
(1993) 08 SC CK 0011

In the Supreme Court Of India

Case No : Civil Appeal No. 1133 of 1990

Employees" State Insurance Corpn.

APPELLANT

Vs

M/s. Harrison Malayalam Pvt. Ltd.

RESPONDENT

Date of Decision : 30-08-1993

Acts Referred:

Employees State Insurance (General) Regulations, 1950 — Regulation 12, 14, 15
Employees State Insurance Act, 1948 — Section 40

Citation : AIR 1993 SC 2655 : (1993) 5 JT 96 : (1994) LabIC 24 : (1994) 1 LLJ
12 : (1993) 3 SCALE 596 : (1993) 4 SCC 361

Hon'ble Judges : Yogeshwar Dayal, J;P. B. Sawant, J

Bench : Division Bench

Advocate : V.J. Francis and J.B.D, for the Appellant;

Final Decision : Disposed Of

Judgement

1. The question raised in the present appeal is whether the employees of the contractor engaged by the respondent-Company to execute certain contract are covered by the Employees' State Insurance Act, 1948 [hereinafter referred to as the 'Act'] and whether contribution in respect of them is payable although the contract was completed much prior to the demand for such contribution made by the appellant-Corporation.

2. Both the Insurance Court and the High Court have held against the Corporation on the ground that workers in respect of which the contribution is demanded were casual employees of the contractor and since the contract was over long ago, they are not identifiable.

3. We are afraid that the ground given by both the Courts is not justifiable. Under the Act, it was the duty of the respondent-Company to get the necessary details of the workmen employed by the contractor at the commencement of the contract since the primary responsibility of payment of the contribution is on the principal employer. On the admitted fact that the respondent-Company had engaged the contractor to execute the work, it was also the duty of the

respondent-Company to get the temporary identity certificates issued to the workmen as per the provisions of Regulations 12, 14 and 15 of the Employees' State Insurance [General] Regulations, 1950 and to pay the contribution as required by Section 40 of the Act. Since the respondent Company failed in its obligation, it cannot be heard to say that the workers are unidentifiable. It was within the exclusive knowledge of the respondent-Company as to how many workers were employed by its contractor. If the respondent-Company failed to get the details of the workmen employed by the contractor, it has only itself to thank for its default. Since the workmen in fact were engaged by the contractor to execute, the work in question and the respondent-Company had failed to pay the contribution, the appellant-Corporation was entitled to demand the contribution although both the contribution period and the corresponding benefit period had expired. The scheme under the Act for insuring the workmen for conferring on them benefits in case of accident, disablement, sickness, maternity etc. is distinct from the contract of insurance in general. Under the Act, the scheme is more akin to group insurance. The contribution paid entitles the workman insured to the benefit under the Act. However, he does not get any part of the contribution back if during the benefit period, he does not qualify for any of the benefits. The contribution made by him and by his employer is credited to the insurance fund created under the Act and it becomes available for others or for himself, during other benefit periods, if he continues in employment. What is more, there is no relation between contribution made and the benefit availed of. The contribution is uniform for all workmen and is a percentage of the wages earned by them. It has no relation to the risks against which the workman stands statutorily insured. It is for this reason that the Act envisages automatic obligation to pay the contribution once the factory or the establishment is covered by the Act, and the obligation to pay the contribution commences from the date of the application of the Act to such factory or establishment. The obligation ceases only when the Act ceases to apply to the factory/establishment. The obligation to make contribution does not depend upon whether the particular employee or employees cease to be employed employees after the contribution period and the benefit period expire.

4. Shri Pai while not disputing the fact that the Act applies to casual workmen, contended that it cannot be made applicable to the workmen of casual contractors such as the plumbers, electricity repairers, air-conditioner repairers, computer repairers, T.V. repairers etc. which contractors are engaged for temporary repair works. There is indeed great force in this contention. However, in the present case there is nothing on record to show that the contractor engaged was such casual contractor and the work executed by him was of a casual nature. We are, therefore, not called upon to decide, in the present appeal, the plausible case made out by Shri Pai. We keep the said point open to be decided in a proper case.

5. In the result we allow the appeal and set aside the decision of the Insurance Court as well as of the High Court. There shall be an order for costs.