

(1966) 03 MAD CK 0022
In the Madras High Court

Employees' State Insurance Corporation	APPELLANT
Vs	
Pioneer Laundry	RESPONDENT

Date of Decision : 30-03-1966

Acts Referred:

Employees State Insurance Act, 1948 — Section 2

Citation : (1966) 2 LLJ 425 : (1966) 79 LW 353

Hon'ble Judges : Venkatadri, J

Bench : Single Bench

Judgement

Venkatadri, J.—These two appeals arise out of a common order passed by the First Assistant Judge, City Civil Court. The respondent-

company filed an application for a declaration that they were not liable to pay the employer's special contribution for every quarter commencing

from 1 December 1959 and ending with 31 December 1959, and subsequent quarters ending with 31 December 1961, in accordance with the

provisions of the Employees' State Insurance Act, The appellant-Employees' State Insurances Corporation filed an application for directing the

company to pay the amount which might be found due to the Corporation on the ground that the company had employed more than twenty

persons. The main contention of the company was whether the managing partner who was designated as manager in the returns of the company

could be included as an employee, when computing the number of employees in the company under the provisions of the Act. The learned Judge

of the City Civil Court has come to the conclusion that the managing partner who styled himself as the manager cannot be deemed to be an

employee, and if he was excluded there would be only nineteen persons working in the company and that, therefore, they would not be liable to

pay the contribution. It is against this order the Employees' State Insurance Corporation has filed the present appeals.

2. The question, therefore, that looms large in the appeals is whether the managing partner of the respondent-company could be deemed to be an employee under the provisions of the Act.

3. Learned Counsel appearing for the Employee' State Insurance Corporation laid stress on the definition of the word "" factory "" in Section 2(12)

of the Act which means any premises including the precincts thereof whereon twenty or more persons are working and in any part of which

manufacturing process is being carried on with the aid of power. The Pioneer Laundry is no doubt a factory in the broad sense of the term.

Therefore, according to the Corporation, if twenty persons or more are working in that factory, it would come under the definition of the word

factory."" According to the learned Counsel for the appellant; irrespective of the fact whether the managing partner would come under the

definition of "" employee "" or not, the fact that the total number of persons working in the factory including the managing partner comes to twenty

would be enough to constitute it a "" factory "" under the Act. On the other hand, the learned Counsel for the respondent contends that the word

employee "" in Section 2(9) and the words "" twenty or more persons "" in Section 2(12) of the Act should be taken together, and it should then be

decided whether the managing partner could be deemed to be a person working in the factory. He contends that the managing partner of the

laundry is not working as an employee but is only supervising the work of the employees under him.

4. Admittedly, there are two partners in this concern of which one is styling himself as the managing partner. There is no evidence on the record to

show the actual work he renders in the concern. In such circumstances, how is it possible to term him an employee in the firm ?

5. Learned Counsel for the respondent drew my attention to the decision of the Court of Appeal in *Ellis v. Joseph Ellis & Co.* (1905) 1 K.B.D.

324. In that case, a partnership was formed for the purpose of working a mine. By arrangement with his co-partners, a member of the partnership

worked in the mine, as a foreman and received wages. While working in the mine, he met with an accident which caused his death, and his widow

thereupon claimed compensation under the Workmen's Compensation Act from the surviving partners. The question arose whether he was a

workman or not. In that connexion, Collins, M.R., observed at p. 328 :

It seems to me that, when one comes to analyse an arrangement of this kind, namely, one by which a partner himself works, and receives sums

which are called wages, it really does not create the relation of employers and employed, but, is, in truth, a mode of adjusting the amount that must

be taken to have been contributed to the partnership assets by a partner who has made what is really a contribution in kind, and does not affect his

relation to the other partners, which is that of co-adventurer and not employee. Such a partner cannot put himself in the position of not being a

partner when he is one, or of being a workman employed, when that position would involve that he would be both employer and employee ... It

seems to me obvious, when the true position of the deceased is analysed, that he was not such a workman as is contemplated by the Act, and that

a person cannot for the purposes of the Act occupy the position of being both employer and employee.

6. This case has been followed in *In re Workmen's Compensation of Jaglipathan* AIR 1936 Rangoon 89, where it has been observed that in order

to be a workman within the meaning of the Workmen's Compensation Act, the persons claiming to be a "workman" must be under a contract of

service with some other person.

7. Learned Counsel for the appellant cited a number of cases to support his proposition that it is enough if twenty or more persons are working in

the premises, irrespective of the fact whether they earn wages or not. He cited the decision in *Employees' State Insurance Corporation Vs.*

Siddique (M.A.), where it is observed that it is clear from the definition contained in Section 2(12) that it does not speak of persons working for

wages as such and that so long as the number of persons working on the premises is twenty or more, the premises is a "factory" falling within the

definition, it being immaterial whether those persons so working are paid wages or not. Learned Counsel also cited the decision in *Bank Silver Co.*

Bombay v. Employees State Insurance Corporation 1964 II L.L.J. 591, a case on similar facts, where it has been observed at p. 593 that the

language used in Section 2, Clause (12), of the Act shows that the sole test

which must be applied for determining whether an establishment is a factory or not, is whether twenty or more ""persona"" are working in the factory and whether a manufacturing process is being carried on with the aid of power in any part of the establishment, that if these two tests are satisfied, the establishment must answer the description of factory under the Employees' State Insurance Act and it is immaterial that some of the persons who work in the factory are either the proprietors of the establishment or are partners in the firm which owns the establishment and that it is also immaterial that if such proprietors or partners are excluded the number of the remaining workers would fall below twenty.

8. While interpreting the word ""factory"" a Division Bench of the Punjab High Court, in Chanan Singh & Sons v. Employees' State Insurance Corporation 1964 I L.L.J. 314, observed at p. 319 thus :

In my opinion, whether the employer is to be included in the twenty persons necessary to make premises a factory or not must depend on the facts of each particular case, and where, as must be the case in many small businesses which are on the border line of being factories within the meaning of the Act, the principal employer is a person who actively works on the premises in connexion with the business, he must be included in the figure of twenty, but if he is the principal employer merely by being the owner or occupier of the factory and does not take any personal active part in running the business on the spot, leaving this to a manager he should be excluded.

The facts in this case reveal that there was a manager separately employed. R.W. 1 has stated that there was a manager but while he inspected he saw only P.W. 1, the managing partner of the firm. R.W. 1 has not taken any statement from him as to the part he was playing in the premises. At best, as the managing partner he might have been in the factory, not taking any active part in the running of the business. In such circumstances, he cannot be termed an employee and cannot also be included in the twenty persons necessary to make the premises a factory. The burden of proof is upon the Corporation. They should prove, before including the managing partner among the twenty persons, the actual part and nature of work he was rendering within the factory premises in connexion with the work of the factory. The managing partner might have come to the office-room,

just to acquaint himself with the day-to-day work and affairs of the business. He cannot then be included among the twenty persons working in the

factory. Under the circumstances, I am of the opinion that the learned Judge of the City Civil Court has come to the correct conclusion that the

Corporation is not entitled to call upon the respondents to pay the necessary contribution.

9. In the result, the appeals are dismissed. There will be no order as to costs.