

M/S. Hindu Jea Band, Jaipur

Vs

Regional Director, Employees' State Insurance Corporation, Jaipur

Special Leave Petition (Civil) No. 1743 of 1987

M/S. Hindu Jea Band, Jaipur

Vs

State of Rajasthan and Others

Civil Writ Petition No. 197 of 1987

(K. N. Singh, E. S. Venkataramiah JJ)

20.02.1987

JUDGMENT

E. S. VENKATARAMIAH, J. -

1. The petitioner M/s. Hindu Jea Band, Jaipur which is a partnership firm carrying on the business of playing music on occasions, such as, marriages and other social functions questioned its liability to pay the contribution under the provisions of the Employees' State Insurance Act, 1948 (hereinafter referred to as 'the Act') in a petition filed under Section 75 of the Act before the Employees' State Insurance Court, Jaipur principally on two grounds (i) that the place where it was carrying on business was not a shop and (ii) that its business being one of intermittent or seasonal character the Act could not be extended to its business. The Employees' State Insurance Court rejected the petition filed by the petitioner and directed it to pay the amount which had been computed as the arrears by the Regional Director of the Employees' State Insurance Corporation, Jaipur. And appeal filed against the decision of the Employees' State Insurance Court, Jaipur by the petitioner was dismissed by the High Court of Rajasthan. This petition under Article 136 of the Constitution is filed against the judgment of the High Court. The petitioner has also filed a writ petition under Article 32 of the Constitution questioning the validity of sub-section (5) of Section 1 of the Act and the notification issued by the State Government under it to which reference will be made hereafter.

2. The Act did not apply to shops and such other establishments straight away on the Act coming into force in the State of Rajasthan. But by the notification dated September 20, 1975 issued under sub-section (5) of Section 1 of the Act the Government of Rajasthan extended all the provisions of the Act to certain classes of establishments and areas in the State notification. Item 3 (iii) in the Schedule to the said notification brought within the purview of the Act shops in which 20 or more persons had been employed for wages on any day of the preceding 12 months and appointed October 26, 1975 as the date from which the said notification would come into force. The petitioner as held by the Employees' State Insurance Court, had employed 23 persons on wages during the relevant period. Since the petitioner did not comply with the provisions of the Act the authorities of

the Employees' State Insurance Corporation, Jaipur called upon the petitioner to make contributions as required by the Act with effect from October 26, 1975. The petition before the Employees' State Insurance Court was filed by the petitioner on such a demand being made on it questioning the validity of the said demand.

3. The first contention urged in support of the petition is that since the petitioner was not selling any goods in the place of its business but was only engaged in arranging for musical performances on occasions such as marriages etc. its business premises cannot be called a 'shop'. We do not agree with the narrow construction placed by the petitioner on the expression 'shop' which appears in the notification issued under Section 1(5) of the Act which is a beneficent legislation. The word 'shop' has not been defined in the Act. A shop is no doubt an establishment (other than a factory) to which the Act can be extended under Section 1(5) of the Act provided other requirements are satisfied. In Collins English Dictionary the meaning of the word 'shop' is given thus :

(i) a place esp. a small building for the retail sale of goods and services and (ii) a place for the performance of a specified type of work; workshop.

It is obvious from the above meaning that a place where services are sold on retail basis is also a shop. It is not disputed that the petitioner has been making available on payment of the stipulated price the services of the members of the group of musicians employed by it on wages. We, therefore, hold that the place where the petitioner has been carrying on business is a shop to which the Act is applicable by virtue of the notification referred to above. The first contention, therefore, fails.

4. We do not find much substance in the second contention too. The fact that the services are rendered by the employees engaged by the petitioner intermittently or during marriages does not entitle the petitioner to claim any exemption from the operation of the Act. The petitioner cannot rely on sub-section (4) of Section 1 of the Act which refers to factories only in support of its case. We are concerned in this case with a shop and not a factory as defined under Section 2(12) of the Act. Moreover the services of the employees of the petitioner are not confined only to marriages. It cannot also be said that marriages take place only during a specified part of the year. Nowadays marriages take place throughout the year. The petitioner provides music at several other social functions also which may take place during all seasons. The definition of an 'employee' under the Act has a wider meaning. The employees who worked outside the business premises but those whose duties are connected with the business are also 'employees' within the meaning of Section 2(9)(i) of the Act. (See Nagpur Electric Light & Power Co. Ltd. v. Regional Director, ESIC ((1967) 3 SCR 92 : AIR 1967 SC 1364).) Even those employees who are paid daily wages or those who are part-time employees are employees for purposes of the Act. Hence we do not find any merit in this special leave petition. The petition, therefore, fails and it is dismissed.

5. Alongwith the special leave petition the petitioner has presented before this Court a writ petition under Article 32 of the Constitution questioning the validity of the notification issued by the State Government on the ground that the power conferred under the Act on the State Government by sub-section (5) of Section 1 authorising the State Government to extend all or any of the provisions of the Act to other establishments in the State suffers from the vice of excessive delegation of essential legislative powers. It is also contended that the application of the Act to business like the one which is being carried on by the petitioner during certain seasons only of the year is violative of Article 14, Article 19(1)(g) and Article 21 of the Constitution. Having carefully considered the submission made by the learned counsel for the petitioner we find no merit in any of the contentions urged in

the writ petition. The writ petition is also, therefore, dismissed.

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