

(2013) 04 KL CK 0026
In the High Court Of Kerala
Case No : Ins. A. No's. 56 and 70 of 2007

Design Combines

APPELLANT

Vs

Employees State Insurance Corporation

RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Employees State Insurance Act, 1948 — Section 1(5)
Kerala Shops and Commercial Establishment Act, 1960 — Section 2(4)

Citation : (2013) 139 FLR 57 : (2013) 138 FLR 300 : (2013) 2 ILR (Ker) 376 :
(2013) 2 KHC 415 : (2013) 2 KLJ 552 : (2013) 2 KLT 409 : (2013) LabIC 3670 :
(2013) 3 LLJ 463 : (2013) LLR 715

Hon'ble Judges : S. Siri Jagan, J; Babu Mathew P. Joseph, J

Bench : Division Bench

Advocate : E.K. Nandakumar and A.K. Jayasankar Nambiar Sr. Advocates, K.
John Mathai and P. Benny Thomas, for the Appellant; P. Sankarankutty Nair, for
the Respondent

Final Decision : Dismissed

Judgement

S. Siri Jagan, J.—The common applicant in I.C. Nos. 28/2002 and 98/2002 before the Employees' Insurance Court (E.I. Court), Alappuzha, is the appellant in these two appeals. The I.Cs. were filed challenging the demands made by the E.S.I. Corporation, for contributions under the Employees' State Insurance Act for different wage periods. The appellant is a partnership firm consisting of two partners, who are professional architects. They possess degrees in Architecture. Other professional architects are also employed by the appellant. The Employees' State Insurance Corporation (hereinafter referred to as "the Corporation") sought to cover the establishment under the Employees' State Insurance Act (hereinafter referred to as "the Act") and demanded contributions under the Act in respect of the employees of the appellant's firm as a "shop" as per the notification dated 18.9.1974 issued by the Government extending the application of the Act to "shops" also. The appellant challenged the same by filing the two I.Cs., in respect of two different wage periods. The appellant

contended before the E.I. Court that the appellant's establishment does not come within the meaning of "shop", insofar as they are only rendering professional services. Only "shops" are brought within the purview of the Act by the notification dated 18.9.74 issued by the Government of Kerala in exercise of powers u/s 1(5) of the Employees' State Insurance Act, 1948. Insofar as the appellant's establishment is not a shop, the appellant is not liable to be covered under the Act and to pay contributions under the Act, was the contention raised by the appellant before the E.I. Court. The E.I. Court considered the matter in the light of the law laid down by of the Supreme Court in the following decisions:

(a) Hindu Jea Band, Jaipur Vs. Regional Director, Employees' State Insurance Corporation, Jaipur, .

(b) M/s. Cochin Shipping co. Vs. E.S.I. Corporation, .

(c) M/s. International or Fertilisers India (Private) Limited v. E.S.I. Corporation (1998 1 LLJ 235).

(d) AIR 1994 1154 (SC) .

(e). M/s. Kirloskar Consultants Ltd. Vs. Employees' State Insurance Corpn., .

The E.I. Court, relying on the decision of the Supreme Court in Kirloskar" Consultants Ltd."s, case (supra), held that the applicant also comes within the purview of the meaning of "shop" and, therefore, is liable to be covered under the Act. But the demands were set aside and the Corporation was directed to reassess the contributions payable in accordance with directions in the judgment. The common judgment in the two I.Cs. holding that the appellant is liable to be covered under the E.S.I. Act is under challenge in these appeals. The appellant's contention is that the appellant is not engaged in any trading or commercial activity whatsoever. According to the appellant, they are only rendering services to persons approaching them for their professional services and charging a fee for the professional services rendered to the clients. As such, they do not engage in any trading or business activity so as to come within the meaning of "shop". Consequently, they are not liable to be covered under the Act as a "shop" coming within the purview of the notification dated 18.9.1974, is the contention raised. It is the further contention of the appellant that the Supreme Court had occasion to consider as to whether an advocate's firm rendering professional services like the appellant firm would come within the definition of "shop" under the Kerala Shops and Commercial Establishments Act and answered in the negative in the decision of V. Sasidharan Vs. Peter and Karunakar and Others, . The ratio of that decision is squarely applicable to the appellant's case also, is the contention raised. A still further contention advanced by the learned counsel for the appellant is that the word, "shop", has not been defined any where in the Act, and since establishments, which may otherwise come within the purview of shops are also separately included in the notification issued u/s 1(5) of the Act Like hotels, restaurants, motor transport establishments, cinema houses, newspaper establishments which would also come within the purview of "shops"

have been separately notified in the notification dated 18.9.1974, it is clear that unless it is separately notified, an architect's firm is not liable to be covered under the Act even if the appellants firm can be considered as a shop. It is pointed out by the learned counsel for the appellant that, ever since the said notification, the Corporation also understood the law in that manner only and did not rope in professional establishments rendering services like architectural consultancy firms within the purview of the Act, which would go to show that a firm of architects will not come within the purview of "shop".

2. In answer, the learned Standing Counsel for the Corporation would point out that the issue is squarely covered by the ratio of the decisions of the Supreme Court in R.K. Swamy's case (supra) and Kirloskar Consultants Ltd.'s case (supra). It is submitted that the ratio of the decision in Sasidharan's case (supra) cannot be applied to the facts of this case insofar as the Supreme Court itself has in the decision of Kirloskar Consultants Ltd.'s case (supra) categorically held that Sasidharan's case (supra) concerns with interpretation of the words, "shop" and "commercial establishments" as defined in Section 2(4) of the Kerala Shops and Commercial Establishments Act, 1960, and is not concerned with the meaning attributed to "shop" arising in the context of the E.S.I. Act. The Supreme Court had taken the same view in R.K. Swamy's case (supra) also. It is the contention of the Corporation that the appellant is engaged in the activities of preparing plans for customers approaching them as per specifications of the customers and selling the plans to those customers, which would squarely come within the purview of the activities in a shop and, therefore, the E.I. Court was right in upholding the stand of the Corporation that an architectural firm is liable to be covered under the Act. As far as the presence of other establishments, which may otherwise come within the purview of the term "shop", are included in the notification dated 18.9.1974 and notifications issued later also is concerned, the contention is that simply because two entries in the Schedule may overlap, that does not mean that the specified entries alone will come within the purview of the general entry. According to the learned Standing Counsel for the Corporation, if the appellant's firm comes within the scope of a "shop", then the fact that the other establishments which may also answer the definition of shop, are separately notified also is no reason to deny coverage of that establishment under the provisions of the Act.

3. We have considered the rival contentions in detail.

4. An architectural firm is a place where intending customers go for professional help, certainly. Customers go to an architect's firm for preparation of a plan, for construction of a building, prepared in accordance with their specifications. The architects, using their professional skills, prepare building plans in accordance with the specifications of the customer and sell it to the customer for a price. That certainly is a commercial activity. Therefore, the activities of the appellant's firm are activities in a "shop". The analogy drawn by the appellant comparing the appellant's firm with an advocate's firm is not apt in this case. In Sasidharan's

case (supra), the Supreme Court was considering the question as to whether an advocate's firm will answer the definition of "shop" or "commercial establishment" as defined under the Kerala Shops and Commercial Establishment Act. The word "shop" is not defined anywhere in the Employees State Insurance Act. In R.K. Swamy's case (supra) and in Kirloskar Consultants Ltd.'s case (supra), the Supreme Court has categorically held that the definition of the word "shop" in the Shops and Commercial Establishment Act cannot be looked into for the purpose of deciding coverage under the Employees State Insurance Act. Moreover, the activities of an advocate's firm are different from that in an architects' firm. In an advocate's firm only professional services are rendered for a fee. But in an architects' firm further activities as in a shop like preparation of plans and sale of the same to the customers are also involved. That being so, the reliance by the counsel for the appellant on the decision in Sasidharan's case (supra) and the definition of "shop" in the Kerala Shops and Commercial Establishments Act, will not be of any help to them. Our decision that the firm of architects are selling products made by their professional skills and therefore would come within the purview of the meaning of the word "shop" is amply supported by all the decisions cited hereinbefore. In R. K. Swamy's case (supra), the Supreme Court discussed all the earlier decisions regarding the subject in the context of an identical notification while deciding the coverability of an advertising firm, under the E.S.I. Act and finally came to the following conclusion:

16. In the light of these judgments and the expanded meaning now given to the word "shop", the evidence which we have reproduced above setting out the different activities of an advertising agency needs to be considered. Clients call on an advertising agency to initiate campaigns for promotion of their products. Advertising campaigns can be conducted in the different media and otherwise. The advertising agency gives advice in this behalf and as to possible expenses. The advertising agency prepares and presents alternative campaigns for the client to choose from. For such purpose it must prepare the necessary art work and the appropriate words to go with it. It employs specialists in these fields. The advertising agency is paid for the service it renders as aforesaid by the client. It also receives commission from the media through whom advertising is done.

17. Anyone who has products to sell may approach an advertising agency. The advertising agency will prepare an advertising campaign for him utilizing the services of the experts it employs in this behalf. It sells the campaign to the client and receives the price thereof. Indubitably the price will depend upon the nature of the campaign, but that does not, in our view, make any great difference. Essentially, the advertising agency sells its expert services to a client to enable the client to launch an effective advertising campaign of his products. Without straining language, the premises of an advertising agency can, therefore, reasonably be said to be a "shop", as now understood.

Following that judgment in Kirloskar Consultants Ltd.'s case (supra) the Supreme Court again held thus:

9. What we are concerned in the present case is what this Court was concerned in R.K. Swamy's case. An advertising agency organizes campaigns by conducting the same in different media and would give advice in this behalf and also in regard to possible expenses. It is also engaged in preparing and presenting alternate campaigns and for such a purpose it prepares artwork and appropriate slogans to go with it. By engaging the service of experts in different fields the advertising agency would prepare the campaign for customers and sell the campaign by receiving the price thereof. As the advertising agency sells its expert services to a client to enable him to launch an advertising campaign to advertise his product, the same being offered for at a price, the premises of an advertising agency could reasonably be said to be a shop. Adopting the same logic, we may say that the business carried on by the appellant is of consultancy services to its customers in respect of industrial, technical, marketing and management activities and preparation of project reports by engaging the services of architects, engineers and other experts. In substance, the nature of activities carried on by the appellant is commercial or economical and would amount to parting with the same at a price. Hence reliance on Sasidharan's case is misplaced. Thus we do not find any good reason to differ from the view expressed by the High Court.

An architect's firm is also engaged in identical activities like an advertising firm. Of course, the learned counsel would point out that people engaged in the field of advertising does not necessarily possess professional degrees in the subject in the field of their activity and their professional conduct are not governed by any legislation and supervised by an expert body under such legislation. We are of opinion that the same does not make any difference on the question as to whether the activities both are engaged in are activities in a "shop". In fact persons who do not possess a degree in Architecture can also, if they have skill to draw up building plans, engage in the very same activity without any statutory embargo or control. Therefore on the question as to whether their activities are those rendered in a "shop" advertising consultants and firms of architects stand on the same footing. We are therefore of opinion that those decisions would squarely apply to an architect's firm also. An architect also sells his expert services to a client to enable him to construct a building in accordance with a plan prepared by the architect and sold to the client.

Of course, the learned counsel for the appellant would refer us to a decision by a learned single Judge of the High Court of Madras in Pithavadian and Partners Vs. Deputy Director Employees State Insurance Corporation, , wherein after distinguishing the decision in Kirloskar Consultants Ltd's case, the learned Judge came to the conclusion that professionals like architects governed by statute and regulations will not come within the purview of "shop" under the Employees' State Insurance Act. But we are of the opinion that in view of the decisions of the Supreme Court on the subject, cited above, the decision of the Madras High Court is not good law.

In view of our above findings we have no hesitation to hold that an architects firm who prepare plans, using their professional skills in accordance with the specifications of the customers and sell it to the customers would certainly come within the meaning of "shop" and therefore an architect's firm would certainly come within the purview of the Employees' State Insurance Act. In that view, we do not find any infirmity in the judgment of the E.I. Court. Accordingly, these appeals are dismissed.