
Muruga Home Industries Vs Employees State Insurance Corporation

A.A.O. No. 1 of 1990

Court: Madras High Court

Date of Decision: Dec. 21, 1998

Acts Referred:

Employees State Insurance Act, 1948 " Section 1(5), 2(12), 61, 75, 75G

Citation: (2000) 2 LLJ 590

Hon'ble Judges: K. Gnanaprakasam, J

Bench: Single Bench

Advocate: Meenakshi Sundaram, for the Appellant; G. Desappan, for the Respondent

Final Decision: Dismissed

Judgement

K. Gnanaprakasam, J.

This civil miscellaneous appeal is directed against the order dated August 30, 1989, passed by the Employees"

Insurance Court (Principal District Judge), Tirunelveli, in E.S.I. O.P. No. 4 of 1986.

2. The respondent, Employees" State Insurance Corporation, sent a notice to the appellant on June 17, 1985, informing that the Government has

extended the provisions of the Act to other establishments u/s 1(5) of the Employees" State Insurance Act, 1948 (hereinafter called as ""the Act""),

with effect from May 14, 1978, vide Notification No. 360 , dated May 2, 1978, and the appellant"s-establishment would also come under the

said notification and liable to pay contribution, to which, the appellant herein sent a reply on July 11, 1985, stating that the G.O. Ms. No. 360,

dated May 2, 1978, is not applicable to the appellant"s-establishment. The appellant-establishment is neither a ""shop"" nor an ""establishment"" as

described in the said Government order and thereby denied its liability. Further, the respondent sent a notice on March 20, 1986, to the appellant,

to which the appellant sent its reply on April 7, 1986. Thereafter, the respondent herein sent a show cause notice on April 29, 1986, calling upon

the appellant to pay contribution of Rs. 50,311.80. As against the same, the appellant filed an application u/s 75 of the Act stating that at no point

of time, twenty or more persons were employed under the appellant's-establishment and it does not come tender any of the categories as:

(1) Hotels

(2) Restaurants

(3) Shops

(4) Cinemas including theatres

(5) Newspaper establishments as defined u/s 2-A of the Working Journalists and Other Newspaper Employees (Conditions of Service) and

Miscellaneous Provisions Act, 1955 (Central Act 45 of 1955). The Beedi Workers Welfare Cess Act, 1976 (Act 56 of 1976), is a special

enactment for the welfare of the beedi workers, which is applicable to the appellant establishment, wherein the welfare of the beedi workers were

taken care of and that, therefore, the provisions of the Employees' State Insurance Act, are not applicable to the appellant-establishment.

3. The respondent, in its counter, has stated that by virtue of notification issued by the Government of Tamil Nadu in G.O. Ms. No. 360 dated

May 2, 1978, the appellant-establishment is covered under the Act. The Beedi Workers Cess Act, 1976, deals with the beedi workers and the

scope of the said Act are different from the scope of the Employees' State Insurance Act. By virtue of Section 61 of the Employees' State

Insurance Act, even if any other Act provides similar benefit, the Employees' State Insurance Act will prevail.

4. The Employees' Insurance Court, after having taken into consideration all the aspects of the case and the materials placed before it came to the

conclusion that the Act is applicable to the appellant-establishment and the appellant is liable to pay the contribution. Aggrieved by the same, the

appellant has filed the present appeal.

5. The learned advocate for the appellant has submitted that the workers of the appellant establishment are covered under the Beedi and Cigar

Workers (Conditions of Employment) Act, 1966, and the premises wherein they are carrying on their work would come under the definition of

industrial premises", which states that "industrial premises" means any place or premises (not being a private dwelling house), including the

precincts thereof, in which or in any part of which any industry or manufacturing process connected with the making of beedi or cigar or both is

being or is ordinarily, carried on with or without the aid of power. Section 3 of the Act says that no employer shall allow to be used any place or

premises as an industrial premises unless he holds a valid licence issued under this Act and no such premises shall be used except in accordance

with the terms and conditions of such licence. It is, therefore, submitted that the appellant's-establishment is an "industrial premises" and, hence, it

cannot be construed as ""shop"", as furnished in the Government Order, relied upon by the respondent. It is further argued that the beedi and cigar

workers are protected by the Beedi Workers Welfare Cess Act, 1976 (Act 56 of 1976), by which, cess is collected for the purpose of the Beedi

Workers Welfare Fund Act 62 of 1976, to provide various welfare measures to the beedi workers. The Beedi and Cigar Workers (Conditions of

Employment) Act, 1966 and the Beedi Workers Welfare Cess Act, 1976, are special enactments mainly intended and provided for the welfare of

the beedi workers, and their welfare, will be protected and taken care of by the said Act and, therefore, no contribution could be paid and it may

even amount to double taxation, and the same is not permissible under law.

6. The appellant further urged that if there is any dispute between the employer and the employee or between employer and the corporation that

has got to be referred to the Employees' Insurance Court u/s 75-G of the Act and without resorting to the said provisions, the respondent has

issued a show-cause notice calling upon the appellant to pay contribution and the same is not proper and legal. It is also further stated that at no

point of time, the appellant had employed twenty or more persons, and that, therefore, it does not come within the definition of ""factory"" as defined

u/s 2(12)(b) of the Act.

7. Per contra, the learned advocate for the respondent has pointed out that the witness examined on the part of the appellant, has deposed that 23

persons were employed in their establishment, which include the accountant, the persons who check the finished beedies, the persons who handed

over beedi leaves to the workers and also the driver of the vehicle. The said evidence would clinch the issue that the appellant was employing more

than twenty persons and that, therefore, the appellant establishment has got to be held as a ""factory"" within the definition of Section 2(12)(b) of the

Act.

8. Now, the question is whether the employees under the appellant factory would be governed by the Beedi and Cigar Workers (Conditions of

Employment) Act, 1966, and the Beedi Workers Welfare Cess Act, 1976, or under the Employees' State Insurance Act, 1948?

9. The learned advocate for the appellant has submitted that the employees of the appellant establishment would fall within the definition of

employee"" u/s 2(f) of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, for whom the Beedi Workers Welfare Cess Act is

applicable. Under the above said Act, cess is collected for the purpose of the Beedi Workers Welfare Fund Act, 1976 (Act 62 of 1976), to take

care of the welfare measures of the workers covered under the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, that therefore,

these employees cannot be equated to the employees, who are coverable under the Act. It is further submitted that cess is collected from the

employer for the abovesaid purpose and if the employer is called upon to pay contribution to the Employees' State Insurance, it amounts to double

taxation, which is not permissible under law.

10. The learned advocate for the respondent has submitted that the Beedi and Cigar Workers (Conditions of Employment) Act, 1966, governs

only in respect of employees employed in the beedi and cigar work only, but whereas the Employees' State Insurance Act, covers other

employees also. Admittedly, there are accountants, checkers, and persons who are delivering beedi leaves to the workers, to whom the Beedi and

Cigar Workers (Conditions of Employment) Act, 1966, cannot be made applicable. But, on the other hand, the provisions of the Act would be

made applicable and, therefore, the Act alone is applicable to the workers of the appellant's-establishment. Further, it is seen that the appellant is

only an "immediate employer", who handed over the beedi leaves to several persons for manufacturing and receiving them and delivering them to

manufacturer, who is the principal employer. This position is not in dispute. It is also pointed out that the "principal employer" is covered under the

Act and, therefore, the appellant-establishment is also coverable under the Act.

11. The respondent further pointed that the subject, whether the Employees' State insurance Applicable to beedi factories in and around Madras,

has come up for consideration, in batch of writ petitions in W. P. Nos. 9196 to 9199 of 1982, 9201, 9202, 10110 to 10113 of 1982 and eight

other writ petitions, before this Court. It has been held in the order passed by this Court, "that a reading of Section 61 of the Employees' State

Insurance Act shows that the benefits due to the employees protected by the ESI Act is a basic benefit, which cannot be avoided, if the Act could

be applicable and only in case a worker gets a benefit under the Employees' State Insurance Act". Based upon the said decision, C.V.

GOVARDHAN, J. has dismissed the appeal filed by the employer, viz., Seyadu Beedi Company v. Regional Director, Employees' State

Insurance Corporation 1999 III LLJ (Suppl) 128 (Mad). The facts and the principles involved in the batch of writ petitions are squarely applicable

to the case on hand and, therefore, I have to necessarily hold that the appellant establishment is coverable under the Employees' State Insurance

Act and in the said circumstances, I do not find any good or valid reason to interfere with the findings of the Employees' Insurance Court.

12. In the result, the appeal deserves to be dismissed and the same is hereby But, however, there will be no order