

# CALCUTTA HIGH COURT

Calcutta Electric Supply Corporation, Ltd

Vs.

Employees State Insurance Corporation

A.F.O.O. No. 505 of 1958

(P.N. Mookerjee and S.K. Niyogi, JJ.)

29.04.1960

## JUDGMENT

### **P.N. Mookerjee, J.**

1. Three questions of importance, touching the Employees' State Insurance Act, 1948, and the inter-relation of some of its sections and its three Chapters IV, V and V-A and their relative mutual impact on one another, arise for consideration in this appeal and they embrace, in particular, determination of the meaning and scope of the two terms 'employee' and 'factory' and the effect thereof and of the exemption, granted by the State Government under Sections 87 and 88 of the Act, of the employer's liability for special contribution under the aforesaid Chapter V-A. For proper appreciation of the questions raised and facilitating due determination of the same, it is necessary to state the facts which led up to the present proceeding. Those facts lie within a short compass and they stand as follows : The appellant, the Calcutta Electric Supply Corporation Ltd., is a business concern, carrying on the business of generating and supplying electrical energy for use, inter alia, in Calcutta and its suburbs and, for that purpose, it has three power houses or Generating Stations and 23 sub-stations in Calcutta and Howrah and certain ancillary establishments. The above three Power Houses or Generating Stations are the Southern Generating Station, the old Cossipore Generating Station and the new Cossipore Generating Station, employing respectively 713, 391 and 399 men on their separate rolls. The 23 sub-stations which draw high voltage electrical energy from the connected power Houses or Generating Stations and distribute such energy to individual customers after transforming and converting it to low and medium voltage, are each situate at a distance of more than one mile from the corresponding Power House or Generating Station and each of these sub-stations, apart from its connection with the corresponding main Power House Or Generating Station as aforesaid (which is of paramount importance in the present case), may be said to form and constitute a distinct and separate installation in its own premises employing, on its own individual roll, less than 20 persons.

2. The Employees' State Insurance Act, Act XXXIV of 1948, which applies, inter alia, to "factories" (vide Section 1(4)), became law on April 19, 1948, and, in accordance with its own provisions, different parts of the statute were brought into force in different areas on different

dates (vide Section 1(3)). The original Act had no Ch. V-A and this new Chapter, with its new group of Sections, Sections 73-A to. 73-1, was enacted and introduced in the year 1951 by Act LIII (S. 20) of that year, and, under the said new Section 73-A, the appellant Company was made liable to pay the special contribution in terms thereof with effect from February 25, 1952.

3. In the year 1955, or more precisely, on. the 31st of August, of that year, the State Government, acting as the appropriate Government (vide Section 2(1)) for the purpose, issued a notification under Section 88 of the Act, exempting the appellant's employees from the operation of the above Act "except Chapter V-A thereof, subject to the condition that such exemption shall cease to be in force alter a period of one year or after Chapters IV and V of the said Act are brought into force in the area, where the Mulajore Generating Station, Shyamnagar, of the Calcutta Electric Supply Corporation Ltd., is situate, whichever is earlier," and, in the wake of the said notification, the appellant Company objected to the levy of the special contribution and, eventually, filed the present application before the appropriate special tribunal under the Act, namely, the Employees Insurance Court, Calcutta (vide Section 74) praying for a declaration that it (the appellant) was not liable to pay any special contribution at all or, at any rate, in respect of the employees at the sub-stations and the ancillary establishments, referred to above, and for an order' staying realization of the amounts (Rs. 12,597/- and Rs. 2,652/-) demanded on that account, as also of the proceedings, to wit, Certificate Proceedings, already started for such realization.

4. The appellant's application was opposed by the appropriate Employees' State Insurance Corporation, Calcutta, a statutory body, formed under the Act for implementing its provisions (vide Section 3) and it controverted all the relevant allegations of the appellant, on which its claim for the aforesaid declaration, prayed for as above, and the exemptions, sought therein, was based, namely, (1) that the special contribution under Ch. V-A of the Act was only to be paid in lieu of the ordinary (employer's) contribution under Ch. IV, from, which, in effect, the appellant had been exempted under the aforesaid notification of the State Government and, in the absence whereof or of liability wherefore, no liability can attach for the special contribution, thus leading to the appellant's necessary exemption from the special contribution too. (2) That the sub-stations and the ancillary establishments, referred to above, were not 'factories' within the meaning of the statute and the employees thereof were not 'employees' thereunder, and, as such, at least, with regard to these sub-stations and ancillary establishments and the employees thereof, the appellant had no liability for the special contribution.

5. The Court (Tribunal) below overruled the appellant's plea and dismissed its application. Hence this appeal by the appellant Company.

6. All the points, which were, in the main argued before the court below, were urged in this Court. But, in our opinion, none of them can succeed in the particular facts before us so as to afford any relief to the appellant, and this appeal must, accordingly, fail. We proceed to give our reasons herein below.

7. The appellant, on its own case, is a business concern for the generation and supply, including distribution and sale, of electricity for use inter alia in Calcutta and suburbs. Admittedly, also, this electricity is generated in the above three power houses or Generating Stations, which, again, are, according to the appellant itself, 'factories' within' the meaning of the above Act and there is

no dispute also that, so far as those Power Houses are concerned, the appellant's employees or, in other words, its employees in the said Power Houses, are 'employees' within the meaning of Section 2. Sub-Section (9) of the said Act and, so far as they are concerned, the appellant would be, but for its claim of exemption, based on, and in view of, the above notification, liable to pay the special contribution under Section 73-A(1) of the Act. This claim of exemption, on the basis, and in view, of the State Government's above notification, is the most comprehensive and covers all the appellant's Power Houses, sub-stations and ancillary establishments, and, indeed, all its employees, and we propose to examine it hereinafter.

8. As to the sub-stations and other ancillary establishments, however, the appellant has a further case and it is of a two-fold character, namely, (1) that they are not 'factories' and (2) that their employees are not 'employees' within the meaning of the statute. Whether taken independently and as separate units, the sub-stations and the other ancillary establishments, referred to above, are 'factories' or not, having regard to the admitted fact that the three Power Houses or Generating Stations are 'factories' within the meaning of the Statute and having regard to the relation of the different sub-stations and the other ancillary establishments, referred to above, with the said Power Houses or Generating Stations, the employees in the said substations and other ancillary establishments, are, in our opinion, 'employees' within the meaning of the statute and the said sub-stations and ancillary establishments also are, as we shall see hereinafter, 'factories' within the definition, given in Section 2(12) of the Act, read with Section 2(k) of the Factories Act (Act LXIII of 1948), which, by reference, is attracted to the said definition. This follows primarily from the fact that having regard to the nature of the appellant's business, namely, of generation and supply of electricity, including its distribution and sale to individual consumers, and the purpose, for which the above sub-stations and other ancillary establishments exist and are actually used, the Power Houses or Generating Stations and the connected substations and other ancillary establishments must be regarded as one' unit or part of same unit or, in other words, the substations and the other ancillary establishments are really adjuncts to the corresponding main Generating Station or Power House and they and their employees cannot be considered separately or in separate or different compartments They are parts of the same unit and must be regarded as a whole. If this be the correct approach, the appellant's objection, based on the fact that the number of employees at each of the sub-stations is less than 20 or that the ancillary establishments do not carry on any work of manufacture within the meaning of the statute, read with or without the Factories Act, must vanish. This will be so, although, strictly speaking, neither the sub-stations nor the other ancillary establishments, taken by themselves separately or independently, would be 'factories' under the Act (vide Section 2(12)) as the former, in such context, admittedly employ less than 20 persons and, In the latter, it may well be said that no manufacturing process is carried on within the meaning of the term in the definition in Section 2(k) of the Factories Act, that is, within the meaning of Section 2(12) of the Employees' State Insurance Act, 1948, which adopts the same definition, for its purpose. The above view will be greatly aided by the opening words of the sections themselves, namely, 'unless there is anything repugnant to the subject or context' and it will also avoid conflict with the definition of 'employee', to which specific reference will be made immediately herein below. Moreover, in any view, that is, whether the sub-stations are factories or not as aforesaid, the employees in them and in the ancillary establishments also would be 'employees' under the Act and employees of factories too thereunder, they being employees of the Fewer Houses or Generating Stations, under the definition in Section 2(9) of the Act as the said definition of employee includes within it 'any person employed for wages in or in connection with the work of factory or establishment

to which the Act applies' and 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'. The appellant's objection under this head, therefore, fails.

9. One word more before we leave the above question. During argument, the appellant cited the case of. *S.M. Sriramulu Naidu v. Employees State Insurance Corporation*<sup>1</sup>, With respect, we are as at present, advised, not inclined to agree with than decision but it is not necessary to go to that length for our present purpose and all we need say is that the case cited is distinguishable upon the finding, made or implied therein, namely, that the different departments of the Film Studio concerned were separate, so as not to constitute one composite whole or unit for purposes of the Employees State Insurance Act, 1948. A more reasonable view, however, appears to have been taken in *Ramanadham v. Emperor*<sup>2</sup>

10. We take up now the appellant's comprehensive objection, embracing its Power Houses, substations and other ancillary establishments and all its employees. That objection relates to the validity of the continuance of the imposition of the special contribution in the face of the exemption, granted by the State Government's notification, referred to hereinbefore. The objection appears to proceed upon a misconception and misreading of the statute. The special contribution has been imposed under Ch. V-A. This is plainly within and under the power, given under Section 73-A, Sub-Section (1), and that Sub-Section clearly contemplates and authorizes such imposition notwithstanding anything in the statute, as expressly mentioned therein (vide the words 'notwithstanding anything contained in the Act' in the section itself). Under Sub-Section (2) of the aforesaid Section (Section 73-A), this special contribution will be in lieu, of the ordinary (employer's) contribution payable under Ch. IV (vide Section 39), where that Chapter (Ch. IV) and Ch. V are in force. It is clear also that, under Section 73-F, it is the Central Government and the Central Government alone, which has the power to grant exemptions from the special contribution. The State Government's power under Sections 87 and 88 of the Act (vide also Section 91) in the matter of exemption of 'factories or establishments or class of factories or establishments or of persons or class of persons' from the operation of the Statute or parts thereof, does not extend to the case of special contribution which is exclusively a matter for the Central Government alone. This is categorically stated in Section 73-F, which is the governing, - and, indeed, the only, section, authorizing and permitting exemption from special contribution. The State Government's notification, therefore, must be lead subject to the said limitation and it has no effect whatsoever on the special contribution, imposed under Section 73-A of the Act, or the liability thereof. It is true that, where the particular employer is otherwise liable for the ordinary (employer's) contribution under Ch. IV, in view of Sub-Section (2) of Section 73-A. the special contribution will be, and must be deemed to be, in lieu of the same but that is only to give relief to the employer against double imposition and it does not mean that exemption from ordinary (employer's) contribution would necessarily have the effect of exempting

<sup>1</sup>(1958) 2 Mad LJ 544: (AIR 1959 Mad 457)

<sup>2</sup> ILR 50 Madras 834: (AIR 1927 Mad 345)

the particular employer from the special contribution too. Indeed, that will be against both the letter and the spirit of the statute and its scheme and purpose and the express provisions, contained in Ch. V-A, in particular, Sections 73-A and 73-F, - and it would be directly contrary to the language and intention of the two Sub-Sections (1) and (2) of the said Section 73-A and of

Section 73-F as well, which, as already stated, expressly reserves the power of granting exemption from special contribution to the Central Government alone and denies such power to the State Government. It is clear beyond dispute that the matter of special contribution, both as regards its imposition (vide Section 73-A), and exemption, (vide Section 73-F) or cancellation (vide Section 73-1), is left by the statute solely to the discretion of the Central Government and the State Government has nothing to do with it and it has no power in regard to the same. Read in the above light, the exemption, granted under the State Government's aforesaid notification, would not affect the imposition of the existing special contribution and, only when the employer is or becomes liable to pay the ordinary (employer's) contribution, under Ch. IV of the Act, it would be, and would be deemed to be, in lieu of the said ordinary (employer's) contribution, or, in other words, where the employer is liable for the special contribution, he will not, at the same time, be liable for the ordinary (employer's) contribution under Ch. IV. Clearly, then, the exemption, granted by the State Government, would be unavailing and unavailable for the purpose of a claim of exemption from the special contribution, which exemption can only be granted by the Central Government under Section 73-F of the Act, and no such exemption has, admittedly, been granted in the present case.

11. In the above view, this objection of the appellant would also fail.

12. In the result, all the points, urged in support of the appeal, fail and the appeal is, accordingly, dismissed with costs.

**Niyogi, J.**

13. I agree.

Appeal dismissed.