Regional Director Employees A State ... vs Ramanuja Match Industrirs on 27 November, 1984

Equivalent citations: 1985 AIR 278, 1985 SCR (2) 119, AIR 1985 SUPREME COURT 278, (1985) IJR 8 (SC), (1985) 1 LABLJ 69, 1985 BBCJ 28, (1985) 66 FJR 108, (1985) 1 LAB LN 249, (1985) 1 SCWR 114

Author: Misra Rangnath

Bench: Misra Rangnath, Amarendra Nath Sen

PETITIONER:
REGIONAL DIRECTOR EMPLOYEES A STATE INSURANCE CORPORATION TR

Vs.

RESPONDENT:
RAMANUJA MATCH INDUSTRIRS

DATE OF JUDGMENT27/11/1984

BENCH:
MISRA RANGNATH
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MISRA RANGNATH
SEN, AMARENDRA NATH (J)

CITATION:
1985 AIR 278 1985 SCR (2) 119
1985 SCC (1) 218 1984 SCALE (2)815
CITATOR INFO :
RF 1991 SC1806 (8)
RF 1992 SC 573 (11)

ACT:
Employees State Insurance Act 1948section 2(9) 'employee'-Meaning of Partners of a firm receiving salary or of her remuneration - Whether employee.
Indian Partnership Act 1931 sections 4 and 30(1) 'partner' - 'partners in a firm' - Not employees.
Interpretation of statutes: Beneficent legislation to receive liberal interpretation - However Court not to travel beyond scheme of statute and extend scope of statute on pretext of extending statutory benefit to these not covered by the scheme of the statute.

HEADNOTE:

The Respondent-firm was engaged in the manufacturing of matches. The Inspector of the Employees State Insurance Corporation who inspected the firm found that there were 18 regular employees and three of the partners worked regularly for wages. As the number of employees were over 20 he held that the Respondent-firm incurred liability for contribution under the Employees State Insurance Act 1948.

The Respondent challenged its liability before the Employees Insurance Court by contending that partners were not employees and that when the three partners were excluded, the total number of employees did not exceed the statutory minimum. The Insurance Court found in favour of the respondent. The Employees State Insurance Corporation appealed to. The High Court, which held following its earlier decision in Regional Director of E.S.I. Corporation v. Mls. Oosmalua Tiite Works, Alwayes I.L.R. 1975(2) Kerala 201 that partners were not employees. In the appeal to this Court on the question whether a partner of a firm is an "employee'l within the meaning of section 2(9) of the Employees State Insurance Act 1948, H
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Dismissinhe Appeal,
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HELD: 1. The three partners were not employees. On this admitted fact the total number of employees would be less than 20. The Employees State Insurance Act 1948 would not therefore be applicable to the respondent-establishment. [128C]

2. The term 'employee' has been defined in section 2(9) of the Employees State Insurance Act 1948 to mean any person employed for wages in or in connection with the work of a factory or establishment to which the Act applies...". Wages") has been defined in sub-section (22) of that section to mean all remuneration paid or payable, in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled...". In order that some one may be an employee within the meaning of the Act, he has to be employed for wages. The concept of wages would bring in the contract of employment, and the concept of employee would take with it the correlation of the employer. The term 'employer' has not been defined in the Act. In the absence of an employer who would provide the employment, there would be no employee. (122D-F)

3. A partnership firm is not a legal entity. In a partnership each partner acts as an agent of the other. The position of a partner qua the firm is thus not that a master and a servant or employer and employee which concept involves an element of subordination but that of equality. The partnership business belongs to the partners and each one of them is an owner thereof. In common parlance the status of a partner qua the firm is

thus different from employees working under the firm, it may be that a partner is being paid some remuneration for any special attention which he devotes but that would not involve any change of status and bring him within the definition of employee.

Seth Hira Lal & Anr-v. Sheikh Jammaluddin and anr. [1946] 224 Indian Cases 106 & Regional Director of E.S. 1. Corporation v. M/s. Osmanja Tile Works, Alwaye, I.L.R. 1975 (2) Kerala 207 approved.

Regional Director of E.S.I. Corporation, Jaipur v. P.C. Kasliwal and Anr. (1931) Labour & Industrial Cases 671 reversed 4. In the United States, Great Britain and Australia, a partner is not treated as an employee of his firm merely because he receives a wage or remuneration for work done for the firm,
which is in complete accord with the jurisprudential approach. [127D-E]

Dube v. Robinson 92 N 312. United States Fidelity JUDGMENT:

Smith 202 N.Y.S. 514 & Berger v. Fldility Union Casualty Co, Tayes, 293 S.W. 235 & Weaver v. Wcinberger 392 F. Suppl. 721 Crooks v. Glena Falls Indemnity Co, 268 P. 2d. 203 & Morfci Corporation v. US.D.C. California, 500 F. Suppl. 714 & Burker v. Friedman, 556 F. 2d 687 & Wright v. Deareter 442 P. 2d 888 Ellies v. Joseph & Co. [1905] K B. 324 & Rose v. Federal Commissioner of Taxation [1951] 84 C.L R. 118 A referred to.

5. Beneficial legislation should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme. [127F-G]

6. The employees State Insurance Act 1948 covers all factories or establishment with 20 or more employees and the benefit is intended to be given to institutions with more than that number. Because the legislation is beneficial it should also apply to factories or establishments with less than 20 employees is not the contention on behalf of the appellant. If that be not so, in finding out whether a partner would be an employee a liberal construction is not warranted. [127H, 128A] & CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3500 of 1984.

Appeal by Special leave from the Judgment and order dated the 3rd August, 1981 of the Kerala High Court in M.F.A. No. 442 of 1979.

M.K. Banerjee, Addl. Sol. General, Girish Chandra and R.N. Poddar for the Appellant.

The Judgment of the Court was delivered by RANGANATH MISRA, J. The short point which arises for determination in this appeal by special leave is as to whether a partner of a firm is an "employee ' within the meaning of Section 2(9) of the Employees State Insurance Act, 1948 (hereinafter called 'the Act'). Respondent Ramanuja Match Industries which is a firm is engaged in manufacturing of

matches within the Trichur area of Kerala State and the question as to whether it is covered under the provisions of the Act fell for consideration. The Inspector found that there were 18 regular employees and three of the partners who worked regularly for wages were to be put together. Thus the number of 20 employees as required by the Act was satisfied and the respondent did incur liability for contribution The respondent challenged its liability before the Employees Insurance Court at Calicut by contending that partners were not employees and when the three partners were excluded, the total number of employees did not exceed the statutory minimum. The Insurance Court found in favour of the respondent and an appeal under the Act was carried to the High Court by the appellant and a Division Bench of that Court following its earlier decision in Regional Director of E.S.I. Corporation v. M/s. Oosmanja Tile Works, Alwaye,(l) held that partners were not employees. It is against this decision that the present appeal has been carried.

There is no dispute that under the Act, liability to pay contribution arises only when 20 or more persons are employed for wages. It is also not disputed that in the case of the respondent unless the three partners are included, the basic number of 20 is not reached and no liability under the Act accrues.

The term 'employee' has been defined in s. 2(9) of the Act to mean "any person employed for wages in or in connection with the work of a factory or establishment to which the Act applies and-"one of the alternative in clauses

(i), (ii) or (iii). 'Wages' has been defined in sub-s. (22) of that section to mean "all remuneration paid or payable, in cash to an employee, if the terms of the contract of employment, express or implied, were fulfilled.. " It is thus clear that in order that some one may be an employee within the meaning of the Act, he has to be employed for wages. The concept of wages would bring in the contract of employment. The Shorter oxford English Dictionary gives the meaning of 'employ' to be "to use the services of for some special business; to have or maintain in one's service". In common parlance the concept of employee would take with it the correlation of the employer. The term 'employer' had not been defined in the Act but in the absence of an employer who would provide the employment, there would indeed be no employee. In fact, that concept is clear in the scheme of the Industrial Disputes Act of 1947 and the definition of the term 'employer' in s. 2(g) of that Act makes the position clear.

It is appropriate that at this stage we refer to the position of a partner qua the firm. Section 4 of the Partnership Act, 1932 defines 'partnership' and one of the essential requisites of a partner ship is that there must be mutual agency between the partners.

(1) I.L.R. 1975 (2) Kerala 207.

Full Bench of the Patna High Court in Seth Hira Lal & Anr. v. A Sheikh Jamaluddin and Anr.,(1) rightly emphasised upon the position that an important element in the definition of partnership is that it must be carried on by all or any one of the partners acting for all. Section 18 of the Partnership Act statutorily declares every partner to be an agent of the firm for the purposes of the business of the firm and Section 19 states that an act of a partner which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. A partnership firm is not a

legal entity. This Court in Champaran Cane Concern v. State of Bihar and Anr.,(2) pointed out that in a partnership each partner acts an agent of the other. The position of a partner qua the firm is thus not that of a master and a servant or employee which concept involves an element of subordination but that of equality. The partnership business belongs to the partners and each one of them is an owner thereof. In common parlance the status of a partner qua the firm is thus different from employees working under the firm, it may be that a partner is being paid some remuneration for any special attention which he devotes but that would not involve any change of status and bring him within the definition of employee.

Learned counsel for the appellant strongly relied on a case of the Rajasthan High Court in Regional Director of E.S.I. Corporation, Jaipur v. P.C. Kasliwal and Anr.,(3) The learned Single Judge has taken the view that a partner can be employed by the firm and if he draws emoluments within the prescribed limits for the work of the factory, he would be an employee under s. 2(9) of the Act. In the same decision it has also been held that a sleeping partner drawing a monthly allowance merely because he is a partner would not come within the ambit of the Act as an employee and contribution in respect of such partner would not be payable. As against this view there is a Division Bench decision of the Kerala High Court in Regional Director of E.S.I. Corporation v. M/s. Oosmanja Tile Works, alwaye (supra), where it has been held that a managing partner of a firm is not an employee if merely he receives salary or other remuneration. Strong reliance has been placed by (1) [1946] 224 Indian Cases 106.

(1) [1964] 2 S.C.R. 921.

(2) [1981] Labour & Industrial Cases 671.

the Kerala High Court on the position that such managing partner is not an employee who is working under a contract of service. In fact, in the present case support has been drawn from this decision of the High Court as a precedent and following the ratio of that decision, the High Court has decided against the appellant. The Rajasthan High Court has obviously not been alive to the definition of the term 'employee' in s. 2(9) of the Act though the definition has been extracted in extenso. The status of a partner qua the firm with reference to the provisions of the Partnership Act the concept of "employer" and "employee" and the importance of the definition of "wages" have also been lost sight of in adjudicating whether a partner is an employee. We are, therefore, not inclined to accept the view of the Rajasthan High Court. On the other hand, the view taken by the Kerala High Court seems to be the correct one and fits in with the position of a partner qua his firm and the jurisprudential approach to the matter.

The respondent did not choose to appear in this Court to support the order of the High Court. We have, however, come across several judicial opinions of American and English Courts taking the view that a person cannot be the employee of the firm of which he is a partner. In Words and Phrases Permanent Edition Vols. 14 and 14A (1974 reprint), several such decisions of the American State Courts have been referred to in support of the view that a partner cannot be an employee of his firm and we propose to refer to some of the more apt ones. In Dube v. Robinson(1) it has been held that in a partnership each partner is an agent of the others as well as a principal; but he is not in hire

as an employee and that he may perform labour even with the employees of the partnership and of the same kind as they perform does not make him an employee of the other partners or of the partnership, and hence such partner cannot be counted to constitute one of the workmen' necessary for application of the Employers' Liability and Workman's Compensation Act to the partnership business. In United States Fidelity & Guarantee Company v. Neal(2) it has been held that a partner not an employee of the partnership within the Compensation Act though at the time of the injury he was performing special services under contract with his partner, (1) 92 N.H. 312.

(2) 188 Ga. 105.

separate and independent from the articles of partnership, and is A being paid compensation therefore in addition to his shale in profits. Again, in Le Clear v. Smith,(1) it was held that a partner, though he received a salary in addition to his share of the profits, was an employer and an not employee entitled to compensation under the Workman's Compensation Law, where the insurer did not insure the employers. In Berger Fidelity Union Casualty Co., v. Texas,(2) it has been held that a member of an employer firm cannot be an employee thereof. In Wearer v. Weinberger,(3) it was held that "employee" is a person who renders service to another, usually for wages, salary or other financial consideration, and who, in performance of such service, is entirely subject to the direction and control of the other, such other being the employer. Crooks v. Glena Falls Indemnity Co.,(4) is an authority for the view that an employee is one who is subject to the absolute control and direction of the employer in regard to any act, labour or work to be done in course and scope of his employment. In Morici Corporation v. U.S.D.C. California.,(5) the Court held that the test to determine whether one person is another's employee, is whether or not he is subject to control of the other person. In Burker v. Friedman,(6) it was held that partners cannot be regarded as employees rather than as employers who own and manage operation of business, and, hence, cannot be included as employees. Wright v. Deareter(7) took the view that partners were not employees for purposes of requirement that compensation law be complied with when there are three or more employees. Though we have not come across any decision of the U.S. Supreme Court on the point, these authorities under various legislations are clearly indicative of the principle that a partner who belongs to the class of employer cannot rank as employee because he also works for wages for the partnership. Undoubtedly the term employee is the co- relative of employer.

(1) 202 N.Y.S. 514.

(2) 293 S.W. 235.

(3) 392 F. Suppl.

(4) 268 P. 2d. 203.

(5) 500 F. Suppl. 714.

(6) 556 F. 2d 827.

(7) 442 P. 2d 888.

We may usefully refer here to an English decision. The Court of Appeal in Ellis v. Joseph Ellis & Co.,(1) was called upon to decide whether a partner of a firm could be its employee. The short facts relevant for our purpose available in the judgment of Collins M.R. are:

> "The deceased appears to have been a skilled workman and, by agreement with his partners, he worked at the mine, sometimes on the surface and sometimes under ground, for wages; and, while working underground, he met with an accident which occasioned his death. His representative thereupon claimed compensation under the Workman's Compensation Act, 1897, on behalf of her self and his children. The question is whether, having regard to his position as one of the partners, he can be regarded as a workman in the employ of the partnership, and the partners as his employers within the meaning of the Act. When one looks at the provisions of the Act, they do not appear to be applicable to a case like the present. The supposition that the deceased man was employed, within the meaning of that term as used in the Act (not very different from the definition here), would appear to involve that he, as one of the partners, must be looked upon as occupying the position of being one of his own employers. It seems to me that, when one comes to analyse an arrangement of this kind, namely, one by which a partner himself works, and receives sums which are called wages, it really does not create the relation of employers adjusting the amount that must be taken to have been contributed to the partnership assets by a partner who has made what is really a contribution in kind, and does not affect his relation to the other partners which is that of co-adventurer and not employee".

Lord Justice Mathew pithily but with emphasis added:

> "The argument on behalf of the applicant in this appeal appears to involve a legal impossibility, namely, that the same person can occupy the position of being both master and servant, employer and employed."

(1) [1905] 1 K.B. 324.

Lord Justice Cozens-Hardy also spoke in the same strain:

> "All that our decision in this case amounts to, I think, is that the Act only applies where there is on one side an employer, and on the other side a workman, who are different persons."

This is in complete accord with our view.

F.C. Bock and F.F. Manix in their book, the Australian Income Tax Law and Practice (1960 Edn., Vol. 3, page 3092) have said:

> "The decision of the High Court in Rose v. Federal Commissioner of Taxation(l) established that there is nothing in the relevant income-tax legislation to warrant treating a partnership as a distinct legal entity. A partner cannot therefore, also be an employee of the partnership, for a man cannot be his own employer ..... "

It is thus clear that in the United States, Great Britain and Australia, a partner is not treated as an employee of his firm merely because he receives a wage or remuneration for work done for the firm. This view is in complete accord with the jurisprudential approach. In the absence of any statutory mandate, we do not think there is any scope for accepting the view of the Rajasthan High Court.

Counsel for the appellant emphasised on the feature that the statute is a beneficial one and the Court should not interpret a provision occurring therein in such a way that the benefit would be withheld from employees. We do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme. The Act covers all factories or establishment with 20 or more employees and the benefit is intended to be given to institutions with more than that number. It is not the (1) [1951] 84 C.L.R. 118.

contention of counsel that because the legislation is beneficial it should also apply to factories or establishments with less than 20 employees. If that be not so, in finding out whether a partner would be an employee a liberal construction is not warranted. A person who would not answer the definition cannot be taken into account for the purpose of fixing the statutory minimum. We are-therefore, not inclined to accept the contention of counsel that on the basis of the statute being beneficial, a partner should also count as an employee.

Once we hold that the three partners were not employees, on the admitted fact the total number of employees would be less than 20, the Act would not be applicable to the establishment in question. There is no merit in the appeal and the same is, therefore, to be dismissed. At the hearing the respondent was not represented; we, therefore, make no direction for costs.

N. V. K. Appeal dismissed.