SUPREME COURT OF INDIA

M.D.,Hassan Coop.Milk Produ.Soc.U.Ltd.

Vs.

Asstt. Regnl.Director, E.S.I.C.

C.A.No.3816 of 2010

(R.V.Raveendran and R.M.Lodha JJ.)

26.04.2010

JUDGEMENT

R.M.Lodha, J.

1. Leave granted.

2. These two appeals, by special leave, are concerned with the liability of the appellants to pay ESI contribution in respect of the workers employed by the contractors in performance of the contract awarded to them for transportation of milk.

3. The two appeals arise out of different proceedings.

> "Brief narration of facts in relation to each of the appellants may be set out first. Hassan Cooperative Milk Producer's Society Union Limited (for short, `HCMPSU Ltd.')."

4. HCMPSU Ltd. is a federal society. Its main business is purchasing milk and pasteurization of the same. The milk procured by member societies is transported in lorries/vans to the appellant's dairy. For that purpose, contract is awarded on the basis of rate per kilometer to the lowest bidder. The contractor collects the milk from the various societies in cans on specified routes and transports to the appellant's dairy. The empty cans are retransported and returned to the respective member societies. On September 23, 1994, a show cause notice was issued by the Assistant Regional Director, Employees' State Insurance Corporation, Bangalore to the HCMPSU Ltd. calling upon them to furnish explanation and show cause as to why action should not be taken against them for non-payment of contribution under the *Employees' State Insurance Act, 1948 (for short, `1948 Act')* in respect of the employees of the appellant. It is not in dispute that this notice related to the employees engaged by the contractors for the transportation of milk. The appellant responded to the show cause notice by filing their reply on October 10, 1994, inter-alia, stating therein (a) that the main business of the appellant is to process milk, receive and sell the same to the public in the concerned

districts through their agents. The appellant does not appoint the officers and subordinates to collect the milk from the societies located in different places and (b) that appellant calls for tenders and awards the contract for transportation of milk for specified period at a particular rate per kilometer. The contractors engage workers for that work but such workers are neither directly nor indirectly employees of the appellant and; the appellants have no control over such employees nor they supervise their work. The wages or salary of such workers have also not been paid by the appellant. Another notice was also issued by the concerned authority to which reply was submitted by the appellant stating therein that the workers so engaged by the contractors do not work in the premises of the appellant's establishment and for this reason also 1948 Act is not applicable. It appears that inspection of the appellant's establishment was conducted by the concerned authority under the 1948 Act and thereafter an order under Section 45A of 1948 Act came to be passed on March 21/24, 1995 calling upon the appellant to pay contributions totaling Rs. 65,834/- for the period April 1, 1989 to March 31, 1990 in respect of the workers employed for transportation and procurement of milk together with interest payable at the rate of 12 per cent per annum upto August 31, 1994 and 15 per cent from September 1, 1994 till the date of actual payment, within a period of 15 days from the date of receipt of the order. The appellant challenged the aforesaid order under Section 75 read with Sections 76 and 77 of 1948 Act before the Employees' State Insurance Court at Mysore (ESI Court). The ESI Court did not find any merit in the application and dismissed the same vide order dated January 29, 2004 holding that the work of employees engaged by the contractors is incidental to the main work carried out by the appellant and that supervision over the work of such employees by the appellant is also established. The appellant challenged the aforesaid order before High Court of Karnataka by filing statutory appeal under Section 82(2) of 1948 Act which has been dismissed by the impugned order.

> “The Bangalore Urban and Rural District Co-operative Milk Producers Societies Union Limited (for short, `BURDCMPS Union')”

5. BURDCMPS Union is a cooperative society. By virtue of a tripartite agreement, Bangalore Dairy became its unit w.e.f. September 1, 1988. Bangalore Dairy was earlier a constituent of Karnataka Dairy Development Corporation and subsequently became a constituent of Karnataka Milk Federation. For the purpose of transportation, distribution and procurement of milk and milk products, Bangalore Dairy used to entrust the work to independent contractors after inviting tenders. The said contractors were being paid charges on kilometer basis. The appellant adopted the same system. An inspection was conducted by ESI Inspector in respect of transportation of milk and milk products through transport contractors for the period from October 1985 to December 1991 and from January 1992 to March 1993. On October 13, 1993, a notice indicating tentative determination of dues was issued to the appellant to show cause as to why contribution under 1948 Act should not be recovered from them. In response to the show cause notice, the appellant appeared through its representative and contested the liability. It appears that the authority asked the appellant to bifurcate the wage element involved in the amount paid to the contractors and produce the same for verification which was not done. The Assistant Regional Director, Bangalore by his order dated September 6, 1994 finally determined an amount of Rs. 4,81,313/- for the period

from October 1985 to March 1993 and held that the said amount was liable to be paid by the appellant within 15 days from the date of receipt of the order. In the said order, interest at the rate of 12 per cent per annum was also ordered to be paid. The appellant challenged the aforesaid order before ESI Court, Bangalore under Section 75 of 1948 Act. ESI Court dismissed the application vide order dated October 30, 1999. The appellant then filed an appeal under Section 82 of 1948 Act before the Karnataka High Court which too was dismissed on August 24, 2007.

6. 1948 Act was enacted to provide for certain benefits to employees in case of sickness, maternity and employment injury and for certain incidental matters. That the Act is beneficial legislation admits of no doubt. It is appropriate at this stage to refer to definition of terms, `contribution', `employee', `immediate employer', `principal employer' and `wages' occurring in 1948 Act.

7. `Contribution' is defined in Section 2 (4) which means the sum of money payable to the Employees State Insurance Corporation by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of 1948 Act.

8. `Employee' is defined in Section 2(9) as follows:

> “S. 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 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;
>
> 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 or any person engaged as apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the 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 such wages as may be prescribed by the Central Government] a month:"

Provided that an employee whose wages (excluding remuneration for overtime work) exceed 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;”

9. Section 2(13) defines `immediate employer' while Section 2(17) defines `principal employer'. The definitions of `immediate employer' and `principal employer' in the 1948 Act are as follows:

“S. 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"

"S. 2 (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;”

10. Section 2 (22) defines `wages' thus:

“S. 2 (22).- "wages" means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes any payment to an employee in respect of any period of authorized leave, lock-out, strike which is not illegal or lay-off and other additional remuneration, if any, paid at intervals not exceeding two months, but does not include -- (a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;

(b) any traveling allowance or the value of any traveling concession;

(c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or (d) any gratuity payable on discharge;"

11. Sections 46 to 73 in Chapter-V provide for claims and benefits such as sickness benefit, maternity benefit, disablement benefit, medical benefit, etc.

12. The answer to the controversy presented before us has to be found primarily from Section 2(9) which defines `employee' and the terms of agreements. Section 2(9) has been extensively analysed by this Court in *Royal Talkies, Hyderabad and Others v. Employees State Insurance Corporation*[1] thus:

"14. Now here is a break-up of Section 2(9). The clause contains two substantive parts. Unless the person employed qualifies under both he is not an `employee'.

Firstly, he must be employed "in or in connection with" the work of an establishment. The expression "in connection with the work of an establishment" ropes in a wide variety of workmen who may not be employed in the establishment but may be engaged only in connection with the work of the establishment. Some nexus must exist between the establishment and the work of the employee but it may be a loose connection.

`In connection with the work of an establishment' only postulates some connection between what the employee does and the work of the establishment. He may not do anything directly for the establishment; he may not do anything statutorily obligatory in the establishment; he may not even do anything which is primary or necessary for the survival or smooth running of the establishment or integral to the adventure. It is enough if the employee does some work which is ancillary, incidental or has relevance to or link with the object of the establishment. Surely, an amenity or facility for the customers who frequent the establishment has connection with the work of the establishment. The question is not whether without that amenity or facility the establishment cannot be carried on but whether such amenity or facility, even peripheral may be, has not a link with the establishment.

Illustrations may not be exhaustive but may be informative. Taking the present case, an establishment like a cinema theatre is not bound to run a canteen or keep a cycle stand (in Andhra Pradesh) but no one will deny that a canteen service, a toilet service, a car park or cycle stand, a booth for sale of catchy film literature on actors, song hits and the like, surely have connection with the cinema theatre and even further the venture.

On the other hand, a bookstall where scientific works or tools are sold or a stall where religious propaganda is done, may not have anything to do with the cinema establishment and may, therefore, be excluded on the score that the employees do not do any work in connection with the establishment, that is, the theatre.

In the case of a five-star hotel, for instance, a barber shop or an arcade, massage parlour, foreign exchange counter or tourist assistance counter may be run by some one other than the owner of the establishment but the employees so engaged do work in connection with the establishment or the hotel even though there is no obligation for a hotel to maintain such an ancillary attraction. By contrast, not a lawyer's chamber or architect's consultancy. Nor, indeed, is it a legal ingredient that such adjunct should be exclusively for the establishment if it is mainly its ancillary.

15. The primary test in the substantive clause being thus wide, the employees of the canteen and the cycle stand may be correctly described as employed in connection with the work of the establishment. A narrower construction may be possible but a larger ambit is clearly imported by a purpose-oriented interpretation. The whole goal of the statute is to make the principal employer primarily liable for the insurance of kindred kinds of employees on the premises, whether they are there in the work or are merely in connection with the work of the establishment.

16. Merely being employed in connection with the work of an establishment, in itself, does not entitle a person to be an `employee'. He must not only be 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).

17. Section 2(9)(i) covers only employees who are directly employed by the principal employer. Even here, there are expressions which take in a wider group of employees than traditionally so regarded, but it is imperative that any employee who is not directly employed by the principal employer cannot be eligible under Section 2(9)(i). In the present case, the employees concerned are admittedly not directly employed by the cinema proprietors.

18. 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. In such cases, the `principal employer' has no direct employment relationship since the `immediate employer' of the employee concerned is some one 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 is ordinarily (not necessarily nor statutorily) 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 a 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 integral to it 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."

13. The masterly analysis and clear exposition of the term `employee' as defined in Section 2(9) done by V.R. Krishna Iyer, J. in Royal Talkies1 has been consistently followed in subsequent decisions. Some of these decisions are : (1) *Regional Director, Employees' State Insurance Corpn., Madras v. South India Flour Mills (P) Ltd.*[2] ; (2) *Kirloskar Brother Ltd. v. Employees' State Insurance Corporation*[3] (3) *RaJakamal Transport and Another v. Employees' State Insurance Corporation, Hyderabad*[4]; (4) *Transport Corporation of India v. Employees' State Insurance Corporation and Another*[5] and (5) *M/s. Saraswat Films v. Regional Director, E.S.I. Corporation,. Trichur*[6].

14. In the light of the definition of the `employee' under Section 2(9) as interpreted by this Court in Royal Talkies1 and subsequent decisions, we may examine the question as to whether the workers employed by the contractors in performance of the contract awarded to them by the appellants for transportation of milk are covered by Section 2(9). The reference to relevant clauses of the agreement at this stage will be appropriate.

15. The relevant clauses of the agreements between HCMPS Union and contractors are :

"1) That in consideration of the H C M P S U Ltd., paying to the contractor at the rate of Rs. 2.50 (Rupees two and fifty paise only) per Kilometer of journey, the contractor hereby agrees to transport the Milk from the places on routes specified in schedule-1 annexed to this agreement, which all shall form part of this agreement.

2) It is further agreed that the rate of specified above shall include the cost of loading the milk at the points specified as above into the vehicles, transporting the same on the routes specified to the specified Dairy/Chilling Centres and unloading the same at the specified Dairies/Chilling centre.

The contractor also bring back the empty cans, bottles, etc. to the place from where he had taken them out.

7) The contractor shall ply the vehicles owned by him and shall provide/produce the vehicles with the registration certificate tax paid receipts, comprehensive insurance certificate and all the specified for the purpose of satisfying the ownership of the vehicles and road worthiness of the vehicles and farther undertakes to replace the such vehicles which in the option of the authorities of the HCMP SUL are not fit for the purpose of transporting the milk as agreed to.

9) The contractor shall make his own arrangements for the engaging the workers required for loading and unloading and transport operations and further agrees to abide by the provisions of the contract labour (Regulation and Abolition) Act, in the matter of payment of their wages etc. and further indemnify the HCMP SUL against any claim by such workers.

14) The contractor shall strictly confirm to the various instructions to be given from time to time by the authorities of the HCMPSU Ltd., with regard to the safe transportation of the can milk/sachet Milk and other materials as agreed to under this contract.

17) The contractors further agreed that the addition to his workmen he shall allow the staff authorized representatives of HCMPSU Ltd, including the officials of the Milk Producing Co-operatives societies to travel free of charges in the contractors vehicle.

26) (i) If any employee/representative of the contractor is found pilfering and/or adulterating and/or destroying the milk and other items entrusted to the contractor during the transportation or during/loading/unloading operations to the premises of the milk producers Union/societies the contractor shall responsible for the loss and the contractor shall make good all such losses incurred by DCs from the day of default upto 15 days H C M P S U Ltd., may at its discretion forfeit the security, deposit and terminate the contract.

(ii) If any employee of representative of the Contractor misbehaves and or indulges in disorderly conduct with the staff of the milk producers union/societies, or with the members of the General public the H C M P S U Ltd., may require the contractor to remove such undesirable persons from the transport work. The contractor shall not reemployed such undesirable persons who have been removed from the transport work either by the contractor himself or by any other contractor engaged by H C M P S U Ltd., “

16. As regards the agreements between BURDCMPS Union and contractors, the relevant clauses are:

“1) In consideration of payment of transport charges by the Dairy the Contractor at the rate of Rs.6-40 (Rupees six and paise forty only) per K.M. of journey, the

contractor shall carry in his motor vehicles and deliver at the appointed sale points the Dairy products entrusted to him for such purpose, once in the morning and one in the evening or as required by the Dairy daily. The Contractor, who files tenders for more than two routes should have one standing vehicle for replacement in the event of any breakdown of his vehicle during the transport of Dairy products.

After delivery of the Dairy products at all the sale point, the Contractor shall deliver all the teens, crates containers and returned dairy products to the Dairy immediately upon arrival at the Dairy.

5) No person other than the persons employed by the Dairy or the contractor for the purpose of Transport, shall be carried in any vehicle of the contractor while it is engaged in the performance of this contract.

6) The contractor shall promptly remove any employee of his who behaves improperly with the Dairy staff or the selling agents or their men at the sale points, on a complaint by the Dairy.

7) If any pilferage or shortage or adulteration is found to have occurred in the course of transport, the full value of the Dairy property pilfered, short found or adulterated shall be recoverable by the Dairy from the contractor. If any pilferage or shortage or adulteration is found to have occurred in the course of transport for second time, the contractor will also incur the liability for cancellation of the contract in addition to his liability to pay full value of the Dairy property pilfered, short-found or adulterated."

17. We shall assume, to test the validity of the contention, in favour of the E.S.I. Corporation that workers engaged by the contractor (immediate employer) for transportation of milk have been employed in connection with the work of the principal employer and these employees, thus, qualify under first substantive part of Section 2(9). But as stated in Royal Talkies1 that merely being employed in connection with the work of an establishment, in itself, does not entitle a person to be an `employee'; he must not only be 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). Are these workers covered by any of these categories?

18. It is not the case of any of the parties nor there is any evidence to show that the persons who did loading and unloading were directly employed by the appellants. Section 2(9)(i) is, therefore clearly not attracted as it covers the workers who are directly employed by the principal employer. As a 18 matter of fact, the thrust of the arguments centred round clause (ii) of Section 2(9). This clause, requires either (a) that the person to be an employee should be employed on the premises of the factory or establishment, or (b) that the work is done by the person employed under the supervision of the principal employer or his agent on work which is ordinarily part 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. The expression "on the premises of the factory or establishment" comprehends presence of the persons on the

premises of the factory or establishment for execution of the principal activity of the industrial establishment and not casual or occasional presence. We shall again assume in favour of the E.S.I. Corporation that for the purposes of loading and unloading the milk cans, the truck driver and loaders enter the premises of the appellants but mere entry for such purpose cannot be treated as an employment of those persons on the premises of the factory or establishment. We are afraid, the said expression does not comprehend every person who enters the factory for whatever purpose. This is not and can never be said to be the purpose of the expression. It has to be held that the persons employed by the contractor for loading and unloading of milk cans are not the persons employed on the premises of the appellants' establishment.

19. Now, the next question is, can these workers, in the facts and circumstances of the case, be said to be working under the supervision of the appellants. It is appropriate to refer to a decision of this Court in *C.E.S.C. Limited and Others v. Subhash Chandra Bose and Others*[7]. In that case, the question that fell for consideration was, whether on the facts found, the right of the principal employer to reject or accept work on completion, on scrutinizing compliance with job requirements, as accomplished by a contractor, the immediate employer, through his employees, is in itself an effective and meaningful "supervision" as envisaged under Section 2(9) of the 1948 Act. The majority view explained:

“14. ......In the textual sense `supervision' of the principal employer or his agent is on `work' at the places envisaged and the word `work' can neither be construed so broadly to be the final act of acceptance or rejection of work, nor so narrowly so as to be supervision at all times and at each and every step of the work. A harmonious construction alone would help carry out the purpose of the Act, which would mean moderating the two extremes. When the employee is put to work under the eye and gaze of the principal employer, or his agent, where he can be watched secretly, accidentally, or occasionally, while the work is in progress, so as to scrutinise the quality thereof and to detect faults therein, as also put to timely remedial measures by directions given, finally leading to the satisfactory completion and acceptance of the work, that would in our view be supervision for the purposes of Section 2(9) of the Act.

> “It is the consistency of vigil, the proverbial `a stich in time saves nine'. The standards of vigil would of course depend on the facts of each case. Now this function, the principal employer, no doubt can delegate to his agent who in the eye of law is his second self, i.e., a substitute of the principal employer. The immediate employer, instantly, the electrical contractors, can by statutory compulsion never be the agent of the principal employer. If such a relationship is permitted to be established it would not only obliterate the distinction between the two, but would violate the provisions of the Act as well as the contractual principle that a contractor and a contractee cannot be the same person...........”

20. The decision also referred to the definition of "agent" drawn in Halsbury's Laws of England (Hailsham Edition) Vol. I at page 145, para 350 which is as follows:

> "An agent is to be distinguished on the one hand from a servant, and on the other from an independent contractor. A servant acts under the direct control and supervision of his master, and is bound to conform to all reasonable orders given to him in the course of his work; an independent contractor, on the other hand, is entirely independent of any control or interference and merely undertakes to produce a specified result, employing his own means to produce that result. An agent, though bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal, is not subject in its exercise to the direct control and supervision of the principal."

21. After taking into consideration Section 182 of the *Indian Contract Act, 1872* that defines `agent', the majority view recorded its conclusion thus:

> "20. Thus on both counts, the principal question as well as the subsidiary question must be answered against the ESIC holding that the employees of the electrical contractors, on the facts and circumstances, established before the Division Bench of the High Court, do not come in the grip of the Act and thus all demands made towards ESI contribution made against the CESC and the electrical contractors were invalid. We affirm the view of the High Court in that regard."

22. Although, E.S.I. Court in respect of the appellants in separate orders, has recorded a finding that such workers work under the supervision of the principal employer and the said finding has not been interfered with by the High Court but we find it difficult to accept the said finding. The ordinary meaning of the word `supervision' is `authority to direct' or `supervise' i.e., to oversee. The expression `supervision of the principal employer' under Section 2(9) means something more than mere exercise of some remote or indirect control over the activities or the work of the workers. As held in C.E.S.C. Ltd. 7 that supervision for the purposes of Section 2(9) is `consistency of vigil' by the principal employer so that if need be, remedial measures may be taken or suitable directions given for satisfactory completion of work. A direct disciplinary control by the principal employer over the workers engaged by the contractors may also be covered by the expression `supervision of the principal employer'. The circumstances, as in the case of HCMPSU Ltd., that the authorized representatives of the principal employer are entitled to travel in the vehicle of the contractor free of charge or in the case of BURDCMPS Union, that the principal employer has right to ask for removal of such workers who misbehave with their staff are not the circumstances which may even remotely suggest the control or interference exercised by the appellants over the workers engaged by the contractor for transportation of milk. From the agreements entered into by the appellants with the contractors, it does not transpire that the appellants have arrogated to themselves any supervisory control over the workers employed by the contractors. The said workers were under the direct control of the contractor. Exercise of supervision and issue of some direction by the principal employer over the activities of the contractor and his employees is inevitable in contracts of this nature and that by itself is not sufficient to make the principal employer liable. That the contractor is not an agent of the

principal employer under Section 2(9)(ii) admits of no ambiguity. This aspect has been succinctly explained in C.E.S.C. Ltd.7 with which we respectfully agree. No evidence has been collected by the E.S.I. Corporation during the inspection of the appellants' establishments or from the contractors that the appellants have any say over the terms and conditions of employment of these employees or that the appellants have any thing to do with logistic operations of the contractors. As a matter of fact, there is nothing on record to show that principal employer had any knowledge about the number of persons engaged by the contractors or the names or the other details of such persons. There is also no evidence that the appellants were aware of the amount payable to each of these workers. In the circumstances, even if it be held that the transportation of milk is incidental to the purpose of factory or establishment, for want of any supervision of the appellants on the work of such employees, in our opinion, these employees are not covered by the definition of `employee' under Section 2(9) of the Act.

23. As a result of the foregoing discussion, both appeals are allowed and the impugned orders are set aside. No order as to costs.

[1]*(1978) 4 SCC 204*
[2]*(1986) 3 SCC 238*
[3]*(1996) 2 SCC 682*
[4]*(1996) 9 SCC 644*
[5]*(2000) 1 SCC 332*
[6]*JT 2002 (Suppl 1) SC 454*
[7]*(1992) 1SCC 441*