Before : D. S. Tewatia & M. M. Punchhi, JJ.

EMPLOYEES' STATE INSURANCE CORPORTION,—
Appellant.

versus

M/S GEDORE TOOLS INDIA (P) LTD.,—*Respondent.*

Letters Patent Appeal No. 422 of 1982

December 10, 1986.

Employees' State Insurance Act (XXXIV of 1948)—Sections 2(22)(c) and 40—Management granting additional remuneration to its employees under a Unilateral Reward Scheme as incentive for higher production—Food concession also given in the shape of Tea and Milk allowance—E.S.I. Corporation raising demand against management for payment of contributions on Reward Scheme and Food Concessions on the ground that such payments form part of 'wages'—Sums paid to the workman under the Unilateral Reward Scheme—Whether form part of wages—Company—Whether liable to make contributions for the same—Sub-section (c) of Section 2(22)—Whether to be interpreted liberally—Milk and Tea Allowance given to the employees—Whether outside the scope of term 'wages'—Employer—Whether liable to make contributions.

Held, that in order to avail of the incentives for more production given under the unilateral reward scheme, no sum is paid by the employer to the employee to defray special expenses entailed on him by the nature of his employment. Therefore, exclusion (c) of section 2(22) of the Employees' State Insurance Act, 1948 does not apply to this item at all. Hence it has to be held that the payments made to employees under the unilateral reward scheme are wages as defined in Section 2(22) of the Act and the Company is liable to make contributions for the same.

(Para 7).

Held, that in any institution, private as well as governmental, wherever a sizeable number of people work, provision of tea shops and canteens can be seen to be operating. The need to refresh the human body by solid food or by liquids is even recognised when providing intervals for the purpose during working hours. If the

employer, becoming cognizant of this elemental need, were to provide a cup of tea or the cost thereof to its employees it would not serve the purpose of the law or its intendment to treat that cup of tea as wages by interpreting exclusion (c) in such a manner that a few sips out of that cup must in all events be allowed to go as the employee's contribution towards Employees' State Insurance Fund. A glance at sub-section (2) of Section 40 of the Act reveals that it entitles the employer to recover from the employees the employee's contribution by deduction from his wages. This has then to be added to by the employer's contribution. The principal employer has thus to pay to the Corporation the contribution in respect of whom he deducted the contribution and the employer has to remit the contribution to the Corporation. Thus, in these circumstances, a liberal interpretation of exclusion (c) must necessarily be given as is beneficial to the interests of the employees for whose benefit the Act had been passed. This being a welfare legislation, it also appears to us that the main part of the definition of 'wages' has designedly been kept wide and all embracing when it comes to inlets. In the same spirit of welfare of the employee, the latter part also provides liberal exclusions or outlets when the employee need be reimbursed on his entailing special expenses by the nature of his employment. Thus, we need to give such an interpretation to exclusion (c) and hold that the provision of tea allowance to the employee, which is actually expended or supposedly expended on his reporting to duty, entailed by the employee by the nature of his employment in the establishment, and being in the nature of special expense, needs defrayment and the allowance takes the shape of the sum paid in that regard. As such, the tea and milk allowance paid to the employee is outside scope of 'wages' under the Act and the employer is not liable to make any contribution.

(Paras 8 and 9).

Letters Patent Appeal under Clause 10 *of the Letters Patent against the judgment, dated* 3*rd December,* 1981 *passed by Hon'ble Mr. Justice G. C. Mital in Employees' State Insurance Corporation* v. *M/s. Gedore Tools* India *(P) Ltd. F.A.O. No.* 57 *of* 1980 ***praying*** *that the appeal may be accepted and the respondent's* ***application*** *under section* 75 *of the Act may be dismissed.*

Employees' State Insurance Corporation *v.* M/s. Gedore Tools India (P) Ltd. (M. M. Punchhi, J.)

K. L. Kapur, Advocate, *for the Appellant.*

A. S. Chadha, Advocate, with Shri Lakhinder Singh, Advocate, *for the Respondent.*

JUDGMENT

M. M. Punchhi, J.

(1) The Employees, State Insurance Corporation (for short 'the Corporation, the appellant in this Letters Patent Appeal, raised a demand in the sum of Rs. 2,11,034.33 p. together with interest by serving a notice on M/s. Gedore Tools India (Private) Limited the respondent, on the charge that it had failed to pay contributions in terms of the provisions of the Employees' State Insurance Act, 1948 in relation to wages paid/payable to employees in the form of sectional rewards, tea allowance and milk allowance. The respondent challenging the demand notice moved a petition under section 75 of the Act before the Employees' Insurance Court, Gurgaon, raising the plea that on sectional rewards and milk/tea allowances, no contribution was due as these did not form part of the term 'wages' known to the Act and further the demand notice had not been issued by the Corporation but a person unauthorised. The respondent was successful in the Employees' Insurance Court on both the pleas. The Corporation's first appeal was allowed by an Hon'ble Single Judge of this Court to the extent that the notice was validly issued by an appropriate authority but was disallowed holding that sectional reward and milk/tea allowance was not part of wages and hence no contribution was due. The dissatisfied Corporation has filed this Letters Patent Appeal.

(2) The Hon'ble Single Judge dealing with the matter had framed the following two questions of law, terming them substantial, for determination :—

(i) Whether payments made to employees under a unilateral reward scheme, which cannot be enforced by the employees but can be altered or rescinded to the detriment of the employees by an unilateral act of the employer, can be termed as 'wages' as defined in section 2(22) of the

Employees' State Insurance Act, 1948 (hereinafter referred to as the Act); and

(ii) Whether milk and tea allowance paid to the employees would be covered by the definition of 'wages' as given in section 2(22) of the Act or would be excluded therefrom under any of the exceptions thereto ?

(3) The decision of the Hon'ble Single Judge mainly rested on his finding that the reward scheme was unilateral and could be altered, rescinded or withdrawn by the unilateral act of the employer and thus it could not be termed as 'wages' as defined in section 2(22) of the Act. In the same way, the Hon'ble Single Judge ruled that the provision of milk and tea allowance was also a unilateral concession which could unilaterally be withdrawn but alternately the provision of milk or the cost thereof to some of the employees would even be covered by one of the exceptions as special expenses defrayed entailing on the employees by the nature of their employment. The finding otherwise recorded was that the terms of the unilateral reward scheme, Exhibit A-5, and unilateral policy, Exhibit A-4, called food concession revealed that sectional reward was evolved to give incentive to employees to put in more work and give better production and better results, and tea was uniformly provided to all employees working in the establishment irrespective of the sections, but milk was provided to employees working in forging, grinding, heat-treatment and electro-plating sections as those employees had to work under special atmospheric conditions of heat, dust, fume etc., requiring such provision in order to take good care of their health. At a later stage, the price of a mug-full of tea for all employees and half a litre of milk to the employees working in the afore-referred to four sections were calculated in terms of money and these have been increased from time to time depending on the price structure. Yet, in the food policy, it is said in categoric terms that the allowance of tea and milk is available to employees while actually on work and the policy, Exhibit A-4, is certain in terms that it would not be admissible to employees who would remain absent from duty or would be on leave of any kind and that a proportional deduction for the days not on duty would be made from the allowance paid. On these findings, whether the appellant-Corporation has any claim to contribution under these heads has obviously to be viewed in the context of the provisions of the Act.

(4) To begin with, the term 'wages' defined in section 2(22) of the Act as it was before and after the amendment of Central Act No. 44 of 1966 with effect from 28th January, 1968, is worthwhile to be juxtaposed..

Old section 2(22).	*New section* 2(22).
"Wages" means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes other additional remuneration, if any, paid at intervals not exceeding two month but does not include—	"Wages" means all remuneration paid or payable in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled and includes *any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off and* other additional remuneration, if any, paid at intervals not exceeding two months but does not include—
(a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;	(a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;
(b) any travelling allowance or the value of any travelling concession;	(b) any travelling allowance or the value of any travelling concession;
(c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or	(c) any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
(d) any gratuity payable on discharge;	(d) any gratuity payable on discharge;

(5) The old definition of the term 'wages', as is patent, had two parts. The first part pertained to all remuneration paid or

payable in cash to an employee, if the terms of contract of employment, express or implied were fulfilled. The second part pertained to other additional remuneration, if any, paid at intervals not exceeding two months. Both these parts were subject to four exclusions mentioned in headings (a), (b), (c) and (d) In *M/s. Briathwaite and Co. (India) Ltd.* v. *The Employees' State Insurance Corporation,* (1), the Supreme Court was called upon to interpret the first part of the definition because counsel appearing in that case did not rely either on the second part of the definition or the exclusions in clauses (a), (b), (c) and (d). That was a case in which an Inam Scheme was evolved so as to make payment to employees exceeding the target of output appropriately applicable to each of them. The scheme was unilateral as the employer reserved the right to withdraw the scheme altogether without assigning any reason or to revise its conditins at its sole discretion. It was also made clear to the workmen in the scheme that the payment of reward was in no way connected with the part of wages. It is in these circumstances that the Supreme Court ruled that the payments under the scheme were not remuneration paid or payable in cash to an employee if the terms of the contract of employment, express or implied, were fulfilled, as the Court had found that it was not, on the interpretation put by it on the first part of the definition. At the cost of repetition, it may be mentioned that the interpretation of the second part regarding additional remuneration never arose. Thus, as commonly understood, unilateral reward schemes or concessions were treated to be outside the term 'wages', as defined in the Act. The law after the amendment divided however, the definition in three parts and the introduced words now comprise of the second part. The plain language "any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off", when contrasted with the language of the earlier part, made it abundantly clear that payments paid or due to be paid of the kind mentioned outside the terms of the contract of employment too were wages. In other words, the first part of the definition applied to what was contractual and the second part to what was non-contractual. Whether the third part of the definition (which was the second part prior to amendment) covering the aspect of additional remuneration related to contractual payments or non-contractual payments was a question which was not mooted in *Braithwaite Company's case*

(1) AIR 1968 S.C. 413.

(supra) but has now squarely been answered by the Supreme Court in *M/s. Harihar Polyfibres* v. *The Regional Director, E.S.I. Corporation,* (2) it has been ruled as follows :—

> "Therefore, wages as defined includes remuneration paid or payable under the terms of the contract of employment, express or implied, but further extends to other additional remuneration, if any, paid at intervals not exceeding two months, though outside the terms of employment. Thus remuneration paid under the terms of the contract of the employment (express or implied) or otherwise if paid at intervals not exceeding two months is wages. The interposition of the clause 'and includes any payment to an employee in respect of any period of authorised leave, lock-out, strike which is not illegal or lay-off' between the first clause, 'all remuneration paid or payable in cash to an employee if the terms of the contract of employment, express or implied, was fulfilled' and the third clause, 'other additional remuneration, if any, paid at intervals not exceeding two months, makes it abundantly clear that while 'remuneration' under the first clause has to be under a contract of employment, express or implied, 'remuneration' under the third clause need not be under the contract of employment but may be any 'additional remuneration' outside the contract of employment. So, there appears to our mind no reason to exclude 'House Rent Allowance', 'Night Shift Allowance', 'Incentive Allowance' and 'Heat, Gas and Dust Allowance' from the definition of 'wages'."

This settles that in all events wages paid or payable under a bilateral contract of employment and additional remuneration under a unilateral contract are wages if paid at intervals not exceeding two months. At the same time, it needs emphasis that it is the actual factum of payment which counts because the word used is 'paid', as distinguished from 'paid or payable'. This means that the moment an employee gets an additional remuneration, other than the remuneration payable under the contract of employment and then if additional remuneration is paid at intervals not exceeding two months, it

(2) A.I.R. 1984 S.C. 1680.

becomes wages by virtue of the third part of the definition of 'wages'. In view of the law settled by the apex Court, no purpose would be served in referring to precedents of various High Courts cited by the learned counsel for the parties taking the view that payment made under a unilateral contract would or would not come within the definition of 'wages'.

(6) Thus, on the facts of the instant case, it becomes clear that payments made (none was claimed as payments made at intervals exceeding two months) by the employer under its unilateral reward scheme and milk and tea allowances were wages under the main part unless excluded under clauses (a), (b), (c) and (d). Out of them, concededly clauses (a), (b) and (d) do not apply. The question is whether exclusion (c) applies at all.

(7) So far as the unilateral reward scheme, Exhibit A-5, is concerned, it is obvious that in order to avail of the incentives for more production, no sum is paid by the employer to the employee to defray special expenses entailed on him by the nature of his employment. Thus, exclusion (c) does not apply to this item at all. It is thus held that the payments made to employees under the unilateral reward scheme are wages, as defined in section 2(22) of the Act which justify the Corporation to issue notice to the Company for making contributions and we find no fault, legal or factual, in such a step.

(8) So far as tea allowance under Exhibit A-4 is concerned, it bears re-capitulation that to begin with a mug-full of tea was provided to every worker coming and attending to work in the establishment. This was later quantified in terms of money for the workers, being dissatisfied with the quality of tea, wished to make arrangements of their own. Now tea as a beverage, besides being a stimulant, is a source of refreshment. We cannot shut our eyes that in institutions, private as well as governmental, wherever a sizeable number of people work, provision of tea shops and canteens have been seen to be operating, whether private or institutional. The need to refresh the human body by solid food or by liquids is even recognised when providing intervals for the purpose during working hours. If the employer, becoming cognizant of this elemental need, were to provide a cup of tea or the cost thereof to its employee actually coming to the establishment and working, would it serve the purpose of the law or its intendment to treat that cup of tea as wages

by interpreting exclusion (c) in such a manner that a few sips out of that cup must in all events be allowed to go as the employee's contribution towards Employees. State Insurance Fund is something which is hard to digest. A glance at sub-section (2) of section 40 of the Act reveals that it entitles the employer to recover from the employee the employee's contribution by deduction from his wages. This has then to be added to by the employer's contribution. The principal employer has thus to pay to the Corporation the contribution in respect of whom he deducted the contribution. It is he who has to remit the contributions to the Corporation. In actual result, what it would mean is that some fraction of that cup of tea would have to be deducted by the employer as the employee's contribution, which cup of tea the employee, while at work, had actually consumed or to have presumptively consumed. Thus, in these circumstances, a liberal interpretation of exclusion (c) must necessarily be given as is beneficial to the interests of the employees for whose benefit the Act had been passed. This being a welfare legislation, it also appears to us that the main part of the definition of 'wages' has designedly been kept wide and all embracing when it comes to inlets. In the same spirit of welfare of the employee, the latter part also provides liberal exclusions or outlets when the employee need be reimbursed on his entailing special expenses by the nature of his employment. Thus, we need to give such an interpretation to exclusion (c) and hold that the provision of tea allowance to the employee, which is actually expended or supposedly expended on his reporting to duty, entailed by the employee by the nature of his employment in the establishment, and being in the nature of special expense, needs defrayment and the allowance takes the shape of the sum paid in that regard. We hold it accordingly by excluding the tea allowance by this process from the term 'wages'. Sequally, this part of the demand notice issued by the Corporation is without authority of law.

(9) What goes for tea allowance must necesarily go with added strength for milk allowance. That is due only to employees working in forging, grinding, heat-treatment and electro-plating sections. These employees have to work under certain atmospheric conditions of heat, dust, fume etc. The environment in these sections being hazardous to health, nutritious food like milk is an elemental necessity for the workmen. Expenses incurred on the intake of milk by the employees would, with all vigour, be special expenses entailed on each employee working in that section by the nature of his employment and hence the milk allowance paid is in the nature of a sum paid to the employee to defray those expenses. Thus, we hold that the milk allowance paid to the employees is outside the scope of wages under the Act and hence the demand of contribution in regard thereto is illegal.

(10) It is worth noticing that the Hon'ble Single Judge in *Hyderabad Asbestos Cement Products Ltd., Ballabgarh* v. *The Regional Director, E.S.I. Corporation Chandigarh,* (3), appears to have liberally construed the exclusion and held that the uniform washing allowance paid by the employer to the employee was not to be added to the wages for calculating the contribution under section 2(22)(c) of the Act. The provision apparently was thus construed as if uniform washing allowance was a special expense and entailed on him by the nature of his employment. We are in agreement with this liberal interpretation.

(11) For the foregoing reasons, this appeal partially succeeds in as much as the judgment and order of the Hon'ble Single Judge is upset in so far as it relates to the unilateral reward scheme but is upheld so far as the milk and tea allowances are concerned but for reasons given heretofore. Consequently, the matter is remitted back to the Employees' Insurance Court to bifurcate the amounts involved in the presence of the parties and for passing an appropriate order streamlining the demand. There will be no order as to costs.

D. S. Tewatia, J.—I agree.

R.N.R.

(3) 1982 Lab. I.C. NOC 88 (Pb. & Hry.).