

(1989) 03 KL CK 0063

High Court Of Kerala

Case No: None

Travancore Devaswom Board

APPELLANT

Vs

Purushothoman

RESPONDENT

Date of Decision: March 1, 1989

Acts Referred:

- Employees Compensation Act, 1923 - Section 12, 2, 3, 30, 31

Citation: (1989) ACJ 624 : (1989) 2 ILR (Ker) 254 : (1989) 2 LLJ 114

Hon'ble Judges: T.S. Krishnamoorthy Iyer, J; P.C. Balakrishna Menon, J

Bench: Division Bench

Judgement

Krishnamoorthy, J.

In this appeal filed by the Travancore Devaswom Board u/s 30 of the Workmen's Compensation Act, 1923 a substantial question of law as to the liability of the Board under the above Act arises for consideration. The appeal arises out of an application for a compensation of Rs. 10,000/- on account of a fatal accident resulting in the death of one Mahendran who was the son of the applicant. The applicant alleged that his son Mahendran was engaged by the 1st and 2nd opposite parties before the Workmen's Compensation Commissioner for conducting "Nerchavedi" in the Achencoil temple under the management and administration of the Devaswom Board. While doing the work on 21st January 1981, the "vedikutti" exploded as a consequence of which Mahendran died. The 1st opposite party died during the pendency of the application and opposite party Nos. 3 and 4 were impleaded as his legal representatives. The Devaswom Board was impleaded as the 5th opposite party, alleging that they are the principal employers and that the 1st opposite party was a contractor under the Board. The applicant further alleged that he is entitled to recover an amount of Rs. 10,000/- from the opposite parties as compensation for the death of his son in the course of his employment under the 1st opposite party. The claim is made against the Board also on the ground that they are the principal employers who are bound to pay the compensation.

2. The 2nd opposite party filed a written statement contending that he had nothing to do with the business of Nerchavedi and that he is only a sweeper in the Devaswom. Opposite party Nos. 3 and 4 who are the legal representatives of the 1st opposite party contended that the 1st opposite party had obtained the right to conduct Nerchavedi in the premises of the Achencoil temple from the Devaswom for an amount of Rs. 600/-, that he had not engaged Mahendran for the above work and that the 1st opposite party was himself doing it. They further pleaded that Mahendran died while he was doing gambling near the vedikutti and not while he was in the employment of the 1st opposite party. The Devaswom Board filed a written statement pleading that the right to conduct Nerchavedi in the temple for the year 1980-81 was put on auction and the 1st opposite party being the highest bidder was allowed to do the business in the premises of the temple. They contended that the business is his own and not a part of the trade or business of the Board and that they are not liable under the provisions of the Workmen's Compensation Act. They further contended that they are not the principal employers as the conducting of Nerchavedi is not part of their trade or business and Section 12 of the Act has no application to the facts of the case.

3. By the impugned order the Commissioner held that the deceased Mahendran was a workman of the 1st opposite party and that he died during the course of employment under the 1st opposite party. He also held that opposite party Nos. 3 and 4 cannot be made liable as they are only the legal representatives of the 1st opposite party and there is no provision in the Workmen's Compensation Act to fasten a liability under the above Act on the legal representatives. It was also held that the Board is liable as the principal employer to pay compensation to the applicant for the death of Mahendran as the performance of the Nerchavedi is an integral part of the day-to-day affairs and festivals in the Achencoil temple. It was also held that the 2nd opposite party was an employee of the Board and had nothing to do with the Nerchavedi. He fixed the compensation at Rs. 18,000/- on the basis of the wages of Mahendran and directed the Devaswom Board to pay the above amount and exonerated all other parties from any liability.

4. The learned Counsel for the Devaswom Board (appellant) challenges all these findings. u/s 30 an appeal will lie to the High Court only on a substantial question of law. The question as to whether Mahendran was an employee of the 1st opposite party and whether he died while in the course of employment under the 1st opposite party are questions of fact which this Court is not entitled to go into in an appeal u/s 30 of the Act. But the contention of the Board that they are not liable u/s 12 of the Workmen's Compensation Act is a substantial question of law which they are entitled to urge in the appeal. The counsel for the Board contended that the finding of the Commissioner that the Board is liable as the principal employer is erroneous. He contended that deceased Mahendran was not an employee of the Devaswom Board but was a workman of the 1st opposite party and that in such circumstances the Devaswom Board will be liable only if it will come within the

purview of Section 12 of the Act. In order to attract Section 12, the person (called the principal) should carry on a trade or business and for the purpose of that or in the course of the business he should have engaged a contractor and the work should also be ordinarily a part of the trade or business of the principal. The learned Counsel contends that the above conditions are not satisfied in this case, that the Commissioner erred in making the Board liable to pay compensation for the death of a person who was admittedly not their workman, and that the conduct of Nerchavedi is not ordinarily a part of their trade or business. Counsel for the applicant (1st respondent), on the other hand, contended that the conduct of Nerchavedi is part of the ordinary business of the Devaswom Board and that the 1st opposite party being a person engaged by the Devaswom for doing the above work, the liability has to be fastened on the Board u/s 12 of the Act.

5. Substantial question of law to be decided in the appeal is as to whether the Board is liable to pay compensation for the death of Mahendran, on the facts of this case, u/s 12 of the Act, as the principal employer.

6. The purpose of the provisions contained in Section 12 of the Workmen's Compensation Act and the conditions necessary to make a person liable to pay compensation to a workman not engaged by him are correctly stated in *Vijayaraghavan v. Velu* (1973) KLT 333 to the following effect:-

if any workman suffers an injury as a result of an accident arising out of or in the course of the employment, the employer is liable to pay compensation to the workman u/s 3 of the Act. There must be an employer and employee relationship between the workman and the person against whom compensation is asked for. But, in many cases persons who want to get work done try to avoid this liability by contracting with someone else to provide labour or to execute the work and then contend that as there is no employer and employee relationship between the workman who suffered an injury and themselves, they are not liable to pay any compensation. To prevent such escape from liability to pay compensation Section 12 has been enacted which reads as follows:-

12. Contracting--(1) Where any person (hereinafter in this section referred to as the principal) in the course of or for the purposes of his trade or business contracts with an other person (hereinafter in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of any work which is ordinarily part of the trade or business of the principal, the principal shall be liable to pay to any workman employed in the execution of the work any compensation which he would have been liable to pay if that workman had been immediately employed by him, and where compensation is claimed from the principal, this Act shall apply as if references to the principal were substituted for references to the employer except that the amount of compensation shall be calculated with reference to the wages of the workman under the employer by whom he is immediately employed.

(2) Where the principal is liable to pay compensation under this section, he shall be entitled to be indemnified by the contractor (or any other person from whom the workman could have recovered compensation and where a contractor who is himself a principal is liable to pay compensation or to indemnify a principal under this section he shall be entitled to be indemnified by any person standing to him in the relation of a contractor from whom the workman could have recovered compensation) and all questions as to the right to and the amount of any such indemnity shall, in default of agreement, be settled by the Commissioner.

(3) Nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.

(4) This section shall not apply in any case where the accident occurred elsewhere than on, in or about the premises on which the principal has undertaken, or usually undertakes, as the case may be, to execute the work or which are otherwise under his control or management.

A reading of the above provision discloses that order that a person can be made liable to pay compensation to a workman not engaged by n the following essentials must be satisfied:-

(i) That person (called the principal) is carrying on a trade or business and in the course of or for the purpose of that trade or business engages a contractor to execute the work.

(ii) That work is ordinarily a part of the trade or business of the principal.

(iii) The accident which gives rise to the liability for compensation must have occurred on, in or about the premises on which the principal has undertaken or usually undertakes to execute the work or which is in his control or management.

(iv) The accident must have occurred while the workman was in the course of his employment in executing the work.

Now it has to be examined whether these conditions are satisfied in this case. In determining the above question the main factor to be considered is whether the Travancore Devaswom Board is conducting any trade or business. There can be no doubt that it is not doing any trade. Is it doing any business? The word "business" has a very wide import and has a variety of meanings in different contexts. There is no definition of the word in the Act and the various decisions have given different meanings in the context of particular statutes and fact situations. Going by these decisions and the dictionary, in a broad sense, it means "everything that occupies time, attention and labour of men for the purpose of livelihood or profit". In a narrow sense it is confined to commercial activity. In certain contexts courts have interpreted business to include the practice of a profession. Agriculture has been held to be a business in the context of this Act. It is not advisable to interpret expressions used in one Act with reference to their use in another enactment. But it

is evident that in order to constitute business, it must be an occupation, profession or calling or a commercial activity. It is in this background that we have to consider whether the Devaswom Board is carrying on a business.

7. We think, it is not. The Board is constituted under the Travancore-Cochin Hindu Religious Institutions Act, 1950. u/s 3 of the above Act, the administration and the management of all incorporated and unincorporated Devaswoms and all their properties and funds shall vest in the Devaswom Board. Achencoil Devaswom is an incorporated Devaswom as defined in Section 2(c) read with Schedule I to the Act whose management and assets have vested in the Board. Section 31 of the Act enjoins the Board to manage the properties and affairs of the Devaswoms, both incorporated and unincorporated and arrange for the conduct of the daily worship and ceremonies and of the festivals in every temple according to its usage. The Board is a statutory trustee, the beneficiaries being the general Hindu public. It is not with any profit motive that the Board is functioning. Nor is it practising a profession or calling. It is a statutory trustee constituted for the upkeep and management of the temples which are intended for the spiritual upliftment of the devotees. In these circumstances, we have no doubt that the Board is not doing any business and the first condition to attract Section 12 is not satisfied in this case.

8. Even assuming that the Board is doing a business, we are of the opinion that the second condition is not satisfied in this case. It is nobody's case, nor is there any evidence to show, that the Nerchavedi is part of the ceremonies of the temple to constitute an ordinary part of the business of the Devaswom Board. The name Nerchavedi itself suggests that it is not. It is only one of the offerings made by the devotees to the deity. The Board has no obligation to conduct it; but it is for the devotees to perform it. The Board has only granted a licence to the 1st opposite party to conduct the business of Nerchavedi in their premises on behalf of the worshippers and the devotees on receipt of the cost of the same. Any devotee or worshipper can do the very same offering by himself without the aid of the 1st opposite party. In many temples licences are granted for the sale of fruits, flowers and other materials which are offered to the deity as offerings, inspite of the fact that the worshippers are free to bring their own offerings of the same nature to the temple. Such licences are granted only for the convenience of the worshippers and by no stretch of imagination can it be said that the sale by licensed vendors of the above items in the temple premises is the ordinary business of the Devaswom Board, which is being carried on through a contractor. The business of Nerchavedi conducted by the 1st opposite party is of a similar type and is not the ordinary business of the Board, but the exclusive business of the 1st opposite party and it is not being done on behalf of the Board. This is only a licence granted by the Board to the 1st opposite party of their premises for the conduct of the business of the 1st opposite party. In these circumstances, we are of the opinion that the conduct of Nerchavedi is not ordinarily a part of the business of the Devaswom Board and the second condition is also not satisfied. As these two conditions are not satisfied in

this case, the question whether the other conditions are satisfied need not be considered and we hold that the Board has no liability u/s 12 of the Workmen's Compensation Act to compensate for the death of Mahendran who was a workman under the 1st opposite party.

9. The Commissioner has directed only the Travancore Devaswom Board to pay the compensation amount. In view of our conclusions mentioned above, that direction, making the Board liable, is unsustainable. The further question is whether we can pass such orders which the Commissioner would have passed if he had not taken an erroneous view on the interpretation of Section 12 of the Act. It has been held by a Division Bench of this Court in Vijayaraghavan v. Velu (supra) that in an appeal under the Workmen's Compensation Act, the appellate court can exercise the powers of a civil court under Order XLI, Rule 33 of the Code of Civil Procedure. Under the above provision it is open to a court of appeal, while granting relief to the appellant, to pass a decree or order in favour of a non-appealing respondent against another respondent in case the facts and circumstances justify the same. In this case the finding of the Commissioner is that the deceased Mahendran was a workman under the 1st opposite party, opposite party Nos. 3 and 4 being his legal representatives. But the view of the Commissioner that opposite party Nos. 3 and 4 are not liable, being the legal representatives, is not correct. It is clear from the definition of "employer" given in Section 2(e) of the Act that the legal representatives of a deceased employer will also come within the purview of employer. As the definition itself includes the legal representatives, opposite party Nos. 3 and 4 are liable to pay the compensation for the death of Mahendran, as he was a workman under the 1st opposite party. In the application for compensation the applicant had claimed only an amount of Rs. 10,000/- and the Commissioner should not have awarded more than what was claimed. In the circumstances of this case we exercise our power under Order XLI, Rule 33 of the CPC and direct opposite party Nos. 3 and 4 to pay an amount of Rs. 10,000/- as compensation for the death of Mahendran to the applicant. It is needless to say that opposite party Nos. 3 and 4 will be liable only to the extent of the assets if any of the 1st opposite party which have come to their hands.

10. In the result, we allow the appeal, set aside the order of the Commissioner passed against the appellant-Devaswom Board and instead, direct opposite party Nos. 3 and 4 to pay or deposit an amount of Rs. 10,000/- towards compensation for the death of Mahendran, with interest at 6% per annum from the date of the application till realisation. The liability of opposite party Nos. 3 and 4 is limited to the assets of 1st opposite party if any which have come to their hands. The application as against opposite party Nos. 2 and 5 is dismissed. Parties will bear their costs.