Kirloskar Brothers Ltd. Vs Employees'' State Insurance Corpn.

Civil Appeals No. 177 of 1984.

Court: Supreme Court of India

Date of Decision: Jan. 24, 1996

Acts Referred:
Constitution of India, 1950 â€" Article 136, 14, 21#Employees State Insurance Act, 1948 â€" Section 1(5), 2, 2(17), 2(9), 3

Citation: AIR 1996 SC 3261 : (1996) 2 JT 159 : (1996) LabIC 1718 : (1996) 1 LLJ 1156 : (1996) 2 SCALE 1 : (1996) 2 SCC 682 : (1996) 1 SCR 884 : (1996) 4 UPLBEC 2796 : (1996) 2 UPLBEC 1031

Hon'ble Judges: S. Saghir Ahmad, J; K. Ramaswamy, J; G. B. Pattanaik, J

Bench: Full Bench

Advocate: R.F. Nariman, P.H. Parekh and Arvind Kumar Sharma, for the Appellant; V.C. Mahajan, T.C. Sharma and Anil Katiyar, for the Respondent

Final Decision: dismissed

Judgement

1. In these appeals short question that arises for consideration is whether the Employees'' State Insurance Act, 1948 (for short, ''the Act'') would

apply to the regional offices of the appellant at Secunderabad in Andhra Pradesh and Bangalore in Karnataka State. The Appellant had established

its registered office at Poona for sale and distribution of its products from three factories one situated at Kirloskarvadi, second at Karad in State of

Maharashtra and the third one at Deewas in the State of Madhya Pradesh. Admittedly factories situated in Maharashtra are not covered under the

Act. They set up regional offices at several places. The Governments of Andhra Pradesh and Karnataka have applied the provisions of Section

2(g) of the Act to the aforesaid regional offices situated at Secunderabad and Bangalore and the respondent had issued notice u/s 3(g) of the Act

calling upon them to contribute their share of the health insurance of the workmen working in the respective regional offices. Disputing the liability,

the appellant filed application before Insurance Court u/s 75 of the Act. The Court had held that the appellant''s regional offices are covered under

the Act and accordingly it directed them to pay their contribution. The High Courts of Andhra Pradesh and Karnataka have upheld the said orders.

Hence these appeals by special leave.

2. In point of time, the judgment of the Andhra Pradesh High Court is the earliest rendered in C.M.A. No. 593 of 1976. It had followed the

decision of this Court in 272086 and held that the regional offices are established for sale or distribution of the appellant''s products, which have

their connection to its factory at Deewas and as such the appellant is liable to pay contribution. When similar question had arisen in the Orissa High

Court, in Misc. Appeal No. 187 of 1982, by an order dated March 5, 1987, the learned single Judge had held that since the percentage of sale of

products form Dewas at Bhubaneswar regional office is not predominantly higher but is only incidental, it is not covered under the Act. Therefore,

the appellant is not liable to contribute to the insurance of the workmen. SLP No. 7372 of 1987 against the said judgment was dismissed by a

Bench of two Judges of this Court on January 28, 1988 holding that having regard to the peculiar facts of the case, no interference under Article

136 of the Constitution was called for. When the appeals came for hearing before a Bench of two Judges, by an order dated January 17, 1990,

the appeals were referred to this Bench for decision. Thus these appeals have come before us.

3. Shri R.F. Nariman, learned senior counsel for the appellant, raised two-fold contentions. It is contended that as per material on record, the

regional offices at Secunderabad and Bangalore are transacting business of the products manufactured by Deewas factory ranging between 3% to

33%. It is not predominantly products of the factory at Deewas and the other factories are not covered under the Act. Therefore, the view

expressed by the Orissa High Court is correct interpretation of the law and that of the High Courts of Andhra Pradesh and Karnataka is incorrect.

It is also contended that the decision said of the High Court of Orissa between the same parties become final, it operates as res judicata,

Therefore, the appellant is entitled to be excluded from the purview of the Act.

4. Shri V.C. Mahajan, the learned senior counsel appearing for the State, contended that regional offices having been established by the appellant

at different places to sell or distribute their products at the respective places, the quantum of business transaction is not relevant consideration.

Equally, the test of predominant business turnover of the products manufactured by Deewas factory is not a relevant consideration. The test laid

down in Hyderabad Asbestos Cement Products Ltd. case, i.e., control by the principal employer connected with the sale or distribution of the

products of the appellant is relevant. Therefore, the test laid down by the learned Judge of the Orissa High Court is not correct one, the Andhra

Pradesh and Karnataka High Courts'' view has correctly laid down the test and commanded for acceptance. It is also contended that the principle

of res judicata cannot be applied in the facts of this case, since the entire issue is now at large.

5. Having regard to the respective contentions, the question that arises for consideration is whether the Act applies to the respective regional

offices. Section 2(9) of the Act defines ""employee"" to mean any person employed for wages in or in connection with the work of a factory or

establishment to which this Act applies... 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 he

products of, the factory.... (Emphasis supplied), ""Occupier"" of the factory u/s 2(15) shall have the meaning assigned to it in the Factories Act.

Principal employer"" defined in Section 2(17) means, ""in a factory, the owner or occupier of the factory and includes the managing agent of such

owner or occupier, the legal representative or 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; 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; in any other

establishment, any person responsible for the supervision and control of the establishment"". It would thus be seen that the Principal employer is the

exclusive owner or occupier of the factory and includes the managing agent of the owner or occupier or where a person has been named as the

manager of the factory under the Factories Act the person so named or any other person responsible for the supervision and control of the

establishment etc., is the principal employer. Having established the regional offices at the respective places, the person who keeps control or is

responsible for the supervision of the establishment at the respective regional offices in connection with factory whose finished products are

distributed or sold, would be the principal employer for the purpose of the Act. The person appointed for sale or distribution of the products in the

regional office is the employee covered under the Act.

6. The object of the Act is to provide certain benefits to employees in of sickness, maternity, employment injury and for certain other matters in

relation thereto. Section 39 of the Act enjoins upon the employer to make payment of contribution and deduction of the contribution of the

employees from their wages at the rates specified in the First Schedule to the Act and to credit the same to their account. The employees covered

under the Act in return would receive treatment for sickness, maternity, payment for employment injury etc. Every human being has the right to live

and to feed himself and his dependents. Security of one''s own life and livelihood is a pre-condition for orderliness. Liberty, equality and dignity of

the person are intertwined precious right to every citizen. Article 1 of the Universal Declaration of Human Rights, 1948 assures human sensitivity

and moral responsibility of every State and that all human beings are born free and equal in dignity and rights. Article 3 assures everyone the right

to life, liberty and security of person. Article 25(1) assures that everyone has a right to a standard of living adequate for the health and well-being

of himself and of his family, including, among others things, medical care and right to security in the event of sickness, disability etc. Article 6 of

International Covenant on Civil and Political Rights, 1966 assures that every human being has inherent right to life. This right shall be protected by

law. Article 7(b) recognises the right of everyone for the enjoyment of just and healthy conditions of work which ensures in particular safe and

healthy working conditions. The Preamble of the Constitution of India, the Fundamental Rights and Directive Principles constituting trinity, assure to

every person in a welfare State social and economic democracy with equality of status and dignity of person. Political democracy without social

and economic democracy would always remain unstable. Social democracy must become a way of life in an egalitarian social order. Economic

democracy aids consolidation of social stability and smooth working of political democracy. For welfare of the employees, the employer should

provide facilities and opportunities to make their life meaningful. The employer must be an equal participant in evolving and implementing welfare

schemes. Article 39[e] of the Constitution enjoins upon the State to secure health and strength of the workers and directs that the operation of the

law is that the citizens are not forced by economic necessity to work under forced labour or unfavourable and unconstitutional conditions of work.

It should, therefore, be the duty of the State to consider that welfare measures are implemented effectively and efficaciously. Article 42, there fore,

enjoins the State to make provision for just and human conditions of work and maternity relief. Article 47 imposes a duty on the State to improve

public health.

7. Economic security and social welfare of the citizens are required to be reordered under rule of law. In 270866 , in paragraph 31 this Court

surveyed various functions of the State to protect safety and health of the workmen and emphasised the need to provide medical care to the

workmen to prevent disease and to improve general standard of health consistent with human dignity and right to personality. In para 32, it was

held that the term ""health"" implies more than an absence of sickness. Medical care and health facilities not only protect against sickness but also

ensures stable manpower for economic development. Facilities of health and medical are generate devotion and dedication to give the workers''

best, physically as well as mentally, in productivity. It enables the worker to enjoy the fruit of his labour, to keep him physically fit and mentally alert

for leading a successful, economic, social and cultural life. It was held that ""medical facilities are, therefore, part of social security and like gilt-

edged security, it would yield immediate return to the employer in the increased production and would reduce absenteeism on grounds of sickness,

etc."" It would thus save valuable man power and conserve human resources.

8. Health is thus a state of complete physical, mental and social well being right to health, therefore, is a fundamental and human right to the

workmen. ""The maintenance of health is the most imperative constitutional goal whose realisation requires interaction of many social and economic

factors. Just and favourable condition of work implies to ensure safe and health working conditions to the workmen. The periodical medical

treatment invigorates the health of the workmen and harnesses their human resources. Prevention of occupational disabilities generates devotion

and dedication to duty and enthuses the workmen to render efficient service which is a valuable asset for greater productivity to the employer and

national production to the State."" Interpreting the provisions of the Act in para 33, it was held that the Act aims at relieving the employees from

health and occupational hazards. The legal interpretation is to ensure social order and human relations.

9. In 276935 a three-Judge Bench of this Court held that the jurisprudence of personhood or philosophy of the right to life envisaged in Article 21

of the Constitution enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman

to earn his livelihood, to sustain the dignity of person and to live a life with dignity equality. The expression "life" assured in Article 21 does not

connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard

of living, hygienic conditions in the work place and leisure facilities and opportunities to eliminate sickness and physical disability of the workmen.

Health of the workman enables him to enjoy the fruits of his labour, to keep him physically fit and mentally alert. Medical facilities, therefore, is a

fundamental and human right to protect his health. In that case health insurance, while in service or after retirement was held to be a fundamental

right and even private industries are enjoined to provide health insurance to the workman.

10. In expanding economic activity in liberalities economy Part IV of the Constitution enjoins not only the State and its instrumentalities but even

private industries to ensure safety to the workman to provide facilities and opportunities for health and vigour of the workman assured in relevant

provisions in Part IV which are integral part of right to equality under Article 14 and right to invigorated life under Article 21 which are fundamental

rights to the workman. Interpretation of the provisions of the Act, therefore, must be read in the light not only of the objects of the Act but also the

constitutional and fundamental and human rights referred to hereinbefore.

11. The principal test to connect the workmen and employer under the Act to ensure health to the employee being covered under the Act has been

held by this Court in Hyderabad Asbestos case, i.e., the employee is engaged in connection with the work of the factory. The test of predominant

business activity or too remote connection are not relevant. The employee need not necessarily be the one integrally or predominantly connected

with the entire business or trading activities. The true test is control by the principal employer over the employee. That test will alone be the relevant

test. The connection between the factory and its predominant products sold or purchased in the establishment or regional offices are irrelevant and

always leads to denial of welfare benefits to the employees under the Act. When there is connection between the factory and the finished products

which are sold or distributed in the regional offices or establishment and principal employer has control over employee, the Act becomes

applicable. The test laid down by the Orissa High Court, namely, predominant business activity, i.e., sale or distribution of the goods manufactured

in the factory at Deewas, is not a correct test. It is true that this Court in the SLP arising from the Orissa High Court judgment, leave was declined

holding it to be of peculiar facts.

12. This Court has not laid down any law therein. Shri Nariman has contended that it would operate as a precedent. Since the entire controversy

between the parties is at large and this Court has seisen of the issue and pending decision, Orissa case should have got posted with these appeals.

That case did not lay any law. The previous decision does not operate as res judicata. Therefore, we do not find any merit in the contentions.

Accordingly, we hold that the view expressed by the Andhra Pradesh and the Karnataka High Courts is correct in law. The appellant, therefore, is

liable to pay contribution from the respective date of demand in 1975 in Andhra Pradesh case, and on the respective date in Karnataka case u/s

39 read with first schedule to the Act.

13. The appeals are accordingly dismissed with the above modifications. No costs.