

Design Combines Vs Employees State Insurance Corporation

Court: High Court Of Kerala

Date of Decision: April 1, 2013

Acts Referred: Employees State Insurance Act, 1948 " Section 1(5)
Kerala Shops and Commercial Establishment Act, 1960 " Section 2(4)

Citation: (2013) 139 FLR 57 : (2013) 138 FLR 300 : (2013) 2 ILR (Ker) 376 : (2013) 2 KHC 415 : (2013) 2 KLJ 552 : (2013) 2 KLT 409 : (2013) LabIC 3670 : (2013) 3 LLJ 463 : (2013) LLR 715

Hon'ble Judges: S. Siri Jagan, J; Babu Mathew P. Joseph, J

Bench: Division Bench

Advocate: E.K. Nandakumar and A.K. Jayasankar Nambiar Sr. Advocates, K. John Mathai and P. Benny Thomas, for the Appellant; P. Sankarankutty Nair, for the Respondent

Final Decision: Dismissed

Judgement

S. Siri Jagan, J.

The common applicant in I.C. Nos. 28/2002 and 98/2002 before the Employees" Insurance Court (E.I. Court),

Alappuzha, is the appellant in these two appeals. The I.Cs. were filed challenging the demands made by the E.S.I. Corporation, for contributions

under the Employees" State Insurance Act for different wage periods. The appellant is a partnership firm consisting of two partners, who are

professional architects. They possess degrees in Architecture. Other professional architects are also employed by the appellant. The Employees"

State Insurance Corporation (hereinafter referred to as "the Corporation") sought to cover the establishment under the Employees" State Insurance

Act (hereinafter referred to as "the Act") and demanded contributions under the Act in respect of the employees of the appellant's firm as a "shop"

as per the notification dated 18.9.1974 issued by the Government extending the application of the Act to "shops" also. The appellant challenged

the same by filing the two I.Cs., in respect of two different wage periods. The appellant contended before the E.I. Court that the appellant's

establishment does not come within the meaning of "shop", insofar as they are only rendering professional services. Only "shops" are brought within

the purview of the Act by the notification dated 18.9.74 issued by the Government of Kerala in exercise of powers u/s 1(5) of the Employees"

State Insurance Act, 1948. Insofar as the appellant's establishment is not a shop, the appellant is not liable to be covered under the Act and to pay

contributions under the Act, was the contention raised by the appellant before the E.I. Court. The E.I. Court considered the matter in the light of

the law laid down by of the Supreme Court in the following decisions:

(a) Hindu Jea Band, Jaipur Vs. Regional Director, Employees" State Insurance Corporation, Jaipur, .

(b) M/s. Cochin Shipping co. Vs. E.S.I. Corporation, .

(c) M/s. International or Fertilisers India (Private) Limited v. E.S.I. Corporation (1998 1 LLJ 235).

(d) AIR 1994 1154 (SC) .

(e). M/s. Kirloskar Consultants Ltd. Vs. Employees" State Insurance Corpn., .

The E.I. Court, relying on the decision of the Supreme Court in Kirloskar" Consultants Ltd."s, case (supra), held that the applicant also comes

within the purview of the meaning of ""shop"" and, therefore, is liable to be covered under the Act. But the demands were set aside and the

Corporation was directed to reassess the contributions payable in accordance with directions in the judgment. The common judgment in the two

I.Cs. holding that the appellant is liable to be covered under the E.S.I. Act is under challenge in these appeals. The appellant"s contention is that

the appellant is not engaged in any trading or commercial activity whatsoever. According to the appellant, they are only rendering services to

persons approaching them for their professional services and charging a fee for the professional services rendered to the clients. As such, they do

not engage in any trading or business activity so as to come within the meaning of ""shop"". Consequently, they are not liable to be covered under the

Act as a "shop" coming within the purview of the notification dated 18.9.1974, is the contention raised. It is the further contention of the appellant

that the Supreme Court had occasion to consider as to whether an advocate"s firm rendering professional services like the appellant firm would

come within the definition of "shop" under the Kerala Shops and Commercial Establishments Act and answered in the negative in the decision of

V. Sasidharan Vs. Peter and Karunakar and Others, . The ratio of that decision is squarely applicable to the appellant"s case also, is the

contention raised. A still further contention advanced by the learned counsel for the appellant is that the word, ""shop"", has not been defined any

where in the Act, and since establishments, which may otherwise come within the purview of shops are also separately included in the notification

issued u/s 1(5) of the Act Like hotels, restaurants, motor transport establishments, cinema houses, newspaper establishments which would also

come within the purview of "shops" have been separately notified in the notification dated 18.9.1974, it is clear that unless it is separately notified,

an architect"s firm is not liable to be covered under the Act even if the appellants firm can be considered as a shop. It is pointed out by the learned

counsel for the appellant that, ever since the said notification, the Corporation also understood the law in that manner only and did not rope in

professional establishments rendering services like architectural consultancy firms within the purview of the Act, which would go to show that a firm

of architects will not come within the purview of "shop".

2. In answer, the learned Standing Counsel for the Corporation would point out that the issue is squarely covered by the ratio of the decisions of

the Supreme Court in R.K. Swamy's case (supra) and Kirloskar Consultants Ltd.'s case (supra). It is submitted that the ratio of the decision in

Sasidharan's case (supra) cannot be applied to the facts of this case insofar as the Supreme Court itself has in the decision of Kirloskar

Consultants Ltd.'s case (supra) categorically held that Sasidharan's case (supra) concerns with interpretation of the words, "shop" and

commercial establishments" as defined in Section 2(4) of the Kerala Shops and Commercial Establishments Act, 1960, and is not concerned with

the meaning attributed to "shop" arising in the context of the E.S.I. Act. The Supreme Court had taken the same view in R.K. Swamy's case

(supra) also. It is the contention of the Corporation that the appellant is engaged in the activities of preparing plans for customers approaching them

as per specifications of the customers and selling the plans to those customers, which would squarely come within the purview of the activities in a

shop and, therefore, the E.I. Court was right in upholding the stand of the Corporation that an architectural firm is liable to be covered under the

Act. As far as the presence of other establishments, which may otherwise come within the purview of the term "shop", are included in the

notification dated 18.9.1974 and notifications issued later also is concerned, the contention is that simply because two entries in the Schedule may

overlap, that does not mean that the specified entries alone will come within the purview of the general entry. According to the learned Standing

Counsel for the Corporation, if the appellant's firm comes within the scope of a "shop", then the fact that the other establishments which may also

answer the definition of shop, are separately notified also is no reason to deny coverage of that establishment under the provisions of the Act.

3. We have considered the rival contentions in detail.

4. An architectural firm is a place where intending customers go for professional help, certainly. Customers go to an architect's firm for preparation

of a plan, for construction of a building, prepared in accordance with their specifications. The architects, using their professional skills, prepare

building plans in accordance with the specifications of the customer and sell it to the customer for a price. That certainly is a commercial activity.

Therefore, the activities of the appellant's firm are activities in a "shop". The analogy drawn by the appellant comparing the appellant's firm with an

advocate's firm is not apt in this case. In Sasidharan 's case (supra), the Supreme Court was considering the question as to whether an advocate's

firm will answer the definition of "shop" or "commercial establishment" as defined under the Kerala Shops and Commercial Establishment Act. The

word "shop" is not defined anywhere in the Employees State Insurance Act. In R.K. Swamy's case (supra) and in Kirloskar Consultants Ltd.'s

case (supra), the Supreme Court has categorically held that the definition of the word "shop" in the Shops and Commercial Establishment Act

cannot be looked into for the purpose of deciding coverage under the Employees State Insurance Act. Moreover, the activities of an advocate's

firm are different from that in an architects' firm. In an advocate's firm only professional services are rendered for a fee. But in an architects' firm

further activities as in a shop like preparation of plans and sale of the same to the customers are also involved. That being so, the reliance by the

counsel for the appellant on the decision in Sasidharan's case (supra) and the definition of "shop" in the Kerala Shops and Commercial

Establishments Act, will not be of any help to them. Our decision that the firm of architects are selling products made by their professional skills

and therefore would come within the purview of the meaning of the word "shop" is amply supported by all the decisions cited hereinbefore. In R.

K. Swamy's case (supra), the Supreme Court discussed all the earlier decisions regarding the subject in the context of an identical notification

while deciding the coverability of an advertising firm, under the E.S.I. Act and finally came to the following conclusion:

16. In the light of these judgments and the expanded meaning now given to the word "'shop'", the evidence which we have reproduced above

setting out the different activities of an advertising agency needs to be considered. Clients call on an advertising agency to initiate campaigns for

promotion of their products. Advertising campaigns can be conducted in the different media and otherwise. The advertising agency gives advice in

this behalf and as to possible expenses. The advertising agency prepares and presents alternative campaigns for the client to choose from. For such

purpose it must prepare the necessary art work and the appropriate words to go with it. It employs specialists in these fields. The advertising

agency is paid for the service it renders as aforesaid by the client. It also receives commission from the media through whom advertising is done.

17. Anyone who has products to sell may approach an advertising agency. The advertising agency will prepare an advertising campaign for him

utilizing the services of the experts it employs in this behalf. It sells the campaign to the client and receives the price thereof. Indubitably the price

will depend upon the nature of the campaign, but that does not, in our view, make any great difference. Essentially, the advertising agency sells its

expert services to a client to enable the client to launch an effective advertising campaign of his products. Without straining language, the premises

of an advertising agency can, therefore, reasonably be said to be a "shop", as now understood.

Following that judgment in Kirloskar Consultants Ltd.'s case (supra) the Supreme Court again held thus:

9. What we are concerned in the present case is what this Court was concerned in R.K. Swamy's case. An advertising agency organizes

campaigns by conducting the same in different media and would give advice in this behalf and also in regard to possible expenses. It is also

engaged in preparing and presenting alternate campaigns and for such a purpose it prepares artwork and appropriate slogans to go with it. By

engaging the service of experts in different fields the advertising agency would prepare the campaign for customers and sell the campaign by

receiving the price thereof. As the advertising agency sells its expert services to a client to enable him to launch an advertising campaign to

advertise his product, the same being offered for at a price, the premises of an advertising agency could reasonably be said to be a shop. Adopting

the same logic, we may say that the business carried on by the appellant is of consultancy services to its customers in respect of industrial,

technical, marketing and management activities and preparation of project reports by engaging the services of architects, engineers and other

experts. In substance, the nature of activities carried on by the appellant is commercial or economical and would amount to parting with the same

at a price. Hence reliance on Sasidharan's case is misplaced. Thus we do not find any good reason to differ from the view expressed by the High

Court.

An architect's firm is also engaged in identical activities like an advertising firm. Of course, the learned counsel would point out that people

engaged in the field of advertising does not necessarily possess professional degrees in the subject in the field of their activity and their professional

conduct are not governed by any legislation and supervised by an expert body under such legislation. We are of opinion that the same does not

make any difference on the question as to whether the activities both are engaged in are activities in a "shop". In fact persons who do not possess a

degree in Architecture can also, if they have skill to draw up building plans, engage in the very same activity without any statutory embargo or

control. Therefore on the question as to whether their activities are those rendered in a "shop" advertising consultants and firms of architects stand

on the same footing. We are therefore of opinion that those decisions would squarely apply to an architect's firm also. An architect also sells his

expert services to a client to enable him to construct a building in accordance with a plan prepared by the architect and sold to the client.

Of course, the learned counsel for the appellant would refer us to a decision by a learned single Judge of the High Court of Madras in *Pithavadian*

and *Partners Vs. Deputy Director Employees State Insurance Corporation*, wherein after distinguishing the decision in *Kirloskar Consultants*

Ltd's case, the learned Judge came to the conclusion that professionals like architects governed by statute and regulations will not come within the

purview of "shop" under the Employees' State Insurance Act. But we are of the opinion that in view of the decisions of the Supreme Court on the

subject, cited above, the decision of the Madras High Court is not good law.

In view of our above findings we have no hesitation to hold that an architect's firm who prepare plans, using their professional skills in accordance

with the specifications of the customers and sell it to the customers would certainly come within the meaning of "shop" and therefore an architect's

firm would certainly come within the purview of the Employees' State Insurance Act. In that view, we do not find any infirmity in the judgment of

the E.I. Court. Accordingly, these appeals are dismissed.