

(1969) 07 MAD CK 0034
In the Madras High Court

Gnanambikai Mills Ltd.

APPELLANT

Vs

Employees' State Insurance Corporation

RESPONDENT

Date of Decision : 07-07-1969

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 38, 39, 46, 47

Citation : (1970) 2 LLJ 233

Hon'ble Judges : Ramamurthi, J

Bench : Single Bench

Judgement

Ramamurthi, J.—This appeal arises out of an order passed by the learned District Judge functioning as the Court of Employees' State Insurance, Coimbatore, on an application filed u/s 73 of the Employees' State Insurance Act, hereinafter called the Act.

2. The appellant is a limited company carrying on the business of manufacture and sale of cotton yarn. The Regional Director issued a demand notice to the appellant on 20th March 1963, to the effect that the concerned Insurance Inspector inspected the records of the appellant-mills on 29th January, 1963, that certain workers have not been registered and the employees' contribution due in respect of these workers had not been paid. The notice further called upon the appellant to pay all the arrears in respect of the workers by submitting distribution cards as required by the rules. Thereupon, the present application No. 2 of 1963 was filed by the appellant mills on 6th June, 1963 for an adjudication and declaration by the court that the workers employed are not employees within the meaning of the Act, and for an order directing the Regional Director not to enforce his demand aforesaid. As the application was dismissed the appellant has preferred this appeal.

3. At the outset it has to be mentioned that it is not in dispute that these workers are only casual workers who were employed in connection with some temporary work, and they are not in the rolls of the mills as permanent employees. It is not in dispute that these workers were not regularly employed, that they have no

right to continue in service and the contention is that the Act would not apply to such workers to whom work is given purely on a precarious basis, depending upon the need for temporary or casual labour. On behalf of the appellant it was also contended that the workers were not employed in any work incidental or preliminary to or connected with the work of the factory, which is the manufacture of cotton yarn and its sale, which has nothing to do with the casual repair work which was done by these casual workers.

4. In the objections statement filed on behalf of the Employees' State Insurance Corporation the main averment of the management that the workers concerned were casual workers was not traversed and the only point on which this application was resisted by the Insurance Corporation was that the work done by the workers was incidental or preliminary to or connected with the work of the factory within the meaning of the Act. I may also add that before me it was not urged by the Employees' State Insurance Corporation that the workers are not casual workers who merely did some repair work and that the names of these workers are not in the rolls of the appellant. Learned Counsel for the respondent also contended that the Act would apply to a casual worker.

5. Learned Counsel on both sides drew my attention to some of the decisions to show as to when and under what circumstances the work done by an employee could be construed as work incidental or preliminary to or connected with the work of the factory. It is now settled by judicial decisions that having regard to the fact the Employees' State Insurance Act is an important piece of social security legislation, to provide a remedy for the benefit of employees in the event of sickness, maternity, injuries in the course of employment, etc., the term "employee", i.e., the definition clause in Section 2(9) of the Act should receive a wider and more liberal connotation than the meaning of the word under the Factories Act. After dealing with the scope of the provisions of the Factories Act, a Bench of this Court in *Employees' State Insurance Corporation v. S.M. Sriramulu Naidu* (1959) 19 F.J.R. 238, observed as follows at page 244 emphasising that "an employee" under the Act would cover a wider class of employees than those contemplated by the Factories Act:

In our opinion, the decision in *In re K.V.V. Sarma* (1952) 4 F.J.R. 329, only recognises this principle and excludes portions of the premises which, but for the accident of being situate in the same compound, could not be regarded as a factory. But that principle cannot be extended to the case of a factory as defined under the Employees' State Insurance Act, whose object is more comprehensive, and whose scope designedly wider.

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 the society named by Lord Beveridge (in his report which inspired this type of legislation in all countries), namely, want, disease, dirt, ignorance and indigence. Having regard to the magnitude of the task, the

Act was made, in the first instance, applicable to factories as defined therein. It primarily provides benefits to the employees in such factories. The Act envisages also the extension of benefits to other establishments, industrial, commercial, agricultural or otherwise by a notification by the appropriate Government. It provides for benefits to the employees in the event of sickness, maternity, injuries in the course of employment and payments to dependents in certain cases. The monetary and other benefits granted under the Act to an insured employee of a factory are secured by a system of compulsory insurance under which the employer, employees and the Government each contribute financially. This is unlike the previous legislation in respect of workers in factories. The Workmen's Compensation Act, the Factories Act and the Maternity Benefit Act are based on the liability of the employer. The benefits conferred by the Employees' State Insurance Act cover a larger area of employees than that the Factories Act and allied legislations intended. u/s 46 of the Act, the insured persons, or, as the case may be, their dependents, are entitled to its benefits. An insured person is an employee past or present in respect of whom contributions are or were payable under the Act. Contributions are made payable by and in respect of an employee. We have already referred to the definition in the Act of the term, "employee". That will include within its scope clerical and labour workers engaged or paid through contractors and also part time workers and paid apprentices. That is in keeping with the objects of the Act, which was to relieve poverty, a feature not confined only to the actual workers in a manufacturing plant.

6. Before I refer to the cases it is necessary to refer to the following provisions of the Act to which my attention was drawn by learned Counsel Sri M.R. Narayanaswami, in support of his contention that the provisions of the Act would not apply to such temporary or precarious or casual workers who may do odd jobs. Section 2(2) defines "benefit period" specifying the minimum period ranging from 25 to 27 consecutive weeks when the employee should have worked in the factory. This has to be read with Section 2(5) which defines "the contribution period, specifying the same length of time; Section 2(13-a) and Section 2(14) deal with insurable employment and the insured person within the Act; Section 38 provides that all the employees in the factories could be insured in the manner provided by the Act. Section 39 provides for the payment of contribution which would comprise that payable by the employer as well as by the employee. A perusal of Sub-section (3) of Section 39 clearly indicates that a week is a unit under the Act, and the contribution has to be paid on the last day of the week. Next follow Sections 46 to 51 in Chapter V dealing with the benefits secured to an employee.

7. Learned Counsel for the appellant stressed that when one looks at the scheme of the Act and the special features of the provisions, in particular Sections 47, 49 and 50 which deal with sickness benefit and the maternity benefit and Section 51 which deals with disablement benefit it would be clear that the Act was not intended to apply to mere casual workers without any tenure of service. Learned

Counsel also urged that it will be practically impossible to work the Act and apply its provisions to casual employees. The benefit for the employees could be effectively secured and the Act could be worked out for the benefit of the workers only if the employer has a certain amount of control and holding over the employees in the matter of work, for the specified period, is the matter of the right to deduct the employees' contribution at the time of the payment of the wages and that such control and check could not possibly be exercised by the employer if the worker concerned is just a casual worker for a day or two doing merely precarious or odd jobs. Learned Counsel urged that there is no point in the employer being compelled to pay the contribution without the rest of the integral provisions of the Act being applicable to a particular case. For instance if the employee has not qualified to obtain the benefits of the Act by not having served in the factory for the minimum period and by not having contributed for 13 weeks the employer cannot be called upon to pay the contribution in respect of such casual worker. My attention was not drawn to any decision in which this aspect has been decided one way or the other. After considering all the aspects of the matter and in particular the provisions concerning the benefit scheme I am of the view that the Act will not apply to such casual workers. In this view it may not be necessary to refer at length to the cases cited before me as to when an employee could be said to be directly employed in any work or doing any work incidental or preliminary to or connected with the work of the factory within the meaning of the Act.

8. Reference may first be made to the earliest Bench decision of the Bombay High Court in *Employees' State Insurance Corporation v. C.H. Raman* (1956) 11 F.J.R. 462. That decision has explained and pointed out that the fact that a particular office is situated within the same compound in which the factory is located would not make the workmen in that office employees of the factory. It was observed that the work of the factory would end in the production of the finished articles and the work of the sale of the finished products cannot be said to be incidental to or connected with the work of the factory, when the factory and the administrative office maintain two separate musters, wage rolls, separate accounts, etc. While pointing out that the use of the words "in connection with" is of larger import than the words "incidental or preliminary to" it is observed that a person engaged in the management side could not be a worker within the meaning of the Indian Factories Act. This statement of the law has been referred to with approval in subsequent cases. Vide *Nagpur Electric Light and Power Co., Ltd. v. Employees' State Insurance Corporation* (1967) 33 F.J.R. 263.

In *Employees' State Insurance Corporation v. S.M. Sriramulu Naidu* (1959) 19 F.J.R. 238, the question arose with regard to a cinema studio, "Pakshiraja Studios", in Coimbatore, as to how far all the departments should be taken as a unit for the purpose of ascertaining whether the premises of the studio would be a factory under the Act. In that studio there were several departments like electrical, camera, sound, setting, moulding, carpentry, laboratory, editing, make-

up, etc. Electric power was utilised in connection with some of the items of these works. If all the departments were taken into account the number of persons employed would automatically exceed 20. But if each department was taken as a unit, the number employed was less than 20. The argument of the management that all the departments should not be taken as one unit was not accepted by the High Court. It was observed that all the 20 persons need not be working in the same section or department, and that so long as the efforts of all the departments are co-ordinated to achieve the main object of the factory, "manufacture", the premises would be a "factory" and that the premises need not be a single building, and a number of buildings within a single compound might constitute a factory.

10. The Bench decision in *Employees' State Insurance Corporation v. Ganapathia Pillai* (1960) 19 F.J.R. 279, is of great relevance for considering when the several departments carrying on activities of one kind or another within the same compound should be co-ordinated together to determine whether the employees in all the departments would be "employees" within the meaning of the Act. The Bench had to consider all the persons employed in the office of the managing agents of the Lotus Mills Ltd., Coimbatore. The Bench emphasised that the words "incidental or preliminary to" have to be understood in conjunction with the words "with the work of the factory" in the definition clause. Of the 7 persons 6 persons were doing work in connection with the managing agents' office. The individual work done by these 7 persons is extracted at page 285 of the Report. It was held that only one person, No. 4 "Kanthanathan", who was the cashier and who disbursed the pay to the entire staff including the employees of the mill would be an employee under the Act, in the view that the payment of wages to the workers in the entire mill is in a sense incidental to or connected with the work of the factory. With regard to the other employee, one Ramaswami Chettiar, the ledger clerk, an affidavit was filed that he did not attend to the accounts of the mills, and that he was only keeping the ledger of the managing agents' office. So it was held that he was not doing any work incidental or preliminary to or connected with the work of the factory, and that the rest six persons were all employed in the managing agents' office. The observations of Gajendragadkar J., as he then was, in *Employees' State Insurance Corporation v. C.H. Raman* (1966) 11 F.J.R. 462, referred to above were extracted with approval.

11. The principle laid down in this Bench decision was applied in *Mahalakshmi Oil Mills v. Employees' State Insurance Corporation* (1965) 28 F.J.R. 181, where it was held, on the facts, that in the case of an oil mill the workers in the sales organisations altogether could not be held to be employees within the meaning of the Act, so as to be taken along with the workers in the mills.

12. In *K. Thiagarajan Chettiar v. Employees' State Insurance Corporation* (1963) 24 F.J.R. 400, the question arose as to how far the watchman, office boys, and gardeners and other workers employed in the textile mill would be employees within the meaning of the Act. The Bench observed following *Employees' State*

Insurance Corporation v. Ganapathia Pillai (1960) 19 F.J.R. 279, that the term "employee" is of a wider connotation and would include in its scope every clerical labourer or part time worker. Even though the definition clause takes in any person who is employed in any work incidental or preliminary to or connected with the work of the factory or establishment it has observed that as indicated in Employees" State Insurance Corporation v. Ganapathia Pillai (1960) 19 F.J.R. 279, limitation had to be imposed upon that term, and that the limitation is to be found by reading the words "incidental or preliminary to" in the definition clause in conjunction with the words "work of the factory".

13. It was therefore held that builders, or persons who maintain buildings, watchman, office boys and gardeners would be employees within the meaning of the Act. Tie Bench held that the factory, i.e., mills, may maintain a garden for the purpose of maintaining the building in healthy surroundings and that the maintenance of the garden would be conducive to the health of the manual workers and would enhance their efficiency and health and they would be certainly doing work in connection with the work of the factory.

14. This Bench decision shows that if the factory in question carries on the business of manufacture and production of yarn or manufacture and sale of any finished product, the service of the workers need not necessarily be utilised in the process of production or in the process of the sale of the finished products. The workers may do some extraneous work provided the work is in connection with the work of the factory. A gate keeper in the factory, water boy supplying water to the workers in the mills will be doing work in connection with the work of the factory as much as the persons actually working in the textile department. I may also refer to the Bench decision of the Andhra Pradesh High Court in Sirsilk Ltd. v. Employees" State Insurance Corporation (1963) 26 F.J.R. 266, in which workmen employed in a canteen attached to a factory were held to be employees within the meaning of the Act. The reasoning was that a canteen serves a purpose which is incidental to the process of the factory. In view of the principle laid down in K. Thiagarajan Chettiar v. Employees" State Insurance Corporation (1963) 24 F.J.R. 400, already cited, a gardener or a building repairer could well be regarded as an employee under the Act. For instance, if workers are employed permanently and are in the rolls of the mills and their job is to do repair work whenever necessary or do white washing or colour washing whenever necessary, even though the necessity for doing such work may not be quite full time work as in the case of workmen employed in the production work of the factory, the former would be employees if they are not casual workmen employed as and when a need arises, for instance due to heavy winds, rains or storm. Every big building like textile mills will undoubtedly require several workmen for attending to the repair work, white washing, or colour washing. They would be certainly employees within the meaning of the Act, and the work they do cannot be said to be casual labour. The distinction is not whether the work done is in the main manufacturing and production line, but whether the work done is done in connection with the work of the factory, and whether or not it is casual or

precarious.

15. Learned Counsel for the respondent drew my attention to an observation in the decision in A M. Chinniah, In Re (1957) I M.L.J. 155, to the effect that the worker might have been a casual labourer would make no difference and reference was made to a decision in State v. A.K. Thamboli (1954) 8 F.J.R. 494. I have perused that Bombay decision. But there is nothing in it to support the view that even a casual labourer would be an employee.

16. For all these reasons the appeal is allowed and the declaration is grafted as prayed for by the company. No costs.