

The Employees State Insurance Corporation & Ors. Vs. M/s. Key Dee Cold Storage Pvt. Ltd.

Civil Appeal No. 4159 of 2022 arising out of S.L.P. (C) No. 17162 of 2017
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Full judgment text

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Hrishikesh Roy, J.

1. Leave granted.

2. Heard Mr. Santosh Krishnan, the learned counsel appearing for the appellants. The respondent is represented by Mr. Parthiv K. Goswami, the learned counsel.

3. The challenge in this appeal is to the judgment and order dated 1.12.2016 in the RFA No. 82/2006 whereby the Guwahati High Court has allowed the appeal of the respondent and set aside the order dated 28.4.2006 passed in favour of the appellants by the Employees Insurance Court. Under the impugned judgment,

it has been held that Village Tarapur, where the factory of the respondent is located, falls outside the municipal limits of Silchar and is therefore not covered under the notification dated 21.7.1999 (Annexure P-I) issued by the appellants under sub-Section (3) of Section 1 of the Employees' State Insurance Act, 1948 (hereinafter referred to as the "ESI Act"). The other finding of the High Court to the effect that the business of cold storage run by the respondent is covered within the meaning of 'manufacturing process' as defined under Section 2(14AA,) is however not challenged in this appeal by the appellants.

4. The issue to be decided here is whether the High Court was correct in its interpretation of the notification dated 21.7.1999 and holding that the notification covers only the areas within the Silchar Municipal Board, although the notification additionally mentions names of other areas/villages including the Village of Tarapur, where the respondent's factory is located.

5. The Village Tarapur is subdivided into many segments and part of the village area falls within the Silchar Municipal Corporation and other parts, within the Silchar Revenue Circle. The respondent company set up its cold storage factory at Ramnagar, Village Tarapur.

6. On 21.7.1999, the notification was issued under subsection (3) of Section 1 of the ESI Act, notifying 1.8.1999 as the date on which certain provisions of the ESI Act shall come into operation in the following areas in the State of Assam namely :- "Areas under Silchar Municipal Corporation falling within Silchar Revenue Circles including the Revenue Village - Silchar Town, Ambicapur, Uttar Krishnapur, Kanakpur, Ukilbazar, Tarapur, Rangpur, Durganagar, Gosaipur, Srikona, Under Mouza-Barakpur, Tarapur, Ph- Barakpur, Rang Ph-Barakpur, Udharbond, Rajnagar."

7. Thereafter, the Regional Director of the Employees State Insurance Corporation informed the respondent about the notification and that the provisions of the ESI Act are now made applicable, to all factories situated within the notified areas and as such, the respondent's factory at Ramnagar, Village Tarapur would be covered under the ESI Act, with effect from 1.8.1999. Since the respondent failed to take necessary steps for registration under the ESI Act and to pay the requisite contribution for the employees in their establishment, a show cause notice was issued to the respondent to remit contribution for the months of April to September, 2000, on ad hoc basis. This was followed by a notice by the competent authority for recovery of Rs. 17,068 from the respondent.

8. The respondent then moved the Employees Insurance Court, Guwahati (hereinafter referred to as the "EI Court") to challenge the show cause notice and the consequent steps for recovery of contribution. The say of the respondent was that the area in which their factory is located is not covered by the 21.7.1999 notification. The Regional Director of the ESI Corporation however contended that the 21.7.1999 notification, extending the provisions of the ESI Act, also covers the area where the factory of the

respondent is located.

The EI Court considered the testimony of the witnesses and the documents relied upon by the parties and concluded that the notification extends to Tarapur and therefore, the factory of the respondent, located in Tarapur, is brought under the coverage of the ESI Act. Accordingly, the respondent is required, under the ESI Act, to make the contribution, and the authorities had correctly assessed the quantum of contribution payable for the employees in the establishment.

9. The relevant findings of the EI Court are extracted below:-

" **** *
11. The Notification Ext. 2 issued by the Government of India on 21.7.99 includes areas under Silchar Municipal Corporation falling within Silchar revenue circles including the revenue village, Silchar Town, Ambicapur, Uttar Krishnapur, Kanakpur, Ukil bazar, Tarapur, Rongpur, Durganagar, Gosaipur, Srikona, under Mouza-Borakpur, Tarapur etc.

12. From evidence on record it is clear that Lamargram, Ramnagar is situated within the Tarapur Village in between Tarapur and Srikona. Several part villages are included in the Tarapur villages area and Lamargram, Ramnagar is included in the Tarapur Village, in the Notification Tarapur has been included as a whole. This being so, I hold that M/s. Kay Dee Cold Storage Pvt. Ltd. - the petitioner was included under the coverage of E.S.I. Act vide Notification Ext. 2. **** *
10. An appeal was then preferred under Section 82 of the ESI Act before the Guwahati High Court to challenge the decision of the EI Court. In RFA 82/2006, the learned Judge framed, inter alia, the following substantial question of law to be answered in the proceeding:-

"i. Whether the establishment of the appellant is covered within the area as notified vide notification dated 21st July, 1999 (Ext.2)?

11. In the impugned judgment, the High Court concluded that the establishment of the respondent is not covered by the 21.7.1999 notification and the RFA was accordingly allowed by setting aside the judgment dated 28.4.2006 of the E.I. Court. Answering the substantial question No. (i), the Court opined that "only the area under Silchar Municipal Board is the overall area sought to be covered by the notification, and therefore, only the areas falling within the Silchar Revenue Circle, inclusive of the areas mentioned therein that falls within the jurisdiction of Silchar Municipal Board can be said to be covered by the notification dated 21.7.1999"

12.1 Assailing the above, Mr. Santosh Krishnan, the learned counsel for the appellants, would contend that the 21.7.1999 notification while setting out that it applies to areas under the Silchar Municipal Corporation, also goes on to specifically name certain areas/villages including the Tarapur Village where the respondent's factory is located. The village Tarapur is constituted by several parts and in the Para Lamar Gram of Tarapur Part III, the Cold factory Storage of the respondent is situated.

The Village Tarapur partially falls under Silchar Municipal Corporation and also under the Silchar Revenue Circle and since Village name is mentioned twice in the notification, the entire village area of Tarapur would be covered by the notification dated 21.7.1999. According to Mr. Santosh Krishnan, the learned counsel, on correct understanding of the areas covered by the 21.7.1999 notification, the area where the cold storage factory is located, could not have been excluded by the High Court by placing reliance on the Certificate dated 5.7.2004 (Ext. 16), which had certified that the respondent's factory at Ramnagar, Tarapur is situated outside the limits of Silchar Municipal Board.

12.2 As the respondent has not challenged the notification dated 21.7.1999 issued under Section 1(3) of the ESI Act, the High Court, according to the appellants, fell into an error in giving a restrictive interpretation of the notification dated 21.7.1999.

12.3 The exclusion of the areas of Ramnagar, Tarapur from the purview of the 21.7.1999 notification would, according to the appellant's counsel, have far reaching consequences, inasmuch as others in the area would then claim that they are outside the purview of the coverage under the ESI Act, and this consequently will be detrimental to the interests of the employees working in the establishments covered by the ESI Act.

12.4 The appellants also argue that in the proceedings before the E.I. Court, the respondent should have impleaded the factory's workmen as also the Union of India, to facilitate participation of these necessary stakeholders and since this was not done, the finding in favour of the respondent is a nullity and it should be understood accordingly.

13.1 Per contra Mr. Parthiv K. Goswami, the learned counsel for the respondent would point out that the factory of the respondent does not fall within the limits of the Silchar Municipal Corporation and the Silchar Revenue Circle but is located in Ramnagar Tarapur Gram Panchayat, and therefore it is outside the coverage of the ESI Act, in terms of the notification dated 21.7.1999.

13.2 According to Mr. Goswami, the learned counsel, since the authority of the Silchar Municipal Board had issued the certificate on 5.7.2004 (Ext. 16) certifying that the respondent's cold storage factory at Ramnagar Tarapur is outside the municipal limits, the coverage of the said factory under the ESI Act, is not warranted.

13.3 Adverting to the penal implications under the ESI Act, Mr. Goswami submits that the expanded interpretation of the notification is not warranted and the High Court, according to the learned counsel, has correctly interpreted the notification dated 21.7.1999 in favour of the respondent.

14. At this stage, it would be appropriate to identify the location of the respondent's establishment. Silchar is one of the sub-divisions of Cachar District in Assam and it is comprised of five revenue circles (Tehsils) namely Silchar, Lakhipur, Sonai, Udharbond and Katigorah. There are 245 revenue villages within the jurisdiction of the Silchar Sadar Revenue Circle.

The records show that Part I to Part VIII segments of Tarapur and the Tarapur Part VIII "B" town segment are located within Barakpur Pargana. The respondent's cold storage factory is situated in Tarapur III, Lamar Gram, Ramnagar and this segment is outside the limits of the Silchar Municipal Corporation. Only Tarapur Part VII and Tarapur Part VIII segments are partially within the Silchar Municipal Corporation area. It can therefore be appreciated that one part of village Tarapur falls within the limits of Silchar Municipal Corporation and another segment of same village falls within the Silchar Revenue Circle.

15. The 21.7.1999 notification issued by the Central Government specifies the areas to which the ESI Act is made applicable and significantly, apart from stating that it applies to areas under the Silchar Municipal Corporation, it goes on to specifically name additional areas/villages, including the village of Tarapur. It is therefore not difficult to comprehend that the notification would extend to areas well beyond the limits of the Silchar Municipal Corporation.

If the area of coverage of the ESI Act was intended to be restrictive, there was no need to mention other areas by name in the said notification. The logical interpretation would then be that the entire village area of Tarapur is notified for coverage as the name of Tarapur village is mentioned twice in the notification. The significance of this must be given due weightage.

16. The notification issued under Section 1(3) of the ESI Act is a statutory notification and the same should be treated as a part of the statute, both for the purposes of construction and also for the obligations arising therefrom, as if, they are contained in the Act. The principles of interpretation of subordinate legislation are applicable for interpretation of such statutory notification.

If the words used are unambiguous, the cardinal principle of interpretation is that effect has to be given to every word in the subject notification.[See. South Central Railway Employees Cooperative Credit Society Employees' Union, Secunderabad vs. Registrar of Cooperative Societies and Ors¹ and National Highways Authority of India vs. Pandarinathan Govindarajulu and Anr.²]

17. Guided by the above, let us now examine whether the statutory notification was intended to cover only those areas falling within the jurisdiction of the Silchar Municipal Board as was decided in the impugned judgment. Such an interpretation would mean that all the other areas specifically mentioned in the notification, which are otherwise beyond the limits of the Silchar Municipal Corporation, would be excluded from the purview of the statutory notification.

If this is accepted, there will be departure from the cardinal principle of interpretation of giving full effect to every word of the notification. This would then be contrary to what is repeatedly laid down by this Court, including in the case of South Central Railway Employees Cooperative Credit Society Employees' Union (supra) and National Highways Authority of India (supra).

18. The Central Government notification makes reference to several areas beyond the limits of the Silchar Municipal Board. This is discernible from the fact that reference to Tarapur is made twice, firstly in reference to the Silchar Municipal Corporation and secondly with reference to Mouza-Barakpur. The reference to the Udharbond Revenue Circle (outside the limits of Silchar Municipal Corporation) and likewise to Rajnagar, which is another revenue unit, distinct from Barakpur (which comprises the Silchar Town), would suggest that the Central Government intended to extend the operation of the ESI Act to areas well beyond the limits of the Silchar Municipal Corporation.

The concerned establishment is located in Tarapur Part III falling within Barakpur, which is otherwise outside the Silchar Municipal Area. Significantly, Mouza-Barakpur by name is mentioned in the notification. Therefore, the High Court's constrictive interpretation of the 21.7.1999 notification, for application of the ESI Act to the smaller areas within the limits of Silchar Municipal Corporation, cannot be countenanced by us.

19. That apart, the notification which obviously could have been better drafted, is punctuated by several commas. This would suggest that the areas mentioned after the punctuation marks should be read disjunctively and should not be read in reference to the Silchar Municipal Corporation which is the first area mentioned in the notification. Here we may benefit by referring to Dr. M.K Salpekar Vs. Sunil Kumar Shamsunder Chaudhari and Ors.³

In this case, Justice L.M Sharma writing for the Division Bench, while adverting to the use of punctuation, opined that "punctuation "comma" in the sub-clause after "alternate accommodation" and before the rest of the sentence indicates that the last part of the sub-clause, namely, "and does not reasonably need the house" governs only the second part of the subclause." When we look at the punctuation marks in the notification dated 21.7.1999, and what follows thereafter, our finding is that the notification intended to cover several areas beyond the areas within the Silchar Municipal Corporation.

The notification issued under Section 1(3) of the ESI Act, after initially adverting to areas under Silchar Municipal Corporation falling within Silchar Revenue Circles, significantly uses the word "including" which would suggest the intention of the writer of the notification, to enlarge the coverage area, well beyond the limits of the Silchar Municipal Corporation. The other areas specifically mentioned after the word "including", would suggest that the area of coverage under the ESI Act, must not be restricted to the territorial limits of the Silchar Municipal Corporation.

20. Confronted with a situation where interpretation had to be made on usage of the word "includes" in Ramanlal Bhailal Patel and Ors. vs. State of Gujarat⁴, Justice R.V. Raveendran, speaking for the Division Bench, had the following to say:-

"23. The word "person" is defined in the Act, but it is an inclusive definition, that is, "a person includes a joint family". Where the definition is an inclusive definition, the use of the word "includes" indicates an intention to enlarge the meaning of the word used in the statute. Consequently, the word must be construed as comprehending not only such things which they signify according to their natural import, but also those things which the interpretation clause declares that they shall include.

Thus, where a definition uses the word "includes", as contrasted from "means", the word defined not only bears its ordinary, popular and natural meaning, but in addition also bears the extended statutory meaning (see S.K. Gupta v. K.P. Jain [(1979) 3 SCC 54 : AIR 1979 SC 734] following Dilworth v. Commr. of Stamps [1899 AC 99 : (1895-99) All ER Rep Ext 1576 : 79 LT 473] and Jobbins v. Middlesex Country Council [(1949) 1 KB 142 : (1948) 2 All ER 610 (CA)])."

21. At this stage, it would also be apposite to refer to the opinion written for the Constitution Bench by Justice G.B. Pattanaik in Union of India and Anr. vs. Hansoli Devi and Ors.⁵, where it has been rightly held that "it is not a sound principle of construction to brush aside words in a statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute." It must be remembered that "the legislature is deemed not to waste its words or to say anything in vain⁶" and a construction which attributes redundancy to a statute cannot be accepted except under compelling circumstances.

22. Proceeding with the above understanding, let us now examine the impugned judgment. The High Court has restricted the application of the statutory notification to the limits of the Silchar Municipal Corporation, which would imply that all the other areas mentioned beyond "including" would be taken out of the purview

of the ESI Act. This could not have been the intention of the Union Government.

23. This Court in *Delhi Gymkhana Club Limited vs. Employees' State Insurance Corporation*⁷, through the opinion of Justice R. Banumathi, noted that the object of the ESI Act is to provide benefits to the employees and also to make provisions for certain other matters in relation thereto. As the ESI Act is a beneficial piece of social welfare legislation aimed at securing the well-being of the employees, a restrictive interpretation which will have the effect of defeating the objects of the beneficial legislation, should be eschewed by the Court.

24. In the present matter, the respondent while challenging the show cause notice in the EI Court, failed to implead the factory's employees either individually or in representative capacity. Even the Union of India which issued the notification under Section 1(3) of the ESI Act expanding coverage of the beneficial legislation to the area where the factory of the respondent is located, was not arrayed as a party in the proceeding. In such circumstances, the decision of this Court in *Employees' State Insurance Corporation vs. Bhakra Beas Management Board and Anr.*⁸ and *Fertilizers and Chemicals Travancore Ltd. vs. Regional Director, Employees' State Insurance Corporation and Ors.*⁹ would come into play.

25. In *Employees' State Insurance Corporation (supra)* the necessity of impleading the employees of the concerned establishment in a proceeding under the ESI Act was emphasized by this court in the following opinion:-

"4. This Court has recently held in *Fertilizer & Chemicals Travancore Ltd. v. ESI Corpn.* [(2009) 9 SCC 485 : (2009) 2 SCC (L&S) 693 : (2009) 11 Scale 766] as under: (SCC pp. 487-88, paras 5-10) "5. It may be noted that in its petition before the Employees' Insurance Court, the appellant herein only impleaded the Employees' State Insurance Corporation and the District Collectors of Alleppey, Palaghat and Cannanore as the respondents but did not implead even a single workman as a respondent.

Labour statutes are meant for the benefit of the workmen. Hence, ordinarily in all cases under labour statutes the workmen, or at least some of them in a representative capacity, or the trade union representing the workmen concerned must be made a party. Hence, in our opinion the appellant (petitioner before the Employees' Insurance Court) should have impleaded at least some of the persons concerned, as respondents.

8. In our opinion, wherever any petition is filed by an employer under Section 75 of the Act, the employer has not only to implead ESIC but has also to implead at least some of the workers concerned (in a representative capacity if there are a large number of workers) or the trade union representing the said workers. If that is not done, and a decision is given in favour of the employer, the same will be in violation of the rules of natural justice. After all, the real parties concerned in labour matters are the employer and the workers. ESI Corporation will not be in any way affected if the demand notice sent by it under Sections 45-A/45-B is quashed."

26. Likewise this court in *Fertilizers and Chemicals Travancore Ltd. (supra)*, made the following pertinent observation on impleadment of the employees:-

"10. In the present case the workmen concerned were not made parties before the Employees' Insurance Court, nor was notice issued to them by the said court. Also, the order of the Employees' Insurance Court dated 4-2-1993, relevant portion of which we have quoted, is not a very happy one as no proper determination has been made therein as to whether the workmen concerned are the employees of the appellant and whether they are entitled to the benefit of the Act.

12. In our opinion, the Employees' Insurance Court should have itself made a proper investigation of the facts after getting evidence from the parties, including the workmen concerned, and after impleading them as party in the petition, it should have determined the question as to whether the persons concerned were the employees of the appellant or not.

14. Needless to say, the Employees' Insurance Court will grant an opportunity to all the parties, including the alleged workmen, to lead documentary evidence or oral evidence and thereafter proceed in accordance with law. We make it clear that nothing stated hereinabove shall be construed as an expression of opinion on the merits of the controversy involved. All questions of law and fact are left open for the parties to be raised before the Insurance Court."

27. The above judgments suggest that for non-joinder of necessary parties, the proceeding at the instance of the respondent would not be legally maintainable. Such a plea was specifically raised by the appellants before the High Court but this was rejected with the observation that the issue ought to have been raised before the trial court.

In this context, it is necessary to keep in mind that the Supreme Court judgment i.e. Employees' State Insurance Corporation (supra) was rendered on 17.9.2009 whereas the judgment in favour of the appellants was rendered by the HC Court much earlier on 21.6.2006. Therefore, for the appellants, it would have been impossible to rely on the ratio in the subsequent judgment of the Supreme Court to argue on the non-maintainability of the respondent's proceeding, for non-impleadment of the concerned employees.

28. In any case, non-joinder of a necessary party goes to the root of the matter and could also be fatal to a legal proceeding. For this we can usefully read the opinion of this court in *Khetrabasi Biswal vs. Ajaya Kumar Baral and Ors.*¹⁰ where it was held as follows:-

"6. The procedural law as well as the substantive law both mandates that in the absence of a necessary party, the order passed is a nullity and does not have a binding effect."

29. Let us now deal with the specific submission of the learned counsel for the respondent. The argument is that since penal consequences are provided under the ESI Act, strict interpretation of the notification on the applicability of the Act to the respondent's establishment, must be made. On this aspect, it needs to be said that the name of village Tarapur is mentioned twice in the 21.7.1999 notification and therefore a strained interpretation is not at all necessary to bring the establishment of the respondent, within the ambit of coverage of the ESI Act. The respondent's failure to conform to the requirement of the ESI Act may perhaps invite penal action envisaged by the legislation. But this by itself does not persuade us to interpret the statutory notification in a particular manner, to suit the purpose of the respondent.

30. As we find, the High Court erred in holding that since the Village Tarapur, where the factory of the Respondent is situated, falls outside the municipal limits of Silchar, the establishment of the respondent is not covered by the notification (21.07.1999). Such faulty interpretation adopted by the High Court cannot be countenanced.

The word "including" in the Notification, is used as a word of enlargement, so as to make the territorial application of the ESI Act extensive. The notification is certainly not confined to "only the area under the Silchar Municipal Board", but includes various areas mentioned therein, in addition to the areas under the Silchar Municipal Board. That being the case, the respondent's establishment, is found to be covered under the purview of the ESI Act.

31. The terms of the notification cannot be any clearer and the language used admits no exceptions of the kind argued by the respondents. There is definite and unambiguous reference to the areas beyond the territorial limits of the Silchar Municipal Board. Furthermore, the village Tarapur (where the factory of the respondent is situated), is mentioned a second time.

The words used are not surplusage and emphatically proclaim the drafter's intention to include wider areas within the purview of the notification and thereby the ESI Act. The plain language of the notification settles the issue against the respondent.

32. In the result the impugned decision is set aside. The Appeal accordingly stands allowed without any order on costs.

1(1998) 2 SCC 580

2(2021) 6 SCC 693

3 (1988)4 SCC 21

4 (2008) 5 SCC 449

5(2002) 7 SCC 273

6Quebec Railway, Light, Heat & Power Co. V. Vandry, AIR 1920 PC 181

7 (2015) 1 SCC 142

8 (2009) 10 SCC 671

9 (2009) 9 SCC 485

10 (2004) 1 SCC 317

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