(1972) 10 MAD CK 0023

In the Madras High Court

Employees' State Insurance Corporation APPELLANT

Vs

Prabhulal Brothers RESPONDENT

Date of Decision : 12-10-1972

Acts Referred:

Employees State Insurance Act, 1948 — Section 2

Citation : (1974) ILR (Mad) 171 : (1973) 1 LLJ 304 : (1973) 86 LW 101

Hon'ble Judges : K. Veeraswami, C.J;Raghavan, J

Bench : Division Bench

Judgement

K. Veeraswami, C.J.—These appeals are against an order of Venkatadri, J. The question turns on whether two sales clerks working in the factory could be regarded as Its employees. The learned Judge was of opinion that they were not.

2. The respondent is engaged in the manufacture and sale of umbrellas at No. 10, Narayana Mudali Lane, Madras-1. Eighteen workmen admittedly were engaged in the actual manufacture of the umbrellas. In addition to these workmen, there was one accountant and there were two sales clerks working in the premises. If they are taken into account, liability under the Employees'' State Insurance Act, 1948, will arise.

3. It Is contended for the respondent that the two clerks'' work was not in any way connected with the manufacturing process in the factory and, therefore, they could not be regarded as employees in the factory within the definition of the term.

4. The Employees'' State Insurance Act, 1948, was enacted to provide for certain benefits to employees in case of sickness, maternity and employment injury, and to make provision for certain other matters in relation thereto. The Act has, in the first instance, application to all factories, including factories belonging to the Government, other than seasonal factories. Power has been given to the Government to extend the Act to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. Sub-section (9)

of Section 2 defines the term "employee" as a person employed for wages in or in connection with the work of a factory or establishment to which the Act applies and who is directly employed by the principal employer on any work of, or incidental or preliminary to, or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere, There is also the definition of a factory. It is in terms of the premises, including the precincts wherein 20 or more persons are employed, and in any part of which a manufacturing process is carried on without the aid of power, or is ordinarily carried on but does not include a mine subject to the operation of the Mines Act, 1952, or a railway running shed. Reading the two definitions side by side, it is clear, as we think, that they will cover the two sales clerks. A factory is not defined in terms merely of a manufacturing process or in relation to the work of manufacture. A factory is defined as a place where a minimum number of workmen should be engaged and in any part of the precincts, be it noted, where a manufacturing process is carried on. When, therefore, in Sub-section (9) of Section 2, the definition of an employee speaks of "in connection with the work of a factory", or "employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory" the work of the factory is not to be equated to the manufacturing process. In our opinion, there is no justification to read the two definitions in that manner. The work of the factory may comprise of activities wider than the manufacturing process, and we think it should be necessarily so.

5. This view of ours is supported by the Nagpur Electric Light and Power Co. Ltd v. Employees'' State Insurance Corporation 1967 XI L.L.J. 40 : [1967] 32 F.J.R. 263. It was there held that where a company maintained an establishment for its factory and the factory did the work of transforming and transmitting electrical energy, all employees, clerical or otherwise, including administrative staff, were employed in connection with the work of the factory, and none of them was employed in any separate establishment unconnected with the work of the factory, and all workers of disputed categories, whether they worked in the factory or elsewhere, were employees within the meaning of Section 2(9)(i) of the Employees'' State Insurance Act. In that case some of the employees were clerks; they were not engaged in manual labour. But a person doing non-manual work could well be regarded, as was done in that case, as an employee within the meaning of that definition, if he was employed in connection with the work of the factory. In this case, the factory, as we mentioned, was engaged in the manufacture of umbrellas. It is inconceivable that the work of the factory did not include sale of such umbrellas. If it were otherwise, it would be unrealistic, having regard to the concept of factory. A factory is associated with a commercial activity and that activity will have as its ultimate aim the marketing of its products. Sales clerk, therefore, would clearly fall within the definition of the term "employee" in the Act.

6. Our attention has been invited to Mahalakshmi Oils Mills Vs. Employees'' State

Insurance Corporation, . There, a learned single Judge of this Court referred to the Employees'' State Insurance Corporation with its Regional Office at Coimbatore Vs. Ganpathia Pillai and Others, , and thought that the work of the factory was equated to the manufacturing process. That was not the decision in Employees'' State Insurance Corporation v. Ganapathia Pillai, (supra). In any case, in our opinion, that view is not sound.

7. The appeals are allowed with costs.