

PETITIONER:
M/S. KIRLOSKAR CONSULTANTS LTD.

Vs.

RESPONDENT:
EMPLOYEES STATE INSURANCE CORPN.

DATE OF JUDGMENT: 14/11/2000

BENCH:
S. Rajendra Babu, & S.N. Variava.

JUDGMENT:

RAJENDRA BABU, J. :

L...I...T.....T.....T.....T.....T.....T.....T.....T..J

The appellant before us provides under a roof, the services of several different professionals like Engineers, Architects, Financial Consultants and Management Consultants, guidance and advice to other companies, corporations, boards and even local authorities on how best to manage their business for optimum utilization of plant, machinery and other infrastructure. The appellant is registered as a commercial establishment under the provisions of the Bombay Shops and Commercial Establishments Act. An application was filed by the applicant under Section 75 of the Employees State Insurance Act, 1948 [hereinafter referred to as the Act] before the ESI Court, Pune for a declaration that the provisions of the said Act would not be applicable to the appellant, pursuant to a letter sent by the respondent stating that it was covered under the provisions of the Act w.e.f. 31.7.76. From that letter it was assumed that it was a shop for purposes of the applicability of the Act. The appellant started remitting contribution in respect of its employees as per the provisions of the Act. It was contended before the E.S.I Court that the appellant has not carried on any process of manufacture and hence is not a factory much less work carried on by it on the premises could make it a shop.

The respondent pleaded that the appellant is engaged in the consultancy services in technical and marketing fields for a price and it is a shop. The E.S.I Court after noticing that the appellants establishment is a commercial establishment doing consultancy service in respect of marketing, management, technical and industrial establishment, observed that a shop does not include a premises where intellectual advice is tendered and, therefore, the appellant is not covered by the Act. To reach this conclusion, it relied upon the decision of the High Court in Dattatraya Advertising Co. Ltd. vs. E.S.I.Corpn., 1956 LLN 346.

Against the order of the ESI Court the respondent filed an appeal under the Act in the High Court. The High Court, on the basis of ratio of the decision in E.S.I.Corpn. vs. R.K. Swamy and Ors., (1994) 1 SCC 445, held that the word

'shop has acquired an expanded meaning to cover a premises where the advertising agency sells its expert services to a client to enable the client to launch an effective advertising campaign for his product, and in the same manner premises where consultancy service is provided is also a shop and appeal of respondents was allowed. Hence this appeal.

Shri Raju Ramchandran, learned senior Advocate for the appellant, relying upon a decision of this court in V.Sasidharan vs. M/s. Peter And Karunakar & Ors. (1984) 4 SCC 230, contended that the appellants business premises cannot be a shop on the analogy that a lawyers office where advice is given by lawyers is not a 'shop as held by this Court for purposes of Kerala Shops and Commercial Establishments Act, 1960. He emphasized that a place of work can not be regarded as a shop unless the activity is conducted in a 'shop. He submitted that the expression 'shop means a premises which is used in connection with the trade or business, but not when professional service is rendered. He emphasised that the appellant does not carry on any trade or business and contended that the appellants establishment can not be a 'shop. He also submitted that the decision of this Court in R.K.Swamys case is in conflict with the decision in Sasidharans case and therefore, the matter has to be considered by a larger bench.

Shri Vijay Kumar Mehta, learned counsel for the respondents, submitted that in the light of the several decisions of this Court where the expression shop having been given expanded meaning for purposes of the ESI Act, whereunder the expression shop is not defined the matter is no longer res integra. Nor is shop defined as has been done in the Kerala Shops and Commercial Establishment Act. He, therefore, submitted that it is unnecessary to refer the matter to a larger bench as there is no conflict between the views expressed in the decision in Sasidharans case and the decision in R.K.Swamys case.

He also submitted that whenever an establishment carries on activities in the nature of a trade or commerce, it must be held that such premises is a 'shop in the light of the judgments rendered by this court giving an expanded meaning to the word 'shop. He also submitted that on the facts of this case, it is clear that the appellant is engaged in several activities including advice to its clients in respect of industrial, technical, marketing and management activities. It is submitted that the nature of the activities carried on by the appellant cannot fall outside the scope of the expression 'shop as understood by this court in several decisions.

This court in Sasidharans case was concerned with the interpretation of Kerala Shops & Commercial Establishments Act, 1960, wherein Section 2(4) defines 'commercial establishment and Section 2(15) defines 'shop. In that case, therefore, this court had to find out whether the activities carried on in a lawyers office fall within the definitions in Sections 2(4) and 2(15) of the said Act. Thus, this court was not concerned with the meaning attributed to a shop arising in ESI Act. It was held that lawyers do not carry on trade or business nor render service to customers but carry on a profession and therefore cannot

fall within the scope of that Act. Reference may be made to a decision of this court in Hindu Jea Band vs. Regional Director, ESIC, (1987) 2 SCC 101, and in that case the premises in which services for rendering music is given is held to be a 'shop'; so was the decision in Cochin Shipping Co. vs. ESI Corpn., (1992) 4 SCC 245, wherein it was held that regardless of the fact that the steamship company is not carrying on stevedoring operations, it is a shop. Further, in the case of International Ore and Fertilizers (India) Pvt. Ltd. vs. ESI Corporation, (1987) 4 SCC 203, the premises was held to be a shop even where activities relating to sale of goods do not take place but negotiations for the terms of sale, carrying on of the survey of the goods imported, is done.

What we are concerned in the present case is what this court was concerned in R.K.Swamys case. An advertising agency organises campaigns by conducting the same in different media and would give advice in this behalf and also in regard to possible expenses. It is also engaged in preparing and presenting alternate campaigns and for such a purpose it prepares artwork and appropriate slogans to go with it. By engaging the service of experts in different fields the advertising agency would prepare the campaign for customers and sells the campaign by receiving the price thereof. As the advertising agency sells its expert services to a client to enable him to launch an advertising campaign to advertise his product, the same being offered for at a price, the premises of an advertising agency could reasonably be said to be a shop. Adopting the same logic, we may say that the business carried on by the appellant is of consultancy services to its customers in respect of industrial, technical, marketing and management activities and preparation of project reports by engaging the services of architects, engineers and other experts. In substance, the nature of activities carried on by the appellant is commercial or economical and would amount to parting with the same at a price. Hence reliance on Sasidharans case is misplaced. Thus, we do not find any good reason to differ from the view expressed by the High Court.

Hence, this appeal stands dismissed. However, in the circumstances, the parties shall bear their respective costs.