
(1973) 06 KL CK 0011
In the High Court Of Kerala
Case No : A.S. No. 320 of 1969

The Insurance Inspector, Employees State Insurance
Corporation, Ernakulam

APPELLANT

Vs

M/s. Victory Tile Works, Alwaye

RESPONDENT

Date of Decision : 08-06-1973

Acts Referred:

Employees State Insurance Act, 1948 — Section 15(2), 2(17), 2(9), 40, 41
Factories Act, 1948 — Section 7(1)

Citation : (1973) KLJ 757

Hon'ble Judges : P. Subramonian Poti, J;K. Bhaskaran, J

Bench : Division Bench

Advocate : C. Sankaran Nair, for the Appellant; Pathrose Mathai, for the Respondent

Final Decision : Allowed

Judgement

P. Subramonian Poti, J.—An interesting question has been raised in this appeal and that is whether a person who satisfied the definition of "employee" in S. 2(9) of the Employees' State Insurance Act, 1948 (hereinafter referred to as the Act) and who also satisfies the definition of "Principal employer" in S. 2(17) of the Act could be said to be entitled to fall within the coverage of the Act. This question has arisen when the Employees' State Insurance Corporation moved an application under S. 15(2) of the Act for recovery of contribution in regard to one P. Easwara Iyer, the Manager of a Factory of the Opposite Party—This application made before the Employees' State Insurance Court, Kozhikode stands dismissed and the Corporation has taken up this matter in appeal to this court. That Sri. Easwara Iyer was the manager of the factory of the opposite party is not disputed. But the liability of the opposite party to contribute under the Act is seriously challenged since it is the plea that the manager is one who has been named as such under the Factories Act, 1948 and therefore he comes within the definition of Principal Employer. If he is the principal employer it is said that he cannot be an employee at the same time and therefore there is no scope for

contribution in regard to such manager.

2. It is necessary to refer to the definitions of the terms ""employee" and "principal employer":

2(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

(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 establishments; but does not include

(a) any member of the Indian naval, Military or air forces; or

(b) any person so employed whose wages (excluding remuneration for overtime work) exceed five hundred rupees a month:

Provided that an employee whose wages (excluding remuneration for overtime work) exceed five hundred rupees a month at any time after (and not before) the beginning of the contribution period, shall continue to be an employee until the end of that period;

S. 2 (17) of the Act reads:

2 (17) "principal employer" means

(i) in a factory, the owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier, and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named;

(ii) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed, the head of the department;

(iii) in any other establishment, any person responsible for the supervision and control of the establishment:

It is also necessary to refer to S. 40 and 41 of the Act which deal with the liability of the Principal Employer to pay contribution in the first instance and, his right to recover this contribution from the immediate employer. S. 40 and 41 of the Act run as follows:

40 (1) The principal employer shall pay in respect of every employee, whether directly employed by him or by or through an immediate employer, both the employer's contribution and the employee's contribution.

(2) Notwithstanding anything contained in any other enactment but subject to the provisions of the Act and the regulations, if any, made thereunder the principal employer shall, in the case of an employee directly employed by him (not being an exempted employee), be entitled to recover from the employee the employee's contribution by deduction from his wages and not otherwise:

Provided that no such deduction shall be made from any wages other than such as relates to the period or part of the period in respect of which the contribution is payable or in excess of the sum representing the employee's contribution for the period.

(3) Notwithstanding any contract to the contrary, neither the principal employer nor the immediate employer shall be entitled to deduct the employer's contribution from any wages payable to an employee or otherwise to recover it from him.

(4) Any sum deducted by the principal employer from wages under this Act shall be deemed to have been entrusted to him by the employee for the purpose of paying the contribution in respect of which it was deducted.

(5) The principal employer shall bear the expenses of remitting the contributions to the Corporation.

41 (1) A principal employer, who has paid contribution in respect of an employee employed by or through an immediate employer, shall be entitled to recover the amount of the contribution so paid (that is to say the employer's contribution as well as the employee's contribution, if any) from the immediate employer, either by deduction from any amount payable to him by the principal employer under any contract, or as a debt payable by the immediate employer.

(2) In the case referred to in sub-section (1), the Immediate employer shall be entitled to recover the employee's contribution from the employee employed by or through him by deduction from wages and not otherwise, subject to the conditions specified in the proviso to sub-section (2) of S. 40.

We may also mention here that S. 7 (1) of the Factories Act, 1948 provides that the occupier shall, at least fifteen days before he begins to occupy or use any premises as a factory, send to the Chief Inspector a written notice containing

certain particulars, one of which is "the name of the manager of the factory for the purpose of this Act." It is this that is referred to in the definition of principal employer.

3. That the manager, as the one in the present case, satisfies the definition of "employee" under the Act is not in dispute. He is a person employed for wages in connection with the work of a factory and is also one who is directly employed by the principal employer in the work of the factory. It is also not in dispute that in view of the definition of the term "principal employer" as including a person who has been named as the manager of the factory and since Sri. Easwara Iyer has been so named, he is a "principal employer". The question is whether in these circumstances he could be considered to be not an (***)

employee" because he falls within the definition of the term (***)

principal employer". In other words, though in the definition in S. 2 (9) there is no proviso that in spite of the definition of the employees being such as to include managers of factories also it shall not include such managers, should such a provision be nevertheless be read into that definition.

4. We have, in this context, to remember that the term "principal employer" is employed in the statute for a definite purpose and that purpose is evident from the provisions where the said terms occur. The liability to contribute under the Act is that of the principal employer and S. 40 provides that he shall pay in respect of every employee both the employer's contribution and the employee's contribution. In regard to employee's contribution he has got a right to recover by deduction from the wages of the employee. Where he is not the immediate employer he has a right to recover from the immediate employer the contribution he pays on behalf of the employee either by deduction from the amount payable to him or as a debt recoverable from him. It is clear from the scheme of the Act that there is no apparent conflict of interest between the principal employer and the employee and there is no reason why if a person satisfies the definition of employee and belongs to that class he cannot in certain cases be also a "principal employer". To construe otherwise would mean that though he is an employee who should normally come within the scope of the Act he would not get the benefits of the Act because he is, by the definition of principal employer included in that category. It is not as if his obligations as the principal employer are irreconcilable with his obligations or rights as an employee. In his character as the principal employer he is bound to pay contribution even in regard to himself and that could be recovered from his salary which he is bound to do as the manager and thereby the principal employer. It is a well established canon of construction that the purpose or object of a statute necessarily lends colour to the interpretation of the provisions thereof. The Employees' State Insurance Act, 1948 is a piece of legislation intended for the welfare of the working class who have been brought within the definition of the term "employees" in the statute and who satisfy the definition. If it is seen from the scheme of the Act that a particular class is intended to be covered by this beneficial provision, unless

there is compelling reason to read the provision as excluding any particular person or persons of this class from the scope of the application of this Act, the court will be slow or hesitant to lend itself to a construction favouring such exclusion. We have no doubt that all wage earners within the limits prescribed in the statute itself are intended to be covered by the enactment whether they be managers, supervisors clerks, workmen or any class of employees provided they fall within the definition. Of course, if a person happens to be a manager who is not named under the Factories Act as such it is not disputed that he will come within the coverage of the Act. But in case he is named as the manager under the Act the statute says that he becomes a principal employer and would that circumstance constrain us to hold that thereby he will forfeit the benefits which he is otherwise entitled to as an employee. We see no reason to adopt such a contraction. Unless we are compelled by the very plain language of the section to hold so. we would not think it would be justifiable. We have already said that on the language of the provisions of the statute it is not necessary to construe so.

We therefore hold that the manager of the Factory of the Opposite party, notwithstanding he is so named under the Factories Act, is an employee and the application filed by the Corporation has to be allowed. The appeal is allowed and the result is that the application under S. 75(2) moved by the Corporation will stand allowed. Parties are directed to suffer costs in this appeal, in the circumstances.

(***)