
(1974) 06 MAD CK 0014
In the Madras High Court

Employees' State Insurance Corporation APPELLANT
Vs
Sri Sakthi Textiles (P) Limited RESPONDENT

Date of Decision : 17-06-1974

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 75

Citation : (1975) ILR (Mad) 31 : (1975) 1 LLJ 388 : (1975) 88 LW 765

Hon'ble Judges : Varadarajan, J; Kailasam, J

Bench : Division Bench

Judgement

Kailasam, J.—This appeal filed by the Employees' State Insurance Corporation against the judgment of the Employees' State Insurance Court and the District Judge, Coimbatore, holding that the workers engaged by the mills for putting up additional constructions are not employees within the definition of the term in the Act.

2. The short facts necessary are as follows : Sri Sakthi Textiles Private Limited was granted additional spindleage and it expanded its premises by putting up new buildings. For that purpose, it employed a large number of workers. The plea of the respondent-mills is that no muster roll was kept regarding these workers whose work was to last only till the building was completed and that the workers thus recruited were working on an ad hoc basis just when required. The Employees' State Insurance Corporation is of the view that the workmen thus employed fell within the ambit of the definition of the term in the Act and that the appellant is bound to pay the contribution. The Employees' State Insurance authorities fixed the contribution payable at Rs. 24,356-27 and sought to recover that sum under the Revenue Recovery Act. The mills objected to the proceedings and took up the matter before the Employees' State Insurance Court u/s 75 of the Act questioning the right of the Employees' State Insurance Corporation to collect the sum of Rs. 24,356-27. The lower Court on a consideration of the question, and relying on the decision of this Court in *South India Flour Mills Pvt. Ltd. v. Employees' State Insurance Corporation* (1969) 37 F.J.R. 101, held that

he workers concerned were not employees under the Act.

3. Section 2(9) of the Act defines an "employee" in the following terms:

employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies.

The definition proceeds to enumerate three classes of workers and the relevant portion will be referred to presently. It has also an inclusive definition which was introduced as an amendment by Act 44 of 1966. The definition mainly refers to a person employed for wages in or in connection with the work of a factory or establishment to which the Employees' State Insurance Act applies. Section 2(9) (i) provides that the word employee applies to any person "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...."

Reading the two portions of the definition together, it appears that in order to be an employee, a person must be employed for wages in connection with the work of a factory or establishment and when directly employed by the principal employer must be on any work of or incidental or preliminary to or connected with the work of the factory or establishment. "Factory" is defined in Section 2(12) of the Act as meaning:

any premises including the precincts thereof whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on....

Therefore, a factory means any premises including the precincts thereof where twenty or more persons are employed and where in any part of it a manufacturing process is being carried on.

4. It is now necessary to determine whether the employment of persons for putting up additional buildings would be employment incidental or preliminary to or connected with the work of the factory or establishment. There can be no doubt that apart from the manufacturing process, that is handling of the machinery and the manufacturing duties, the employment of persons for bringing raw materials, storing them and delivering them in the factory and for taking the finished products from the factory would all be incidental to or preliminary to or connected with the work of the factory. The question is whether the putting up of additional buildings for the expansion of the factory on a subsequent date would be work incidental or preliminary to the work of the factory. We do not think so. We are of the view that putting up additional buildings for the purpose of commencing manufacturing process on a later date would not be employment incidental or preliminary to or connected with the work of a factory. A factory means any premises including the precincts thereof in any part of which a manufacturing process is carried on.

5. The lower Court relying on the decision of Alagiriswamy, J., in *South India Flour Mills Pvt. Ltd. v. Employees' State Insurance Corporation* (1969) 37 F.J.R.

101, held that the persons concerned herein were not employees under the Act. In that case, the learned Judge was considering "the question whether the persons employed in the construction of any building in the compound of the existing factory were employees. The learned Judge held that the persons employed in the construction of a new unit of the factory were not employees. The learned Counsel for the appellant submitted that the learned Judge was in error in distinguishing the decision of a Bench of this Court in *K. Thagarajan Chettiar v. Employees' State Insurance Corporation* (1963) 24 F.J.R. 400. That case related to the gardeners, building workers, office attenders and watchmen of a textile mill who were permanently employed by the mill for the work concerned with the day to day maintenance of the mill. The Bench held that there can be little doubt that the maintenance of the garden would be conducive to the health of its manual workers and would also enhance their efficiency and health and that, therefore, it can be said that the workers in that case would be employees coming within the definition of the term in the Act. The facts of the present case are different and, therefore, that decision will not be of any help to the appellant.

6. The learned Counsel for the appellant also referred to a decision of the Supreme Court in *Nagpur Electric Light and Power Co. Ltd. v. Employees' State Insurance Corporation* (1967) 32 F.J.R. 263. In that case the Supreme Court found that all the workers of the disputed categories were persons employed for wages in or in connection with the work of the company's factory and are directly employed by the company on work of or incidental to or connected with the work of the factory. On that finding there can be no doubt that the persons concerned come within the definition of the word "employee" in the Act. The Supreme Court referred to the decision of the Bombay High Court in *Employees' State Insurance Corporation, Bombay v. Raman* (1956) 11 F.J.R. 462, and distinguished it on the ground that the office building was situated in the same compound as the factory and that the entire compound was surrounded by one compound wall. It was found that the manufacturing process ended with the production of the finished articles and that the work of selling the products was not connected with the work of the factory. Therefore, the contention that the administrative office was not part of the factory was accepted. This view was also approved by the Supreme Court.

7. The position, therefore, is that a person in order to claim the benefit as an employee should be employed for wages in connection with the work of a factory and should be employed by the principal employer on any work incidental or preliminary to the work of the factory. The inclusive definition, which was added after the decision of the Bombay High Court referred to above, would bring within its purview persons employed for wages on any work connected with the administration of the factory or establishment or any part, department or branch thereof or with the purchase of raw materials for, or the distribution or sale of the products of the factory or establishment. Even this inclusive definition would not bring within its purview persons who are employed in a work which is totally

unconnected with the existing factory, that is, putting up additional buildings for the future expansion of the existing factory. We are in agreement with the view taken by Alagiriswami, J., in *South India Flour Mills Pvt. Ltd. v. Employees' State Insurance Corporation* (1969) 37 F.J.R. 101. The Employees' State Insurance Court was right in rejecting the claim of the Employees' State Insurance Corporation.

The appeal is dismissed with costs.