HIGH COURT OF MADHYA PRADESH: BENCH AT INDORE
W.P. No.7808/2016
M/s Prakash Asphaltings & Toll Highways [India] Limited v/s
Aditional Commissioner (Revenue) & Another

Indore, dated 08.02.2018

Shri G.S. Patwardhan, learned counsel for the petitioner.

Ms. Shublaxmi Mehra, learned counsel for the respondents.

The petitioner, M/s Prakash Asphaltings & Toll Highways [India] Limited, before this Court has filed the present petition being aggrieved by order dated 31.07.2015 issued by Employees' State Insurance Corporation, by which, it has been clarified that the construction workers are covered under the provisions of Employees' State Insurance Act, 1948.

The petitioner before this Court has stated that the petitioner/company is engaged in construction of road and bridges across the state and certainly employed more than twenty persons and all of a sudden, a notification has been issued on 09.08.2016 covering as many as 22 districts of the State of Madhya Pradesh for the purposes of applicability of Employees' State Insurance Act, 1948.

It has further been stated that Employees' State Insurance scheme is financed mainly by contribution of employer and employees and the scheme has been extended to new sector of employment i.e. educational institutions, private and medical institutions.

The petitioner's contention is that by issuing a circular dated 31.07.2014, the respondents have changed the well settled understanding in respect of construction workers and the construction workers who were earlier not covered under

the Act of 1948, are being covered under the act and the scheme framed thereunder.

Various grounds have been raised by the petitioner in the matter and the stand of learned counsel for the petitioner is that the provisions of Act of 1948 doesn't include the construction workers and a proper notification has to be issued as per Section 15 of the Act of 1948. It has also been argued that in case of the petitioner appropriate government is State Government and it is only the State Government, which can issue a notification for the coverage of workers employed in construction activities.

It has also been argued that the word 'establishment' has not been defined under the Act of 1948 and mechanically, the Act cannot be made applicable to the construction activities, as has been done by the respondents. Reliance has been placed upon a judgment delivered in a case of ***Cemendia Company Ltd. v/s ESIC reported in 1995 (71) FLR 160***. Reliance has also been placed upon a judgment delivered in the case of ***Kerela Financial Corporation v/s CIT reported in 1994 A.I.R. SC 2416*** and prayer has been made for quashment of impugned notification dated 31.07.2015.

A detailed and exhaustive reply has been filed by the respondents and learned counsel for the respondents has argued before this Court that the notification to include construction workers, was issued way back in the year 1976, however, it could not be implemented on account of less numbers of hospitals in the State of Madhya Pradesh. He has stated that Employee State Insurance Act, 1948 is a beneficial piece of legislation. The Government of India has established large number of hospitals throughout the State of Madhya

Pradesh, and now, the facility of treatment is being provided to workers all over the State of Madhya Pradesh. As the organization is now competent to provide medical facilities, the provisions of Act of 1948 by virtue of notification dated 20.05.1976 is being enforced. He has stated that the words manufacturing process finds place in the notification of 20.05.1976 and the notification is very much in existence, and therefore, the question of quashment of the impugned circular doesn't arise. He has also argued that the act has not been made applicable by virtue of circular dated 31.07.2015. The circular dated 31.07.2015 is nothing but an attempt to ensure the compliance of the earlier notification issued under the Act dated 20.05.1976 and a prayer has been made for dismissal of the writ petition.

Heard learned counsel for the parties and perused the record. The matter has been disposed of at motion hearing stage itself with the consent of the parties.

In the present case, the only dispute is whether the Employees' State Insurance Act, 1948 is applicable to construction workers or not.

The Act of 1948 was enacted by the Parliament to provide certain benefits to employees in case of sickness, maternity and employment injuries and provisions were made under the Act in respect of the aforesaid. It is beneficial piece of legislation and by virtue of the Act of 1948, a workman is entitled for sickness cash benefit, maternity benefit, disablement and dependents benefits, medical care and treatment and other facilities.

As per the provisions of the Act of 1948, appropriate Government whether it is State Government or Central

Government, is empowered to extend the provisions of the Act to establishment or class of establishment. Section 1(5) of the Act of 1948 reads as under:-

> (5) The appropriate Government may, in consultation with the corporation and [where the appropriate Government is a State Government, with the approval of the Central Government], after giving [one month's] notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, to any other establishment or class of establishment, industrial, commercial, agricultural or otherwise: [Provided that where the provisions of this Act have been brought into force in any part of a State, the said provisions shall stand extended to any such establishment or class of establishments within that part if the provisions have already been extended to similar establishment or class of establishments in another part of that State."

In the present case, the notification issued by the appropriate Government, has been filed by learned counsel for the respondent, which has not been disputed by learned counsel for the petitioner. The notification dated 28.05.1976 published in Madhya Pradesh Rajpatra reads as under:-

> Vide Notification No.S.O.459 (E), dated August 29, 1975-The Central Government hereby appoints the first day of September, 1975, as the dated on which the provisions of Section 3 to 7 (both inclusive) and Section 9 of the said Act shall into force.
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> (See G.O.I. Gaz. Pt. 11 dt 29-08-75 P. 1979)
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> Vide Notification No.3160-7254-XVI, dated the 20th May 1976. The State Government having already given six months' notice as required there under vide this department's Notification No.3445-2731-XVI, dated the 5th July 1975 published in the "Madhya Pradesh Rajpatra" dated the 11th July 1975, hereby, appoints the 13th August 1976, as the date on which all provisions of the said Act shall extend to the classes fo establishments at Indore centre as specified in the Sechdule annexed hereto.

SCHEDULE

Description of establishment	Areas to which the establishments are situated
1. Any premises including premises thereof wherein ten or more persons but in	Indore

any case less than twenty persons are employed for wages on any date of the proceeding twelve months , and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on; but excluding a mine subject to the operation of the Mines Act, 1952 (No.35 of 1952), or a railway running shed or an establishment which is exclusively engaged in any of the manufactruing process specified in clause (12) of section 2 of the Employees' State Insurance Act, 1748 (No.34 of 1948)	The area within the Municipal limits. Area of one mile in radius surrounding the Municipal limits of Indore including the residency area
2. Any premises including premises thereof where twenty or more persons are employed or were employed for wages on any day of the proceeding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is so carried on; but excluding a mine subject to the operation of the Mines Act, 1952 (No.35 of 1952),; or a railway running shed or an establishment which is exclusively engaged in any of the manufacturing processes specified in clause (12) of section 2 of Employees' State Insurance Act, 1948 (No.34 of 1948)	-

The aforesaid notification makes it very clear that the area within the municipal limits of Indore, adjoining area is included in respect of any premises where the manufacturing process is being carried out, is covered under the Act of 1948.

Another notification was also brought on record dated 19.03.1977, which was in respect of entire State of Madhya Pradesh excluding Indore, Gwalior and Raipur. The aforesaid notifications make it very clear that the Act has been made applicable in respect of Indore and other adjoining area as well as two other districts of the State of Madhya Pradesh.

It has been argued before this Court that workers engaged in construction of building as well as road, are not at all engaged in manufacturing process, and therefore, the Act

cannot be made applicable to such establishments. The definitions of manufacturing process, as defines under Section 2 sub-section 14-AA reads as under:-

> "(14AA) "manufacturing process" shall have the meaning assigned to it in the Factories Act, 1948."

The aforesaid definition of manufacturing process is having the same meaning, as assigned to it under the Factories Act, 1948.

Section 2 sub-section K of the Factories Act, 1948 defines the manufacturing process as under:-

> "(k) "manufacturing process" means any process for-
>
> - (I) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal; or
> (ii) pumping oil, water, sewage, or any other substance; or
> (iii) generating, transforming or transmitting power; or
> (iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book-binding; or
> (v) constructing, reconstructing,, repairing, refitting, finishing or breaking up ships or vessels; or
> (vi) preserving or storing any article in cold storage"

It certainly includes the construction activities, and therefore, by virtue of the definition of manufacturing process, it can safely be gathered that the construction activity, which is subject matter of the present writ petition is certainly a manufacturing process, as defined under Employees State Insurance Act, 1948, and therefore, by virtue of notification dated 20.05.1976 and notification dated 19.03.1977, the act has been made applicable by the appropriate Government.

The Act of 1948 has further been extended by another

notification dated 25.05.2015 to shop, hotels, motor transport establishment, educational institution, meaning thereby, it has been again extended to a larger fraction of society, as it is a beneficial piece of legislation. However, in the present case, notification dated 25.05.2015 is not material, as in the present case, the issue is in respect of construction workers.

The Apex Court in the case of ***Kirloskar Brothers v/s Employees State Insurance Corporation*** while dealing with an issue in respect of applicability of the Act in respect of Regional Officers of Kirloskar Brothers at Sikundrabad (Andhra Pradesh) and Banglore (Karnataka) in paragraph-4 to 6 has held as under:-

> "4. The object of the Act is to provide certain benefits to employees in case of sickness, maternity, employment injury and for certain other matters in relation thereto. Section 39 of the Act enjoins upon the employer to make payment of contribution and deduction of the contribution of the employees from their wages at the rates specified in the First Schedule to the Act and to credit the same to their account. The employes covered under the Act in return would receive treatment for sickness, maternity, payment for employment injury etc. Every human being has the right to live and to feed himself and his dependents. Security of one's own life and livelihood is a pre-condition for orderliness. Liberty, equality and dignity of the person are intertwined precious right to every citizen. Article 1 of the Universal Declaration of Human Rights, 1948 assures human sensitivity and moral responsibility of every State and that all human beings are born free and equal in dignity and rights. Article 3 assures everyone the right to life, liberty and security of person. Article 25 [1] assures that everyone has a right to a standard of living adequate of the health and well-being of himself and of his family, including, among others things, medical care, and right to security in the event of sickness, disability etc. Article 6 of Internationa Convent on Civil and Political Rights, 1966 assures that every human being has inherent right to life. This right shall be protected by law. Article 7 [b] recognizes the right of everyone of the enjoyment of just an healthy conditions of work which ensures in particular safe and healthy

working conditions. The Preamble of the Constitution of India, the Fundamental Rights and Directive Principles constitution Trinity, assure to every person in a welfare State social and economic democracy with equality of status an dignity of person. Political democracy without social and economic democracy would always remain unstable. Social democracy must become a way of life in an egalitarian social order. Economic democracy aids consolidation of social stability and smooth working of political democracy. For welfare of the employees, the employer should provide facilities and opportunities to make their life meaningful. The employer must be an equal participant in evolving and implanting welfare schemes. Article 39 [e] of the Constitution enjoins upon the State to secure health and strength of the workers and directs that the operation of the law is that the citizens are not forced by economic necessity to work under forced labour or unfavorable and unconstitutional conditions of work. It should, therefore, be the duty of the State of consider that welfare measures are implemented effectively and efficaciously. Article 42, therefore, enjoins the State to make provision for just and human conditions of work and maternity relief. Article 47 imposes a duty on the State to improve public health.

Economic security and social welfare of the citizens are required to be reordered under rule of law. In C.E.S.C. Limited v. Subhash Chandra Bose [(1992) 1 SCC 441 at 463], in paragraph 31 this Court surveyed various functions of the State to protect safety and health of the workmen and emphasized the need to provide medical care to the workmen and emphasized the need to provide medical care to the workmen to prevent disease and to improve general standard of health consistent with human dignity and right to personality. In para 32, it was held that the term 'health' implies more than an absence of sickness. Medical care and health facilities not only protect against sickness but also ensures stable manpower for economic development. Facilities of health and medical care generate devotion and dedication to give the workers' best, physically as well as mentally, in productivity. it enables the worker to enjoy the fruit of his labour, to keep him physically fit and mentally alert for leading a successful, economic, social and cultural life. It was held that "medical facilities are, therefore, part of social security and life gilt-edged security, it would yield immediate return to the employer in the increased production and would reduce absenteeism on ground of sickness, etc." It would thus save valuable man power

and conserve human resources.

Health is thus a state of complete physical, mental and social well being and right to health, therefore, is a fundamental and human right to he workmen. "The maintenance of health is the most imperative constitutional goal whose realization requires interaction of many social and economic factors. Just and favorable condition of work implies to ensure safe and health working conditions to the workmen. The periodical medical treatment invigorates the health of the workmen and harnessers their human resources. Prevention of occupational disabilities generates devotion and dedication to duty and enthuses the workmen to render efficient service which is a valuable asset for greater productivity to the employer and national production to the State." Interpreting the provisions of the Act in para 33, it was held that the Act aims at relieving the employees from health and occupational hazards. The legal interpretation is not ensure social order and human relations.

5. In Consumer Education & Research Center & Ors. v. Union of India & Ors. [(1995) 3 SCC 42] a three-Judge Bench of this Court held that the jurisprudence of personhood or philosophy of the right to life envisaged in Article 21 of the Constitution enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workmen to earn his livelihood, to sustain the dignity of person and to live a life with dignity and equality. The expression 'life' assured in Article 21 does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure facilities and opportunities to eliminate sickness and physical disability of the workmen. Health of the workmen enables him to enjoy the fruits of his labour, to keep him physically fit and mentally alert. Medical facilities, therefore, is a fundamental and human right to protect his health. In that case health insurance, while in service or after retirement was held to be a fundamental right and even private industries are enjoined to provide health insurance to the workman.

6. In expanding economic activity in liberalized economy Part IV of the Constitution enjoins not only the State and its instrumentalities but even private industries to ensure safety to the workman and to provide facilities and opportunists for health and vigor of the workman assured in relevant provision in

part IV which are integral part of right to equality under Article 21 which are fundamental rights to the workman. Interpretation of the provisions of the Act, therefore, must be read in the light not only of the objects of the Act but also the constitutional and fundamental and human rights referred to hereinbefore.

The principal test to connect the workmen and employer under the Act to ensure health to the employee being covered under the Act has been held by this Court in Hyderabad Asbestos case, i.e., the employee is engaged in connection with the work of the factory. The test of predominant business activity or too remote connection are not relevant. The employee need not necessarily be the one integrally or predominantly connected with the entire business or trading activities. The true test is control by the principal employer over the employee. That test will alone be the relevant test. The connection between the factory and its predominant products sold or purchased in the establishment or regional offices are irrelevant and always leads to denial of welfare benefits to the employees under the Act. When there is connection between the factory and the finished products which are sold or distributed in the regional offices or establishment and principal employer has control over employee, the Act becomes applicable. The test laid down by the orissa High Court, namely, predominant business activity, i.e., sale or distribution of the goods manufactured in the factory at Deewas, is not a correct test. It is true that this court in the special leave petition arising from the orissa High Court judgment, leave was declined holding it to be of peculiar facts.

This Court has not laid down any law therein, Shri Nariman has contended that it would operate as a precedent. Since the entire controversies between he parties is at large and his Court has seisen of the issue and pending decision, Orissa case should have got posted with these appeals. That case did not lay any law. The decision does not operate as res judicata. Therefore, we do not find any merit in the contentions. Accordingly, we hold that the view expressed by the Andhra Pradesh and the Karnataka High Courts is correct in law. The appellant, therefore, is liable to pay contribution from the respective date of demand of 1975 in Andhra Pradesh case, and on the respective date in Karnataka case under Section 39 read with first schedule to the Act."

The apex Court in the aforesaid case after taking into

account the object of the Act has held that the Act aims at relieving the employees from health and occupation hazards and the legal interpretation is to ensure social order and human relation. It has been held that the principal test to connect the workman and employees under the act, is the control by the principal employ over the employee and the aforesaid test alone has to be held as a relevant test. In the construction activity, the construction workers are certainly under the control of the principal employee.

The notification issued by the appropriate Government in respect of workmen employed in the manufacturing process has brought them under the purview of Employees' State Insurance Act, 1948 and merely because now the Act the being enforced by the respondents by issuing a circular dated 31.07.2015, it cannot be said that there was no notification issued by the appropriate Government, as required under Section 1 sub-section 5 of the Act of 1948. Letter dated 31.07.2015 is nothing but a letter issued by the Additional Commissioner to ensure compliance of the Act of 1948. The petitioner has not been able to make out any case of interference.

Resultanty, the admission is declined.

Certified copy as per rules.

(S.C. Sharma)
Judge

Ravi