

Regional Director, E. S. I., Corporation

Vs

Kerala State Drugs & Pharmaceuticals Ltd. and Others

Civil Appeal No. 514 of 1989

(P. B. Sawant, Yogeshwar Dayal JJ)

19.08.1993

ORDER

1. The employees involved in these proceedings were engaged, according to the respondents, though its contractor for constructing Vitamin 'A' Plant of the respondent-Company. After the construction of the plant, the contractor and his employees were no longer connected with the respondents. It is thereafter that the appellant- Corporation raised a demand on the respondent-Company for contribution in respect of the said employees towards insurance. Both the Insurance Court of the High Court held that since the contribution was demanded in respect of the employees who had since the contribution was demanded in respect of the employees who had since the long ceased to be the employees working on the premises, no such contribution was leviable from the respondent-Company. To arrive at this conclusion, the courts gave two reasons. The first was that since the employees in respect of whom contribution was asked had ceased to work in the premises of the respondent-Company, there is no benefit which will accrue to them by such contribution, and second, the workmen are unidentifiable.

2. We are afraid that the two courts misconceived both the object of the Act and the purpose of the insurance scheme under it. The contribution which is levied on the employer in respect of the employees engaged by him directly or through another agency is for the benefit of all workmen in general who are covered by the Act. The contribution is irrespective of the fact whether the employees get or do not get the said benefit. That is also evident from the definition of "insured person" given in Section 2(14) of the Act which reads as follows :

"2. Definitions. - In this Act, unless there is anything repugnant in the subject or context,-

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(14) 'insured person' means a person who is or was an employee in respect of whom contributions are or were payable under this Act and who is, by reason thereof, entitled to any of the benefits provided by this Act."

3. There is thus no quid between the persons insured and the benefit available under the Act. As regards the finding that the workmen were unidentifiable, what is forgotten is that under the Act, once an establishment comes to be covered by the Act, the employer becomes liable to pay the contribution in respect of the employees in his employment directly or indirectly. The contribution which had become payable for the relevant period has to be paid even if the employees concerned are no longer in employment. Whether the employees are unidentifiable today or not is, therefore,

irrelevant so long as the contribution was liable to be paid on their behalf, when they were in employment.

4. Shri. Sampath, learned counsel appearing for the appellant raised yet another point before us. He contended that the employees were not the employees of the respondent-Company and hence the respondent- Company was not liable to pay the contribution. We are afraid that this contention ignores the definition of the 'employed' given in Section 2(9) (ii) of the Act, which is as follows :

"2. Definitions. -In this Act, unless there is anything repugnant in the subject or context,-

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(9) 'employee' means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and -

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(ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervisions 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,"

5. Hence, we find no substance in any of the contentions. A similar point was decided by this Court in a decision in Employee's State Insurance Corpn. v. Hotel Kalpaka International. In view of the said decision, there was no scope for any further arguments in the present case. However, we have dealt with the contentions raised for whatever they were worth. The appeal is, therefore, allowed and the decisions of the courts below are set aside. The respondents will pay the costs.

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