

(1960) 08 MAD CK 0006
In the Madras High Court
Case No : A.A.O. No. 18 of 1957

Employees' State Insurance Corporation with its Regional
Office at Coimbatore

APPELLANT

Vs

Ganpathia Pillai and Others

RESPONDENT

Date of Decision : 01-08-1960

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(9), 38, 39

Citation : AIR 1961 Mad 176 : (1961) 2 FLR 391 : (1961) ILR (Mad) 228 :
(1961) 1 LLJ 593 : (1961) 74 LW 123 : (1961) 1 MLJ 143

Hon'ble Judges : P.V. Rajamannar, C.J.; Veeraswami, J

Bench : Division Bench

Advocate : Government Pleader, for the Appellant; T.R. Sangameswara Iyer, for the Respondent

Final Decision : Allowed

Judgement

Basheer Ahmed Sayeed, J.—This is an appeal against the order of the learned District Judge of Coimbatore in Proceedings No. 1 of 1955

under the Employees' State Insurance Act, XXXIV of 1948.

2. The respondents in this appeal, who are employees of the Lotus Mills Ltd., Podanur, made an application u/s 75 and Regulation 40 of the

Employees' State Insurance Act for a declaration that the applicants-respondents were not employees liable to pay any contribution under the

provisions of the Employees' State Insurance Act. They also prayed for an order directing the Employees' State Insurance Corporation to refund

the contributions till now erroneously collected from the applicants till the date of the application. The first of the opposite parties was the Lotus

Mills Ltd., and the second was the Employees' State Insurance Corporation. The Lotus Mills seem to have remained ex parte, while the

Employees" State Insurance Corporation filed a written statement raising various contentions as to the untenability of the application filed by the employees.

3. The learned District Judge framed three issues. The first one related to the question as to whether the applicants were the employees of the

Lotus Mills Ltd., as defined in Section 2(9) of Central Act, XXXIV of 1948. The second Issue related to the liability of the applicants to pay

contributions u/s 38 of the Act, and the third one was whether the applicants were entitled to the refund claimed by them. Giving his findings on all

the three issues in favour of the applicants, the learned District Judge held that the applicants were not employees within the meaning of Section

2(9) of the said Act, XXXIV of 1948, and that they were not, liable to pay any contributions under the provisions of the said Act.

In regard to the third issue, however, the learned District Judge held that there was no scope for directing the refund of the amount already

collected from the applicants, but merely confined himself to giving a declaration to the effect that the applicants were not entitled to contribute

anything under Sections 38 and 39 of the Act, and directing the applicants to take out appropriate proceedings for getting a refund of the

contributions collected from them. The Employees" State Insurance Corporation dissatisfied with this order has preferred this civil miscellaneous

appeal.

4. The learned Government Pleader, appearing on behalf of the Employees" State Insurance Corporation, has contended that the term ""employee

is of a much wider scope than the construction that has been placed by the learned District-Judge on the said term. He has contended that the term

employee"", as defined in the Act, need not be restricted to mere workmen who are engaged in some form or other in the process of manufacture

that is carried on in a factory, but that the scope and definition as given in Section 2(9)(i) to (iii) should comprehend not merely the technical staff

that is employed in the actual manufacturing process, but that it should also include the non-technical staff, such as clerks and other members of the

staff and establishment in the factory, who are not directly concerned with any manufacturing process.

He further contended that there was no reason why the benefits that are sought

to be conferred under the Act should be confined only to the technical staff, whereas in any factory there is also a large number of non-technical staff working in the non-technical departments of the factory. It could not be that the intention of the legislature was that the benefit contemplated u/s 48 should be limited only to the technical staff as defined in the Factories Act, but that the Employees State Insurance Act is of a far wider scope.

Therefore, the argument of the learned Government. Pleader was that the term "employee" should be interpreted in a liberal manner, especially in

view of what is contained in the terminology employed in Section 2(9)(i) to (iii) of the Act. In these sub-clauses it has been provided that an

employee would be one who is put on any work by the employer 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.

The learned Government Pleader also relied on the terminology in Sub-clause (ii) of Clause (9) of Section 2, where it is stated that an employee is

one who is employed on work which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment. The main

purpose of his argument was that any person who works in any capacity in a factory was intended by the legislature to be conferred upon him the

medical benefit, sickness benefit, maternity benefit, disablement benefit, dependence benefit and so forth.

There is no reason why when the workmen are to be conferred these benefits, the other clerical staff which is non-technical, should not be

conferred these benefits so long as they were employees in the factory and doing work in connection with the work of the factory or doing work

incidental or preliminary to such work of the factory. It is true that in the actual manufacturing process, the men employed are technical. But a

factory is not con-lined merely to manufacturing process alone.

There is a lot of other work that is carried on in relation to manufacturing process, such as correspondence, watch and ward, health and sanitation

and so forth. So, the learned Government Pleader's point was that the legislature intended that the benefits which arc sought to be conferred by the

Act should be made available to all persons employed in any capacity whatsoever

in the factory, irrespective of any distinction as to technical or non-technical work, that may be done by such employees in so far as no such distinction has been made anywhere in the Act.

5. The learned Government Pleader also invited my attention to the definition of the word "employment" and the words "employed person" as

found in Shroud's Judicial Dictionary, 3rd Edn. p. 943 in addition to citing the decisions reported in *Emperor v. Manilal Bhogilal*, 1 Ind Cas 102)

and *Emmens v. Elderton*, (1852) 10 E. R 606 . The main question that has to be kept in view in interpreting the word "employee" is whether there

is a relationship of master and servant established between the owner of the factory and those who work in the factory in any capacity whatsoever,

and when such relationship is established and when a person is doing work under the guidance and supervision of one who employs him and pays

him wages, the definition of the term "employee" must be deemed to comprehend every such person.

The definition of "wages" has also been made very comprehensive in this Act. It includes any remuneration paid or payable in cash to an employee

if the terms of the contract of employment, express or implied, were fulfilled and includes other additional remuneration, if any (paid at intervals not

exceeding two months), but does not include (a) any contribution paid by the employer to any pension fund or provident fund, or under this Act;

(b) any travelling allowance or the value of any travelling allowance; (c) any sum paid to the person employed to defray special expenses entailed

on him by the nature of his employment; or (d) any gratuity payable on discharge.

6. On the other hand, Mr. Sangameswaran, appearing on behalf of the respondents, contended that the definition of the term "employee" in the Act

cannot be understood to include within its scope persons who are not actually connected with the work of the factory, which work is nothing other

than manufacturing raw or finished articles for the market

In so far as the clerical staff, who are the respondents in the present case, are not actually connected with any manufacturing process but are doing

work which is outside the scope of manufacturing process, notwithstanding the fact that they are working under the control and supervision of the

owner of the factory and are also paid wages as contemplated under the Act,

they cannot be deemed to be employees coming within the scope of the Employees State Insurance Act, XXXIV of 1948.

His contention was that the intention of the legislature was mainly to restrict the benefits of the Act to such people and such persons as are doing hazardous work and where there is likelihood of injuries to the person or impairment to the health of the employees working in the factory. The

clerical staff not being subject to such hazards, it could not have been the intention of the legislature to include such of clerical staff who are not in

any way likely to be affected by anything that happens in the process of manufacture that is carried on in a factory.

Therefore, it is too much to say that these clerical staff were intended to get the benefits of the Insurance Act in the matter of sickness or the

medical benefit or the disablement benefit. But, it has to be noted that throughout the provisions of the Act, it has not been set out anywhere that

the sickness, or the disablement, or the maternity benefits that are sought to be conferred by the Act should be claimed only by reason of any

activity on the part of the employee directly connected with the manufacturing process.

On the other hand, the provisions only lay down that when the employee falls ill or when there is maternity entered into by any woman worker or

when any employee is disabled from doing his work, the benefits of the Insurance Act should be made available to such a person. In the absence

of any direct connection having been established by the provisions of the Act that the person entitled to the benefit should become disabled or

become sick as a result of his work connected with the manufacturing process, it is difficult to say that the benefits were intended to be restricted

merely to the technical staff.

7. The Government Pleader, however, has invited my attention to the report of the Select Committee on this Act which has stated that the original

preamble, which stated that the benefits were to be conferred only upon workmen, was altered by the Committee so as to enlarge the scope of the

benefits to be available also to all employees in a factory. The final preamble, however, that is found in the Act does not mention this fact,

specifically but it states that the Act is intended to benefit only employees against sickness, disablement etc. It is the contention of the learned

Government Pleader that in interpreting the term ""employee"" as defined in this Act, reference may be had to the proceedings of the Select Committee.

8. It has also been brought to my notice by counsel on both sides that the question as to whether the term ""employee"" as defined in Act XXXIV of 1948, does or does not comprehend non-technical staff such as clerks of the type of the respondents in this appeal is bereft of any authority and that no decision of this court or of any other court has been available so far and it is also stated by counsel on both sides that there are several applications pending before courts in this State which involve the interpretation of the term ""employee"" as defined in the Employees' State Insurance Act, and that the matter is one of considerable importance for employees and also the factories where these technical and non-technical staff work.

9. In view of these facts, I consider that this matter deserves to be considered by a Bench so that the question as to whether the term ""employee"" as defined in the Act includes also within its scope non-technical staff such as clerks as well in addition to the technical staff, actually employed in the process of manufacture in a factory may be decided and set at rest so far as this Court is concerned. This matter will therefore be placed before my Lord, the Chief Justice for necessary orders.

JUDGMENT

Bajamannar, C.J.

10. The decision of this appeal turns on the application of the definition of ""Employee"" in the Employees State Insurance Act, 1948, to seven persons employed in the office of the Managing Agents of the Lotus Mills Ltd., Coimbatore. Lotus Agency (Pte) Ltd, are the managing agents.

The learned District Judge of Coimbatore decided that they were not ""employees.

11. ""Employee"" is defined in Section 2(9) of the aforesaid Act thus:

Employee"" means any person employed for wages in or In connection with the work of a factory or establishment to which this Act applies and:

(i) 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.....

12. For the purpose of this appeal Sub-clauses (ii) and (iii) are not material. ""Factory"" is thus defined:

""Factory"" means any premises including the precincts thereof whereon 20 or more persons are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on but does not include a mine subject to the operation of the Indian Mines Act, 1923 or a railway running shed.

As it was not clear to us what was the exact work which the seven persons from whom contribution was demanded under the provisions of the

said Act were doing, we asked both the learned Government Pleader and the counsel appearing for the employees to file before us statements

setting out the particulars of the work which had been allotted to each of them. We have now been given the requisite information which we set out

below:

1. Ganapathia Pillai (who has since died on 9-1-1958): General supervision of the work in the Managing Agents' office.

2. A. N. Venkatachalam Chettiar, Assistant Secretary in charge of the Managing Agents' office, in status next to the Secretary, entrusted with the overall responsibility for running the Managing Agents' office.

3. C. V. Vaidyalingam, supervisory official in charge of the managing agents' office. After Ganapathia Pillai's death he has been doing the work of general supervision of the managing agents' office also.

4. T. N. Kanthanathan, cashier for disbursement of pay to all officers and staff and wages to workers of the mill.

5. R. Rangaswami Rao, typist, attending to all typists' work in the managing agents' office.

6. V. Radhakrishnan, clerk attending to general clerical work in the managing agents' office.

7. A. R. Ramaswami Chettiar, ledger clerk in charge of the maintenance of the ledgers and the cash book of the managing agents' office.

13. The learned Government Pleader contended that the definition of ""employee"" in Section 2(9) of the Act should be broadly construed and it

should be held that persons employed in the office of a managing agent for an

industrial or manufacturing establishment must be deemed to be employed on any work incidental or preliminary to, or connected with the work of the factory or establishment.

14. Now, "the work", which is the prime factor is the work of the factory. "Factory" means the premises wherein a manufacturing process is being carried on. It follows that only persons who are in some manner or another connected with the said work, viz, manufacturing process, that can be said to be "employees" within the meaning of the definition. There are no doubt the words "incidental or preliminary to", but both these have to be understood in conjunction with the words "with the work of the factory".

So, the work done by the person in question should be work incidental or preliminary to the work of the factory as such. No decided case of this court was cited to us which has a direct bearing on the point. A ruling of a Division Bench of this Court in Employees State Insurance Corporation, Madras Vs. S.M. Sriramulu Naidu, , was referred to us. It was there held that if within the same premises or compound a number of departments are situate and the departments are engaged in the work in connection with or incidental to a manufacturing process of the factory, they would prima facie all form part of the factory.

The main question which was raised before the learned Judges in that case was whether a cinema studio could be described as a factory. There were several departments engaged in different kinds of work in the studio, namely, (i) electrical, (ii) camera (iii) sound (iv) setting (v) moulding (vi) carpentry etc. There was a controversy whether any of these departments would come within the term of "factory" under the Act. The learned Judges held that it would.

Therefore, the provisions of the Employees State Insurance Act would apply to it. In that case there was no question as to whether a person was or was not an employee. The contribution was demanded from the proprietor of the studio as an "employer". The defence of the employer was that the studio was not a factory and therefore he was not liable. That plea was not upheld. In the course of the judgment of the Division Bench delivered by Ramachandra Iyer, J., there are observations to the effect that the object of the Employees' State Insurance Act is more comprehensive and its scope designedly wider than those of the Factories Act.

The learned Judge said:

The Employees State Insurance Act is the outcome of a policy to provide a remedy for the widespread evils arising from the consequences of

national poverty. It is a piece of social security legislation, conceived as a means of extinction of the evils of society named by Lord Beveridge (in

his report which inspired this type of legislation in all countries), namely, want, disease, dirt, ignorance and indigence.

While we recognise that there is a difference between the definition of ""worker"" in the Factories Act and the definition of ""employee"" in the

Employees State Insurance Act, what we have to decide in each case is whether a particular person is one who will fall within the definition in the

Employees State Insurance Act.

Of the seven persons from whom contribution is demanded, in our opinion, only one of them, namely, Sri T. N. Kanthanathan, can be brought

under the definition, interpreting its language as widely as we can. Sri Kanthanathan disburses not only the pay of the officers and staff, but also the

wages to the workers of the mill. It may be said that the payment of wages to the workers employed in the factory is in a sense incidental to, or

connected with the work of the factory.

We hold that Sri T. N. Kanthanathan will be liable for insurance contribution. We had at one time a doubt about Sri A. R. Ramaswami Chettiar,

because it was alleged that he keeps the ledger not only for the managing agents' office hut also for the factory accounts. An affidavit has since

been filed by him that he does not attend to the accounts of the factory as such. His work is confined to the accounts of the managing agents'

office. Of the other persons sought to be made liable, it cannot be said in any sense that they are employed on any work of, or incidental or

preliminary to, or connected with the work of the factory.

They are all persons employed in the managing agents' office. A private copy of a judgment of a Division Bench of the Bombay High Court,

Employees' State Insurance Corporation, Bombay v. Raman, (F. A. No. 610 1935 (Born)) was furnished to us by the learned Government

Pleader. The judgment of the Bench was delivered by Gajeadragadkar, J. The question raised in that case was whether a person employed in the

administrative office of the J.K. Chemicals Ltd., was an ""employee"" within the

meaning of the Act. The learned Judge held he was not and observed :

Nevertheless, before the respondent can be said to be an employee within the meaning of Section 2(9)(i), it must be shown that he has been employed on any work of, or incidental or preliminary to, or connected with the work of the factory. It is necessary to emphasise that on the facts admitted in this case it is not shown that the work of the factory was to sell the products of the factory. The work of the factory in the present case began with the collection of raw materials and ended with the production of finished articles. If that be so, it would be difficult to accede to the argument that the work of selling the products of the factory was connected with the work of the factory. The work of selling cannot be said to be incidental or preliminary to the work of the factory. It is obviously not preliminary, and it cannot be incidental in that sense. It is true that the expression ""connection with"" may be larger in its denotation than ""incidental"" or ""preliminary"". But this expression also must be construed in the light of the facts as to which there is no dispute in the present case.

15. Applying these observations to the present case, it is obvious that the persons from whom contribution was demanded, except Sri T. N.

Kanthanathan, are not employees. In paragraph 2 of the affidavit filed by Sri C. V. Vaidyalingam on behalf of the respondent it is definitely stated

that:

The Managing Agents' office is concerned purely with the administrative side of the mills and sale of finished products and are not in any way

connected with the manufacturing process or with the work of the factory.

This is not denied.

16. In the result, the appeal is allowed in part regarding the fourth respondent, namely, Sri T. N. Kanthanathan, but is dismissed otherwise. There

will be no order as to costs.