in the case of the factory in the present case the work "began with the collection of raw materials and ended with the production of finished articles, it would be difficult to accede, to the argument that the work of selling the products of the factory was connected with the work of the factory. The work of selling cannot be said to be incidental or preliminary to the work of the factory." In Employees' State Insurance Corporation with its Regional office at Coimbatore vs. Ganpathia Pillai and Others(2), a Bench of the Madras High Court considered the question whether persons employed in managing agent's office not connected with manufacturing process or with work of factory can be deemed to be employees liable for contributions under the Employees' State Insurance Act. Chief Justice Rajamannar held following the decision of the Bombay High. Court reported in 1957 Vol. I, L.L.J. 267 (supra) that only persons who are in some manner or other connected with the manufacturing process can be said to be employee-,; within the meaning of the definition. Adverting to the words "incidental or preliminary to" the

learned Judge held that both the words have to be understood in conjunction with the work of the factory. Accepting the affidavit filed on behalf of one of the respondents that he was not attending to, the accounts of the factory and that his work was confined to the accounts of the managing agents office, the learned Judge held it cannot be said in any sense that he was employed in any work incidental or preliminary to the work of the factory.

The amendment to section 2(9) introducing the inclusive definition referred to above was enacted by Act 44 of 1966 which came into force on 28-1-1968. It may be noted that the decisions of the Bombay and the Madras High Courts referred to above (supra) were rendered before the amendment was introduced and it appears the amendment was (2) A.I.R. 1961 Mad P. 176.

introduced for the purpose of covering cases which were held to be outside the scope of section 2(9) by the two decisions. The amended section 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. It will be seen that the work connected with the administration of the factory, the purchase of raw materials and the distribution or sale of products are brought within the scope of the definition. After the amendment therefore the plea that employment in connection with the administration of the factory or with the purchase of raw materials or distribution or sale of products cannot be contended to, be as not falling within the definition.

The contention of the learned counsel for the appellants, is that the word "factory" is confined only to persons who are employed with the manufacturing process. The definition of the word factory is as follows "factory" means any premises including the, precincts thereof 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 earned on with 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 running shed;"

> The word factory is confined to the premises including the precincts thereof where the manufacturing process is carried on. The submission on behalf of the appellants is that an employee of the factory should not only be an employee falling within the definition of the word " employee" but also an employee of the factory i.e. of a factory as defined in section 2(12). In support of their plea reference was, made to section 3 8 of the Act which requires that all employees of the factories should be insured. Section 38 lays down that all employees in factories, orestablishmentstowhichthisAct appliesshallbeinsured in the manner provided by this Act. It was submitted that to fall within the charging section 38 employees should be employees in factories and not employees connected with the work of the factory. Anil Dewan appearing for the Indian Chemical Industries submitted that the words 'employees in factories' are significant and that only employees who are employed in the factory are required to be insured and not employees who are employed in connection with the work of the factory. The learned counsel proceeded to point out that the amendment is confined only to persons employed on any work connected with the administration and not to

be employed in the factory and submitted that the applicability should be strictly confined to the employees in factories. The contention put forward, it was pleaded, is- more reasonable as the Act through out maintains a distinction between factory and establishments and it is against the tenor of the Act to bring employees in establishments within the meaning of employees of the factories. The learned counsel also pointed out that in various firms the emnloyees themselves are against their being included within the scope of the Act and the, recall-. tant position will be that as between two establishments which are functioning under the same conditions one establishment which is connected with the sale, of finished product of the factories will come within the scope of the Employees' State, Insurance Act whereas the other establishment would be outside the purview of the Employees' Stale Insurance Act. On a careful consideration of section 2(q) section 2(12), section 38 and section 39 we, are unable to, accept the restricted interpretation sought to be put upon the, words "employees La factories". Even before the amendment the, word "employee" include persons connected with the work of the factory. The Supreme Court has laid down that a person employed in connector with the work of the factory would-fall within the definition as it stood before the amendment and it may not be open to, the learned counsel to contend that it is only employees that are employed in the factory that would fall within the definition. The definition before the amendment as well as after the amendment would include not only persons employed in the factory but also in connection with the work of the factory. Thus section 39 of the Act makes the position clear. It provides that the contribution payable under the Act is in respect of an employee. It is not confined only to employees in factories. We see no justification 'for reading the words employees in factories in section 38 as meaning persons employed in factories only. We are unable to accept the contention that the employees that are required to be insured under the Act are only those employed in factories defined under section 2(12) of the Act. It was submitted that the test as to whether an employee is an employed "in a factory" is the test of not physical presence or absence outside the precincts of the factory but the test is whether be is under the control of the factory and is on the factory wage, roll, or other similar tests. We are unable to accept the contention for on a reading of the relevant sections it is clear that the word "employee"

would 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 the factory or may be employed for administrative purposes or for purchase, of raw materials or for sale of the finished goods all such employees are included within the definition of. employee'. A recent decision of the Bench of the Madras igh Court in W.Ps 144-149 and 331 of 1971 dated 14th October, 1976 has also taken a similar view. We agree with the view taken by the judgments of the Andhra High Court and of the Calcutta High Court and dismiss these appeals with costs.

P.H.P. Appels dismissed.,