

Kerala High Court

Employees State Insurance ... vs City Centre Builders And ... on 14 November, 2008

IN THE HIGH COURT OF KERALA AT ERNAKULAM

Ins.APP.No. 39 of 2005()

1. EMPLOYEES STATE INSURANCE CORPORATION,  
... Petitioner

Vs

1. CITY CENTRE BUILDERS AND DEVELOPERS,  
... Respondent

For Petitioner :SMT.T.D.RAJALAKSHMY, SC, ESI CORPN.

For Respondent :SRI.DENIZEN KOMATH

The Hon'ble MR. Justice M.N.KRISHNAN

Dated :14/11/2008

O R D E R

M.N.KRISHNAN, J

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INAP No.39 OF 2005

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Dated this the 14th day of November 2008

JUDGMENT

This appeal is preferred against the order of the Employees' Insurance Court, Palakkad in I.C.No.84 of 2002. The point that arose for consideration was whether the applicant before the said court was an establishment coming under the provisions of Section 1(5) of the ESI Act and the relevant notification thereunder. It is contended by the applicant before the court below that various portions of the building along with undivided shares of the landed property have been assigned to different persons and it will not come under the scope of Section 1(5) of the Act. On the other hand, the contention of the Corporation is that there are 7 labourers, 11 cleaners, 7 security guards and therefore it will come under Section 1(5). It has to be stated that by a notification dated 27.5.1976, the Government of Kerala has extended the ESI Act to the classes of establishment and areas as

specified in the schedule. From the description of the establishment attached to the schedule, learned counsel for the Corporation would contend that paragraph 3(iii) shops will take in this and as the number of employees exceeds 20 it is liable to be covered under the ESI Act. Shop means any premises where any trade or business is carried on or where services are rendered to customers and includes offices, store rooms, go-downs or warehouses were in the same premises or otherwise such trade or business, but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop are allowed to the benefits provided under the Factories Act. Now what is the scope of the work done by the so called employees are (1) the builder has constructed so many rooms and flats and it is either occupied for personal purpose or commercial purpose as owners of undivided share or on a lease basis by so many persons. There is common area available and it belongs to all and the upkeep and maintenance of that area is looked after by the person, who has constructed the building. There is also an office in the very same building. In other words, there are occupants who have got absolute right. There are occupants who are lessees and admittedly the applicant- establishment cannot have any control over their occupation or business. Just because all of them have decided together and thereafter engaged persons for sweeping and cleaning of the entire premises for which also the payment is not made by one individual but it is collected proportionally and handed over to the employees. So what is really done is the upkeep, maintenance and safety of the building. I feel when such is the work entrusted and done collectively by a group of persons, who have no common interest other than for the purpose of upkeep and security of the building one cannot call them as an employer under whom all of these buildings will come and thereby attract the definition of a shop. It has also to be stated that shop in the ordinary parlance means any trade or business. The word 'customer' as per the Dictionary meaning is only a person who buys goods or services from a shop or business.

So from these discussions I hold it cannot be correct to give an interpretation that these type of services rendered amounts to the activities of a shop as defined under the Shops and Commercial Establishment Act and so I decline to interfere with the decision rendered by the E.I.Court. Therefore the appeal fails and the same is dismissed.

M.N.KRISHNAN, JUDGE Cdp/-