

(1976) 08 MAD CK 0052
In the Madras High Court

E.S.I.C.

APPELLANT

Vs

K. Ramachandran and Others

RESPONDENT

Date of Decision : 17-08-1976

Acts Referred:

Employees State Insurance Act, 1948 — Section 2

Citation : (1977) 2 LLJ 214

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

Bench : Division Bench

Judgement

1. These three appeals have been filed by the Employees" State Insurance Corporation against the common judgment of Venkataraman, J., in C.M.A. Nos. 260, 261 and 262 of 1968 The respondents in each of the appeals before us are different, but the question raised is the same. It arises in the following circumstances

2. The respondents are textile mills in Combater District They had constructed their factories some time ago. Ever since then, they have been engaged in the production of yarn. Recently each of these mills proceeded to put up additional factory buildings for installing extra spindles and for expanding production. Construction workers were, naturally, employed to do the work of actual construction of these additional buildings

3. The question arose whether these construction workers were employees within the meaning of the Employees" Mate Insurance Act, 1948. If they were, then the respondents were under a statutory obligation to pay the contribution to the Employees" State Insurance Corporation, if not, not. The Employees" State Insurance Court (District Judge), Combater, took the view that these construction workers must be regarded as "employees" falling within the statutory definition. On appeal by the mills concerned, Venkataraman, J., in a common judgment, held otherwise His view is now being challenged before us in these Letters Patent Appeals by the Employees" State Insurance Corporation.

4. The learned Judge, in coming to his conclusion, dwelt at length on the definition of the expression "employee" occurring in Section 2(9) of the Act. There was in direct authority on the subject before him at that time, but he sought support from a few decisions which he considered to be near enough. Since then, however, a Bench of this Court had had occasion to examine this very question. Their judgment is reported as *Employees' State Insurance Corporation v. Sri Sakthi Textiles (P.) Ltd.* (1974) 46 F.J.R. 118. They held that persons employed in putting up additional buildings for future expansion of an existing factory would not come within the inclusive definition of an "employee" u/s 2(9) of the Act. On the principle of the ruling, all the three Letters Patent Appeals before us filed by the Corporation will have to be dismissed.

5. Venkataraman, J., while disposing of the appeals before him, remanded two of them, viz., C.M.A. Nos. 260 and 261 of 1968, for further inquiry by the learned District Judge. He did so because in those cases the additional building put up by the concerned workers comprised not only additional factory buildings, but the constructions such as workers' rest house, creche for workers' children, time office and cycle stand. In one case, a new building was put up wherein a mercerizing plant was installed, to mercerize the yarn produced by the existing factory. The learned Judge took the view that construction workers who had put up these buildings would fall within the statutory definition of "employee". The learned Judge's remand to the District Judge was only to ascertain which of the construction workers had constructed the additional factories, as such, on the one hand, and which of them had constructed the other new buildings like creche, rest house, etc., on the other. But, on the principle of the Bench decision in *Employee's State Insurance Corporation v. Sri Sakthi Textile (P.) Ltd.* (supra) we feel that there is no scope for the further inquiry contemplated by the learned Judge. We cannot see any acceptable distinction between construction workers employed to build annexes and additions to the existing factory buildings and construction workers employed to construct other new structures intended to enhance the utility of the existing factory. In our opinion, the Division Bench ruling in *Employees' State Insurance Corporation v. Sri Sakthi Textiles (P.) Ltd.* (supra) would apply, on principle, to workmen engaged in raising all additional constructions put up subsequent to the initial setting up of the factory, irrespective of what function such constructions are meant to fulfil.

6. The learned Judge seems to have thought that the workers' rest house, creche, etc., very much sub-served the interests of all factory workers, including the existing mill hands, and, therefore, the construction workers who had been instrumental in raising these structures must be regarded as persons "employed on work incidental to or connected with" the work of the factory within the meaning of the definition in Section 2(9). This view, with respect, misses what "the work of the factory" in the present case consists in. As we mentioned earlier, the work in each of these mills is production of yarn. It follows from this that in order that any of the employees might be regarded as being engaged in work connected with the factory, it must be shown that the work in question was

connected with yarn production or was necessarily incidental to that manufacturing process or conducive to the work in the factory. I here might be cases where attendants, watchmen, etc., are employed to take care of the workers' rest house, creches, cycle stands, etc. The work these men do might well be regarded as being "incidental to the work of the factory" on the analogy of the work done by the gardeners in factory gardens, in *Ihugaraja Cheitiar v. Employees' State Insurance Corporation* (1963) 24 F.J.R. 400, a Division Bench of this Court held that gardeners employed in a factory would come within the statutory description, "persons employed in work connected with the factory." But the construction workers who put up the additional constructions have no similar nexus with the factory work as such. This is because they are birds of passage, and the moment they complete the constructions they are out of the picture. Indeed, it is only after the construction workers finish their job, that the completed building begins to assume any reality or relevance to the day-to-day working of the factory. In this view, therefore, there is no occasion for the issue of any directions, to the District Judge for instituting further inquiry. This part of Venkataraman, J.'s order, is accordingly set aside. Subject to this modification of the learned Judge's order in C.M.A. Nos. 260 and 261 of 1968, all the three Letters Patent Appeals preferred by the appellant- Corporation are hereby dismissed. But, in the circumstances, we make no orders as to costs.