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# ROYAL TALKIES, HYDERABAD & ORS.

*v.*

# EMPLOYEES STATE INSURANCE CORP.

*August* 9, 1978

B [V. R. KRISHNA IYER AND D. A. DESAI, JJ.[

*Employees State Insurance Act,* 1948, *s.* 2(9), *definitional amplitude of employee and consequential fall-out of statutory obligations—Whether a cinema theatre Manager who has no statutory obligation to run a canteen or private cycle-stand, but for the better amenities of his customers and improvement of his business enters into an arrangement with another to maintain a canteen and a* C *cycle-stand and that other employs, on his own, workers in connection with the canteen and the cycle stand, can be held liable for contribution as the "principal employer" of the workmen although they are engaged independently by the owner of the canteen or the cycle-stand.*

The appellants are owners of theatres in the twin cities of Hyderabad and Secunderabad, where films are exhibited. Within the same premises as the theatre, in every case, there is a canteen and a cycle stand, leased out to con- D tractors under instruments of lease. The contractors employ their own servants to run the canteen and the cycle stand. In regard to persons so employed by the contractors the owners of the theatres were treated as 'principal employers' and notices of demands were issued to them calling upon them to pay contribution under the Employees State Insurance Act. Thereupon the appellant filed an application under s. 75 of the Act before the Employees Insurance Court for a declaration that the provisions of the Act were not applicable to their E theatres and that they were not liable to any contribution in respect of the persons employed in the canteen and the cycle stands attached to their theatres. The Insurance Court found "that the canteens are meant primarily for the convenience and comfort for those visiting the cinema theatres though in a few cases the persons in-charge of the canteens seem to be allowing the general public also to have access to the canteens" and that the cycle stands "are meant exclusively for the convenience of the persons visiting the theatres". The F Insurance Court held that the owners of the theatres were, therefore, 'principal employers' with reference to the persons employed by the contractors in the canteens and the cycle stands attached to the theatres and rejected the application filed by the owners under s. 75 of the Act. In appeal the High Court confirmed the said findings and hence the appeal by special leave.

G Dismissing the appeal, the Court

HELD : (1) Law is essentially the formal expression of the regulation of economic relations in society. In view of the complexities of modern business organisations, 'the principal employer' is made primarily liable for payment of contribution "in respect of every employee, whether directly employed by him or by or through an immediate employer," under the Insurance Act, the main H purpose of which is to insure all employees in factories or establishments against sickness and allied disabilities, but the funding, to implement the policy of insurance is by contribution from the employers and the employees. The benefits belong to the employees and are intended to embrace as extensive a circle

as is feasible. In short the social orientation, protective purpose and human coverage of the Act are important considerations in the statutory construction, more weighty than mere logomachy or grammatical nicety. [83A, 85G-H, 86A-B] A

(2) In the field of labour jurisprudence, welfare legislation and statutory construction which must have due regard to Part IV of the Constitution, a teleological approach and social perspective must play upon the interpretative process. The reach and range of the definition of 'employee' in s. 2(9) of the E.S.I. Act is apparently wide and deliberately transcends pure contractual relationships. [88C] B

(3) Clause (9) of s. 2 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. 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 concerned; he may not do anything statutorily obligatory in the establishment; he may not 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, the 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. Nor indeed is it a legal ingredient that such adjunct should be exclusively for the establishment if it is mainly its ancillary. [88 D-G, 89 C] C D E

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. Merely being employed in connection with the work of 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 s. 2(9)(1). [89D-F] F G

(4) S. 2(9)(i) covers only employees who are directly employed by the 'principal employer'. It is imperative that any employee who is not *directly* employed by the principal employer cannot be eligible under s. 2(9)(i). In the present case the employees concerned are admittedly not directly employed by the cinema proprietors. [89F-G] H

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(5) The language of s. 2(9)(ii) 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 someone else. Even so such an employee if he works (a) on the premises of the establishment, or (b) under the supervision of the principal employer or his agent on
B 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 s. 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. [89G-H, 90A-B]

C

(6) 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 upon time and place, habits and appetites, ordinary expectations and social circumstances. Keeping a cycle stand and running a canteen are incidental or adjuncts to the primary purpose of the theatre. [90D-E]

D

(7) May be punctilious sense of grammar and minute precision of language may sometimes lend unwitting support to narrow interpretation. But language is the handmaid, not mistress. Maxwell and Fowler move along different streets, sometimes. It will defeat the objects of the statute to truncate its semantic sweep and throw out of its ambit those who obviously are within the benign contemplation of the Act, when, as in s. 2(9) the definition has been cast deliberately in the widest terms and the draftsman has endeavoured to cover
E every possibility so as not exclude even distant categories of men employed either in the primary work or cognate activities. Salvationary effort, when the welfare of the weaker sections of society is the statutory object and is faced with stultifying effect, is permissible judicial exercise. The findings, in the instant case, are correct and the conclusion reached deserves to be affirmed. [90G-H, 91A-B]

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[In view of the fact that the contribution was determined without hearing under s. 45-A of the ESI Act, the Court directed the Corporation authorities to give a fresh hearing to the principal employers i.e. the employers in tune with the ruling of this Court in the Central Press case [1977] 3 SCR 35].

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1226—1244 of 1978.

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Appeal by special leave from the Judgment and Order dated 23-11-77 of the Andhra Pradesh High Court in appeals against Orders Nos. 236, 237, 241 to 243, 246, 253 to 260, 287, 288, 293, and 294 of 1977.

*Y. S. Chitale, A. A. Khan, J. B. Dadachanji* and *D. N. Mishra*
H for the appellants.

*S. V. Gupte, Attorney General of India* and *Girish Chandra* for the Respondent.

The Order of the Court was delivered by

KRISHNA IYER, J. Law is essentially the formal expression of the regulation of economic relations in society. That is the key note thought in this case, where the core question is : who is an employee ? Secondly, to decide the meaning of a welfare measure a feeling for the soul of the measure is a surer guide than meticulous dissection with lexical tools alone.

The definitional amplitude of 'employee' in section 2(9) of the Employees' State Insurance Act, 1948, (hereinafter referred to as the Act), is the sole contentious issue canvassed by counsel at the bar. We have heard Shri Chitale for the appellant and the learned Attorney General for the respondent-Corporation at some length, because a decision by this Court as to the width of the definition and consequential fall-out of statutory obligations may cover a considerable number of establishments. We have granted leave to appeal on that basis and now proceed to study the anatomy of 'employee' as defined in section 2(9) of the Act.

A brief factual narration may help get a hang of the case. The High Court, before which the present appellants had filed fruitless appeals has summarised the facts succinctly thus :

> "The appellants are owners of theatres in the twin cities of Hyderabad and Secunderabad, where films are exhibited. *Within the same premises as the theatre, in every case, there is a canteen and a cycle stand. The canteen and the cycle stand are leased out to contractors under instruments of lease. The contractors employ their own servants to run the canteen and the cycle stand.* In regard to persons so employed by the contractors, the owners of the theatres were treated 'Principal Employers' and notices of demand were issued to them calling upon them to pay contribution under the Employees' State Insurance Act. Thereupon the owners of theatres filed application under Section 75 of the Employees State Insurance Act before the Employees Insurance Court for a declaration that the provisions of the Act were not applicable to their theatres and that they were not liable to any contribution in respect of the persons employed in the canteens and cycle stands attached to the theatres.

The Insurance Court, on a consideration of the relevant lease deeds and other evidence, noticed the following features in regard to the running of the canteens :—

> "(1) All these canteens are within the premises of the cinema theatres. (2) A few of these canteens have access

directly from the abutting roads whereas the other canteens can be reached only through the open space inside the cinema theatres. (3) The persons running the canteens are themselves responsible for equipping the canteens with the necessary furniture and for providing the required utensils. (4) The Managements of all these Cinema theatres pay the electricity charges due in respect of these canteens. (5) The persons working in these canteens are employed only by the contractors or tenants who run the canteens and they alone are responsible for the salaries payable to the persons. (6) The managements of the cinema theatres have absolutely no supervisory control over the persons employed in these canteens. (7) These canteens have to be run only during the show hours. This is made abundantly clear by Exhibits P-7 to P-10 and in the face of the recitals contained in these agreements, I am not prepared to accept P.W. 1's evidence that the tenants of these canteens are at liberty to run them at other times also. In particular Exhibit P-10 provides that the lessee shall run the business ony during the show hours and that it shall be closed as soon as the cinema shows are closed. (8) A few of the persons working in the canteens are allowed inside the auditorium during the interval for vending eatables and beverages. They can enter the auditorium a few minutes before the interval and can remain inside the auditorium for a few minutes after the interval. (9) It is seen from Ex-P. 10 that the management of the cinema theatre had reserved to itself the right to specify what types of things should be sold in the canteen. The canteens are expected to maintain a high degree of cleanliness and sanitation. (10) In some cases the managements of the theatres reserve the right to enter the canteen premises at all reasonable time for purposes of check and inspection. Ex. P. 9 contains a specific clause in that regard."

These features led the Insurance Court to arrive at the following findings of fact.

"From the several circumstances mentioned above it is clear that *these canteens are meant primarily for the convenience and comfort of those visiting the cinema theatres though in a few cases the persons in charge of canteens seem to be allowing the general public also to have access to the canteens* taking advantage of the fact that the canteens can be reached directly from the abutting road. But this circum-

stance does not by itself indicate that these canteens are thrown open to the general public as other hotels, restaurants or eating houses." A

In regard to cycle stands, the Insurance Court held :

> "Hence it may safely be concluded that these *cycle stands are meant exclusively for the convenience of persons visiting the theatres.*" B

The Insurance Court found that the owners of theatres were principal employers with reference to the persons employed by contractors in the canteens and the cycle stands attached to the theatres and rejected the applications filed by the owners of theatres under Sec. 75 of the Act. C

The disappointed theatre owners appealed under Sec. 82, without avail, but undaunted, moved this Court for Special Leave to Appeal which we have granted, as stated earlier, so that we may discuss the facets of the definitional dispute in some detail and lay down the law on the main question. D

A conspectus of the statute, to the extent relevant, is necessary to appreciate the controversy at the Bar. The statutory personality and the social mission of the Act once projected, the resolution of the conflict of interpretation raised in this case is simple. Although, technically, the Act is a pre-Constitution one, it is a post-Independence E measure and shares the passion of the Constitution for social justice. Articles 38, 39, 41, 42, 43 and 43-A of the Constitution show concern for workers and their welfare. Since Independence, this legislative motivation has found expression in many enactments. We are concerned with one such law designed to confer benefits on this weaker segment in situations of distress as is apparent from the F Preamble. The machinery for state insurance is set up in the shape of a Corporation and subsidiary agencies. All employees in factories or establishments are sought to be insured against sickness and allied disabilities, but the funding, to implement the policy of insurance, is by contributions from the employer and the employee. In view of the complexities of modern business organisation the principal employer G is made primarily liable for payment of contribution "in respect of every employee, whether directly employed by him or by or through an immediate employer". Of course, where the employee is not directly employed by him but through another 'immediate employer', the principal employer is empowered to recoup the contribution paid by H him on behalf of the immediate employer (s. 41). There is an Inspectorate to supervise the determination and levy of the contributions.

A There is a chapter prescribing penalties; there is an adjudicating machinery and there are other policing processes for the smooth working of the benign project envisaged by the Act. The benefits belong to the employees and are intended to embrace as extensive a circle as is feasible. In short, the social orientation, protective purpose and human coverage of the Act are important considerations in the B statutory construction, more weighty than mere logomachy or grammatical nicety.

With this prefatory statement we may go straight to the crucial definition. The essential question is whether a *cinema* theatre manager who has no *statutory* obligation to run a canteen or provide a cycle C stand but, for the better amenities of his customers and improvement of his business, enters into an arrangement with another to maintain a canteen and a cycle stand and that other employs, on his own, workers in connection with the canteen and the cycle stand. can be held liable for contribution as the principal employer of the workmen although they are engaged independently by the owner of the canteen D or the cycle stand. It is common ground that there is no statutory obligation on the part of the appellants to run canteens or keep cycle stands. It is common ground, again. that the workers with whom we are concerned are not directly employed by the appellants and, if we go by the master and servant relationship under the law of contracts, there is no employer-employee nexus. Even so, it has been held con- E currently by the Insurance Court and the High Court that "canteens are meant primarily for the convenience and comfort of persons visiting the theatres and the cycle stands are meant exclusively for the convenience of the persons visiting theatres" and "that the persons employed in the canteens and cycle stands are persons employed on work which is ordinarily part of the work of the theatre or incidental F to the purpose of the theatres. In relation to the person so employed, therefore, the owners of the theatres are principal employers." The High Court proceeded further to affirm :—

> "By undertaking to run the canteen or the cycle stand the contractor has undertaken the execution of the whole or G part of the work which is ordinarily part of the work of the theatre of the principal employer or is incidental for the purpose of the theatre. We have already held that the running of canteen or cycle stand is work carried on in connection with the work of the theatre, work which may be considered to be either ordinarily part of the work of the theatre or H incidental to the purpose of the theatre. If so, there is no reason why the contractor should not come within the definition of 'immediate employer' ".

Before us counsel have mainly focussed on the definition of "employee" since the short proposition which creates or absolves liability of the appellants depends on the canteen workers and the cycle stand attendants being 'employees' vis-a-vis the theatre owners. There is no doubt that a cinema theatre is an 'establishment' and that the appellants, as theatre owners, are principal employers, being persons responsible for the supervision and control of the establishment. Admittedly, the canteens and cycle stands are within the theatre premises. Within this factual metrix let us see if the definition in S. 2(9) will fit.

We may read the definition of "employee" once again before analysing the components thereof :—

> 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
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> (i) who is directly employed by the principal employer or 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 of 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
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> (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; but does not include :—
>
> (a) any member of the Indian naval, military or air forces; or

A (b) any person so employed whose wages (excluding remuneration for overtime work) exceed five hundred rupees a month :—

Provided that an employee whose wages (excluding remuneration for overtime work) exceed five-hundred B rupees a month 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.

The reach and range of the definition is apparently wide and deliberately transcends pure contractual relationships. We are in the C field of labour jurisprudence, welfare legislation and statutory construction which must have due regard to Part IV of the Constitution. A teleological approach and social perspective must play upon the interpretative process.

Now here is a break-up of Sec. 2(9). The clause contains two substantive parts. Unless the person employed qualifies under both D 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 E 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 F 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 G 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 can- H teen 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 book-stall where scientific works or tools are sold or 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.

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.

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 Sec. 2(9).

Sec. 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 Sec. 2(9)(i). In the present case, the employees concerned are admittedly not directly employed by the cinema proprietors.

Therefore, we move down to Sec. 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

A 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 Sec. 2(9)(ii). The plurality of
B 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 Sec. 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)
C 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
D 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
E 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.

F We are not concerned with Sec. 2(9)(iii) nor with the rest of the definitional provision.

Shri Chitale tried to convince us that on a minute dissection of the various clauses of the provision it was possible to exclude canteen employees and cycle stand attendants. May-be, punctilious sense of
G grammar and minute precision of language may sometimes lend unwitting support to narrow interpretation. But language is handmaid, not mistress. Maxwell and Fowler move along different streets, sometimes. When, as in Sec. 2(9), the definition has been cast deliberately in the widest terms and the draftsman has endeavoured to cover every possibility so as not to exclude even distant categories of men
H employed either in the primary work or cognate activities, it will defeat the object of the statute to truncate its semantic sweep and throw out of its ambit those who obviously are within the benign

contemplation of the Act. Salvationary effort, when the welfare of the weaker sections of society is the statutory object and is faced with stultifying effect, is permissible judicial exercise. A

In this view we have no doubt that the findings assailed before us are correct and that the conclusion reached deserves to be affirmed. We do so. B

Learned counsel for the appellants finally submitted that, in this event of our negativing his legal contention, he should be given the benefit of natural justice. We agree. The assessment of the quantum of the employers' contribution has now been made on an *ad hoc* basis because they merely pleaded non-viability and made no returns. On the strength of Sec. 45A the contribution was determined without hearing. In the circumstances of the case,—and the learned Attorney General has no objection—we think it right to direct the relevant Corporation authorities to give a fresh hearing to the principal employers concerned, if sought within 2 months from to-day, to prove any errors or infirmities in the physical determination of the contribution. Such a hearing, in tune with the ruling, of this Court in the *Central Press case*(1) is fair and so we order that the assessment shall be reconsidered in the light of a *de novo* hearing to the appellants and the quantum of contribution affirmed or modified by fresh orders. C D

Before we formally wind up we think it apt to make a critical remark on the cumbersome definition in Sec. 2(9) of the Act which has promoted considerable argument. This reminds us of the well-known dictum of Sir James Fitzjames Stephen "that in drafting it is not enough to gain a degree of precision which a person reading in good faith can understand, but it is necessary to attain if possible to a degree of precision which a person reading in bad faith cannot misunderstand."(2) E F

Subject to this direction we dismiss the appeals with costs (one set).

S.R. *Appeals dismissed.*

(1) [1977] 3 S.C.R. 35.
(2) Lux Gentium Lex—Then and Now 1799-1974 p. 7.