(1973) 08 MAD CK 0004

In the Madras High Court

K. Ramachandran (Occupier), Ravendra Mills Limited and Another — APPELLANT

Vs

Employees State Insurance Corporation
The Management of Selvaraja Mills Private Limited Vs The Employees State Insurance Corporation — RESPONDENT

Date of Decision : 13-08-1973

Acts Referred:
Employees State Insurance Act, 1948 — Section 75(2)

Citation : (1974) 2 MLJ 78

Hon'ble Judges : K.S. Venkataraman, J

Bench : Division Bench

Judgement

K.S. Venkataraman, J.—These three appeals have been heard together since they raise a common question of law and hence they are being

disposed of by a single judgment. In each case the principal question is whether, when an additional building is constructed to install new spindles in

an existing factory manufacturing yarn, the workers employed in the construction of the new factory can be held to be employees within the

meaning of the expression in the Employees State Insurance Act, 1948, and the owner of the building is bound to pay contribution for insurance

under the Act.

2. A.A.O. No. 260 of 1968 arises out of a petition (No. 12 of 1966) filed u/s 75 (2) of the Employees State Insurance Act, 1948, (hereinafter

referred to as the Act) by the Employees State Insurance Corporation to recover a sum of a little over thousand rupees towards the employees''

contribution from Ravendra Mills Limited, for the period 1st January, 1961 to 30th September, 1963. The Mills were manufacturing yarn engaging more than twenty persons and certainly constituted a ''factory'' within the meaning of Section 2 (12) of the Act. The Mills wanted to expand their

manufacturing capacity and certain buildings were put up in that connection. The buildings also included a rest-house for the workers and a creche

for the workers'' children. The rest-house and the creche would be useful even for the employees already employed in the existing factory. For

putting up these buildings some workers were employed. The Mills contended that these workers would not come within the definition of

''employee'' in Section 2 (9) of the Act and that therefore, they were not liable to pay any contribution in respect of these workers. The Employees

State Insurance Court, viz., the District Judge, Coimbatore, overruling their pleas, allowed the application of the State Insurance Corporation.

Hence the appeal by the Mills.

3. A.A.O. No. 261 of 1968 arises out of an application ''No. 3 of 1967) before the District Judge, Coimbatore, filed by Selvaraja Mills Private

Limited, u/s 75 of the Act for a declaration that they were not liable to pay a sum of Rs. 2,834 demanded by the State Insurance Corporation.

About 12,320 spindles had been installed in the Mills. They wanted to expand the spindlage to 25,000 as permitted by the Government of India.

For the purpose of housing the additional spindles they put up constructions. They engaged a large number of workers to do the work. They

contended that they engaged the workers through an independent contractor and that they were not liable to pay contribution in respect of those

workers. The learned District Judge overruled that plea and dismissed their application. Hence this appeal.

4. A.A.O.No. 262 of 1968 arises out of an application (No. 5 of 1967) filed by the Employees State Insurance Corporation against Sarguna

Textiles for recovery of a sum of Rs. 510 for contribution under the Act. The contention of the Mills was that they put up the additional machinery

for installing more spindles, that they employed the workmen through independent contractors, that the workers were not employees within the

meaning of the definition under the Act and that they were not liable to pay contribution. That plea was overruled and the petition was allowed.

Hence the appeal by the Mills.

5. It will be seen that in all these cases the Mills constructed buildings to house

additional spindles. The question for consideration is whether the

workers employed in the construction of the buildings would be employees within the meaning of Section 2 (9) of the Act and whether contribution

has to be paid in respect of them to the State Insurance Corporation. The features of the Act are well known but may be briefly recapitulated. As

the name itself indicates the Act provides for insurance against sickness and disablement of workers. It is mainly confined to factories, though it

may be extended to other establishments. An employee himself has to pay contribution and the employer also has got to pay contribution. The

employer may collect the contribution from the employee, but he is responsible for paying the consolidated contribution to the State Insurance

Corporation. The Act contemplates that only persons employed for a minimum period are qualified for the benefits of the Act. It is called the

benefit period. Contribution has to be paid over a period preceding the benefit period and that period is called the contribution period. Each

benefit period is taken as a unit and, if no benefit is claimed in that period that lapses. The next cycle of the contribution period and benefit period

begins.

6. Section 2 (9) of the Act, so far as material for us, defines ""employee"" thus:

(9) ""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.

7. I may at once dispose of the contention of the Mills that the workers were employed through an independent contractor. The available evidence

clearly goes to negative that contention and goes to show that the workers were employed directly by the Mills. I therefore confirm the finding in

that behalf given by the District Judge in each case. This brings us to the really important question, namely, whether when buildings are put up for

expanding the manufacturing capacity of the Mills, any worker employed for that purpose can be said to be a person employed for wages in or in

connection with the work of a factory and is directly employed on any work of, or incidental or preliminary to or connected with the work of, the factory within the meaning of the definition which has been quoted. The question has to be decided in the light of the decisions which have

interpreted the statutory provision. To start with, there is a decision of the Bombay High Court in E.S.I. Corporation v. C. H. Raman (1957) L.L.J

267, Gajendragadkar and Chainani, JJ. There the respondent Raman was employed in the administrative office of J.K. Chemicals Limited. J.K.

Chemicals Limited were the occupiers of a factory called Eastern Chemical Company. They were situated in the same compound. In the building

of the factory itself there was a separate office for the factory, and this office looked after the conduct of the factory. The administrative office

handled the sales of the goods manufactured in the factory, as well as goods imported from abroad. The learned Judges held., on the facts of that

case, that the work in the administrative office was not connected with the work of the factory and that therefore the respondent Raman was not

liable to pay contribution under the Act. They observed:

The points raised before us by Mr. Desai in this appeal must be considered on the facts which are admitted and we propose to confine our

decision to these special facts. It is not the case of the Corporation that the Eastern Chemical Company, as one company runs two departments, in

one of which chemicals are manufactured and in another department the said articles are sold. Conceivably there may be factories which are

started with the object of producing goods as well as selling them. In the present case, on the facts admitted, the work of the factory, which is

carried out in one building, begins with the collection of raw materials and ends with the production of chemical articles. The J.K. Chemicals

Limited, looks after the sale of these articles. But it is significant that the J.K. Chemicals Limited, looks after the sales of other imported goods as

well and the work of this sale is carried on, in the administrative office where the respondent is engaged.

8. It was contended before the learned Judges that, in view of the definition of ""factory"" in Section 2 (12) of the Act, the administrative office also

would be part of the factory. The definition of ""factory"", so far as material, is:

''Factory'' means any premises including the precincts thereof wherein twenty or more persons are working, and in any part of which a

manufacturing process is being carried on with the aid of power....

9. The contention of the Corporation was that it was sufficient that the manufacturing process was being carried on in any part of the premises

within which the administrative office was situated. The learned Judges dealt with the case on the assumption that the administrative office was a

factory within the meaning of Section 2 (12) of the Act, but they went on to observe that the crucial question had yet to be decided, namely; ""it

would be necessary for the Court to hold that the respondent is an employee within the meaning of Section 2 (9) of the Act."".

10. The learned Judges further observed:

We have no difficulty in accepting the argument that the policy of this Act was to enlarge the curb of employees and make the benefits of this Act

available to a class of workers larger than the class included in the Indian Factories Act........ Nevetherless, 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 emphasize 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.

(Italics is mine).

11. The above observations were quoted with approval by a Bench of this Court (Rajamannar, C.J., and Veeraswami, J.) in Employees'' State

Insurance Corporation with its Regional Office at Coimbatore Vs. Ganpathia Pillai and Others, . In that case the factory was the Lotus Mills

Limited; and Lotus Agency (Private) Limited were their Managing Agents. The question arose about the liability to pay contribution in respect of

seven persons employed in the office of the Managing Agents. The final decision was that only one of them could be said to be an employee within

the meaning of Section 2 (9) of the Act, because he alone was connected with the work of the factory and the other persons were not. After

quoting Section 2 (9), the learned Judges observe:

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.

12. Applying the above test, the learned Judges observed:

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 ran. 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..... 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.

The learned Judges point out that it was not disputed that the Managing Agents'' office was concerned purely with the administrative side of the

mills and sale of finished products and was not in any way connected with the manufacturing process or with the work of the factory.

13. Nagpur Electric Lights and Power Co. Ltd. Vs. Regional Director Employees State Insurance Corporation, etc., , concerned persons

employed in the Nagpur Electric Light and Power Company, which was a factory whose work was transforming and transmitting electric power.

The company did not produce electricity itself, but received electricity in bulk from Maharashtra, stepped down the voltage in the factory or in the

sub-stations and distributed it to customers. The company and the workers contended that they were not liable to pay contribution under the Act.

That contention was overruled and it was held that all those who were engaged in that work or in connection with that work would be employees,

within the meaning of Section (sic) (9) (i) of the Act, whether they worked in the premises of the factory or outside, including the sub-stations. For

our purpose, it is significant to note that the case of E.S.I. Corporation v. C. H. Raman was cited before the Supreme Court on behalf of the

company and the employees, but was merely distinguished, and the correctness of the decision was not doubted. Their Lordships observe:

The case of the Employee s'' Stale Insurance Corporation v. Raman (1957)L.L.J. 267, is distinguishable. In that case the company had a factory

and an administrative office. The office was situated in a building which was situated within the same compound in which the factory was located.

The entire compound was surrounded by one compound wall. It was found that the work of the factory began with the collection of raw materials

and ended with the production of finished articles and the work of selling the products was not connected with the work of the factory. The

administrative office handled sales of the products manufactured in the factory as well as goods imported from abroad. The factory and the

administrative office maintained separate muster and wage rolls and separate accounts. In these circumstances, it was held that the clerks

employed in the administrative office, whose work consisted mainly of taking down dictations from the manager and other officers and typing out

letters, were not employees within the meaning of Section 2 (9). The facts of the present case are entirely different. The company maintains one

establishment for its factory. The factory does the work of transforming and transmitting electrical energy. All the workers in question including the

clerks and the administrative staff are engaged in connection with this work. None of them is employed in any separate establishment unconnected

with the work of the factory.

14. Mahalakshmi Oil Mills v. E.S.I. Corporation (1970) 2 M.L.J. 549, was a case decided by Maharajan, J. That was a case where a private

limited company (Dhakeswari Rice and Oil Company, Private, Limited) was the proprietor of Mahalakshmi Oil Mills. The company was engaged

not only in running the Mahalakshmi Oil Mills, but also in buying and selling all kinds of vegetable oils and exporting the same. Fourteen persons

were working in the factory (oil mills). The question was about six other persons who were working in the office of the company. The learned

Judge pointed out that in the definition of ""factory"" in Section 2 (12) of the Act it was stated that the expression ""manufacturing process"" shall have

the same meaning assigned to it in the Factories Act. The learned Judge read it with the definition in Section 2 (k) of the Factories Act and

observed:

This definition makes it clear that the use, sale, transport, delivery or disposal of a manufactured product does not come within the ambit of the

expression ''manufacturing process''. Reading the definition of employee in Section 2, Clause (9) of the Employees State Insurance Act along with

the definition of ''factory'' in Clause (12) of Section 2 of the same Act and in conjunction with the definition of ''manufacturing process'' contained in

Section 2 (k) of the Factories Act, there can be little doubt that only persons who are in some way or other connected with the work of the

factory, namely, the manufacturing process, that can be said to be employees within the meaning of the definition.

The learned Judge observed that that was precisely decided by the Bench of this Court in Employees'' State Insurance Corporation with its

Regional Office at Coimbatore Vs. Ganpathia Pillai and Others, and that that decision was binding on him. It was contended before Maharajan, J.,

that the decision of the Supreme Court in Nagpur Electric Lights and Power Co. Ltd. Vs. Regional Director Employees State Insurance

Corporation, etc., , had, by implication, overruled the decisions of the Bombay High Court in E.S.I. Corporation v. C.H Raman (1957) L.L.J. 267

and of this Court in Employees'' State Insurance Corporation with its Regional Office at Coimbatore Vs. Ganpathia Pillai and Others, . The learned

Judge observed:

I am unable to agree. In the said decision of the Supreme Court, the question that arose for consideration was whether clerical and other non-

manual workers connected with the work of a factory could be regarded as employees within the meaning of Section 2 (9) (?) or not. In fact, their

Lordships referred, in the course of their discussion, to the decision in E.S.I. Corporation v. C. H. Raman (1957) 1 L.L.J. 267 and, without

overruling it, merely distinguished it. The two Division Bench rulings relied upon by me have considered a question which directly arises for

determination in this case and which was not decided by the Supreme Court.

15. In E.S.I. Corporation v. Prabhulal Brothers 86 L.V.V. 101, Veeraswami, G.J.

and Raghavan, J., disapproved of the reasoning of Maharajan,

J. The respondents in that case were engaged in the manufacture and sale of umbrellas. Eighteen workmen had been admittedly engaged in the

actual manufacture of umbrellas. In addition, there were one accountant and two sales clerks working in the premises. If they were taken into

consideration, liability under the Employees'' State Insurance Act, 1948, would arise, but, otherwise, not. The Bench referred to the definition of

employee"" in Section 2 (9) of the Act, and observed:

There is also the definition of a factory. It is in terms of the premises, including the precincts wherein twenty or more persons are employed and in

any part of which a manufacturer g 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 Southern 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, a

manufacturing process is carried on. When therefore, in subsection (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 in connection 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.

The view of ours is supported by the Nagpur Electric Lights and Power Co. Ltd. Vs. Regional Director Employees State Insurance Corporation,

etc., . 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 a factory. A factory

is associated with a commercial activity and that activity will have as its ultimate aim the marketing of its products. Sale clerks, therefore, would

clearly fall within the definition of the term ''employee'' in the Act.

Our attention has been invited to Mahalakshmi Oil Mills v. E.S.I. Corporation (1970) 2 M.L.J. 549. 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 the Employees'' State Insurance Corporation with

its Regional Office at Coimbatore Vs. Ganpathia Pillai and Others, . In any case, in our opinion, that view is not sound.

16. Mr. S. Ali Mohamed, the learned Counsel who appears for the Corporation has urged before me that the recent Bench decision in E.S.I.

Corporation v. Prabhulal Brothers 86 L.W. 101, must be understood as holding that the prior Bench decision in Employees'' State Insurance

Corporation with its Regional Office at Coimbatore Vs. Ganpathia Pillai and Others, , has been overruled by the decision of the Supreme Court in

Nagpur Electric Lights and Power Co. Ltd. Vs. Regional Director Employees State Insurance Corporation, etc., , The basis of this submission is

this. It was held by the Bench of this Court in the earlier decision that the managing agents of the company dealt with the sale of the products

manufactured in the factory of which they were the managing agents and that they were not in any way connected with the manufacturing process

or with the work of factory. The work in the factory did not therefore extend to the sale of the finished product. The decision of the earlier Bench was therefore that the sale of the finished products was not part of the work of the factory and was not connected with it and that that was why

reference was made to the earlier decision of the Bombay High Court in E.S.I. Corporation v. C.H. Raman (1957) L.L.J. 267. The later Bench

decision in E.S.I. Corporation v. Prabhulal Brothers 86 L.W. 101 is, however, directly to the contrary in so far as it holds that the sale of umbrellas

would be connected with the work of the factory, because it is stated:

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 a factory.

The later Bench was bound to follow the decision of the earlier Bench, unless the later Bench felt that the authority of the decision of the earlier

Bench had been impaired by the decision of the Supreme Court in Nagpur Electric Lights and Power Co. Ltd. Vs. Regional Director Employees

State Insurance Corporation, etc., . (Incidentally, Vceraswami, G.J., had himself been a party, as a puisne Judge, to the earlier Bench decision.).

17. Mr. M.R. Narayanaswami, however'' contends that the decision in Employees'' State Insurance Corporation with its Regional Office at

Coimbatore Vs. Ganpathia Pillai and Others, , has not in any way been impaired by the decision of the Supreme Court. I am inclined to agree with

this submission. It may be noted that their Lordships of the Supreme Court only distinguished the decision of the Bombay High Court and did not

say that it was wrong. Before proceeding further, it is just as well to note that all these decisions were rendered with reference to the definition in

Section 3 (9) (i) of the Act as it stood before it was amended by Act IV of 1966 which came into force on 28th January, 1968. The amendment

reads as follows:

.... and includes any person employed for wages on any work connected with the administration of the factory or establishment or any spart,

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.

Under the amended definition, no doubt, persons engaged in the sale of the products of the factory would come within the meaning of the definition

in Section 2 (9) of the Act, but the amending Act does not apply to the cases discussed, and that is why there is no reference to the amended definition in any of those decisions. But the fact remains that their Lordships of the Supreme Court did not doubt the correctness of the decision of

the Bombay High Court. It may be noted that the decision of the Bombay High Court was rendered on the facts of that case; but the facts of the

case in E.S.I. Corporation v. Prahhulal Brothers 86 L.W. 101, must be considered as different, because my Lord has proceeded on the footing

that, on the facts of that case, the work of the factory included the sale of umbrellas which were manufactured in the factory and that the

proprietors were the same, whose object was to manufacture and sell umbrellas. It is unnecessary to pursue the discussion on this aspect further,

for the purpose of our Gase: suffice it to say that the core of the decision in Employees'' State Insurance Corporation with its Regional Office at

Coimbatore Vs. Ganpathia Pillai and Others, namely, ""The work which is the prime factor is the work of the factory"", cannot be taken to have

been disturbed, and there is some difficulty only about the disposal of the finished product manufactured in the factory. There can be no doubt,

however, that the main core of the decision holds good when it has to be applied to the case before us which is a stage antecedent to the work of

the factory. In the Bombay case it was pointed out:

The work of the factory in the present case began with the collection of raw materials and ended with the production of finished articles.

So according to that decision, the work of the factory would begin, at the earliest, with the collection of raw materials. According to that concept

and even other Wise, as a matter of common sense, so far as the case before us is concerned, it is difficult to hold that the work of the construction

of the building itself can be said to be even work preliminary to the work of the factory. To answer this question We may assume a case where a

factory is constructed on vacant premises. Can it ever be said that a person employed in the construction of the factory is an ""employee"" coming

within the meaning of the definition in Section 2 (9) (i) of the Act. To answer this question it Will be convenient to expand Clause (i) of Section 2

(9) as follows:

(a) who is directly employed... on any work of the factory;

(b) who is directly employed....on any work incidental to the work of the factory;

(c) who is directly employed... .on any work preliminary to the work of the factory;

(d) who is directly employed.... on any work connected with the work of the factory.

18. Now a worker engaged in the construction of a factory cannot be said to be employed on any work of the factory or any work incidental to

the work of the factory. It cannot even be said that he is directly employed on any work connected with the work of the factory, because that

would suggest that the factory has commenced work and that the work is connected with the work of the factory. If at all such a worker enagaged

in the construction of a factory can be brought within the definition of ""employee"", it can only be on the ground that he is engaged on a work

preliminary to the work of the factory. Now, according to the Bombay decision, the work of the factory starts with the collection of the raw

materials, and will not apply to an anterior stage, where the building itself is being put up. That seems to me a matter of common sense and also a

legitimate construction of the definition. I may add that Mr. Ali Mohamed, also does not seriously dispute (though he would not concede it) that a

worker engaged in the construction of a factory will not come within the definition of employee in Section 2 (9) (i) of the Act; but he contends that

the position here is different, because the case before us is not one where a factory is being constructed for the first time. He points out that already

there is a factory with in the definition of Section 2 (12) of the Act, that the proposed construction is only an extension thereof and submits that

therefore it can be said to be a work connected with the work of the factory. I am unable to agree with the contention. The work of the additional

construction to house additional spindles will not certainly be work of the existing factory and will not be work incidental to the work of the existing

factory. If at all it can be said to come within the meaning of Clause (i) of Section 2 (9), it can only be on the ground that it is work preliminary to

the work of the existing factory or that it is a work connected with the work of the existing factory. There can be no doubt that the additional

construction is not work connected with the work of the existing factory. The question finally narrows itself to this, namely, whether the work of the

additional construction is work preliminary to the work of the existing factory. Here again I do not see why I should not follow the Bombay decision, according to which the work of the factory starts only with the collection of raw materials. If I may say so with respect that is also what a

layman would say. The work of the existing factory is the production of yarn which can be produced with the existing spindles, and any work to be

called preliminary to the work of the existing factory must relate purely to the yarn which is produced with the existing spindles.

19. Mr. Ali Mohamed, contends that the, workers engaged in the construction of the additional building would be covered by the decision

(Ramachandra Iyer, G.J. and myself) in K. Thiagarajan Chettiar Vs. Employees'' State Insurance Corporation, , I am afraid not. There what was

held was that the persons engaged in connection with the existing buildings of the factories like gardeners, building workers, office attender,

watchman, etc., would fall within the definition of ""employee"", even adopting the narrower definition in Employees'' State Insurance Corporation

with its Regional Office at Coimbatore Vs. Ganpathia Pillai and Others, . The case is therefore distinguishable.

20. Equally, in my opinion, Mr. M.R. Narayanaswami is not correct, in contending that the decision of Ramamurthi, J., in Gnanambikai Mills v.

E.S.I. Corporaporation (1970) 2 L.L.J. 233, affirmed by Veeraswami, G.J. and Raghavan, J., in L.P.A. No. 7 of 1970 (not yet reported) has

concluded the point in his favour. That case dealt with casual workers employed for two or three days altogether and proceeded on the basis that

the Act contemplated certain minimum period of work (See the definition of contribution period and benefit period.). It was in relation to an

existing factory. Here there is no evidence that the workers were casual Workers and that the period of their Work was less than the contribution

period or the benefit period. In the cases cited there is no specific discussion on the point which has engaged my attention in this case. The point

did not really seem to have been concluded by any authority till now.

21. I therefore hold that any worker engaged in the construction of buildings put up purely to house additional spindles will not be an employee

Within the meaning of Section 2 (9) of the Act. Now, this decision will have to be applied to the facts of the three appeals. In A. A. O. No. 260 of

1968, I find the following admission of a witness for the Mills:

The expansion workers are meant for expanding the manufacturing capacity of the mill. The new building works include a rest-house for the

workers and a creche for the workers'' children. They are for the benefit of the workers of the mill.

This means that besides the work of expansion (for housing additional spindles) a rest-house and a creche were put up which would be for the

benefit of even the workers of the existing factory. The rest-house and the creche, for the benefit of the workers of the existing factory, would be

covered by the decision in K. Thiagarajan Chettiar Vs. Employees'' State Insurance Corporation, , and the workers engaged thereon would be

employees"". But the other workers enagaged for putting up new buildings to house the additional spindles would not be ""employees"". The order of

the learned District Judge is set aside and he is directed to make a further enquiry to determine who are the workers who would fall u/s 2 (9) of the

Act and Who are not.

22. In A.A.O. No. 261 of 1968, the evidence of G.P. Ramamurthi, a clerk is Selvaraja Mills Private Limited, shows that, in addition to the

construction of the buildings for the installation of additional spindles., they had also put up constructions for housing a yarn mercerizing plant but

that would be about six furlongs away from Selvaraja Mills. There can be no doubt that the mercerizing plant is to improve the quality of the

existing yarn, and hence that would be work connected with the work of the existing factory. No doubt, the mercerizing plant is about six furlongs

away from the Selvaraja Mills, but the decision of the Supreme Court in Nagpur Electric Lights and Power Co. Ltd. Vs. Regional Director

Employees State Insurance Corporation, etc., , would seem to indicate that, even though it is six furlongs distant, it must be said to be work

connected with the work of the existing factory. Just as the sub-stations were considered part of the main factory, the work done in the building six

furlongs away can be said to be Work connected with the work of the existing factory. In addition to this, I find from paragraph 11 of the judgment

that some time-office and cycle-shed were also put up for the benefit of the workers already engaged in the manufacturing process of the factory.

If that is so, those workers will be employees u/s 2 (9) of the Act. Here again the order of the learned District Judge has to be set aside in order

that he may determine who are the workers who are engaged purely in connection with the construction of the additional buildings put up for

housing the additional spindles. They Will have to be excluded from the definition of "" employee"" and the rest will be employees u/s 2 (9).

23. In A A.O. No. 262 of 1968, the judgment of the learned District Judge shows that the additional construction was purely to house additional

spindles and there is nothing contrary to this in the evidence. Hence none of the workers engaged in the construction of the additional buildings

would be an employee within the meaning of Section 2 (9) of the Act.

24. The appeal will have to be allowed. Accordingly the order of the learned District Judge is set aside and the appeal is allowed.

25. The parties will bear their own costs in the three appeals.