

(2014) 07 KL CK 0043

In the High Court Of Kerala

Case No : Ins. Appeal Nos. 109 of 2012 and 20 of 2014

Nirmala College

APPELLANT

Vs

Employees State Insurance Corporation

RESPONDENT

Date of Decision : 16-07-2014

Acts Referred:

Employees State Insurance Act, 1948 — Section 1(5), 2(13), 2(13A), 2(6A), 2(9)
Industrial Disputes Act, 1947 — Section 2(i), 2(s)
Minimum Wages Act, 1948 — Section 2(i), 2(s)
Wealth Tax Act, 1957 — Section 3

Citation : (2014) 143 FLR 900 : (2014) 3 KHC 354 : (2014) 3 KLT 658 : (2014) LLR 1048

Hon'ble Judges : B. Kemal Pasha, J

Bench : Single Bench

Advocate : N.N. Sugunapalan, M.B. Prajith and K.K. Premalal, Advocate for the Appellant; P. Sankarankutty Nair and Sandesh Raja K., SCs, Advocate for the Respondent

Judgement

B. Kemal Pasha, J.—(i) Whether an unaided School/College being run by a Company incorporated under the Companies Act, comes within the purview of the impugned notification?

(ii) Can the teachers and other employees of a School/College being run by such a Company incorporated under the Companies Act or by an individual, be "employees" within the meaning of Section 2(9) of the ESI Act? These are the questions of law to be answered in this appeal.

2. One of the appellants, a company incorporated under the Companies Act, running an unaided School following the State Syllabus, and the other appellant, an individual running an unaided college, have come up in appeal by challenging notification G.O. (P) No. 135/2007/LBR dated 08.10.2007 issued by the Government of Kerala ("the impugned notification", for short), extending the provisions of the Employees' State Insurance Act, 1948 ("the ESI Act", for short) to educational institutions run by individuals, trustees, societies or other

organisations, wherein 20 or more persons are employed or were employed on any day of the preceding twelve months. Challenging C11 and C18 notices issued by the Employees' State Insurance Corporation ("the ESI Corporation", for short), the said Company and the other appellant had approached the Employees' Insurance Court. The said cases stand dismissed through the impugned judgments.

3. Heard the learned Senior Counsel Sri.N.N.Sugunapalan and the learned counsel Sri.K.K.Premalal for the appellants and the learned Standing Counsel Sri.Sandesh Raja for the ESI Corporation.

4. Over and above the question whether the teachers of educational institutions can be brought within the category of employees within the meaning of Section 2(9) of the ESI Act, the other question raised by the learned counsel for the appellants is whether a Company, incorporated under the Companies Act, running an Educational Institution, can be brought within the purview of the impugned notification.

5. The learned counsel for the appellants have pointed out that the educational institutions run "by individuals, trustees, societies or other organisations, wherein 20 or more persons are employed or were employed on any day of the preceding twelve months" are the educational institutions brought within the purview of the impugned notification.

6. The argument is that a Company incorporated under the Companies Act, cannot come within the categories of individuals, trustees, societies or other organizations coming within the meaning of the impugned notification. According to the learned counsel for the appellants an individual and a corporate body is totally different, and had there been an intention on the part of the Government of Kerala in including corporate bodies also within the purview of the notification, definitely such a term would have been used in the notification.

7. Reliance can be placed on the decision in Kerala Financial Corporation Vs. Wealth-tax Officer, wherein it was held that the expression "individual" appearing in Section 3 of Wealth-tax Act includes a human being as well as a corporation.

8. Much discussion is not required in the matter to conclude that a Company which is a corporate body incorporated under the Companies Act can be treated as an individual. A Company, is no doubt, a separate legal entity, and is a legal person. Company being a legal person, can squarely be treated as an individual. When an educational institution is run by a Company, it has to be treated as an educational institution being run by an individual. Matters being so, the arguments that educational institutions being run by Companies cannot be brought within the purview of the impugned notification, seems to be too hyper technical. It has to be concluded that educational institutions being run by a Company can also be treated as an educational institution being run by an individual which comes within the purview of the impugned notification.

9. The learned counsel for the appellants have pointed out that the court below has considered the question in another perspective and found that such a Company is an organization coming within the meaning of the impugned notification. Such a view does not seem to be correct. At the same time, the Company being in the status of an individual, has to be considered that an educational institution being run by the Company is an educational institution being run by an individual coming within the meaning of the impugned notification.

10. The learned Senior Counsel for the appellants has taken this Court through various provisions of the ESI Act, Industrial Disputes Act, Minimum Wages Act, Kerala Education Act and Rules etc., and argued that teachers, who are practicing a "profession" are not doing an "occupation" and, therefore, it cannot be said that teachers are workers or workmen, and therefore, teachers of Schools or Colleges can never be categorised as "employees" within the meaning of Section 2(9) of the ESI Act.

11. Per contra, the learned Standing Counsel for the ESI Corporation Sri.Sandesh Raja argued that the ESI Act as such is a self contained Code, which is capable of giving a wider amplitude to the definition of "employee" so as to take in the teachers of Schools or Colleges also, within its sweep. It has been further argued that being a social legislation, which is a welfare legislation meant to protect the employees of such schools who are, in fact, downtrodden in the society, a liberal interpretation favouring such employees is required to be adopted even in a case wherein any such terms used in the Act is capable of different interpretations. In such cases, the one favourable to the beneficiaries in such cases has to be adopted, it is argued. It is also argued that being a self contained Code, the definition of the term "employee" as contained in the ESI Act cannot be interpreted by making use of the definition of "workman" as contained in Section 2(s) of the Industrial Disputes Act, or "employee" as contemplated under Section 2(i) of the Minimum Wages Act.

12. The learned Senior Counsel Sri.Sugunapalan has argued that the preamble of the ESI Act as well as various provisions in it including Section 1(5), Section 2(6A), Section 2(9), Section 2(13), Section 2(13A), etc. clearly give an indication and impression that it should be for the protection and benefits of the employees of a factory or such industrial concerns and not meant for teachers of an educational institution like Schools or Colleges. Section 1(5) of the Act reads as follows:-

The appropriate Government may, in consultation with the corporation and where the appropriate Government is a State Government, with the approval of the Central Government, after giving six months" notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

13. The argument is that Section 1(5) makes it clear that the provisions of the said statute can be extended to "any other establishment or class of establishments, industrial, commercial, agricultural or otherwise". The argument in short is that the term "or otherwise" does not give any blank cheque to the Government to bring any establishment, which is totally alien to an industrial, commercial or agricultural establishment within the sweep of the ESI Act. The term "employee" is defined in Section 2(9) as "any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies, and.....". It has also been pointed out that Section 2(13) defines the term "immediate employer", wherein also it has been mentioned that "a factory or an establishment to which this Act applies". Similar is the wording in Section 2(13A) also. The learned Senior Counsel has argued that by extending the principle of ejusdem generis, the term "or otherwise" as contained in Section 1(5) of the Act can only bring in establishment similar to industrial, commercial or agricultural alone.

14. On a careful consideration of the term "or otherwise" as contained in Section 1(5) of the ESI Act, it is evident that the legislature has carefully worded the said provision so as to include any other establishment within the sweep of Section 1(5) of the ESI Act. It has to be noted that if the intention was to include establishment similar to industrial, commercial or agricultural alone as establishments, definitely, the legislature would have worded it as "such other establishments of similar nature". At the same time, in Section 1(5), the legislature has used the term "or otherwise". In the absence of any specific term to invite a presumption that what is intended is establishments similar to industrial, commercial or agricultural in nature, it has to be noted that the legislature has carefully given a blank cheque to the appropriate Government to bring any establishment wherein employees are working, within the sweep of Section 1(5) of the Act.

15. Regarding the definition of "employee" as contained in Section 2(9) of the ESI Act, the learned Senior Counsel as well as the learned counsel for the appellants have pointed out that the legislature has never meant to bring an employee of an educational institution within the said definition. The attention of this Court has been invited to Section 2(s) of the Industrial Disputes Act, 1947 as well as Section 2(i) of the Minimum Wages Act, 1948 to canvas an argument that teachers of an educational institution cannot be brought within the purview of "employee" within the meaning of Section 2(9) of the ESI Act.

16. Section 2(s) of the Industrial Disputes Act defines "workman" as "any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward,.....". Therefore, Section 2(s) is confined to a workman of any industry. Such workman should be a person who is employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. In Section 2(i) of the Minimum Wages Act, 1948, the

term "employee" is defined as "any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed...". Therefore, in order to bring a person in the category of an "employee" within the meaning of the Minimum Wages Act, 1948, he should be in a scheduled employment in respect of which minimum rates of wages have been fixed. When the Industrial Disputes Act brings a workman in respect of any industrial establishment, the Minimum Wages Act brings an employee within the purview of the said Act only when he is in a scheduled employment in respect of which minimum rates of wages have been fixed. Therefore, the legislative intend for bringing a person within the scope of Section 2(s) as a "workman" under the Industrial Disputes Act, and a person as an "employee" within the meaning of Section 2(i) of the Minimum Wages Act, is totally different. The same cannot be equated at all. When the Industrial Disputes Act is confined to an industrial establishment alone, the term "employee" in the Minimum Wages Act is confined to any scheduled employment for which minimum wages have been fixed.

17. On going through the Minimum Wages Act, the definition of "employee" Section 2(i) of the said Act has a wider amplitude than the definition of a "workman" as contained in Section 2(s) of the Industrial Disputes Act. Same is the question with regard to the ESI Act also. It is evident that the definition of the term "employee" as contained in Section 2(9) of the ESI Act has a wider amplitude than that of a "workman" as contained in Section 2(s) of the Industrial Disputes Act and "employee" as contained in Section 2(i) of the Minimum Wages Act. Further, in all other respects also, it is evident that the term "employee" as contained in Section 2(9) of the ESI Act cannot be equated with the definition of the term "workman" or "employee" as contained in the other two Acts. In short, the provisions are not *pari materia*.

18. In such a context, it has to be examined whether for interpreting the term "employee" as contained in Section 2(9) of the ESI Act, the definition of the term "workman" or "employee" from the other two statutes can be made use of. The learned Standing Counsel for the ESI Corporation is relying on the decision in Union of India (UOI) and Others Vs. Shri R.C. Jain and Others, , wherein it has been held in paragraph 1:

It is not a sound rule of interpretation to seek the meaning of words used in an Act, in the definition clause of other statutes. The definition of an expression in one Act must not be imported into another. "It would be a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to such an interpretation is given to it for the purposes of that Act alone" (per Loreburn, L.C. in *Macbeth & Co. v. Chislett*). For the same reason we refrain from borrowing upon the definition of "local authority" in enactments such as the Cattle Trespass Act, 1871 etc. as the High Court has done.

19. The learned standing counsel for the ESI Corporation has further relied on

the decision in Agricultural Produce Market Committee, Narela, Delhi Vs. Commissioner of Income Tax and Another, , wherein it was held in paragraph 40 that in interpreting a definition clause in a statute, it is not a sound rule of interpretation to seek the meaning of words used in the definition clause of other statutes. They have further relied on the decision in M/s. Whirlpool of India Ltd. Vs. Employees' State Insurance Corporation, , wherein it was held:-

The Employees' State Insurance Act is a social legislation enacted to provide benefits to employees in case of sickness, maternity and employment injury and to make a provision for certain other matters in relation thereto. Undoubtedly, any provision of which two interpretations may be possible would deserve such construction as would be beneficial to the working class but, at the same time, one cannot give a go-by to the plain language of a provision.

20. This Court fully agree with the argument forwarded by the learned Standing Counsel for the ESI Corporation that for interpreting a definition clause in the ESI Act, the aid of the definition clause in other enactments noted earlier, cannot be pressed into service. Apart from all these, there cannot be any ambiguity with regard to the definition of the term "employee" as contained in Section 2(9) of the ESI Act.

21. The learned Senior Counsel as well as the learned counsel for the appellants are harping upon the term "work" used in Section 2(9) of the ESI Act to argue that the said term is intended for a worker, who can be equated to a workman under Section 2(s) of the Industrial Disputes Act, and not for a person who is practicing a profession. It is true that the terms "work of a factory or establishment" are used in Section 2(9) but, on interpreting the Section in its plain language, the only possible interpretation to the term "work" incorporated therein is that the said term is used merely in its literal sense to show that a person who is working in a factory or establishment to which the said Act applies. Whether he is a person who is practising a profession or doing an occupation, it cannot be said that he is not working. In the literal sense of the term, it can be said that a Doctor is working in a hospital or a Teacher is working in a school. It cannot be said that the said term in its literal sense cannot be used to reveal the employment of a professional. The legislature has carefully worded the said provision by incorporating the term "work" and has never used the term "worker" or "workman" anywhere in Section 2(9) of the ESI Act. Had the term "workman" is used, the argument forwarded on behalf of the appellants would have carried merits.

22. Apart from all the above, in interpreting the definition of the term "employee" in Section 2(9) of the ESI Act, the aid of Section 1(5) of the ESI Act also has to be taken. The legislature has, in its wisdom, thought it fit to bring any other establishment of the choice of the Government within the purview of Section 1(5) of the ESI Act. There is no restriction to any class of establishment in case the Government wants to bring it within the purview of the provisions of the ESI Act. It is evident that educational institutions also can be establishments

wherein an employee within the meaning of Section 2(9) of the ESI Act can work. By the mere use of the term "work", at any stretch of imagination, the term "employee" can be equated with the term "workman" as defined under Section 2(s) of the Industrial Disputes Act. When compared to the Industrial Disputes Act as well as Minimum Wages Act, other qualifications are also required to classify a person as workman or employee. At the same time, Section 2(9) takes in any employee without any such classification. The only qualification is that such employee should work in a factory or establishment to which the ESI Act applies. Therefore, when there cannot be any restriction to bring an educational institution as an establishment to which the provisions of this Act applies, the employees who are qualified therein to have coverage are, no doubt, employees within the meaning of Section 2(9) of the ESI Act.

23. Regarding teachers, the appellants have invited the attention of this Court to the recent judicial pronouncement of the Apex court in *E.S.I.C. Medical Officer's Association Vs. E.S.I.C. and Another*, wherein it was clearly held in paragraphs 10 and 11 that Doctors as well as Teachers are not merely doing any occupation; whereas, they are practicing solemn professions. It is true that teachers are imparting education in schools and it is true that they are practising a solemn profession of imparting education. It is true that they cannot merely be equated with a workman of a factory or industrial establishment. Of course, it has become trite law that the educational institutions are also parts of industries. The decision in *E.S.I.C. Medical Officers' Association (supra)*, does not lend any adequate support to the question in hand, as the same is not with regard to the term "employee" within the meaning of the ESI Act, whereas, the same is relating to Section 2(s) of the Industrial Disputes Act.

24. The learned counsel for the appellants are relying on the decision in *Miss A. Sundarambal Vs. Government of Goa, Daman and Diu and Others*, also. Unfortunately, the same also does not lend any adequate support, as the same is also confined to the term "workman" within the meaning of Section 2(s) of the Industrial Disputes Act. Similarly, the decision in *Haryana Unrecognised Schools Association Vs. State of Haryana*, also, on which reliance has been placed, is relating to Section 2(i) of the Minimum Wages Act regarding the definition of "employee" in it.

25. Regarding the other point raised by the learned Senior Counsel for the appellants that the term "employee" as contained in Section 2(9) of the ESI Act should be understood as a person associated with work in factories or similar industrial establishments, it has to be noted that wherever the term "factory" is used in the provisions contained in Section 2(9), 2(13) and 2(13A) of the ESI Act, the terms "or establishment to which this Act applies" are also incorporated. Had the provisions were incorporated only with regard to those employees working in factories or similar establishments, such would have been the wordings in those provisions. At the same time, in all those provisions, the terms used are "factory or establishment to which this Act applies". When the

legislature has used the said terms "or establishment to which this Act applies", it should be understood as those establishments coming within the category "or otherwise" as contained in Section 1(5) of the ESI Act. I have also found that the Government is free to bring in any establishments of their choice within the sweep of Section 1(5) of the ESI Act and there cannot be any restriction to it. Therefore, it is evident that a School or College can also be establishment within the meaning of "or otherwise" as contained in Section 1(5) of the ESI Act, or "or establishment to which this Act applies" in various provisions of the ESI Act.

26. From the discussions made above, it is evident that the teachers and other employees, to whom wages enabling them to be covered under the ESI Act are payable, employed at the School/College being run by a Company incorporated under the Companies Act, are employees within the meaning of Section 2(9) of the ESI Act read with Section 1(5) of the Act. It has been pointed out that, if proper emoluments applicable to Aided Schools/Colleges or Government Schools/Colleges, whether it is of the Central Government or the State Government, are disbursed to the teachers or other employees employed therein, there need not be any quarrel with regard to the coverage at all. If sufficient emoluments are disbursed to them, in such case, their emoluments will exceed 10,000/- during the appointed period and in such case, there need not be any quarrel with regard to the coverage at all. Having chosen to retain teachers at educational institutions, without disbursing proper emoluments, the management cannot be heard to clamor that such persons, who happen to work in such educational institutions for paltry amounts as wages, cannot be brought within the coverage of the ESI Act. It goes without saying that the employees as defined in the ESI Act takes in teachers or other employees of such unaided Schools/Colleges drawing wages below the statutory minimum specified for the coverage.

27. The impugned notification is not at all defective on any aspect. C11 notices or C18 notices issued by the ESI Corporation in these cases are not liable to be interfered with.

The impugned judgments passed by the courts below are also not liable to be interfered with. In the result, these appeals are dismissed.