INTERNATIONAL ORE & FERTILIZERS (INDIA) PVT. LTD.

v.

EMPLOYEES' STATE INSURANCE CORPORATION

AUGUST 18, 1987

[E.S. VENKATARAMIAH AND K.N. SINGH, JJ.]

Employees' State Insurance Act, 1948: Sections 1(5) and 75 and Andhra Pradesh State Government Notification dated March 25, 1975—'Shop'—What is.

Interpretation of Statutes: Welfare legislation—Liberal construction—Necessity for.

Words & Phrases: 'Shop'—Meaning of.

The petitioner, a limited company, having central office at Secunderabad was carrying on business of importing fertilizers and represented some foreign principals for the sale of their products in India.

The Government of Andhra Pradesh after giving six months notice, vide its gazette notification No. 788 Health dated 25-9-74 as required under section 1(5) of the Employees' State Insurance Act, 1948 extended the provisions of the Act with effect from 30-3-75 to the establishments mentioned therein in which 20 or more persons were employed for wages on any day of the preceding 12 months by Notification G.O.M.S. No. 297, Health, dated 25th March, 1975. Item 3(iii) in the list of establishments in that notification to which the Act was so extended by the State Government was "shops".

On inspection of the premises of the petitioner-company at Secunderabad on 28-4-75, the Employees' State Insurance Inspector found that the petitioner had employed persons ranging from 27 to 29 for wages and was carrying on the business of import of fertilizers, and the petitioner was asked to comply with the provisions of the Employees' State Insurance Act. The petitioner agreed and submitted contribution forms of its employees to the office of the Corporation.

After complying with the provisions of the Act for a period of four years the petitioner instituted a case under Section 75 of the Act before the Employees' Insurance Court for a declaration that the establish-

A ment in which the petitioner was carrying on its business was not a "shop", and, therefore, it was not covered by the aforesaid notification and that the petitioner was not liable to comply with the provisions of the Act. On behalf of the Corporation it was submitted that the establishment being run by the petitioner was a "shop" and, therefore, liable to comply with the provisions of the Act. The Employees' Insu-
B rance Court upheld the plea of the petitioner and declared that the establishment was not covered by the Act.

The High Court allowed the appeal of the Corporation and held that the establishment was a "shop" to which the Act was applicable by virtue of the State Government's notification.

C

In the Special Leave Petition, on behalf of the petitioner it was urged that since no goods were actually being delivered in the premises in which the petitioner was having its establishment, the said establishment could not be treated as a 'shop' which was referred to in item 3(iii) of the Government's notification.

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Dismissing the Special Leave Petition, this Court,

HELD: 1. The petitioner-company is bound to comply with the provisions of the Act as, at all relevant times, the company had engaged more than 20 persons for wages at its place of business. [986E]

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2.1 The word "shop" is not defined in the Act or in the notification issued by the Government. [985D]

2.2 In ordinary parlance a "shop" is a place where the activities connected with the buying and selling of goods are carried on. [985E]

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2.3 It is not actually necessary that the delivery of the goods to the purchaser should take place at the premises in which the business of buying or selling is carried on to constitute the said premises into a "shop". The delivery of the goods sold to the purchaser is only one aspect of trading activities. Negotiation of the terms of sale, carrying on
G of the survey of the goods imported, arranging for the delivery of the goods sold, collection of the price of the goods sold etc. are all trading activities. [985H, A]

In the instant case, the premises where business is carried on by the petitioner is undoubtedly a "shop" as the activities that are carried
H on there relate only to the sale of goods which are imported into India.

The petitioner acts as the agent of its foreign principals who are the sellers. The petitioner directs and controls all its activities from the premises in question. If orders are received at a place which ultimately fructify into sales and the resulting trading activity is directed from there, that place comes to be known as a "shop". [986B-C]

3. The High Court was right in holding that while construing a welfare legislation like the Act and the notification issued thereunder a liberal construction should be placed on their provisions so that the purpose of the legislation may be allowed to be achieved rather than frustrated or stultified. [986D]

CIVIL APPELLATE JURISDICTION: Special Leave Petition (Civil) No. 6765 of 1985.

From the Judgment and Order dated 11.12.1984 of the Andhra Pradesh High Court in C.M.A. No. 244 of 1981.

D.N. Gupta and Vijay Kumar Verma for the Petitioner.

The Order of the Court was delivered by

VENKATARAMIAH, J. This petition is filed under Article 136 of the Constitution for special leave to appeal against the judgment of the High Court of Andhra Pradesh dated 11.12.84 allowing an appeal filed against the judgment dated 31.12.80 in E.I. case No. 4 of 1980 on the file of the Employees' Insurance Court at Hyderabad.

The petitioner is a limited company carrying on business at Secunderabad and at some other places in India. The petitioner is engaged in the business of importing fertilizers. It represents some foreign principals for the sale of their products in India. The petitioner imports fertilizers into India which is an item purchased by the Central Government through the State Trading Corporation/Minerals and Metals Trading Corporation of India. In the course of its business the petitioner obtains the tenders from the State Trading Corporation Minerals and Metals Trading Corporation of India and passes them on to its principals abroad. Thereafter negotiations are carried on directly between the State Trading Corporation/Minerals Metals and Trading Corporation of India and the foreign principals. After the deal is completed and the fertilizers arrive at the Indian ports the fertilizers are delivered to the Central Government at the ports. Before delivering the goods to the Central Government the petitioner supervises the

A unloading of the goods and conducts the survey of the goods imported to ascertain the condition of the goods and to find out whether there are any shortages in the consignments so that there may be no disputes later on about the quality and quantity of the goods delivered. The petitioner-company has its branch offices in Bombay, Calcutta and Madras for supervising its work at the ports and to attend to other B matters relating to clearing of shipments and in Delhi for securing payments of bills. Its central office is at Secunderabad.

The Government of Andhra Pradesh after giving six months notice vide its gazette notification No. 788 Health dated 25.9.74 as required under section 1(5) of the Employees' State Insurance Act, 1948 (hereinafter referred to as 'the Act') extended the provisions of C the Act with effect from 30.3.75 among others to the establishments mentioned therein in which 20 or more persons were employed for wages on any day of the preceding 12 months by Notification G.O.M. S. No. 297, Health dated 25th March, 1975 published in the Andhra Pradesh Gazette dated March 26, 1975. Item 3(iii) in the list of D establishments in that notification to which the Act was so extended by the State Government was "shops". On inspection by the Insurance Inspector of the premises in which the petitioner was carrying on its business at Secunderabad it was found on 28.4.75 that the petitioner had employed persons ranging from 27 to 29 for wages within the relevant period and was carrying on the business of import of fertili- E zers. On being asked by the Employees' State Insurance Corporation to comply with the provisions of the Act the petitioner agreed that its business was covered by the Act in view of the notification issued by the State Government as it happened to be a "shop" and submitted contribution forms of its employees to the office of the Employees' State Insurance Corporation. After complying with the provisions of F the Act for a period of four years the petitioner raised a dispute about its liability to pay the contributions payable under the Act and instituted under section 75 of the Act the case out of which this petition arises before the Employees' Insurance Court at Hyderabad for a declaration that the establishment in which the petitioner was carrying on its business was not a "shop" and therefore it was not covered by G the notification issued by the State Government and that the petitioner was not liable to comply with the provisions of the Act. The above petition was resisted by the Regional Director, Employees' State Insurance Corporation. It was pleaded on his behalf that the establishment which was being run by the petitioner was a "shop" and therefore it was liable to comply with the provisions of the Act. The H Employees' Insurance Court upheld the plea of the petitioner and

declared that the establishment of the petitioner was not covered by the Act. Aggrieved by the decision of the Employees' Insurance Court, the Regional Director of the Employees' State Insurance Corporation filed an appeal before the High Court under section 82 of the Act. The High Court allowed the appeal, reversed the decision of the Employees' Insurance Court and dismissed the petition filed by the petitioner under section 75 of the Act. The High Court was of the view that the establishment of the petitioner at Secunderabad was a "shop" to which the Act was applicable by virtue of the notification issued by the State Government. Aggrieved by the decision of the High Court the petitioner has filed this petition under Article 136 of the Constitution requesting this Court to grant special leave to appeal against the decision of the High Court.

A B C

On behalf of the petitioner it is urged before us that since no goods were actually being delivered in the premises in which the petitioner was having its establishment the said establishment could not be treated as a shop which is referred to in item 3(iii) of the Government's notification. The word "shop" is not defined in the Act or in the notification issued by the State Government. According to the Shorter Oxford English Dictionary the expression "shop" means "a house or building where goods are made or prepared for sale and sold". It also means a "place of business" or "place where one's ordinary occupation is carried on". In ordinary parlance a "shop" is a place where the activities connected with the buying and selling of goods are carried on. The evidence produced in the case shows that the petitioner is carrying on its business at its business premises in Secunderabad. At that place the petitioner carries on the commercial activity facilitating the emergence of contracts of sale of goods between its foreign principals and the State Trading Corporation Minerals and Metals Trading Corporation of India. It arranges for the unloading of the goods under its supervision and for the survey of the goods despatched by its foreign principals at the ports on behalf of its foreign principals and on the goods being delivered to the Central Government it collects the price payable by the Government and remits it to its foreign principals. All these activities are directed and controlled from its premises at Secunderabad. It is thus clear that the activities carried on by the petitioner constitute trading activities although the goods imported from abroad are not actually brought to the said premises and delivered to the purchaser there. In our opinion it is not actually necessary that the delivery of the goods to the purchaser should take place at the premises in which the business of buying or selling is carried on to constitute the said premises into a "shop".

D E F G H

A The delivery of the goods sold to the purchaser is only one aspect of trading activities. Negotiation of the terms of sale, carrying on of the survey of the goods imported, arranging for the delivery of the goods sold, collection of the price of the goods sold etc. are all trading activities. The premises where business is carried on by the petitioner is undoubtedly a shop as the activities that are carried on there relate B only to the sale of goods which are imported into India. The petitioner acts as the agent of its foreign principals who are the sellers. The petitioner directs and controls all its activities from the premises in question. If orders are received at a place which ultimately fructify into sales and the resulting trading activity is directed from there that place comes to be known as a "shop". In our view the Employees' Insurance C Court placed a very narrow interpretation on the expression "shop" while upholding the contenion of the petitioner by confining "shop" to a place where goods are actually stored and delivered pursuant to a sale. We agree with the decision of the High Court that while construing a welfare legislation like the Act and the notification issued thereunder a liberal construction should be placed on their provisions so D that the purpose of the legislation may be allowed to be achieved rather than frustrated or stultified. There is no doubt that the establishment of the petitioner at Secunderabad is a "shop" where selling activity is carried on and by virtue of the notification issued by the State Government the Act became applicable to it. The petitioner is bound to comply with the provisions of the Act as admittedly at all E relevant times the petitioner had engaged more than 20 persons for wages at its place of business. There is no ground to interfere with the judgment of the High Court.

In the result this petition fails and is dismissed.

N.P.V. Petition dismissed.