HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Civil Misc. Appeal No. 80 / 1988

M/s. Jodhpur Woollen Mills Ltd., 5/6, Heavy Industrial Area, Jodhpur.

----Appellant

Versus

1. Regional Director, Employees State Insurance Corporation, Bhawani Singh Road, Jaipur.
2. Manager, Local Office of Employees State Insurance Corporation, Jodhpur.

----Respondents

For Appellant(s) : Dr. Shailendra Kala
Mr. Anuj Kala

For Respondent(s) : Mr. R.K. Soni

JUSTICE VINIT KUMAR MATHUR

Judgment

23/04/2018

The present appeal is preferred against the order dated 27.02.1988 whereby the suit under Section 75 of the Employees State Insurance Act, 1948 was rejected by the Employees State Insurance Court(CJM), Jodhpur.

The short point involved in the present appeal is that whether the persons involved in the job of cleaning (spinning & carding) and sorting of the raw wool and the loading and unloading of the said bales of wool cartans etc. will be covered by the definition of 'employees'.

To appreciate controversy in the case briefly, the facts in the case are that the respondents passed an order on 10.11.1980 creating an ESI demand for a sum of Rs.38,137.20/- for which a

recovery notice was issued on 04.05.1981. The appellant contended that all the admissible dues have been deposited by it and the demand which is being raised is dehors the law.

On a suit being filed, the issues were framed and the learned trial Court after framing all the issues came to the conclusion that the appellants are liable to pay coolie cartage charges as the employees worked for cleaning (spinning & carding) and sorting of the wool are the employees covered by the ESI Act and the work of cleaning (spinning & carding) and sorting is done in furtherance of their manufacturing activities for the production of final products and, thus, the learned trial Court dismissed the suit of the appellants.

This Court need not go into other deliberations done in the impugned order as the pith and substance in the present case centres around whether such persons who are facilitating the activity of the appellants in manufacturing the final product will come under the definition of the employees or not.

Heard learned counsel appearing for the parties and perused the record of the case.

The only contention which has been raised by learned counsel for the appellant is that since the employees involved in the present case were only doing the job work and were not directly or indirectly connected with the affairs of the appellants, they are not entitled to be considered as their employee as per the definition of 'employee' as enumerated in Section 2(9) of the Employees State Insurance Act, 1948. He further submits that in view of the definition of 'immediate employer' as per Section

2(13) of the Employee State Insurance Act, 1948 the workers who were given specific job for the purpose of cleaning (spinning & carding) and sorting of the raw wool are not entitled to be considered in the employment of the appellants. He further submits that such employees are neither on their roll nor they are engaged through any contractor and not only this, the work which is performed by them is just taken note of by the employees of the appellants while giving and taking raw material. No record is maintained by the appellant and only vouchers are issued. Accordingly whatever work is performed by these persons, they are being paid the amount according to their work done.

As far as the persons involved in loading and unloading is concerned he submits that there are no fixed number of employees who are entrusted the job of loading and unloading. He further submits that on the availability of the persons, the work of loading and unloading is granted to the persons who are available and for the same they are paid remuneration accordingly.

Learned counsel for the appellant has relied upon the judgment delivered by the Hon'ble Madhya Pradesh High Court in the case of ***National India Rubber Works Ltd. Vs. Employee State Insurance Corporation, through its Regional Director; 2007 2 LLJ 584.***

On the other hand, learned counsel for the respondents submits that in view of the definition Section 2(9) of the Employees State Insurance Act, 1948, the appellants were under an obligation to consider the job workers as employee and they

were rightly issued the notice for the payment of Employees State Insurance contribution.

The work or spinning and cording of wool performed by the employees though is not done in factory precincts but the same is in the furtherance of the manufacturing activities undertaken by the appellant for the production of its final product. Hence, such employees are amenable to benefit of Employees State Insurance to be paid.

He further submits that the work of loading and unloading done by the workers engaged for the purpose are also covered under Section 2(9) of the Employees State Insurance Act, 1948 and thus, their contribution towards the ESI is required to be deposited by the appellants.

Learned counsel for the respondents has relied upon a judgment of this Court in the case of ***M/s. Jodhpur Woolen Mills Ltd. Vs. Regional Director, ESI Corporation & Ors.; 2010 LLR 369*** and the judgment of Hon'ble Supreme Court in the case of ***Hyderabad Asbestos Cement Products Ltd. Vs. Employees Insurance Court & Anr.; AIR 1978 Supreme Court 356.***

I have gone through the submissions made at bar and have examined the record of the case.

For the purpose of appreciating the controversy, it will be fruitful to reproduce the definition of 'employee' and 'immediate employee' as per Section 2(9) and Section 2(13) of the Employees State Insurance Act, 1943 which are as under:

(9) **"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

(ii) who is employed by or through an immediate employer, on the premises of the factory or establishment or under the 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 has entered into a contract of service;

1[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] 2[or any person engaged as apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), 3 [and includes such person engaged as apprentice whose training period is extended to any length of time] but does not include] -

(a) any member of [4][the Indian] naval, military or air forces; or

[(b) any person so employed whose wages (excluding remuneration for overtime work) exceed [6][such wages as may be prescribed by the Central Government] a month:

Provided that an employee whose wages (excluding remuneration for overtime work) exceed 6[such wages as may be prescribed by the Central Government] at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period;]

(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, of 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 services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer 3[and includes a contractor];

A plain reading of the definition aforesaid categorically brings the employees who are extending their services temporarily or let on hire to the principal employer will bring into the ambit of Employee. Further if a person is connected with the work of the factory for the purpose of manufacturing their final product and extending the services to the employer even from his home or any other place and will thus be amenable to the provisions of Employees State Insurance, Act, 1948 and, therefore, is liable to make contribution for the purpose.

The controversy with respect to the work of loading and unloading is concerned, it has been settled by this Court in the case of appellants itself wherein this Court has held as under:-

> "I have perused the definition of the workman also as enumerated in Section 2(9) of the ESI Act. In my opinion, any work is executed outside the factory premises regularly for the purpose of loading or unloading, it is certainly covered under the definition of workman under Section 2(9) of the Act, therefore, in absence of any documentary evidence, it cannot be said how the work was executed, therefore, the learned trial Court has rightly arrived at the finding that in the absence of any evidence contrary to the fact that work was executed by workmen, it cannot be presumed that ESI is not leviable from the appellant-plaintiff. In my Opinion, the appellant has failed to even make out prima facie case before the trial Court because it has not led any cogent evidence except statement of PW-1 S.G. Kale who is employee of the firm, therefore, issue wise finding of the trial Court does not require any interference nor any re-

appreciation upon the finding is warranted in this case. Hence, the appeal is dismissed."

As far as the performance of the job work for the coheing and sorting (spinning and carding) of the raw wool is concerned, the Hon'ble Supreme Court in the case of ***Hyderabad Asbestos Cement Products Ltd. Vs. Employees Insurance Court & Anr.; AIR 1978 Supreme Court 356*** has held as under:

"13. It was submitted that the test as to whether an employee is an employee "in a factory' is the test of not physical presence or absence outside the precincts of the factory but the test is whether he 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 "employ". A recent decision of the Bench of the Madras High Court in W.Ps. 144-149 and 331 of 1971 dated 14th October, 1976 (Mad.) 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."

If a person is connected with the work/manufacturer of a final product of a factory then employee will be liable to be paid a contribution towards the Employees State Insurance Act, 1948.

The judgment cited by the learned counsel for the appellant in the case of National Rubber Works Ltd. is not applicable in the present case as it has been established in the order impugned that the workers in the present case were performing the job connected with the work of the factory propagating the work of

manufacturing of the final product therefore the definition of 'employee' is fully applicable in this case on such employees/workers.

Besides this, in view of the authoritative pronouncement of the judgment of the Hon'ble Supreme Court as well as the Coordinate bench, I am not inclined to interfere in the order dated 27.02.1988 passed by the learned Employees State Insurance Court (CJM), Jodhpur.

The appeal thus fails and the same is hereby dismissed. No order as to costs.

(VINIT KUMAR MATHUR), J.

Ramesh/72