

(1986) 09 KL CK 0030
In the High Court Of Kerala
Case No : M.F.A. No. 117 of 1982

E.S.I. Corporation

APPELLANT

Vs

Kerala Kaumudi

RESPONDENT

Date of Decision : 30-09-1986

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(13), 2(9)

Citation : (1986) 09 KL CK 0030

Hon'ble Judges : Kochu Thommen, J; Balakrishnan, J

Bench : Division Bench

Advocate : C. Sankaran Nair and T. Ravikumar, for the Appellant; K.A. Nayar and E.R. Venkiteswaran, for the Respondent

Final Decision : Allowed

Judgement

Kochu Thommen, J.—This appeal by the Regional Director, E.S.I. Corporation, Trichur, arises from the order of the Employees' Insurance Court, Alleppey in Insurance Case No. 111 of 1977. The Court held that the Respondent, Kerala Kaumudi Ltd., Pottah, Trivandrum, was not liable to comply with the provisions of the Employees' State Insurance Act, 1948 in respect of the employees engaged in the canteen attached to the Kerala Kaumudi's Staff Employees' Club. The Court accordingly set aside Exts. P-10, P-11 and P-13 proceedings of the Appellant.

2. The Respondent is the publisher of the newspaper "Kerala Kaumudi". The Appellant directed the Respondent to comply with the provisions of the Act and the scheme framed thereunder to bring the employees engaged in the work of the canteen within the statutory coverage. The Respondent moved the Employees' Insurance Court for a declaration that the persons engaged in the canteen do not come within the protection of the Act and the scheme.

3. The Kerala Kaumudi Staff Employees' Club is situated on the premises of the respondent's establishment, and it is run by the employees of the Respondent.

The respondent's Personnel Officer is the Secretary of the club. The canteen which is attached to the club caters to the needs of the respondent's employees. The canteen is run by a contractor engaged by the members of the club, and it is supervised by the Secretary of the club. Three persons are employed in the canteen by or through the contractor. The Respondent contributes Rs. 250 every month towards the running of the canteen. The Respondent deducts from the wages of its employees the amounts payable by them to the canteen. These facts are not disputed.

4. The appellant's counsel Shri Ravikumar submits that the Employees' Insurance Court misunderstood the scope of the relevant provisions of the Act denning an "employee" and an "immediate employer". He points out that the learned Judge did not notice the principle adopted by the Supreme Court and this Court in construing Sub-sections (9) and (13) of Section 2.

5. The question which arises is whether the persons employed in the canteen are employees" of the Respondent as denned under the Act.

6. Section 2(9), in so far as it is material, reads:

2. Definitions.-In this Act, unless there is anything repugnant in the subject or context.-

* * * * *

(9) "employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and-

(i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of" the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or

(ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or....

Section 2(13) reads:

Immediate employer" in relation to employees employed by or through him, means a person who has undertaken the execution on the premises of a factory or an establishment to which this Act applies or under the supervision of the principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on in, or incidental to the purpose of, any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer.

7. These two sub-sections are couched in wide and diffusive language so as to bring within the scope of employment all persons directly employed by the principal employer, as u/s 2(9)(i), or persons with whom he has no contractual relationship, but who are employed by or through an "immediate employer", as u/s 2(9)(ii). The immediate employer, who is the independent contractor, is denned u/s 2(13). Sub-section (9) has two limbs, and both the limbs must be satisfied to qualify a person as an employer. The first limb is attracted when a person is employed for wages either in a factory of establishment or in connection with the work of a factory or establishment. The latter part of the first limb is much wider in scope, for it attracts all persons employed in connection with the work of a factory or establishment, although they are not employed in the factory or establishment. The second limb of Sub-section (9) contains three parts embodied in clauses (i)(ii) and (iii) of that sub-section, of which Clause (iii) is not relevant to the facts of this case. It is in fact Clause (ii), as distinguished from Clause (i), which is attracted. While Clause (i) refers to persons employed directly by the principal employer, Clause (ii) refers to persons employed by or through an immediate employer who, as defined under Sub-section (13), is an independent contractor. Clause (ii) is attracted either when the employee works on the premises of the factory or establishment; or, elsewhere under the supervision of the principal employer or his agent; whether the work for which he is employed is part of the work of the factory or establishment, or is only preliminary or incidental to such work. Clause (ii) thus ropes in even peripheral employees whose work is only incidental to the purpose of the factory or establishment.

8. The employees in question here, as stated above, are persons employed by or through a contractor for work in the canteen situated in the premises of the establishment. Bearing these facts in mind, we shall reread the sub-sections after omitting the inapplicable words:

2. Definitions.-In this Act, unless there is anything repugnant in the subject or context,.

(9) "employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and-

(i) * * * *

(ii) who is employed by or through an immediate employer on the premises of the factory or establishment on work which is incidental to the purpose of the factory or establishment.

(iii) *****

(13) "immediate employer" in relation to employees employed by or through him, means a person who has undertaken the execution on the premises of a factory or establishment to which this Act applies of the whole or any part of any work which is incidental to the purpose of any such factory or establishment.

The object of the enactment is to bring within its scope even persons who are

employed "in connection with the work" of a factory or establishment, although their work is merely "incidental" to its purpose and they have no contractual relationship with the principal employer.

9. Referring to Sub-section (9) of Section 2, the Supreme Court observes in *Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation*, .

13. The reach and range of the definition is apparently wide and deliberately transcends pure contractual relationships. We are in the field of labour jurisprudence, welfare legislation and statutory construction which must have due regard to Part IV of the Constitution. A teleological approach and social perspective must play upon the interpretative process.

The Supreme Court points out that the expression "in connection with the work" appearing in the first limb of Sub-section (9) is wide enough to rope in persons who are engaged in work which is merely ancillary, incidental or relevant to or linked with the object of the establishment. All such persons fall within the first limb. The second limb, the relevant part of which, on the facts of this case, is what is stated in Sub-section 9(ii), is, as the Court says, wide enough to rope in persons with whom the principal employer has no direct employment relationship, but who are engaged in his premises (or elsewhere under his or his agent's supervision) on work which is merely incidental to the work of the establishment. The Court states:

.... All that the statute requires is that the work should not be irrelevant to the purpose of the establishment. It is sufficient if it is incidental to it. A thing is incidental to Anr. if it merely appertains to something else as primary. Surely, such work should not be extraneous or contrary to the purpose of the establishment but need not be integral to it either. Much depends on time and place, habits and appetites, ordinary expectations and social circumstances. In our view, clearly the two operations in the present case, namely, keeping a cycle stand and running a canteen are incidental or adjuncts to the primary purpose of the theatre.

The Court in this connection points out a striking example:

... In the case of a fivestar hotel, for instance, a barber shop or an arcade massage parlour, foreign exchange counter or tourist assistance counter may be run by someone other than the owner of the establishment but the employees so engaged do work in connection with the establishment or the hotel even though there is no obligation for a hotel to maintain such an ancillary attraction

See also the decision in *Ahmedabad Mfg. and Calico Ptg. Co. Ltd. Vs. Ram Tahel Ramnand and Others*, , *The Saraspur Mills Co. Ltd. Vs. Ramanlal Chimanlal and Others*, , *E.S.I. Corp. v. United Electrical Industries* 1975 KLT 714 and *Sirsilk Ltd., Sirpur, Kaghaznagar Vs. Regional Director, The Employees' State Insurance Corporation, Andhra Pradesh, Hyderabad*, .

10. The learned Judge in the instant case misconstrued the relevant provisions of the statute, and wrongly held that the employees attached to the canteen did not come within the ambit of the Act. Obviously the principle laid down in the decisions cited above had not been brought to the notice of the Court.

11. The object of the enactment is to cater to the welfare of persons employed in or in connection with the work of the factory or establishment to which the statute applies. The employees of the contractor, who is the "immediate employer", as defined u/s 2(13), being engaged in work which is "incidental" to the work of the establishment, in the sense in which that expression is understood by the Supreme Court, are employees entitled to the benefit of the Act. The canteen in which they are employed, and situated on the premises of the respondent's establishment, caters to the needs of its employees, although, considering the number of persons employed in the establishment, a canteen is not required to be maintained under any statute. The contractor runs the canteen at the behest of the members of the club who are themselves employees of the Respondent, although there is no direct contractual relationship between the Respondent and the contractor's employees. The canteen is very much a part of the cultural life of the establishment and relevant to the welfare of its employees. It's work is not only consistent with the purpose of the establishment, but it positively serves its interest.

12. In the circumstances, we set aside the order under appeal, and hold that the direction of the Appellant was perfectly valid. The appeal is allowed with costs throughout.