
(1988) 03 KL CK 0039
In the High Court Of Kerala
Case No : M.F.A. No. 90 of 1983

Regional Director, E.S.I. Corpn.

APPELLANT

Vs

Suresh Trading Co.

RESPONDENT

Date of Decision : 11-03-1988

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(9), 75

Citation : (1988) 2 ACC 35 : (1989) 59 FLR 137 : (1988) 2 ILR (Ker) 447 :
(1990) 1 LLJ 348

Hon'ble Judges : V. Sivaraman Nair, J;P.K. Shamsuddin, J

Bench : Division Bench

Advocate : T.D. Rajalakshmi, for the Appellant; B.S. Krishnan, for the Respondent

Final Decision : Allowed

Judgement

Sivaraman Nair, J.

1.. The Regional Director of the Employees State Insurance Corporation (hereinafter to be referred to as the Corporation) appeals against the judgment of the Employees' State Insurance Court (hereinafter to be referred to as the Insurance Court) in I.C.No.97 of 1979. That case was instituted by the respondent herein u/s 75 of the Employees State Insurance Act, 1948, for a declaration that the applicant-establishment was not liable to be covered under the Insurance Act.

2. The short facts that led to this appeal are as follows: The respondent, M/s. Suresh Trading Company, is an establishment engaged in the purchase of raw-coir mats and mattings, and their sale in India and abroad after processing, which includes shearing, trimming, stenciling, colouring etc. Process of manufacturing and shearing were conducted by the applicant establishment. Their case was that manufacturing and shearing process were conducted through independent factories, one of which was M/s. S.R. Shearing Factory, Both the

establishments were conducted in the same premises. But, they were separately registered and licenced under the Factories Act. They were claimed to be under different ownerships. Different muster rolls, wage registers etc., were maintained in the two establishments. In 1977, an attempt was made to bring M/s. S.R. Shearing Factory within coverage, since that establishment had employed more than the requisite number of 10 workmen and had also employed power in the manufacturing process. Those proceedings were not brought by the Corporation finding that the requirements of coverage were not fully satisfied. The applicant-firm was formed thereafter as a partnership concern with only 4 employees, 8 employees are claimed to belong to a separate and independent unit. The Insurance Inspector conducted a verification of the establishment on 28th October 1978. He reported that both the establishments were one and the same. Since the factory licence of M/s. S.R. Shearing Factory was in the name of the Managing Partner of M/s. Suresh Trading Company, he also reported that the establishments were complimentary to each other, and that M/s. Suresh Trading Company got the coir mats purchased by it and processed by M/s. S.R. Shearing Company in the same premises. He also reported that there was only one common ledger for payment of wages, bonus and other expenses incurred by both the concerns and both were supervised by the Managing Partner of the applicant-firm. The Deputy Regional Director of the Corporation conducted a test survey of the concern on 17th January 1979 and submitted a detailed report stating that shearing is part of the manufacturing process of M/s. Suresh Trading Company, that there was functional integrality as also common supervision of the process conducted by the two units. Since there were 12 employees altogether, he recommended coverage of the establishment. Notices in Form SC5A were issued pursuant thereto on 20th February 1979 in the light of a Notification issued by the Government of Kerala No. 1614I/E2/75/LBR dated 27th May 1976. The applicant submitted his reply on 15th March 1979, maintaining that it was an entirely different entity from M/s. S.R. Shearing Factory, which was only one of the processing units to which the work of the applicant was entrusted. It was also stated that M/s. S.R. Shearing Factory was taking up work of other principals as well and there was no management, supervision or any functional integrality. The appellant sent a further letter dated July 1979 requesting the applicant to comply with the coverage notice. It was at that stage that the applicant filed, I.C.No. 97 of 1979 u/s 75 of the Employees' State Insurance Act. In that application, the applicant maintained that the applicant-firm and M/s. S.R. Shearing Factory were different entities engaged in different processes with different financial structure, management, supervision, maintenance of accounts and other records. In their objections, the appellant reiterated the findings contained in the inspection report date 26th July 1978 and the test survey conducted on 17th January 1979. The Corporation also reiterated the following facts:

"(a) The wages of Shearing Factory employees are chronologically booked in the ledger of, M/s. Suresh Trading Company.

(b) The Shearing Factory has no separate account books or ledger except the Wages Register.

(c) The whole activities are shown in the balance sheet of M/s. Suresh Trading Company.

(d) Bonus paid to all employees (including Shearing Factory employees) in September 75 and later has been booked in the ledger of M/s. Suresh Trading Company.

(e) Supervision and control of both the units are done by the Managing Partner of Suresh Trading Company in the same shed and office. The Deputy Regional Director of the respondent who conducted test survey on 17th January 1979 has confirmed the above facts"

3. The Managing Partner of the applicant firm has examined himself as P.W.1. The Deputy Regional Director, who conducted the test survey, examined himself as D.W.I. The applicant marked two receipts issued by the Modern Shearing Centre, a debit note issued by M.C. John and Company Ltd., and a ledger and cash book of the firm for the year 1976-77. The appellant marked the test survey report of D.W-1 as Ext.D1.

4. On a consideration of the materials thus available before him, the Insurance Court held, that the appellant was not entitled to issue coverage notice in view of the fact that, on an earlier occasion in 1977 the appellant has held that M/s. S.R. Shearing Factory was not liable to be covered under the Insurance Act.

5. The first ground for assailing the judgment of the Insurance Court is that the Court erred in law in refusing to consider the only relevant question as to whether the workmen employed by the applicant-firm and M/s. S.R. Shearing Factory were employees as defined in Section 2(9) and whether the applicant was, atleast, not the principal employer as defined in Section 2(17) of the Act.

6. Section 2(9) of the Employees' State Insurance Act defines an "employee" as meaning

"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

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service;

and includes any person employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of, the factory or establishment".

The exclusions are not very relevant for our present purposes. Counsel submits that any person employed for wages in-connection with the work of a factory or establishment to which the Act applies is an "employee". He may be directly employed by the principal employer and such employment may be of any work of the factory or establishment. It may as well be a work incidental or preliminary to or connected with the work of the factory or establishment. Such work need not be done in the factory or establishment itself. It may even be elsewhere. Even a person employed by or through an immediate employer on the premises of the factory or establishment, or even under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment, is also an employee. Such a person, even if he is employed for work, which is preliminary to the work of the factory or incidental to the purpose of the factory or establishment, will also be an employee.

7. Counsel relied on a number of authorities, including two Bench decisions of this Court and three decisions of the Supreme Court. In *Aluminium Industries v. E.S.I. Corporation* 1980 KLT 587 this Court held, that the employees in the Regional Office of the Factory or Establishment were employees u/s 2(9) because they were employed for wages in connection with the work of the factory, or any work connected with the administration of the factory or establishment. In *Regional Director, E.S.I Corporation v. Kerala Kaumudi*, 1987 XI LLJ 508, section 2(9) of the Employees' State Insurance Act. Reference is also made to the decisions of the Supreme Court reported in *Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation*, ; *Shri Narakesari Prakashan Ltd. and Others Vs. Employees' State Insurance Corporation and Others*, and *Regional Director, Employees' State Insurance Corpn., Madras Vs. South India Flour Mills (P) Ltd.*, In *Royal Talkies case*, (supra), the Supreme Court held (p.394):

"the expression "in connection with the work of an establishment" ropes in a wide variety of workmen who may not be employed in the establishment... Some nexus must exist between the establishment and the work of the employee but it may be a loose connection. "In connection with the work of an establishment" only postulates some connection between what the employee does and the work of the establishment. He may not do anything directly for the establishment; he may not do anything statutorily obligatory in the establishment; he may not even do anything which is primary or necessary for the survival or smooth running of the establishment or integral to the adventure. It is enough if the employee does some work which is ancillary, incidental or has relevance to or link with the

object of the establishment. Surely, an amenity or facility for the customers who frequent the establishment has connection with the work of the establishment".

In *Narakesari* case, (supra) the Supreme Court observed that since a printing press established for the purpose of publishing a newspaper cannot effectively function at all without the services of the members of the editorial staff being made available almost till the tune the newspaper comes out of the printing machine, members of the editorial staff virtually constitute an integral part of the newspaper press and they are employed in connection with the work done at the printing press and, therefore, they are employees u/s 2(9) of the Insurance Act. In *Regional Director, E.S.I. Corporation v. South Indian Flour Mills*, (supra), it was held that even casual employees engaged in connection with the work of a factory or establishment, which was incidental or preliminary to or connected with the work of the factory or establishment, shall be treated as employees u/s 2(9) of the Act.

8. It is true that the most liberal interpretation of the term "employee" was adopted in those decisions. Such interpretation was sought to be just as the beneficial purposes of the statute. There is, therefore, no escape from the position now, that an employee need not be directly employed by the factory or establishment. Even if he was a casual employee engaged by an intermediate employer, in connection with some work, which was incidental or preliminary to the work of the establishment, or connected with the work of the establishment will be a workman.

9. The evidence available before the Insurance Court indicates, with sufficient clarity, that M/s. S.R. Shearing Factory was carrying on a process which was not only incidental or preliminary to the work of M/s. Suresh Trading Company, but which was integral part of the process which the establishment had undertaken. M/s. S.R. Shearing Factory was engaged in the purchase of raw mats and mattings. Its processing involves shearing, trimming, stenciling, pressing and packing. The intermediate processes viz., shearing, trimming, cutting etc., were done by M/s. S.R. Shearing Factory in the same premises of the establishment of M/s. Suresh Trading Company. The fact that M/s. Suresh Trading Company was getting the work done, on occasions in some other establishment, or that M/s. S.R. Shearing Factory was taking up the work for other employers do not make any difference in the obligation of the entire establishment to be covered. The persons employed by M/s. S.R. Shearing Factory were the employees of M/s. Suresh Trading Company, since they were engaged in connection with the work of the establishment or were doing work winch was incidental or preliminary to the work of the establishment. In this view, the order of the Insurance Court has to be set aside.

The appeal is, therefore, allowed. But, in the circumstances of the case, there will be no order as to costs.