(2001) 08 KL CK 0032

In the High Court Of Kerala

Case No : M.F.A. No. 596 of 1991

E.S.I. Corporation	APPELLANT
Vs	
Standard Pottery Works	RESPONDENT

Date of Decision : 02-08-2001

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(22), 2(9)

Citation : (2002) 94 FLR 265 : (2001) 3 ILR (Ker) 178 : (2001) 2 LLJ 1208

Hon'ble Judges : V.P. Mohankumar, J;R. Rajendra Babu, J

Bench : Division Bench

Advocate : P. Sankarankutty Nair, for the Appellant; Gopinathan Nair, Government Pleader, K.P. Dandapani and Sumathi Dandapani, for the Respondent

Judgement

R. Rajendra Babu, J.—The E.S.I. Corporation has come up in appeal challeing in the order of E.I. Court, Alleppey, in I.C. No. 104/88, disallowing the demand of the Corporation for contribution from the employer on the basis of the expenditure met towards the maintenance of the establishment and for the construction of a compound wall.

2. The 1st respondent Standard Pottery Words, Always, was a covered establishment under The E.S.I.Corporation issued notice demanding additional contribution of Rs.6682.30 on a sum of Rs.92169.39. The liability to pay contribution on the above amount was disputed by the employer.The amount were verified again and on a re-assessment the employer was called upon to pay contribution of Rs. 2986.55 on an amount of Rs./ 41193.52 on the following items.

Sl. No.

Item

Wage element

Contribution

1.

Generator Installation

1841.24

133.50

2.

Tunnel Kiln expansion

378.00

27.40

3.

Building Maintenance

2750.00

199.40

4.

Kiln Repair & Maintenance

32207.12

2335.00

5.

Building Maintenance

2142.16

155.30

6.

Building Maintenance

1875.00

135.95

TOTAL

41193.52

2986.55

Aggrieved by the above assessment, the employer approached the E.I. Court by filing l.c. 104/88. Though the claim for contribution on the generator installation, tunnel kiln expansion, kiln repair and maintenance was upheld, the E.I. Court disallowed the claim for contribution towards expenditure on the maintenance of the building and also for the construction of the compound wall. Aggrieved by the above order disallowing contribution on the above expenditure, the E.S.I. Corporation has come up in appeal.

3. Heard the learned counsel for the appellant and the respondents.

4. The respondent had employed casual workers for the maintenance of the establishment and also for the construction of a compound wall. The E.S.I. Corporation demanded contribution on the wages paid to the above casual workers. The E.I. Court held that the respondent was not liable to pay contribution as the casual workers will not come within the definition of employees as defined in the Act. The learned counsel for the appellant argued that the casual workers employed for the repairs and maintenance of the establishment as well as the employees employed by the respondent for the construction of the compound wall would come within the definition of S. 2(9) of the Employees State Insurance Act. It was further submitted that the repairs and maintenance and construction of the compound wall are works intimately connected with the business carried on by the employer and as such the employer was liable to pay contribution on the wages paid by him to the above casual workers. Reliance was placed on the decision of the Supreme Court in Regional Director, Employees'' State Insurance Corpn., Madras Vs. South India Flour Mills (P) Ltd., . That was the case where certain accusal employees were engaged in the construction of the expansion of the factory establishment. There the Supreme Court held:

"The expansion work of the factory should also be understood in the sense of any work necessary for the expansion of the factory or establishment or for augmenting or increasing the work of the factory or establishment. Such work is incidental or preliminary to or connected with the work of the factory or establishment."

There it was further held that the casual employees would come within the purview of the definition of the employees defined in the Act.

5. The question whether the repairs and maintenance of the building were work in connection with the business carried on by the employer had been considered by this Court in Regional Director v. Vinod (1991 (2) KLT 138) There this court held:

"The work of repairs and maintenance of the building of the building has an intrinsic connection with the business carried on by the respondent. Without this building and its proper maintenance, the respondent''s establishment cannot carry on the business. Therefore, the work for which the labourers are employed is connected with the work of the respondent''s establishment. Again these persons are directly employed by the respondent who is the principal employer, for work which is connected with the work of the establishment. The workers negated for repairs and maintenance are therefore employees within the meaning of S. 2(9) of the Act. They receive remuneration on exchange of the labour put in by them. We have no doubt that what they receive from the respondent constitute `wages'' within the meaning of S. 2(22) of the Act."

6. Whether casual labourers employed for repairs and maintenance were the employees coming within the meaning of S. 2(9) of the Act was considered by this Court in Regional Director, E.S.I. Corporation v. Kerala Wheat Flour Roller Mill 1997 1 KLJ 657 It was held:

"What is involved in the present case is that the casual workers were employed by the contractor for the construction of the office building. In view of what is already discussed herein above, the only point which remains to be considered in whether the construction of the office building for the establishment would come within the meaning of S. 2(9) of the Act. The construction of the office building or the maintenance or repair of existing building is a work incidental to the purpose'' of the establishment. The office building is inseparably belonging to connected with or inherent in establishment."

Thus it is clear that casual employees would come within the ambit of E.S.I. Act and the repairs and maintenance of the establishment would be work incidental to the purpose of the establishment and as such the employer was liable to pay contribution for the expenditure meant for the repair and maintenance of the building.

7. The learned counsel for the respondent submitted that the construction of the compound we all had no connection with the business carried on by the respondent and it was neither incidental nor connected with the business of the respondent and as such the casual employees employed for the construction of the compound wall could not be covered and the respondent was not liable to pay contribution. None of the decisions relied on by the appellant would indicated that the workers employed for the construction of the compound wall would be convert and the same had any connection with the running of the establishment or was incidental to the running of the business of the respondent. As the construction of the compound wall had no nexus or connection with the running of the business of the respondent the employees engaged for the construction of the compound we all would not be covered by the Act. Hence the E.I. Court was fully justified in disallowing the claim of the Coloration demanding coverage of employees employed for the construction of the compound wall.

8. An argument was advanced by the learned counsel for the respondent that the employees who were engaged for the repair and maintenance of the building were unknown and due to the lapse of time no purpose would be served by compelling the respondent in paying the contribution. The learned counsel for the appellant placing reliance on the decision of the Supreme Court in E.S.I Corporation v. Kerala State Drugs and Pharmaceutical Ltd. (1995 (3) SCC 148) argued that the employer cannot put forward such a contention. There the Supreme Court held:

"As regards the finding that the workmen were unidentifiable, what is forgotten that under the Act, once an establishment comes to be covered by the Act, the employer becomes liable to pay the contribution in respect of the employees in his employment directly or indirectly. The contribution which had become payable for the relevant period has to be paid even if the employees concerned are no longer in employment. Whether the employees are unidentifiable today or not, therefore, irrelevant so long as the contribution was liable to be paid on their behalf, when they were in employment".

In view of the above decision of the Supreme Court the above contention put forward by the respondent also cannot be accepted.

9. The order of the Employees Insurance Court shall stand modified. The respondent employer shall be libel to pay contribution in respect of the expenditure met for the repair and maintenance of the establishment. The order of the E.I. Court disallowing contribution in respect of the expenditure met for the construction of the compound wall shall stand upheld.

10. The M.F.A. is disposed of accordingly.

