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HYDERABAD INDUSTRIES LTD.

v.

ESI CORPORATION

SEPTEMBER 24, 2007

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[DR. ARIJIT PASAYAT AND D.K. JAIN, JJ.]

Employees State Insurance Corporation Act, 1948; Ss. 2(9), 2(14) and 82:

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Persons engaged by a contractor for doing work at Railway—Employees—Classification of in the context of s.2(g) of the 1948 Act—Whether employees of contractor or Railway—Held: High Court did not analyze the factual position to see the applicability of s.2(g) of the Act—Under the circumstances, it would be appropriate to remit the matter to High Court to decide by analyzing the factual position for applicability of the provisions of the Act—Directions issued.

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The question involved for determination in the appeals was as to whether the workmen engaged by the appellant-organisation were encompassed by the definition of an 'employee' under Section 2(9) of the Employees State Insurance Act.

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Appellant contended that without analyzing the factual position and formulating the right issues, the High Court in an abrupt manner dismissed the appeals; and that there were different categories of persons involved and one uniform yardstick cannot be applied to them.

Disposing of the appeals, the Court

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HELD: The High Court while dealing with the appeals under Section 82(2) of the Employees State Insurance Act is required to analyse the factual position to see whether the definition of employee in terms of Section 2(9) of the Act applies to the facts of the case. Whether the decided case, *RajKamal Transport v. E.S.I.C.*,

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HYDERABAD INDUSTRIES LTD. v. ESI CORPORATION 273
[PASAYAT, J.]

Hyderabad, applies to the facts of the case was to be adjudicated by taking note of the factual background. Since the High Court has not analysed the factual position, it would be appropriate to remit the matter to the High Court for analyzing the factual position to decide whether provisions of the Act are applicable to the category of persons engaged. [276-E-F-G]

Raj Kamal Transport v. E.S.I.C., Hyderabad, (1996) 3 SCALE 806, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 702-709 of 2001.

From the Judgment and Order dated 12.11.1998 of the High Court of Andhra Pradesh in A.A. Order Nos. 690-696 & 722 of 1994.

WITH

C.A. Nos. 710-717 of 2001.

K.V. Viswanathan, Vishal Gupta and Shabyashachi Patra (for Sanjeev Kumar) for the Appellant.

Vijay K. Mehta for the Respondent.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Challenge in these appeals is to the order passed by a Division Bench of the Andhra Pradesh High Court, which by the impugned order dismissed all the appeals filed under Section 82(2) of the Employees State Insurance Act, 1948 (in short the 'Act'). The question involved in the appeals was whether the workmen engaged were encompassed by the definition of an 'employee' under Section 2(9) of the Act. The High Court held that the appellants were the principal employers so far as the concerned workers who are employed are concerned and, therefore, they are liable to pay contribution under the Act. The High Court after quoting Section 2(9) of the Act referred to the decision of this Court in *Rajkamal Transport v. E.S.I.C., Hyderabad, (1996) 3 SCALE 806* and held that the orders passed by the courts below are correct and the appeals lack merit.

2. In support of the appeals, learned counsel for the appellants H

A submitted that without analyzing the factual position and formulating the right issues, the High Court in an abrupt manner dismissed the appeals. It was submitted that there were different categories of persons involved and one uniform yardstick cannot be applied so far as they are concerned.

B 3. In response, learned counsel for the Corporation supported the judgment of the High Court.

4. The issues which require to be considered are as follows:

C (a) Whether the persons engaged by the contractors for loading and unloading at the railway sidings are employees of the contractor?

D (b) Whether statutorily such persons would qualify as insured persons as defined under Section 2(14) of the Act or was their engagement of a sporadic nature with liberty in them to work for several employers?

(c) Whether for the work of loading and unloading at the railway sidings there was supervision by the appellants or its agent?

E (d) Whether persons engaged by the clearing and forwarding agents of the appellants in the various places can be said to be employees of the clearing and forwarding agents in the sense of there being continuity and regularity in the engagement of those persons and further whether such work was carried out by them for or on behalf of the appellants?

F (e) Whether such persons engaged by the clearing and forwarding agents were also working for other clearing and forwarding agents?

G (f) Whether the clearing and forwarding agents who were separate juristic entities would thus be establishments covered under notification issued under section 1(4) extending the applicability of the Act as held in *M/s Cochin Shipping Co. v. E.S.I. Corporation*, [1992] 4 SCC 245.

H (g) Whether clearing and forwarding agents come within the definition of immediate employer under section 2(13) of the ESI

HYDERABAD INDUSTRIES LTD. v. ESI CORPORATION 275
[PASAYAT, J.]

Act?

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(h) Further, whether the workers engaged by the contractors could be said to be employees of the contractor and whether the appellant has supervision over the work either by itself or by its agent? If yes what should be the apportionment towards the labour component from the amount paid to the contractor?

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(i) Whether on the aspect of repairs and maintenance the apportionment of 25% of the amount paid to the contractor as labour component is correct and if not what would be the apportionment?

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(j) Whether the activity of constructing staff quarters and other could be said to be an activity which is ordinarily part of the work of the appellant or incidental to the purpose of the factory or establishment of the appellant?

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5. As rightly submitted by learned counsel for the appellants no finding has been recorded on the following aspects:

(a) Whether the persons engaged by the contractors at the railway sidings are employees of the contractor;

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(b) Whether the contractor is in the nature of immediate employer u/s 2(13) of the ESI Act and as such the appellant is liable as principal employer;

(c) Whether the work done by the persons engaged by the contractor at the railway sidings, there was supervision by the appellant or its agent.

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(d) Whether the work carried on by these persons engaged by the contractor at the railway sidings is ordinarily part of the work of the factory or establishment or is preliminary to the work carried on or incidental to the purposes of the factory or the establishment.

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(e) Whether the persons engaged by the clearing and forwarding agents of the appellant were employees of the clearing and forwarding agents in the sense that certain number of workers were

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A regularly doing the work of the appellant for the clearing and forwarding agent.

(f) Whether for work done on repairs and maintenance 25% apportionment towards labour charges, in the amount paid to the contractor was not the correct apportionment.

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(g) Whether the persons engaged by the contractors for construction of staff quarters were the employees of the contractor or that the construction of the staff quarter in the present case was an activity which is ordinarily part of the work of the factory or establishment of the appellant or that it is preliminary to the work carried on or incidental to the purpose of the factory or establishment of the appellant.

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D 6. Various decisions have been cited to submit that *Raj Kamal's* case (supra) is distinguishable on facts. It is pointed out that the clearing and forwarding measure is to be taken as an establishment itself.

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E 7. As the High Court has not considered the factual aspects and has abruptly concluded that the *Raj Kamal's* case (supra) covers the case there is no scope for analyzing the factual aspects in these appeals. The High Court while dealing with the appeals under Section 82(2) of the Act is required to analyse the factual position to see whether the definition of employee in terms of Section 2(9) of the Act applies to the facts of the case. Whether *Raj Kamal's* case applies to the facts of the case was to be adjudicated by taking note of the factual background. Since the High Court has not analysed the factual position it would be appropriate to remit the matter to the High Court for analyzing the factual position to decide whether provisions of the Act are applicable to the category of persons engaged.

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G 8. The appeals are disposed of accordingly with no order as to costs.

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S.K.S.

Appeal disposed of.