(1978) 1 ILR (Ker) 482 : (1978) 2 LLJ 182

High Court Of Kerala

Case No: None

Tata Oil Mills Co. Ltd. APPELLANT

Vs

E.S.I.C. RESPONDENT

Date of Decision: Sept. 26, 1977

Acts Referred:

- Employees State Insurance Act, 1948 - Section 2, 75, 77

Citation: (1978) 1 ILR (Ker) 482 : (1978) 2 LLJ 182

Hon'ble Judges: T. Kochu Thommen, J; P. Subramonian Poti, J

Bench: Division Bench

Judgement

T. Kochu Thommen, J.
The order of the Employees'' Insurance Court, Calicut, in E.I.C. No. 49 of 1971 is challenged in this appeal. The only question which arises for consideration is whether the employees in the sales office of the appellant are liable to be covered under the Employees'' State Insurance Act, 1948 (hereinafter called " the Act ").

2. The appellant is a company incorporated under the Companies Act. It has a factory at Tatapuram, Ernakulam, among other places in India. In the Tatapuram factory it manufactures mainly soaps and hair oils. It has a sales office at M. G. Road, Ernakulam, which, according to the appellant, is an establishment distinct and different from the factory at Tatapuram and it is controlled by the Head Office at Bombay. The sales office is concerned with distributing and marketing the various products manufactured by the appellant in its factory at Tatapuram as well as in its other factories. Apart from the products manufactured by the factories belonging to the appellant, the sales office also distributes the products of various other manufacturers such as Tata Finlay, Ltd., Lakme Ltd.., etc.

3. When the authorities directed the appellant to take steps to insure the persons employed by it in its sales office under the Act, the appellant approached the Employees'' Insurance Court, Calicut, u/s 77 read with Section 75 of the Act for a declaration that such

persons were not employees within the meaning of the Act, and that no contributions were due from the appellant in respect of those persons. The Court by its judgment dated 18-12-1972 held that the sales office of the appellant had no connection with the factory at Tatapuram except that it sold the products of that factory. That judgment was challenged in appeal before this Court in A.S. No. 67 of 1973. After hearing the parties the case was remanded to ascertain whether the persons employed in the sales office could be regarded as employees within the meaning of Section 2(9) of the Act as construed in the decision of this Court in Regional Director, E.S.I. Corporation, Trichur v. Ruby Rubber Works Ltd. Changanacherry ILR 1974 Ker 536. Thereupon the appellant adduced evidence before the Employees'' Insurance Court in support of its contention that the sales office in Ernakulam sold the products manufactured not only at the appellant''s factory at Tatapuram but also at various other factories belonging to it. The appellant further adduced evidence to show that apart from the products of its own factories, products of various other factories such as Tata Finlay Ltd., and Lakme Ltd., were also sold by the sales office. It was contended before the E.I. Court that the Manager of the Tatapuram factory had nothing to do with the sales office at M.G. Road, Ernakulam and that the sales office is an independent establishment under the control of the General Manager (Sales) of the Head Office at Bombay.

4. Rejecting the appellant''s contentions, the E.I. Court held by its order dated 21st July, 1976 that the persons attached to the sales office at Ernakulam were also employees within the definition u/s 2(9). The Court stated :

The applicant contends that this sales office at Ernakulam is engaged not merely in the sales of products manufactured by the company but also in the sale of products manufactured by other companies. The question whether staff engaged in the sales depot was considered by the High Court in Employees'' State Insurance Corporation v. Ruby Rubber Works and their Lordships held that the workers are liable to be insured. The only additional factor in this case is that they are selling products of other companies. Does it make any change in the character of the sales depot. It is now doubtless that employees in the sales depot are liable to be covered under the E.S.I. Act. There is no case that the other companies whose products are also sold are not liable to be covered under the E.S.I. Act. The reason behind the contention of the appellant is not made clear. in the absence of any reason to justify the stand that they are not liable to be covered. I accept the contention of the opposite party that they are liable to be covered. Hence the petition is dismissed.

5. The relevant portion of Section 2(9) of the Act reads :

''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.... includes any person employed for wages on any work connected with... the distribution or sale of the products of, the factory or establishment ;...

This definition, as held by this Court in Ruby Rubber Works case (supra) takes in persons employed on any work connected with the distribution or sale of the products of a factory or establishment to which the Act applies. If the sales office of the appellant is engaged in the distribution or sale of the products of the factory at Tatapuram, the employees attached to that sales office are also persons coming within the definition of the term ""employee" u/s 2(9). It is, however, contended by Shri K.A. Nayar, appearing for the appellant, that the sales office distributes and sells the products of not only the factory at Tatapuram but also of various other factories some of which belong to the appellant and some do not, That being the position an employee of the sales office cannot be regarded as an employee of any one factory, for, they are engaged in the work of distributing and selling the goods produced by various factories. It is, therefore, pointed out that the definition u/s 2(9) of the Act cannot be so stretched as to make an employee of the sales office at once an employee of several factories and be thus made liable to be insured under the Act in respect of each of those factories. That, counsel points out, would lead to absurdity.

6. It is undoubtedly true, and it was so held by this Court in the decision cited above, that persons engaged in the distribution or sale of the products of a factory come within the definition of the term employee. If certain persons are employed principally for the work of a particular factory although they do some other work also, they would nevertheless be attracted by the definition. If for example, an employee sells the products of a factory principally, although in the course of his work he sells the products of some other factories also in addition to his principal work, he does not cease to be an employee under the Act in relation to the factory with which he is principally connected. It is, therefore, a question of degree of his relationship with the factory with which he is sought to be connected for the purpose of the Act. If his relationship is mostly and basically with that factory and not with any other factory, he is an employee of that factory for the purpose of the Act. This is a question of fact which has to be ascertained by a general appreciation of the various circumstances connected with the employment. If, as alleged, the appellant employs persons in its sales office on the M. G. Road at Ernakulam for the purpose of distributing or selling the products of the Tatapuram and other factories, it has to be ascertained whether these employees are principally engaged in the sale of the products of the factory at Tatapuram for the purpose of making them employees of that factory under the Act. If they are not so specially connected with the Tatapuram factory, but are only employed in connection with the distribution or sale of the products of various factories with none of which they are principally connected, they cannot be treated as employees of any one factory under the Act. Apart from the appellant''s sales office, counsel submitted, others were also entrusted with the sale of the products of the factory at Tatapuram. All this, as we stated, is a matter for determination on the basis of the relevant facts and circumstances. The order under appeal is silent on these questions. We, therefore remand the case to the Employees'' Insurance Court, Calicut, to determine whether the appellant''s sales office at Ernakulam is principally engaged in the distribution or sale of the products of the appellant''s factory at Tatapuram. The parties will be given

an effective opportunity of being heard as well as for production of further evidence if they so desire before a final order is passed. With this direction the appeal is disposed of. In the circumstances, we make no order as to costs.