

(1991) 03 KL CK 0008
In the High Court Of Kerala
Case No : M.F.A. No. 627/86

E.S.I. Corporation

APPELLANT

Vs

High Range Breweries Ltd.

RESPONDENT

Date of Decision : 27-03-1991

Acts Referred:

Citation : (1991) 03 KL CK 0008

Hon'ble Judges : U.L. Bhat, J;K.K. Usha, J

Bench : Division Bench

Advocate : C.S. Rajan, for the Appellant; B.S. Krishnan, for the Respondent

Judgement

U.L. Bhat, J.—Respondent-Employer was directed by the Inspector of E.S.I. Corporation to pay contribution for the period from 23rd December 1973 to 31st March 1976, on account, of certain temporary employees who had been hired through a contractor for the work of repairing a building in the premises of the factory. The employer approached the Employees' Insurance Court for relief contending that the employees of the contractor with reference to whom he is undoubtedly the principal employer are unknown and are no longer working and therefore he cannot be compelled to pay contribution in regard to their wages. This contention found favour with the E.S.I. Court which absolved him of the liability. Hence this appeal by the E.S.I. Corporation.

2. Admittedly the claim for contribution relates substantially to wages paid to certain temporary employees employed through a contractor. There is no dispute that during the period when these temporary employees were working, the employer had a statutory duty to deduct employee's share from the wages paid to them and together with his own contribution to pay the same to the Corporation. His contention, which found favour with the E.S.I. court is that those employees are no longer working there and it would not be possible to identify them and there is no question of those employees being identified at present to receive any benefit under the Employees State Insurance Act, 1948 and therefore he is not liable to pay contribution. Prima facie this contention

appears to be unsustainable. The 1948 Act created the E.S.I. Corporation for the purpose of assuring certain benefits to persons who fall within the definition of expression "employee" in the Act. It became necessary to provide finances for the Corporation. The legislature evidently decided that the finances must come mainly in the shape of contribution by employees and employer. The Act imposes a duty on the employer to deduct employee's share from the wages paid to the employees and add his own contribution and remit the same to the Corporation. The scheme of the Act does not permit a view that share of contribution paid or to be paid by any particular employee is to enable benefit to be provided by the Corporation to him. Ordinarily there could be no doubt about the identity of any particular employee. But the fact that a temporary employee had ceased to be in employment and his whereabouts are not known or his identity is not known cannot have any relevance in deciding the question about the liability of the employer to pay contribution to the Corporation.

3. Learned Counsel for the Respondent has placed reliance on two unreported decisions of Division Benches of this Court in M.F.A. No. 675 of 1987 and M.F.A. No. 727 of 1987. In the first of these two decisions the view taken by Paripooman, J. and Padmanabhan, J. is that if the employees of the contractor are not identifiable and "the details regarding them are also not available and it is impracticable to ascertain them" the demand made by the Corporation for contribution is not justified in law." This decision was followed in M.F.A. No. 727 of 1987 by Paripooman, J. and Fathima Beevi, J. We find that in yet another unreported decision in M.F.A. No. 350 of 1985, a Division Bench consisting of Paripooman, J. and Balanarayana Marar, J., held to the contrary observing. "The Insurance Court may be right in observing that the insured persons are not identifiable. But it is the duty of the Respondent to ascertain the names of the persons employed by the SIDECO for the construction of the work and then to deduct the contribution payable under the Act from the wages of those employees as well as to make that payment together with the contribution of the employer to the Corporation. That they had not maintained any list of the workers is no excuse from making the payments under the Act." We find the only reported decision on the point in E.S.I. Corporation v. Premier Timber Supplies 1991 (1) KLT 554 where a Division Bench of this Court consisting of one of us (Bhat, J.) and Jagannadha Raju, J., followed the view taken in M.F.A. No. 350 of 1985 and held that "Temporary employees as well as casual employees who may now be unidentifiable and employees employed through contractors are certainly covered by the Act, and the principal employer has the primary liability to pay contribution regarding the wages paid to them. The mere fact that no deductions were made from the wages does not absolve the principal employer from his liability to pay contribution to the Corporation."

4. The question of identity of the employee would be relevant only when the particular employee seeks benefit from the Corporation. In such a case the Corporation before extending any benefit will have to be satisfied about the identity of the employee. So far as the contribution payable statutorily by the

employer is concerned, it is his duty to deduct employee's share of contribution from the wages as and when wages are paid and along with his own share of contribution to pay it to the Corporation. The employer who fails to do so and fails even to take precautions to secure or maintain list of employees either engaged by him or engaged through a contractor and fails to make deductions of the employee's share of contribution cannot be permitted to turn round and then rely on his own default and plead exoneration from the statutory liability. We follow the reported decision referred to above and hold that employer in this case is bound to pay contribution to the Corporation.

5. We set aside the impugned decision and dismiss Insurance Case No. 4 of 1985. The appeal is accordingly allowed but in the circumstances without costs.