B. M. LAKSHMANAMURTHY

v.

THE EMPLOYEES' STATE INSURANCE CORPORATION, BANGALORE

*January* 21, 1974

[P. JAGANMOHAN REDDY, S. N. DWIVEDI AND P. K. GOSWAMI, JJ.]

*Employees' State Insurance Act—S.* 2(9)(ii) & 2(13)—*'Employee' & 'immediate employers' meaning & scope of.*

The appellant's firm was carrying on the business of manufacturing and exporting polished granite memorial stones. The firm was a factory both under the Factories Act as well as under the Employees' State Insurance Act. Adjacent to this factory was another factory situated on the appellant's land leased out to two contractors who employed 50 workers in their factory for the purposes of cutting and dressing the granite stones. The granite stones unloaded outside the factory by the lorries were brought on the portion of the leased land and after cutting them they were sent back to the appellant's factory where they were designed and polished. The Employees' State Insurance Corporation claimed from the appellant a certain sum as the firms contribution on account of the workers employed by the two contractors described as 'immediate employers' under the Act. The Employees' State Insurance Court held that the contractors were not 'immediate employers' within the meaning of s. 2(13) of the Employees' State Insurance Act and that they were independent contractors. On appeal the High Court held that the apellant was a principal employer and the contractors were the immediate employers under the Act. The High Court also held that the workers under the contractors were employees within the meaning of s. 2(9)(ii) of the Act.

Dismissing the appeal, to this Court,

HELD : (1) The underlying aim of the Act is to insure the employees against various risks to their life, health and well being and the charge is upon the principal employer even though he may get his usual work done through an intermediary who is described in the Act as 'immediate employer'. Any dispute between the principal employer and the immediate employer has to be settled between themselves *de hors*, the employees and the Act charges the principal employer with the liability to pay the contribution not only of its own but also that of the employees subject to his right to deduct the employees' contribution from their wages under s. 40(2) of the Act. [147A]

(2) On the findings of fact the work undertaken by the contractor's in the adjoining vicinity is preliminary or incidental to the work in the principal employer-factory turning out the finished product for export. The work in the two places has intimate correlation and is a piece of an integrated whole and the said work by the contractors through their labour is ordinarily part of the work of the principal factory undertaken by the contractors. Their factory is situated in the premises of the appellant's factory which, according to the definition clause, includes the precincts thereof. In the instant case on an examination of the site plan and the evidence it is evident that there is a definite environmental as well as functional unity between the two portions, namely, the main factory and the contractors' factory with the precincts even though separated by a wall in which there was a door which sometimes was closed. The work undertaken by the contractors and carried on in their portion of the area is surely componental to make it a part of the complex whole. The principal requirement of the definition namely, that the work or the construction is undertaken on the premises of the factory is satisfied in the present case. It therefore follows that the two contractors are 'immediate employers' within the meaning of s. 2(13) and the workers employed for cutting and dressing the granite stones by the immediate employers are employees within s. 2(9)(ii) of the Act. [148B]

*Employees' State Insurance Corporation, Bombay* v. *Raman* (*Chittur Harihar Iyer*), [1957] 1 L.L.J. 267, *Nagpur Electric Light and Power Co. Ltd.* v. *Regional Director Employees State Insurance Corporation, Etc.*, [1967] 3 S.C.R. 92, *Employees'*

A *State Insurance Corporation*, v. *Peter Sewing Machine Co. etc.* A.I.R. 1970 Delhi 182, and *M/s Hindustan Construction Co. Ltd.* v. *Employees' State Insurance Corporation*, (1966) I.L.R. 18 Assam & Nagaland 87, referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1626 of 1967.

Appeal by Special Leave from the Judgment and Decree dated the 14th October, 1966 of the High Court of Mysore at Bangalore in
B Misc. First Appeal No. 124 of 1966.

*M. Natesan* and *Saroja Gopalkrishnan*, for the appellant

*Gobind Das* and *S. P. Nayar*, for the respondent.

The Judgment of the Court was delivered by

GOSWAMI, J.—The appellant and his brother, Srinivasamurthy
C are partners of a firm carrying on the business of manufacturing and exporting of polished granite memorial stones in the name and style of Messrs Narayanaswami & Sons. The firm is admittedly a factory both under the Factories Act as well as under the Employees' State Insurance Act (briefly the Act). The appellant claims to directly employ about 35 persons in his factory and has been paying contribution under the Act on their account. It is stated that adjacent to
D his own factory there is another factory situated on the appellant's land leased out by him to two persons, Chidambarchari and Shankarsubbachari (hereinafter referred to as the contractors). The contractors employ about 50 workers in their factory for purposes of cutting and dressing the granite stones. The lorry drivers bring granite from the surrounding areas and unload them outside the factory. The contractors get these to their portion of the leased land
E for cutting them. After cutting these are sent back to the appellant's factory where these are designed and polished and thereafter exported.

The Employees' State Insurance Corporation (briefly the Corporation) applied to the Employees' State Insurance Court at Bangalore (briefly the Court) for recovery of an amount of Rs. 8893/- being the employees' contribution payable by the appellant for the period com-
F mencing from 27-7-1958 to 31-1-1964 on account of the workers employed by the two contractors described as 'immediate employers' under the Act. The court decided against the Corporation holding that the contractors were not 'immediate employers' within the meaning of section 2 (13) of the Act and they were independent contractors and hence the appellant was not the principal employer in respect of the employees working under the contractors. The Cor-
G poration appealed to the High Court of Mysore against the aforesaid order under section 82(2) of the Act. The High Court held that the appellant was the principal employer and the contractors were the immediate employers under the Act. The High Court further held that the workers under the contractors were employees within the meaning of section 2 (9) (ii) of the Act. The High Court thus accepted the appeal of the Corporation. Hence this appeal by special
H leave.

Before the court evidence was given by both sides and the following findings of the court are adverted to by the High Court :

"All that can be said to have been proved by the applicant corporation in this case is that RWs 2 and 3 (the contractors) work at a place belonging to the respondent and execute part of the work which is necessary to manufacture the final finished product for sale. All that can be said to have been proved in this case is that the contractors are doing some work which would be the foundation for the work that is finally done by the respondent" A B

After examining the evidence the High Court also found as follows :—

"There is evidence to shew that these employees (under the contractors) are employed in connection with the work of the respondent-factory". C

The respondent in the High Court's judgment refers to the appellant herein. As stated earlier, the High Court answered both the questions in favour of the Corporation.

The same points are raised for consideration in this appeal and Mr. Natesan on behalf of the appellant submits that the contractors owned a separate factory and are independent contractors and cannot be held to be 'immediate employers' within the meaning of section 2(13) of the Act and hence the appellant is not liable as principal employer to pay the contribution on account of the persons working under the contractors. D

Before we deal with the questions of law raised in this appeal, it will be appropriate to refer to the material provisions of the Act.

The Act, as it appears from the preamble, is passed "to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto". Section 2 contains the definitions. By section 2 (4) "contribution" means the sum of money payable to the Corporation by the principal employer in respect of an employee and includes any amount payable by or on behalf of the employee in accordance with the provisions of this Act." By section 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— E F

(*i*) 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; or G

(*ii*) who is employed by or through an immediate employer on the premises of the factory or 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; H

* * * *

A By section 2(12) "factory" means any premises including the precincts thereof whereon twenty or more persons are employed or were employed for wages on any day of the preceding 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 does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed".

B * * * *

By section 2(13) "immediate employer", in relation to employees employed by or through aim, means a person who has undertaken the execution, on the premises of a factory or an establishment to which this Act, applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is C ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer".

D By section 2(14) "insured person" means a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is, by reason thereof, entitled to any of the benefits provided by this Act".

By section 2(17) "principal employer" means—

E (1) in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under the factories Act, 1948, the person so named".

* * * *

F Chapter IV deals with contributions.

The opening section 38 provides that—

"subject to the provisions of this Act, all employees in factories, or establishments to which this Act applies shall be insured in the manner provided by this Act."

* * * *

G By Section 39(1) "the contribution payable under this Act in respect of an employee shall comprise contribution payable by the employer (hereinafter referred to as the employer's contribution) and contribution payable by the employee (hereinafter referred to as the employee's contribution) and shall be paid to the Corporation"

H By section 40 (1) "the principal employer shall pay in respect of every employee, whether directly employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution".

By section 42(2) "Contribution (both the employer's contribution and the employee's contribution) shall be payable by the principal employer for each week in respect of the whole or part of which wages are payable to the employee and not otherwise". A

Section 43 and section 97 empower the Corporation to make regulations. Under section 44 every principal and immediate employer has to submit returns to the Corporation and maintain registers and records. B

Section 68 provides for Corporation's rights where a principal employer fails or neglects to pay any contribution. By section 72 an employer is barred from reducing wages by reason only of his liability to pay contribution.

Chapter VA provides for certain transitory provisions. The opening section 73A provides for employer's special contribution. C

Chapter VI deals with adjudication of disputes and claims. Under section 74 (1) Employee's Insurance Court is constituted. *Inter-alia* under section 75 (1) "If any question or dispute arises as to—

(*a*) whether any person is an employee within the meaning of this Act or whether he is liable to pay the employees' contribution, or D

* * * *

(*d*) the person who is or was the principal employer in respect of any employee;

* * * *

such question or dispute.....shall be decided by the Employees' Insurance Court in accordance with the provisions of this Act." E

Under section 75(1) (g), *inter-alia*, any dispute between a principal employer and an immediate employer shall also be decided by the court. Under section 75 (2) (b) any claim by principal employer to recover contributions from any immediate employer shall also be decided by the Employees' Insurance Court. By section 75 (3) jurisdiction of a civil court is barred regarding, amongst others, any question or dispute as specified in the section. F

Section 82 provides for appeals and under sub-section (2) thereof an appeal shall lie to the High Court from an order of the Employees' Insurance Court if it involves a substantial question of law.

Chapter VII provides for different penalties. G

Under Chapter VIII (Miscellaneous), section 94 provides, *inter-alia*, that contributions due to the Corporation shall have priority over all other debts.

The Act is thus a beneficial piece of social security legislation in the interest of labour in factories at the first instance and with power to extend to other establishments. Provisions of the Act will have to be construed with that end in view to promote the schemes and avoid H

A the mischief. From some of the material provisions set out above, the underlying aim of the Act is to insure the employees against various risks to their life, health and well being and the charge is upon the principal employer even though he may get his usual work done through an intermediary, who is described in the Act as 'immediate employer'. Any dispute between the principal employer and the immediate employer is to be settled between themselves, *de hors*, the B employees and the Act charges the principal employer with the liability to pay the contribution not only of its own but also that of the employees subject to his right to deduct the employees' contribution from their wages under section 40 (2) of the Act. There is a quicker mode of recovery as arrears of land revenue under section 45B and 73D. Chapter VA provides for transitory provisions and by section 73A every principal employer shall have to pay a special contribution C in lieu of the employer's contribution payable under Chapter IV. Adjudication of all kinds of specified disputes are also intended to be expeditiously disposed of by the court constituted under section 74. Such disputes include a dispute between a principal employer and an immediate employer as noticed earlier. Civil courts' jurisdiction is barred in respect of matters specified in the Act. There is only one special type of appeal to the High Court and that also in a restricted D form. The Act insists on compliance with its provisions on pain of penalties and the contributions due to the corporation have priority over other debts.

Keeping in view the scheme and the principal object of the Act, we will now examine the questions of law raised in this appeal. The definition of the 'immediate employer' under section 2 (13), omitting E what is not necessary for our purpose, is as follows:—

> " 'immediate employer', in relation to employees employed by or through him, means a person who has undertaken the execution, on the premises of a factory.....to which this Act applies.....of the whole or any part of any work which is ordinarily part of the work of the factory or F establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory....."

That the appellant, who is the principal employer, has a factory where granite memorial stones are manufactured for export is beyond question. The finished articles are the dressed and polished granite G stones. The raw material is the stone from the quarry—brought therefrom, cut to sizes, dressed, polished and then exported. The other factory of the contractors on the leased land of the principal employer, adjoining the latter's factory, is registered under the Factories Act in the year 1963. Although admittedly a factory, there is no evidence on the record that the contractors pay any contribution under the Act or have been even charged separately as prin- H cipal employers so far as their so called direct employees are concerned. The principal employer, the appellant, is making a claim which, if correct, will make the contractors also principal employers liable under the Act. But it is easy for the appellant to make such

a claim to avoid his personal liability which, in all fairness to labour, should have been settled by impleading the contractors as parties in order to make the entire position clear. It is not necessary for us to examine whether this is a mere device of the principal employer to avoid his liability under the Act. A

We agree with the High Court that on the findings of fact the work undertaken by the contractors in the adjoining vicinity, even though their factory may have been subsequently registered under the factories Act, is preliminary or incidental to the work in the principal employer-factory turning out the finished product for export. The work in the two places has an intimate correlation and is a piece of an integrated whole and the said work by the contractors through their labour is ordinarily part of the work of the principal-factory undertaken by the contractors. Their factory is situated in the premises of the appellant's factory which according to the definition clause includes the precincts thereof. It, therefore, follows that the two contractors are 'immediate employers' within the meaning of section 2 (13) and the workers employed for cutting and dressing the granite stones by the immediate employers are employees within section 2 (9) (ii) of the Act, being employed through the immediate employers on the premises of the factory including the precincts thereof. The fact that in 1963 the contractors' factory was separately registered under the Factories Act or that, after meeting the prior requirements of the principal employer, work of some other parties was also permissible, does not, in our opinion, militate against the predominant purposes of the work of the contractors being part and parcel of the main work of the principal employer-factory for which the contractors mainly work. B C D E

A good deal of argument is advanced with regard to the expression "on the premises of a factory" in the definition clause of "immediate employer" under section 2 (13). The word "premises" according to the dictionary means house or building with its ground or other apurtenances. The premises include under section 2 (13) the precints thereof. The word "precincts" means the environs. This Court in *Ardeshir H. Bhiwandiwala* v. *The State of Bombay*(1) dealt with the term "premises" in the definition of factory under section 2(m) of the Factories Act and after noticing its meaning in various Law Lexicons and dictionaries observed:— F

> "The word "premises" has now come to refer to either land or buildings or to both, depending on the context....." It is therefore clear that the word "premises" is a generic term meaning open land or land with buildings or buildings alone." G

The contention in that case that the word "premises" must be restricted to mean buildings and not taken to cover open lands as well was repelled.

In the instant case, on an examination of the site plan (Ext. P-1) and the evidence, it is evident there is a definite environmental as well as functional unity between the two portions, namely, the main H

(1) [1961] 3 S.C.R. 592.

A factory (Portion A) and the contractors' factory with the precincts (Portion B) even though separated by a wall in which there was a door which sometimes was closed. The work undertaken by the contractors and carried on in their portion of the area is surely componental to make it a part of the complex whole. The principal requirement of the definition, namely, that the work or the construction is undertaken on the premises of the factory and about which both B sides join issue, is satisfied in the present case on the evidence on records and we hold accordingly. We are also satisfied that the workers under the contractors are employees employed by the principal-employer through the 'immediate employers' on the premises of the factory in work which is ordinarily the normal work of the factory or is, at any rate, preliminary to the work or which is certainly incidental to the purpose of the main factory of the appellant.

C

Mr. Natesan laid great stress upon the requirement of a unity of control of the principal employer over the manufacturing process of the work undertaken by the contractors, but it will be obvious from the facts found and the evidence noted below that the work is done on the premises of the factory. We need not examine this aspect in detail in view of the uncontradicted evidence of PW-1 as follows:—

D

> "The work done in the Factory consisted of manufacture of granite stones for export. I found raw stones lying all over the surrounding area. I found that raw stones were moved to the premises marked B in Ex. P. 1. I found that about 50 persons working at the spot. I learnt from the partners those 50 persons had been employed by two or three con- E tractors. Cutting and dressing of the stones were done by those fifty men. There were (1) sand blasting machine belonging to the partners and (2) Electric blower. Power was used in these machines. After the stones are cut and dressed, they are removed to premises A for designing and polishing. Final touches are then given to them in the premises B. They are again brought back to premises A for packing and despatching. The F premises A and B belong to the partners. Only a wall separated the two premises. There was a connecting door which appeared to have been closed".

Again RW-2 also deposed that "it is since last three years that, I undertook the work of the second party" *i.e.* the appellant. R W-1 (partner of the appellant) stated as follows in cross-examination:

G

> "Ex. P. 4 is the copy of the letter dated 19-3-63 written by P.W. 1 to me for copy of the agreement and plan. Ex. P. 5 is my interim reply.....By Factory premises in Ex. P. 5, I meant both the portions A and B in Ex. p. 1".

Mr. Natesan has referred to a decision of the Bombay High Court in *Employees' State Insurance Corporation, Bombay* v. *Raman (Chittur Harihar Iyer)*(1) but the High Court dealt in that case with the definition H of "employee" prior to the amendment of the Act in 1966 and is of no

(1) [1957] I L.L.J. 267.

aid to counsel. This case was also distinguished by this Court in *Nagpur Electric Light & Power Co. Ltd.* v. *Regional Director Employees State Corporation, Etc.*(1) Counsel also relied upon a decision of the Delhi High Court in *Employees' State Insurance Corporation* v. *Peter Sewing Machine Co. etc.*(2), dealing with the definition of 'factory' under section 2 (12) of the Act. The High Court, *inter alia*, was posing a question in that case as to whether the whole or any part of the work of the contractors there consisted of any work which was ordinarily a part of the work of the factory or establishment of the principal employer and answered it in the negative on the finding of facts in that case "that the contractors, manufacture their goods independently and not as a part of the goods manufactured by the Peter Sewing Machine Company". On the facts of this case that question does not arise and we express no opinion thereon. The decision is therefore, of no aid to the appellant in this case.

The learned counsel further draws our attention to *M/s Hindustan Construction Co. Ltd.* v. *Employees' State Insurance Corporation*(3) in which case the High Court remanded the matter to find out "whether the work done at the site can be regarded as a manufacturing process....." We, however, do not fail to notice that the judgment did not take note of the complete definition of "employee" under section 2 (9), the first part of which is joined by a conjunctive 'and' with two clauses. Further the High Court is not correct in thinking that the definition of the word "factory" under the Factories Act "is same" as that of "factory" under the Employees' State Insurance Act which is of wider amplitude with an expanding horizon of objectives in the latter Act. It is not necessary, however, to consider in this case if these factors may have affected the decision in the above case. At any rate, the appellant does not derive any aid from this decision.

The next decision in *Nagpur Electric Light & Power Co., Ltd.* (supra), relied upon by the appellant for the construction of the definition of "employee" under section 2 (9) (i) of the Act is not of assistance to him since we are dealing with a case under section 2(9) (ii).

We, of course, notice that the High Court in this case held as follows at page 20 of the judgment :—

> "From the foregoing, it is clear that the contractors have been executing the work which is ordinarily part of the work of the factory and that within the premises of the respondent-factory".

The definition clauses of "immediate employer" [section 2 (13)] and "employee" [section 2 (9) (11)], contain the expression "on the premises of a factory" and not within it. Even so, as detailed above after examining the evidence ourselves, we are clearly of opinion

(1) [1967] (3) S.C.R. 92. (2) AIR 1970 Delhi 182.
(3) [1966] I.L.R., 18 Assam & Nagaland 87.

A that the work of the contractors was undertaken by them on the premises of the factory which may not be the same thing as in or within the factory. We are further of the view that the entire site of the factory is a composite one containing portions A as well as B and there is no doubt that the contractors are the 'immediate employers' within the meaning of section 2 (13) of the Act and the workers employed by them are "employees" under the Act.

B

In the result, the appeal fails and is dismissed with costs.

P.B.R. *Appeal dismissed.*