



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT  
JODHPUR**

S.B. Civil Misc. Appeal No. 184/1991

M/s. Rajasthan Patrika Pvt. Ltd. Jodhpur

----Appellant

Versus

Regional Director, employees State Ins.c.

----Respondent

Connected With

S.B. Civil Misc. Appeal No. 292/1989

M/s. Rajasthan Patrika Pvt. Ltd. Jodhpur

----Appellant

Versus

Regional Director, employees State Ins.c.

----Respondent

S.B. Civil Misc. Appeal No. 183/1991

M/s. Rajasthan Patrika Pvt. Ltd. Jodhpur

----Appellant

Versus

Reginol Director, employees State Ins.co.

----Respondent

For Appellant(s) : Mr. Shlendra Kala  
Mr. Anuj Kala

For Respondent(s) : Mr. RK Soni  
Mr. Mridul Jain  
Mr. Sanjay Mathur

**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI**

**Order**

**16/09/2019**

1. The question arises in these three civil misc. appeals is whether the employer M/s Rajasthan Patrika Private Limited is required to cover its certain employees / services for the purposes



of the Employees' State Insurance Act, 1948. The demand raised by the ESI on certain issues has been refuted by the appellant. The demands raised in pursuance of the communications dated 05.10.1984 and 03.12.1985 reads as follows :-

*"(i) & (ii): Rs.7,317/- and Rs.9,000/-: Payment to the Employees of Goliat Detectives.*

*The security guards who are already employees of Goliat detective, the company charge remuneration for providing guard for security of the office of the Patrika. They are employees of Goliat Detective and their salaries are paid by Goliat Detectives and not by the appellant.*

*(iii) Rs.475/- : Labour charges paid for white washing etc.*

*This amount is paid to labour who are engaged for white washing in which costs of material like – kali, Chuna, colour and Brush etc. are included for doing white-washing in the building.*

*(iv) Rs.8455/-: For building repairs.*

*This amount is spent on building extensio and reparis inclusive costs of material, like Chuna, Kali, Bazari, Cement, Stone etc. and also the labour charges. The labour provided are not the employees of company but they are engaged for construction purposes whose names are not even known because they are engaged by the Thekedar from the road side every now and then.*

*(v) Rs.4304/- : Paid to Fitter.*

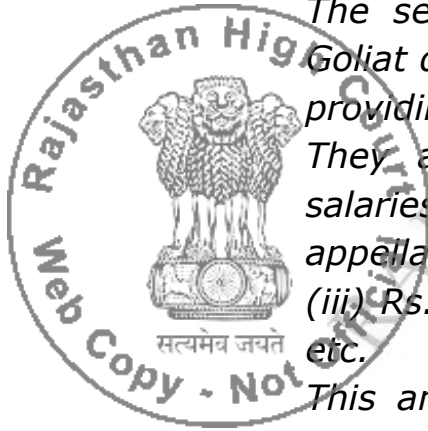
*This amount is paid for fitting of sanitary including the costs of sanitary articles whichis got fitted which consists major amount of costs of articles and petty amount for labour.*

*(vi) Rs.2901.25 P : Paid for composing and Proof reading.*

*Whenever necessity arises, some time proof reading and composing job had to be got done from the market and the amount is paid for this work.*

*(vii) Rs. 15,888.87 P : Maintenance of machinery and shifting etc.*

*For maintaining of machinery, this amount is spent for consumable articles for replacing of certain instruments in the machine. For such head of items ESI has wrongly levelled."*





2. The demand raised in pursuance of the communication dated 06.07.1981 reads as follows :-

"(i) to (vii) were pointed out :-

(I) Rs.2250/- paid to the persons employed for general repairs.

No regular labour is employed. It is the amount spent on routine repair contingently inclusive the price of material used in repairs.

(ii) Rs.1300/- : Paid to the persons employed for carriage and forwarding:

This amount is spent for taking bundles to Railway station and Bus station and for loading it in rail and bus, paid to coolies engaged n the spot from time to time.

(iii) Rs.6485.30 P paid to persons employed for building repairs.

This expenditure includes labour charges engaged or a day or two for petty repairs through the agency of Thekedars. It includes material-Kali, Chuna & cement etc.

(iv) Rs.115/- paid to the persons employed for delivery.

This pertains to Auto Rikshah charges for taking Newspapers and for taking dak charges etc.

(v) Rs.1379.60 P. paid to persons employed for graining works.

The amount is spent for cutting and cleaning of Aluminium and Iron plates pertaining to the Blocks for printing.

(vi) Rs.6712.50 P paid to persons employed for packing work.

This amount is paid for the packing of news-paper on the basis of bundles to the contractors.

(vii) Rs.17767.32 P. paid to persons employed for composing proof reading work on contract basis.

Whenever it is needed this job work is arranged from the market shops. "

3. Learned counsel for the appellant has drawn the attention of this Court to certain precedent law, a gist of which reads as follows :-

**"C.E.S.C Limited Etc. Vs. Subhash Chandra Bose reported in AIR 1992 Supreme Court 573;**



*Employee – Who is – Employment through immediate employer – Establishment of employer-employee relationship between principal employer and employees appointed by immediate employer – Determination – Criteria – Supervision by principal employer or his agent, of work of employees appointed by immediate employer – Essential.*

***ESI Corporation Vs. Bethall Engineering Company reported in 2007 LLR 1054;***

Section 2 (9) 'Employee' – Clarification and interpretation of – For the purposes of coverage under the Act – Where an employer entrusts the work to a third party-contractor and latter engages independent workers to carry on the work as entrusted – The employees of such contractor will not be treated as employees of the employer entrusting the work since the principal employer could not exercise any supervision as envisaged in sub-clause (9) of section (2) of the Act. Right of principal employer to reject or accept work done by contractor through his employees, by itself not to be construed as effective 'supervision' under Section 2(9).

***Indian Oil corporation Ltd. Vs. Employees' State Insurance Corporation reported in 2008 LLR 1070;***

Dispute pertaining to employment of certain casual workers engaged through independent contractors to execute works relating to cutting grass, repair of the boundary wall of the two LPG bottling plants of the appellant – Definitions of the terms "Employee", "Principal employer" and "Immediate employer" discussed.

Held : A person engaged casually in connection with processes which are not integral parts of or incidental to or preliminary to or connected with the operations of the establishment, though such engagement may be for long period, such deployment would not make the workman an employee as defined under section 2(9).

The issue could not have adjudicated without considering the work contracts awarded by the appellant to independent contractors and the supervisory control of the appellant.



The matter calls for a remand – Appeals allowed.

***National India Rubber Works Ltd. through its Factory Manager, Katni Vs. Employees' State Insurance Corporation, through its Regional Director, Indore & Anr. reported in 2007 LLR 993;***

Work of cutting and polishing of rubber items done on contract basis – The Company had no control or supervision over such work carried on through the contractor – Evidence of company un rebutted – Employees of contractor, would not come within sweep of section 2(9) of E.S.I. Act – The appellant-company was therefore held not be come within the ambit of 'immediate employer' as envisaged by section 2(3) of the Act.

***Employees' State Insurance Corporation Vs. RK Furnaces & Anr. reported in 2007 LLR 14;***

The workmen of casual contactors like plumbers,, electricity repairers, air conditioner repairers, computer repairers, T.V. repairers, etc. who are engaged for temporary repair work – Would not be covered by the provisions of the said Act.

***Employees' State Insurance Corporation Vs. Prakash Paper Mart reported in 2003 LLR 1126;***

Respondent firm carrying on business in the manufacture and sale of students' note books and registers etc. – Entrusting the binding work to book binders for binding in books – payment being made to various binders on piece rate basis – Binders binding books with workers of their choice and returning bound books to the employer – No evidence to establish workers employed by binders work in premises of principal employer – No proof that principal employer has any control over binders or their employees – Employer firm not the principal employer for employees of binders for purposes of Act – Demand pertaining to conversion charges of workers doing work of binding books liable to be set aside.



***E.I.D. Parry (India) Ltd. Vijayawada Vs. Employees' State Insurance Corporation & Anr. reported in 2002 LLR 753;***

Hamalies engaged only for loading, unloading and storing of goods in godown – They are not employees of the Company – These workers are also available for such type of work to others also – No evidence to show that they are engaged exclusively by the appellant for their work – No contribution to be paid for hamalies.

***Employees State Insurance Corporation Vs. J.M.d. Fashions, passed by Karnataka Court in MFA No.1089/2001;***

The appellant claimed contribution on conversion charges and job work entrusted to the outside establishments for stitching for the period from 1992-1994.

Outside establishments are not immediate employers under section 2(13) of the Act. In view of this, in my considered view, there is no merit in this appeal and hence it is liable to be dismissed.

***Abu Marble Mining Pvt. Ltd. Vs. Regional Directors, ESI Corp. Mumbai reported in 2005 LLR 184;***

Section 2(9) – 'Employee' – Work of marble fixation done outside the factory premises – Carried upon by the contractor – ESI Authorities demanded contribution on the payment made to the contractor for such work. – Merely because the material is supplied at the site and that is laid by the contractor i.e., immediate employer, it cannot be said that, that would be work which is incidental to the work of the factory or for the purpose of the factory. There was nothing to show that the employees engaged by the immediate employer fell within the extended definition of 'employee' within the meaning of section 2(9) of the ESIC Act.

***National India Rubber works Ltd. Vs. Employees' State Insurance Corporation through its Regional Director, M.P. & Anr. reported in 2007 LLR 838;***



So far as the carrying out necessary repair of building is concerned, I am placing reliance on the decision of Patel Printing Press (supra) in which it has been held that the wages paid to employees of contractor for construction of building, since construction activity was not in connection with the work of establishment, therefore, the demand of contribution was not legal.

Sinch the appellant is not supervising the work of the employees of the contractors, therefore, I am of the view that the appellant company would not come under the ambit and sweep of "immediate employer" as envisaged under S.2(13) of the said Act, nor those employees of the contractors would come under the ambit and sweep of "employee" as defined under S.2(9) of the Act.

***Employees' State Insurance Corporation Vs. R.K. Furnaces & Anr. reported in 2007 LLR 14.***

Four workers engaged in respondent's establishment – For changing the electrical wiring – Coverage intimation was sent to respondent by ESIC – Held that this position is well settled in law – The workmen of causal contractors like plumbers, electricity repairers, air conditioner repairers, computer repairers, T.V. repairers, etc. who are engaged for temporary repair work would not be covered by the provisions of the said Act."

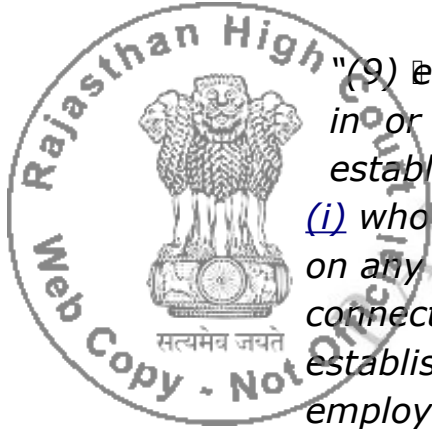
4. Learned counsel for the appellant has also drawn attention of this Court towards the aforementioned precedent law to demonstrate that the employer would be liable for payment under the ESI Act only if the employer is immediate and the principal employer is directly supervising the agent or employee in question.

5. Learned counsel for the appellant has further demonstrated that the workmen like plumbers, electricity men, air conditioner repairing persons, computer repairing persons, TV



repairing persons, who are engaged for temporary repair works would not be covered by the provisions of the Act.

6. Learned counsel for the respondents have however, drawn attention of this Court towards the definition of employee under Section 2 Sub-section 9 of the Employees' State Insurance Act, 1948 which reads as follows :-



"(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;

<sup>17</sup> [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] <sup>18</sup> [or any person engaged as apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), <sup>19</sup> [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 <sup>20</sup> [the Indian] naval, military or air forces; or

<sup>21</sup> [(b) any person so employed whose wages (excluding remuneration for overtime work) exceed <sup>22</sup>





*[such wages as may be prescribed by the Central Government] a month:  
Provided that an employee whose wages (excluding remuneration for overtime work) exceed<sup>22</sup> [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;]"*

7. Learned counsel for the respondents have further

submitted that the basic law regarding the disputed question of

facts is as follows :-

"1. Short period contract for service —  
Electrician, Carpenters, Mechanics, Plumbers etc.  
/ Repair work done on shop :-

*In such cases also contribution is payable on the amount paid by the Employer if the services are rendered within the premises. This view was also held by Punjab and Haryana High Court vide its judgment dated 29.03.1894 in the case of Modern Equipment Vs. ESIC in Civil Appeal No.3218/1989.*

2. Expenditure on Servicing on Machines :

*NO contribution is payable on the servicing of machines where the job awarded is under an annual maintenance and service contract with a servicing unit and instead of contract of service, there is a contract for service for servicing of machines. (the underlying reason is that generally that it is a purely technical job of a short duration done by different persons at different points of time and they are done at infrequent intervals at times convenient to him, thus leaving no scope for their coverage and control over their wages).*

3. Expenditure on annual / periodical service contract :

*In the factories / establishment certain amount is being paid by the employer to the supplier of machines or to the firms of repute for the annual / periodical servicing of the machines and for such purposes the contract is awarded. In such*





*cases no contribution is payable on the amount paid for annual / periodical service contracts.*

**4. Commission to Dealers / Agents:**

*Where dealers / agents are appointed by the employers but no regular wages are paid and it is not obligatory on the part of such dealers / agents to attend to the factories / establishments and they are paid commission only on the quantum of sales, in such cases the amount paid by the employer as commission / dealership does not constitute wage under Section 2(22) of the ESI Act and hence no contribution is payable.*

**5. Service contract :**

*Amount paid to an organization for maintenance of Machinery / Equipment as part of service contract will not attract ESI contribution.*

8. After hearing learned counsel for the parties at length and perusing the record of the case as well as aforesaid precedent law, this Court finds that for coming to the conclusion, the precedent law is the guiding factor and what is to be seen by this Court is whether the functions being discharged by the concerned employee were correlating with the role of the immediate employer and is having direct nexus with the establishment in question. It is also to be seen whether the work is to be done under the immediate supervision of the employer in question.

9. This Court is conscious of the fact that the employee covered under the Employees State Insurance Act, 1948 includes temporary workers and daily wagers as well as the contractual appointees, who are connected with the administration of factory or establishment or any part,



department or branch thereof or with the purchase of raw materials for, or distribution or sale of the products of the factory or establishment or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961. Thus, for determining the purview of relationship defined under Section 2(9) of ESI Act, 1948 each dispute raised has to be adjudicated separately. The adjudication of the dispute shall have to have direct correlation with the job of the employer, which in this case is of a media house & publication. Thus, while applying the definition under Section 2(9) of the Act as well as precedent law cited by both the parties, this Court lays down the following conclusions :-

10. The conclusions pertaining to the communications dated 05.10.1984 and 03.12.1985 are as follows :-

(i) & (ii) are pertaining to security of the premises which is directly related to the daily administration of the establishment and thus, even when being contractual, they fall within the definition of Section 2(9) (iii) and thus, payments towards the same are required to be made to the ESI department.

(iii) white washing is incidental to the maintenance of the premises. However, it is a not a regular part of functioning of the employer in this case, and therefore, does not fall within the purview of payment of contribution.

(iv) is building repairs which is neither concerned with the administration of the factory and nor concerned with the direct functioning of the employer and not done under the direct



supervision of the principal employer and is also not incidental to the principal job of the appellant and thus, contribution of ESI is not payable.

(v) Fitter is also not incidental to the basic functioning of the present employer and does not fall within the incidental work connected to the principal work or for any kind of work defined under Section 2(9) of ESI Act, 1948, and therefore, the contribution is not payable.

(vi) composing and proof reading are the work which are directly associated with the media printing and publishing work being done by the present employer and is directly covered under the definition contained in Section 2(9), as it is directly connected with the discharge of the functions of the appellant and is being supervised by it, and therefore, the contribution shall be payable.

(vii) Maintenance of machinery and shifting is directly concerned with the discharge of the functions of the present appellant and fall within the purview of Section 2(9) and thus, the contribution is payable.

11. The conclusions pertaining to the communication dated 06.07.1981 are as follows :-

(i) is about general repairs where no regular labour is required and it is a one time job which is contingent upon the requirement from time to time and thus, does not fall within the principal employership of the appellant and is not incidental to



the same, and hence, the contribution is not payable.

(ii) Contribution for carriage and forwarding of the newspapers bundles is in direct context with the job being done by the establishment of principal employer, and hence, directly comes under the purview of the ESI Act, 1948. The definition under Section 2(9)(iii) includes distribution or sale of products and thus, the carriage and forwarding is covered under Section 2(9)(iii) of ESI Act and thus, the contribution is payable.

(iii) is for building repairs which does not commensurate with the direct work of the employer and is neither incidental to the preliminary nor the direct work of the employer or the establishment. The building repairs is a contingency which has to be taken care of as a one time measure and in this particular case, do not relate to the principal employer's main job and neither has to be done under its direct supervision. Hence, the contribution is not payable.

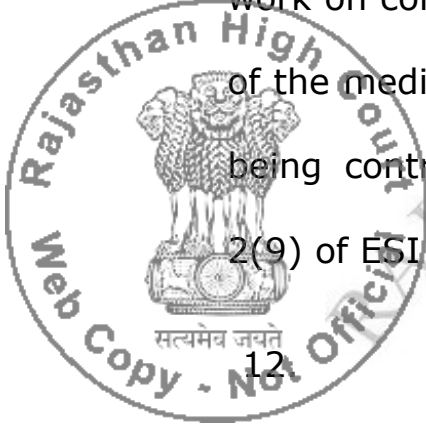
(iv) The employee engaged for delivery of the newspaper i.e. Auto Rickshaw and Dak charges are directly covered under Section 2(9)(iii) as the distribution and sale of the products of the establishment require the supervision and thus, the contribution is payable.

(v) Graining works is directly related to the blocks for printing and is done under direct supervision of the employer establishment and further it is principal job being conducted by the employer and hence, the contribution is payable.



(vi) Packing work of the newspaper of the bundles is also directly incidental to the principal work done by the principal employer as it falls within the clear definition of Section 2(9) (iii) and thus, the contribution is payable.

(vii) The persons employed for composing and proof reading work on contract basis are directly covered with the principal job of the media publishing and printing house and thus, even when being contractual are covered under the definition of Section 2(9) of ESI Act, 1948. Hence, the contribution is payable.



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In light of the aforesaid observations, the present appeals are disposed of. This Court has dealt with each head separately as the purview and ambit of the application of the Act on the heads was different. The conclusion drawn by this Court in each head shall be binding upon by both the parties. It is needless to say that qua the heads in respect whereof the Court has concluded that the contribution shall be payable, the respondent shall be free to impose a maximum interest @ 6% per annum. Stay petitions also stand disposed of.

**(DR. PUSHPENDRA SINGH BHATI),J**

18-sudheer/-