SUPREME COURT OF INDIA

Saraswath Films

Vs.

Regional Director, E.S.I. Corporation, Trichur

(D Mohapatra, B Kumar and D Dharmadhikari JJ.)

01.05.2002

ORDER

1. Leave is granted.

2. The appellant M/s Saraswath Films is the lessee of the cinema hall named 'Padma Movie House' at Ernakulam owned by Mr. A.L. Sreenivasa Shenoy. The controversy raised in the case relates to the point whether the establishment is covered under the Employees State Insurance Act, 1948. Served with the demand of contribution the appellants approached the Employees' Insurance Court seeking a declaration that its establishment is not covered under the Act since the number of employees employed therein are only 14. In that connection a dispute arose whether two security guards working on the premises could be considered as employees of the appellant. The case of the appellant was that the security guards were not to be included as employees of the establishment for the purpose of determination of the controversy raised. In support of the plea it was pleaded that the security guards concerned were employees of the agency which used to send two security guards by rotation for duty at the premises of the cinema hall. Since there was no relationship of employer and employee between the appellants and the security guards, they could not be counted as part of the appellant's establishment for the purpose of registration under the Act.

3. The insurance court on consideration of the matter held that the security guards were employees of the appellant's establishment according to the definition in Section 2(9) of the Employees' State Insurance Act (for short 'the Act'). On inclusion of two security guards the number of employees of the establishment stood at 20, and therefore, the establishment was covered under the provisions of the Act. The first appeal filed by the appellants before the High Court assailing the order of the insurance court proved unsuccessful. Hence this appeal.

4. The core question that arises for consideration is whether the establishment of the appellant comes within the purview of the Act? The answer to the question in the context of the case of the parties, depends on determination of the question whether the security guards are employees within the meaning of Section 2(9) of the Act. Section 2(9) of the Act reads as follows;

"2(9) "employee" means any person employed for wages in or in connection with the work of a factory or establishment to which 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."

5. In this connection the definition of the expression "immediate employer" under Section 2(13) and "principal employer" under Section 2(17) are also relevant. They are quoted below:

"2(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 (and includes a contractor).

(15) "occupier" of the factory shall have the meaning assigned to it in the Factories Act, 1948.

(17) "principal employer" means-

(i) in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under [the Factories Act, 1948 (63 of 1948)] the person so named; (ii) in any establishment under the control of any department of any government in India, the authority appointed by such government in this behalf or where no authority is so appointed the head of the department;

(iii) in any other establishment, any person responsible for the supervision and control of the establishment."

6. From the provision in Section 2(9) it is clear that the definition is wide and of comprehensive nature. It includes any person employed for wages in or in connection with work of the establishment to which the Act applies and also includes any person employed by or through immediate employer on the premises of the establishment or under the principal employer or his agent of work which is ordinarily a part of the work of establishment or which is preliminary to work carried on in or incidental to the purpose of the establishment. In Clause (iii) the position is further clarified; a person 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 is also brought within the purview of the statute. On a plain reading of the definitions of the expressions "principal employer" and "immediate employer" the position is manifest that the appellant is the principal employer of the security guards in the case. It may be that their immediate employer is the security agency with whom there has been a contract either by the lessor or the lessee of the cinema hall for purpose of the service. On a fair reading of relevant statutory provisions and keeping in view the object and purpose for which the legislation was enacted it is clear to us that in this case the security guards come within the purview of the expression "employee" as defined in Section 2(9) of the Act.

7. In the case of Royal Talkies, Hyderabad and Ors. v. Employees State Insurance Corporation this Court interpreting Section 2(9) made the following observations:

> "Therefore, we move down to Section 2(9)(ii). Here again, the language used is extensive and diffusive imaginatively embracing all possible alternatives of employment by or through an independent employer. !n such cases, the 'principal employer' has no direct employment relationship since the 'immediate employer' of the employee concerned is someone else. Even so, such an employee, if he works (a) on the premises of the establishment, or (b) under the supervision of the principal employer or his agent "on work which is ordinarily part of the work of the establishment or which is preliminary to the work carried on in or incidental to the purpose of the establishment", qualifies under Section 2(9)(ii). The plurality of persons engaged in various activities who are brought into the definitional net is wide and considerable; and all that is necessary is that the employee be on the premises or be under the supervision of the principal employer or his agent. Assuming that the last part of section 2(9)(ii) qualifies both these categories all that is needed to satisfy that requirement is that, the work done by the employee must be (a) such as it is ordinarily (not necessarily nor statutory) part of the work of the establishment, or (b) which is merely preliminary to the work carried on in the establishment, or (c) is just incidental to the purpose of the establishment. No one can seriously say that canteen or cycle stand or cinema magazine booth is not even incidental to the purpose of the theatre. The cinema goers ordinarily find such work an advantage, a facility, an amenity and some times a necessity. All that the statute requires is that the work should not be irrelevant to the purpose of the establishment. It is sufficient if it is incidental to it. A

> thing is incidental to another if it merely appertains to something else as primary. Surely, such work should not be extraneous or contrary to the purpose of the establishment but need not be integrated to either. Much depends on time and place, habits and appetites, ordinary expectations and social circumstances. In our view, clearly the two operations in the present case, namely, keeping a cycle stand and running a canteen are incidental or adjuncts to the primary purpose of the theatre."

8. A similar view was taken by this Court in the case of *Transport Corporation of India v. Employees' State Insurance Corporation and Anr*[1] in which the following observations were made:

> "As we have already seen earlier, the express phraseology of Section 2(9) of the Act defining an "employee" read with Section 38 of the Act clearly projects the legislative intention of spreading the beneficial network of the Act sufficiently wide for covering all employees working for the main establishment covered by the Act even though actually stationed at different branches outside the state wherein the head office of the establishment is located. In any case, the said construction can reasonably flow from the aforesaid statutory provisions. If that is so, any other technical or narrower construction, even if permissible, cannot be countenanced, as that would frustrate the legislative intent underlying the enactment of such a beneficial social security scheme."

9. A similar view was taken by this Court in the case of Regional Director, Employees' State Insurance Corporation, Madras v. South India Flour Mills (P) Ltd. .

10. It is relevant to note here that in the case in hand there is material on record to show that the security guards engaged on the premises of cinema hall discharge the duty of checking tickets of persons seeking entry into the hall, which work is directly and intrinsically a part of the work of the establishment.

11. For the reasons discussed above, we find no illegality in the judgment/order passed by the High Court confirming the judgment/order of the employees' state insurance court. Accordingly, the appeals are dismissed, but in the circumstances of the case without any order for costs.

[1] *JT 1999 (9) SC 15*