

(1976) 06 MAD CK 0008
In the Madras High Court

Avery India Limited

APPELLANT

Vs

Additional Commissioner for Workmen's Compensation and
Another

RESPONDENT

Date of Decision : 22-06-1976

Acts Referred:

Tamil Nadu Shops and Establishments Act, 1947 — Section 2, 4, 41

Citation : (1978) 1 LLJ 92

Hon'ble Judges : P.S. Kailasam, C.J.;Balasubramanyan, J

Bench : Division Bench

Judgement

P.S. Kailasam, C.J.—This appeal is filed by Avery India Limited, Madras against the order of Ramanujam, J., in W.P. No. 3485 of 1974.

The second respondent Lawrence was employed as sales representative in the appellant's services at Madras. He was employed as such under

Ext. A.5 with effect from 1-12-1972. His services were terminated under Ext. A. 6 on 11-1-1973. Aggrieved by the order of dismissal, he filed a

petition u/s 41(2) of the Tamil Nadu Shops and Establishment Act, to the Additional Commissioner for Workmen's Compensation, Madras. The

Commissioner found that the second respondent was a "person employed", and would come within the definition of that term under the Tamil

Nadu Shops and Establishments Act and that as such he was entitled to the benefits of the Act. The appellant filed the writ petition praying for the

issue of a writ of certiorari and to quash the order. The learned Judge, after considering the evidence in the case, set aside the order of the first

respondent and directed that he should consider the matter afresh in the light of his order. The first respondent was further directed that if he came

to the conclusion that the second respondent would come u/s 2(12)(i) of the Act,

he could straightaway proceed to dispose of the appeal of the second respondent on merits. The appellant has preferred this appeal against the said order directing further enquiry by the learned Judge.

2. The question as to whether the second respondent is a "person employed" u/s 2(12) of the Act was argued at some length by Mr. Govind

Swaminathan on behalf of the appellant and Mr. Dolia on behalf of the second respondent. We have been taken through the evidence to enable us

to decide whether it is necessary to remand the case for fresh evidence. After going through the evidence we are satisfied that the second

respondent will not be a person employed as he is a canvasser and squarely falls under the exemption given in Section 4 of the Act. According to

the evidence, of the second respondent himself, he was appointed as industrial sales representative, and he collects cash from customers

representing the sale proceeds of the machines sold by the company and issues receipts. He admitted that the company has a number of sales

representatives and that he is paid a commission on the sales effected over and above the salary. His main job as industrial sales representative is

to go to various industrial firms and to put it in his words--collect orders, though he would deny that he was procuring orders and subsequently

attending to his office work. All that he would say was that he did not do any canvassing. But the fact remains that he was appointed as industrial

sales representative for the purpose of pushing the sales of the company and was given a commission and he in fact went to various industrial firms

for the selling of the machinery on commission basis. The evidence of the manager of the company is that the main job of the second respondent is

to go out, meet the industrial customers, canvass for the company's products, survey the machines and submit quotations to the customers and

also give specific reports to the office, follow up the prospects and finalise the business. On this evidence, there can be no doubt that the second

respondent is a canvasser and as such is excluded for the purpose of getting benefits under the Shops and Establishments Act. On this ground we

set aside the orders of the first respondent as also the learned Judge directing fresh enquiry, and allow the appeal. There will be no order as to

costs.