Kirloskar Brothers Ltd vs Employees' State Insurance Corpn on 24 January, 1996

Equivalent citations: JT 1996 (2), 159 1996 SCALE (2)1, AIR 1996 SUPREME COURT 3261, 1996 AIR SCW 2296, 1996 LAB. I. C. 1718, 1996 (2) UPLBEC 1031, (1996) 1 SCR 884 (SC), 1996 (1) SCR 884, (1996) 2 JT 159 (SC), 1996 (1) LAB LR 436, 1996 (2) SCC 682, 1996 LABLR 1 436, (1996) 88 FJR 602, (1996) 72 FACLR 697, (1996) 1 LABLJ 1156, (1996) 2 LAB LN 22, (1996) 2 SCT 199, (1996) 2 UPLBEC 1031, (1996) 33 ATC 231, (1996) 1 CURLR 668, 1996 SCC (L&S) 533, (1997) 2 BOM CR 129

Author: K. Ramaswamy

Bench: K. Ramaswamy

PETITIONER:
KIRLOSKAR BROTHERS LTD.

Vs.

RESPONDENT:
EMPLOYEES' STATE INSURANCE CORPN.

DATE OF JUDGMENT: 24/01/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
AHMAD SAGHIR S. (J)
G.B. PATTANAIK (J)

CITATION:
JT 1996 (2) 159 1996 SCALE (2)1

ACT:

HEADNOTE:

JUDGMENT:

WITH CIVIL APPEAL NO. 147 OF 1980

O R D E R 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 States. 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 under Section 3(9) 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 under Section 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.

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 Hyderabad Abestos Cement products Ltd. vs. The Employees, Insurance Court & Anr. [(1978) 2 SCR 3451 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 from Deewas 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. S.L.P. 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.

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.

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.

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 under Section 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 nos 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 of occupier or where a person has been named as the manager of the factory under the Factories Act the person so named or nay 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.
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> The object of the Act is to provide certain benefits to employees in case 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

employes 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 of 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 Internationa Convent 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] recognizes the right of everyone of the enjoyment of just an 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 constitution Trinity, assure to every person in a welfare State social and economic democracy with equality of status an 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 implanting 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 unfavorable and unconstitutional conditions of work. It should, therefore, be the duty of the State of consider that welfare measures are implemented effectively and efficaciously. Article 42, therefore, 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.

Economic security and social welfare of the citizens are required to be reordered under rule of law. In C.E.S.C. Limited v. Subhash Chandra Bose [(1992) 1 SCC 441 at 463], in paragraph 31 this Court surveyed various functions of the State to protect safety and health of the workmen and emphasized the need to provide medical care to the workmen and emphasized 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 care 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 life gilt-edged security, it would yield immediate return to the employer in the increased production and would reduce absenteeism on ground of sickness, etc." It would thus save valuable man power and conserve human resources.

Health is thus a state of complete physical, mental and social well being and right to health, therefore, is a fundamental and human right to he workmen. "The maintenance of health is the most imperative constitutional goal whose realization requires interaction of many social and economic factors. Just and favorable 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 harnessers 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 not ensure social order and human relations.

In Consumer Education & Research Center & Ors. v. Union of India & Ors. [(1995) 3 SCC 42] 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 workmen to earn his livelihood, to sustain the dignity of person and to live a life with dignity and 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 workplace and leisure facilities and opportunities to eliminate sickness and physical disability of the workmen. Health of the workmen 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.

In expanding economic activity in liberalized economy Part IV of the Constitution enjoins not only the State and its instrumentalities but even private industries to ensure safety to the workman and to provide facilities and opportunists for health and vigor of the workman assured in relevant provision in part IV which are integral part of right to equality 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.

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 special leave petition arising from the orissa High Court judgment, leave was declined holding it to be of peculiar facts.

This Court ha not laid down any law therein, Shri Nariman has contended that it would operate as a precedent. Since the entire controversies between he parties is at large and his 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 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 of 1975 in Andhra Pradesh case, and on the respective date in Karnataka case under Section 39 read with first schedule to the Act.

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