Supreme Court of India
M/S. Rajakamal Transport & Anr vs The Employees State ... on 17 April, 1996
Equivalent citations: 1996 SCALE (3)806
Author: K Ramaswamy
Bench: Ramaswamy, K.

PETITIONER:
M/S. RAJAKAMAL TRANSPORT & ANR.

Vs.

RESPONDENT:
THE EMPLOYEES STATE INSURANCECORPORATION, HYDERABAD.

DATE OF JUDGMENT: 17/04/1996

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
BHARUCHA S.P. (J)

CITATION:
1996 SCALE (3)806

ACT:

HEADNOTE:

JUDGMENT:

O R D E R These appeals arise from the order of the Division Bench of the Andhra Pradesh High Court dated February 7, 1985 made in C.M.A. Nos.868 and 297/81. The admitted facts are that the appellants had engaged hamalis for loading and unloading of the goods undertaken by them for carriage as carriers. The respondent has applied the Employees' State Insurance Act, 1948 [Act No.34 of 1948] [for short, the 'Act'] to the appellants' establishment and called upon them to pay their contribution for the periods mentioned in the notice served on them with interest at 7% thereon. The appellants have disputed the liability and made an application for determination under Section 76 of the Act. The Insurance Court had held that the hamalis are employees within the meaning of Section 2(9) of the Act. Though the appellants collect the charges from the customers and pay the amount to the hamalis at the piece rate for the work they do, they have got supervision of loading and unloading by the hamalis. The hamalis are not appointed or controlled by any other agency. Accordingly appellants are liable to contribute the amount called upon towards the insurance benefit of the workmen under the Act. The appeals came to be dismissed by the High Court. Thus these appeals by special leave.

Shri C. Sitaramiah, learned senior counsel appearing for the appellants contended that there is no relationship of master and servant; no regular salary is paid by the appellants to the hamalis and there is no fixed hours of work for the hamalis. Under those circumstances, the hamalis cannot be considered to be the employees nor the appellants be treated as employer under the Act. We find no force in the contention.

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 the Act applies. Clause (ii) envisages that they need not necessarily be directly employed by the employer. Those who are employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment is an employee within the meaning of Section 2(9) of the Act. The controversy is no longer res integra.

This Court in Royal Talkies, Hyderabad & Ors. v. Employees State Insurance Corpn. [(1979) 1 SCR 80], was called upon to consider whether workmen engaged in the cycle stand and canteen of a cinema theater were employees of the theater within the meaning of Section 2(9) of the Act. This Court, on interpretation, held that the reach and range of the definition is apparently wide and deliberately transcends pure contractual relationships. In the field of labour jurisprudence, welfare legislation and statutory construction which must have due regard to Part IV of the Constitution, a teleological approach and social perspective must play upon she interpretative process. The primary test in the substantive clause being thus wide, the employees of the canteen and the cycle stand may be correctly described as employed in connection with the work of the establishment. A narrower construction may be possible but a larger ambit is clearly imported by a purpose-oriented interpretation. The whole object of the statute is to make the principal employer primarily liable for the insurance of kind of employees on the premises, whether they are there in the work or are merely in connection with the work of the establishment.

Accordingly it was held thereon that they were the workmen or employees within the meaning of Section 2 [9] of the Act. The same ratio was followed in E.S.I. Corpn. v. South Flour Mills [(1986) 2 SCR 863 at 864] where even the casual employees employed by the employer were held to be employees within the meaning of Section 2(9) of the Act.

The same question was considered in another recent judgment of this Court in Kirloskar Brothers Ltd. v. Employees' State Insurance Corpn. [(1996) 2 SCALE 1 t 5] wherein this Court held in paragraph 11 that:

> "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."

It is seen that the Insurance Court after elaborate consideration, found as a fact, that the appellants have the control over loading and unloading of the goods entrusted to the appellants. The appellants' regular business is transportation of the goods entrusted to it as carrier. When the goods are brought to the warehouse of the appellants, necessarily the appellants have to get the goods loaded or unloaded through the hamalis and they control the activities of loading and unloading. lt is true as found by the Insurance Court that instead of appellants directly paying the charges from their pocket, they collect as a part of the consideration for transportation of the goods from the customers and pay the amount to the hamalis. The test of payment of salary or wages in the facts of this case is not relevant consideration. What is important is that they work in connection with the work of the establishment. The loading and unloading of the work is done at their directions and control.

Shri C. Sitaramiah next contended that the Andhra Pradesh Muttah Jattu and Other Manual Workers (Regulation of Employment & Welfare) Act, 1976 applied to the scheduled establishment in item 6 of the Schedule and that, therefore, the Act has no application. Since the State Act has received the assent of the President on December 27, 1976 in relation to its application to the State of Andhra Pradesh, the Act stands repealed and, therefore, the appellants are not liable to make the contribution under the Act. Though this argument appears to have been raised in the High Court, the High Court has not rightly gone into that question as no material was placed before the High Court not any material has been placed before us in that behalf, hence, it is not necessary for us to go into the question of the applicability of the local Act.

The appeals are accordingly dismissed. No costs.