

Shri Navakesari Prakashan Ltd. and Others

Vs

Employees' State Insurance Corporation and Others

Civil Appeals Nos. 3296-97 of 1984

(A. P. Sen, E. S. Venkataramiah JJ)

15.10.1984

JUDGMENT

VENKATARAMIAH, J. -

1. Shri Navakesari Prakashan Ltd. and Nav Samaj Ltd., Nagpur are the appellants in the above two appeals by special leave filed under Article 136 of the Constitution. The appellants respectively are printers and publisher of newspapers known as 'Tarun Bharat' and 'Nagpur Times'. Their case is that their employees working for wages in the administrative and editorial sections of their respective concerns were not 'employees' as defined in Section 2(9) of the Employees' State Insurance Act, 1948 (hereinafter referred to as 'the Act') prior to November 19, 1976 on which date by a notification issued under Section 1(5) of the Act the Government of the State of Maharashtra made the Act applicable to the said employees also and the therefore they were not liable to make any contributions under the Act in respect of the said employees up to that date. They however admit their liability to make contributions during that period in respect of persons employed by them for wages in the printing presses belonging to them.

2. The dispute regarding the liability of the appellants to make contributions under the Act in respect of the members of the administrative and editorial staff arose on the Assistant Regional Director of the Employees' State Insurance Corporation calling upon them by notice issued on October 1, 1975 to make contributions in respect of the said members also with effect from January 28, 1968 on which date the amended definition of the expression 'employee' in Section 2(9) of the Act as per the Amending Act 44 of 1966 came into force. After the above demands were made, the appellants filed applications before the Employees' Insurance Court, Nagpur under Section 75 of the Act questioning their liability to make contributions in respect of their employees working in the administrative and editorial sections of their presses during the period between January 28, 1968 and November 19, 1976. They, however, did not dispute their liability in respect of the period subsequent to November 19, 1976 on which date the notification was issued under Section 1(5) of the Act by the Maharashtra State Government. The applications were contested by the Employees' State Insurance Corporation. The Employees' Insurance Court allowed the applications holding that until the notification under Section 1(5) of the Act was issued by the State Government making the Act applicable to the establishments of the appellants viz. the administrative and editorial sections of their presses, the employees working in those section could not be considered as 'employees' as defined by Section 2(9) of the Act. Aggrieved by the judgment of the Employees' Insurance Court, the Employees' State Insurance Corporation filed appeals before the High Court of Bombay under Section 82 of the Act. The High Court allowed the said appeals holding that the employees concerned came within the definition given in Section 2(9) of the Act and, therefore, the appellants were liable to make contributions during the relevant period in respect of them also under the Act.

The appellants have filed these appeals against the judgment of the High Court.

3. Before dealing with the contentions raised by the appellants, it has to be stated that the members of the administrative staff and the editorial staff of each of the printing presses are employed by the management concerned for the purpose of carrying on the business of printing and publishing the newspaper brought out by it. The correctness of this finding of fact recorded to the above effect by the High Court is not assailed before us. The main contention of the appellants, however, is that since during the relevant period they had maintained, a distinction between the factory sections of their printing presses and the establishment sections which included the administrative and editorial sections of their presses, the employees in the establishment sections could not be treated as employees to whom the Act was applicable until the notification issued under Section 1(5) of the Act expressly brought the said establishment sections also within the scope of the Act.

4. Section 2(9) of the Act which defines the expression 'employee' during the period in question read thus :

2(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 employers 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 service 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 -

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

(b) any person so employed whose wages excluding remuneration for overtime work exceed five hundred rupees a month :

Provided that an employees whose wages excluding remuneration for overtime work exceed five hundred rupees a month 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.

5. The object of the Act is to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provisions for certain other matters in relation thereto. Section

1(4) of the Act provides that it shall apply, in the first instance, to all factories (including factories belonging to the Government) other than seasonal factories. The expression 'factory' is defined by Section 2(12) of the Act as 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 carried 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 railway running shed. It is admitted, as mentioned earlier, that the printing presses owned by the managements where the newspapers are printed and published are factories and are governed by the Act. Section 1(5) of the Act, however, provides that the appropriate Government may, in consultation with the Employees' State Insurance 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 the Act or any of them, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. The expression 'establishment' is not defined in the Act. It may be any industrial, commercial, agricultural or any other establishment where employees are engaged in connection with the business of the establishment. Section 38 of the Act provides that subject to the provisions of the Act, all employees in factories or establishments to which the Act applies shall be insured in the manner provided by the Act. Section 39 of the Act states that the contribution payable under it shall comprise contribution payable by the employer and contribution payable by the employee. The contributions have to be paid at the rates specified in the First Schedule to the Act except where the employees concerned are excluded from some of the benefits under the Act in which case the Corporation is authorised to fix the rates of contributions.

6. Now reverting to Section 2(9) of the Act it is seen that the expression 'employee' means any person employed for wages in a factory or any person employed for wages in connection with the work of a factory. It also means any person employed for wages in or in connection with the work of an establishment to which the Act. Applies. If it is held in these cases that the employees in the administrative or editorial sections of the printing presses are employed in connection with the work of the printing presses which are admittedly factories, then they have to be treated as employees under Section 2(9) of the Act even though no notification is issued under Section 1(5) of the Act making the Act applicable to those sections. The fact that such a notification has been issued, either as a matter of abundant caution or on a wrong understanding of the true implication of the definition in Section 2(9), becomes irrelevant. The members of the administrative and editorial staff of the appellants are no doubt not working in the printing presses. But the question is whether they are not working in connection with the work of the printing presses which are factories under Section 2(12) of the Act.

7. At this stage, two decisions of this Court are required to be considered. In *Hyderabad Asbestos Cement Products Ltd. v. Employees Insurance Court* ((1978) 2 SCR 345 : (1978) 1 SCC 194 : 1978 SCC (L&S) 47 : 1978 Lab IC 307), the appellant company which had a factory at Sanatnagar where it was manufacturing asbestos sheets contended that the employees working in its zonal offices situated at various other places who were doing the work of canvassing for the sale of products manufactured by it at Sanatnagar were not employees within the definition of Section 2(9) of the Act as the zonal offices were establishments and not factories. Negating the above contention, this Court held that any person employed for wages in the zonal offices for the purpose of purchase of raw materials or distribution or sale of the products of the factory or for administrative purposes of the factory was a person employed in connection with the work of the factory and hence was an employee as defined by Section 2(9) of the Act. The Court in reaching the conclusion also relied on the amendment of Section 2(9) of the Act by Act 44 of 1966 which provided that the expression

'employee' included "any person employed for wages on any work connected with the administration of the factory".

8. In *Royal Talkies, Hyderabad v. Employees State Insurance Corpn.* ((1979) 1 SCR 80 : (1978) 4 SCC 204 : 1978 SCC (L&S) 497 : (1978) 2 LLJ 390) employees working in a canteen and at the cycle stand attached to a cinema theatre were held to be persons employed in connection with the work of the cinema theatre. The Court, however, observed that merely being employed in connection with the work of a factory or of an establishment in itself did not entitle a person to be an employee but it must be proved that he was not only employed in connection with the work of the establishment but also be shown to be employed in one or other of the three categories mentioned in Section 2(9) of the Act.

9. When the present appeals are considered in the light of the above decisions, the members of the administrative staff and of the editorial staff in each of the printing presses in question have to be treated as employees under Section 2(9) of the Act. These persons are directly employed by the management concerned on work incidental or preliminary or connected with the work of the factory. The work of the factory in each case being printing and publication of a newspaper, its work cannot be carried on without the assistance of the members of the editorial staff who are engaged in preparing the material for printing the newspaper and of the administrative staff which is needed for managing the affairs of the factory. It is a matter of common knowledge that the members of the editorial staff work almost round the clock at the premises where the printing press is situated or at the precincts thereof. Their principal job is to pick up and select from out of the mass of information which flows into the press, messages which have news value, trim them and make them fit for communication through newspaper. Even though they may not be actual engaged in operating the printing machines, their presence at the spot is essential right upto the moment the 'strike order' is given for the printing of the newspaper. There are cases where changes in the matter to be printed are effected even a few minutes before the process of printing is begun and cases where even after a few copies of newspaper are printed, they are withheld and destroyed on the last minute advice of a responsible member of the editorial staff are not unknown. The editors, news editors, sub-editors, reporters etc. who constitute the editorial staff at the press are collectively referred to as the 'gate keepers' of news because they determine what should be published and what should not be published. A printing press established for the purpose of publishing a newspaper cannot effectively function at all without the services of the members of the editorial staff being made available almost till the time the newspaper comes out of the printing machine. They virtually constitute an integral part of the newspaper press and they are employed in connection with the work done at the printing press. The members of the editorial staff clearly fall under clause (i) of Section 2(9) of the Act. It is so even in the case of the administrative staff. They fall under the clause containing the words "includes any person employed for wages on any work connected with the administration of the factory". It may be stated here that even without the amendment made by Act 44 of 1966 this Court in *Nagpur Electric Light and power Co. Ltd. v. Regional Director Employees' State Insurance Corporation* ((1967) 3 SCR 92 : AIR 1967 SC 1364 : (1967) 2 LLJ 40) had taken the view that the clerical staff etc. of a factory whether they worked within the factory or outside its premises would be employees under Section 2(9) of the Act as it stood before in amendment.

10. The argument that since a person mainly employed in a managerial or administrative capacity cannot be treated as a working journalist under Section 2(f) of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, the members employed in the administrative staff should not be treated as employees in a printing press is an extremely tenuous argument and it is not worth probing further. The effect of an Act cannot be controlled by the provisions of another

Act unless the provisions in one have bearing on the provisions of the other. No such provision is brought to our notice. The contention that since the Act is not expressly made applicable to newspaper establishment by the Working Journalists (Conditions of Service) Miscellaneous Provisions Act, 1955, as it has made certain laws applicable by Section 3, 14 and 15 thereof, the Act should not be applied to the editorial staff has also no merit. We are satisfied that Section 2(9) of the Act clearly brings them within the scope of the Act.

11. On an examination of the provisions of the Act, we are of the view that the persons employed for wages in the administrative section and the editorial section of each of the printing presses in question are employees as defined in Section 2(9) of the Act and the demand made by the Employees' State Insurance Corporation is a justified one.

12. In the result the appeals fail and they are dismissed with costs.

</html