Hotel Annapurna Vs Employees State Insurance Corporation and Others

Court: High Court Of Kerala

Date of Decision: March 7, 1995

Acts Referred: Employees State Insurance Act, 1948 â€" Section 1(5), 2(12), 75

Hon'ble Judges: M.M. Pareed Pillai, C.J; T.V. Ramakrishnan, J

Bench: Division Bench

Advocate: T.G. Rajendran, for the Appellant; C.S. Rajan, for Respondents 1 and 2 and K. Kochupappu, Government Pleader for 3rd Respondent, for the Respondent

Judgement

Ramakrishnan, J.
The challenge in this batch of Original Petitions is against the notices issued by the first Respondent- Employees State

Insurance Corporation (hereinafter referred to as ""the Corporation"") holding that the hotels and restaurants run by the Petitioners are covered

establishments coming within the purview of the Employees'' State Insurance Act, 1948 (for short ''the Act'') and the Rules framed therein and

calling upon the Petitioners to comply with the various provisions of the Act. Petitioners have prayed for quashing the notices and for a declaration

that the Petitioners'' establishments are not covered by and cannot be brought under the provisions of the Act. They have also prayed for a writ of

prohibition restraining the Respondents from enforcing any of the provisions of the Act as against the Petitioners'' establishments. Several other

contentions have been raised in support of the prayers in the O.P. However, in the manner in which we propose to dispose of the O.P., it is

unnecessary to refer to all of the facts and contentions raised in the O.Ps. except in regard to one common contention raised in all the O.Ps.

2. The common contention to which we want to refer is that hotels and restaurants are not comprised in the definition of the term ''factory''

contained in Section 2(12) of the Act either before or after the Amendment Act, 1989. In this connection, the Petitioners have relied upon two

notifications, No. 22877/E2/73/LBR, dated 18th September, 1974 and No. 16141/E2/73/LBR, dated 27th May 1976 issued by the Government

of Kerala under Sub-section (5) of Section 1 of the Act to contend for the position that it is only as per the above two notifications that the hotels

and restaurants were brought within the definition of the word ''factory'' contained in the Act and so long as the Petitioners'' hotels and restaurants

may not come within the scope of the provisions of the two notifications, the impugned notices issued on the assumption that hotels and restaurants

owned by the Petitioners fall within the definition of the word ''factory'' contained in the Act is unsustainable in law. As regards the above

contention, it was pointed out by the learned Counsel for the Corporation that in the light of the Supreme Court decision reported in G.L. Hotels

Limited and Others Vs. T.C. Sarin and Another, the contention raised cannot be sustained in law. Both the notifications are notifications issued

prior to the amendment of the definition of the word ''factory'' contained in the Act by the Amendment Act, 1989. In the light of the decision of the

Supreme Court the notifications have practically become irrelevant or redundant in so far as the Supreme Court has held that hotels and restaurants

attached with a kitchen where manufacturing process takes place in appropriate cases will fall within the ambit of the word ''factory'' contained in

the Act.

3. We find that the Supreme Court in the above decision has upheld the finding of the High Court that since a manufacturing process in the form of

cooking and preparing food is carried on in the kitchen and the kitchen is part of the hotel or precincts of the hotel, the entire hotel falls within the

purview of the definition of the word ''factory'' contained in Section 2(12) of the Act. In the light of the above decision, we find that the common

Contention raised by the Petitioners that the hotels and restaurants are not comprised in the definition of the term ''factory'' contained in Section

2(12) of the Act either before or after the Amendment Act, 1989 cannot be accepted as such. It has to be held in the light of the decision of the

Supreme Court that the term ''factory'' would take in hotels and restaurants-if they satisfy the requirements of the word ''factory'' contained in

Section 2(12) of the Act even in the absence of separate notifications issued u/s 1(5) of the Act bringing in hotels and restaurants within the

purview of the provisions in the Act. In the circumstances, it has to be held that it may not be necessary for the Corporation to rely upon the

notifications referred to above for the purpose of proceeding against the hotels and restaurants owned by the Petitioners if they satisfy the

requirements of the word ''factory'' contained in Section 2(12) of the Act.

4. As regards the other contentions, we find that the Petitioners have got an effective alternative remedy of approaching the Employees Insurance

Court for redressing their grievances against the impugned notices issued by the Corporation. As such in the light of the provisions contained in

Section 75 of the Act, it has to be held that the Petitioners are not entitled to get any of the reliefs prayed for in the O.Ps.

5. Accordingly, we would dispose of the O.Ps. as indicated below subject to our finding on the common contention referred to above and the

following directions:

(a) It will be open to the Petitioners to approach the Employees'' Insurance Court u/s 75 of the Act for appropriate reliefs against the notices

impugned in the O.Ps. within a period of three months from today.

(b) The Respondents shall keep in abeyance all further proceedings pursuant to the impugned notices till the expiry of three months from today.

(c) If any question or dispute is raised by the Petitioners against the notices challenged in the O.Ps., such question or dispute shall be determined

by the Employees'' Insurance Court in accordance with law and subject to the finding recorded by us in this judgment.

No costs.