

(1976) 08 MAD CK 0035
In the Madras High Court

Kamarajan Textiles

APPELLANT

Vs

Employees State Insurance Corporation

RESPONDENT

Date of Decision : 24-08-1976

Acts Referred:

Citation : (1977) 2 MLJ 296

Hon'ble Judges : G. Ramanujam, J

Bench : Division Bench

Judgement

G. Ramanujam, J.—This appeal arises out of an order passed by the Employees State Insurance Court rejecting an application filed by the appellant herein u/s 75 of the Employees State Insurance Act (hereinafter called the Act) for a declaration that its factory was not covered by the provisions of the said Act at any point of time and, therefore, it is not liable to pay any contribution at all. The appellant owns a handloom weaving and dyeing factory known as Kamarajan Textiles producing handloom cloth. In the premises where the handloom cloth is manufactured there are various sections, such as reeling, winding, dyeing and weaving sections. In the reeling and winding sections, power has admittedly been used; but in the dyeing and weaving sections power had not been used. In the reeling and winding sections, where power was used the number of persons employed were less than 20. But in the weaving and dyeing sections, where power is not used, more than 20 persons had been employed by the appellant. According to the appellant its factory cannot be taken to come under the definition of "factory" as defined in the said Act and, therefore, he is not liable to pay any contribution under the provisions of the said Act in respect of persons employed in its factory. However, the respondent had assessed the special contribution payable by the appellant from 31st March, 1967 to 30th June, 1971 at Rs. 13,935 and to realise the said sum it invoked the provisions of the Revenue Recovery Act. At that stage the appellant has filed an application u/s 75 of the Act before the Employees State Insurance Court seeking a declaration as set out above.

2. The appellant's case is that the reeling and winding sections, which used power, employed less than 20 persons and, therefore, they cannot come under the definition of "factory" as defined in the Act and that the dyeing and weaving sections where more than 20 persons are employed, power has not been used and, therefore, those sections cannot also come under the definition of "factory".

3. It is also its case that the persons employed in the weaving section cannot come under the definition of "employee" under the Act, as they are paid only on piece rate basis, that it has no control over the workers working in the weaving section and that therefore, the persons working in the weaving section cannot be taken to be his employees.

4. The case of the respondent is that the appellant's factory is a factory as defined u/s 2(12) of the Act, that it is not a seasonal factory as claimed by the appellant and that admittedly, power having been used in reeling and winding the yarn which is used in the manufacture of the handloom cloth in the weaving section, the entire premises should be taken to be a factory. The respondent also denied the contention of the appellant that it has no control over the workers working in the weaving section and stated that the manufacture of the handloom goods is done only under the supervision of the appellant and that, therefore, the persons working in the weaving section will squarely fall within the definition of "employees" in Section 2(9) of the Act.

5. The Court below has found on evidence that towels alone are being manufactured in the factory of the appellant, that about 100 persons used to work in the factory, that 50 of them are engaged in the looms and are paid en piece rate basis and the other 50 in reeling and winding the thread, that reeling and winding work alone was being done with the aid of electric power and that the persons, whose services are engaged in weaving section are expected to do the work according to the specifications given by the appellant as to the measurement and colour of the towels. On the facts found by the lower Court the question is whether its conclusion that the persons working in the appellant's factory are persons covered by the provisions of the Act and, therefore, the appellant is bound to make special contribution under the said Act in relation to the persons employed therein is correct.

6. As already stated, admittedly in two sections that is reeling and winding sections, power has been used. Though power has not been used in the other sections, the use of power for reeling and winding the yarn which has to be woven into cloth should be taken to have been used for the manufacturing process. It is not necessary that power has to be used in every process of manufacture to attract the definition of "factory". The appellant's case is that in those sections where power is used only less than 20 persons are employed and that only in the other sections where power is not used more than 20 persons have been employed and, therefore, its factory cannot be taken to come under the definition of "factory". I am not able to see how it is possible to cut up a factory into different sections and apply the provisions of the Act to each section

treating it as a unit. I do not think such a thing is possible or contemplated under the provisions of the Act. A perusal of the definition; of "factory" u/s 2(12) of the Act indicates that the entire premises where the manufacturing process is carried on is to be taken as a factory. Section 2(12) is as follows:

2(12). "Factory" means 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 with the aid of power or is ordinarily so carried on but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed.

The definition specifically takes in the entire premises in any part of which a manufacturing process is being carried on with the aid of power. Once it is admitted that power is used in the reeling and winding sections, then the entire premises have to be taken as a factory irrespective of the fact that power has not been used in relation to other processes carried on inside the factory, such as, weaving and dyeing. The plea of the respondent that it is not possible to break up a factory into various sections for the application of the Act, and that the entire premises where the manufacturing process is carried on has to be as a factory has therefore, to be accepted for the same reason, it is not possible to accept the contention of the appellant that as 20 persons are not employed in the reeling and winding sections where power is used, the application of the Act has to be excluded to those sections and that similarly the weaving and other sections where power is not used till not come under the definition of "factory" as defined in the Act even though more than 20 persons are employed therein. Admittedly more than 20 persons have been working in the premises of the factory either in the reeling and winding sections or in the dyeing and Weaving sections. Therefore, the application of the Act to the appellant's factory cannot be avoided on the ground that each of the sections cannot be brought under the definition of the factory and, therefore, the entire premises cannot be taken to be factory.

7. The further question that has to be considered here is whether the persons working in the weaving section of the appellant's factory can be taken to come under the definition of "employees" as defined in Section 2(9) of the Act. The learned Counsel for the appellant relying on the decisions in *S. Palaniappa Mudaliar Vs. Additional First Class Magistrate and Others*, and in *Shankar Balaji Waje Vs. State of Maharashtra*, , contends that the persons engaged by him in the weaving section for weaving the towels are independent contractors and that they are not his employees. It is said that they are not paid wages per day or per month, but they are paid only on piece rate basis in proportion to the work done by them, that no attendance register is maintained for them and that there is no supervision and control in relation to the work turned out by them in the factory in weaving the towels.

8. In *S. Palaniappa Mudaliar Vs. Additional First Class Magistrate and Others*, ,

Balakrishna Ayyar, J., had dealt with a case of weaving establishment. In that case the workmen were under no obligation to come and work on any particular day. They were free to come at any time and go at any time and work on bedsheets or towels. They were also not prevented from working for a competing manufacturer. On the face of these features the learned Judge held that the owner of the factory had no control over the work done by the workmen and, therefore, they cannot be taken to be employees. In *Shankar Balaji Waje Vs. State of Maharashtra*, a beedi factory engaged certain workers for rolling beedies. The Supreme Court found that the owner of the factory had no control or supervision over the details of the rolling of beedies, that he was concerned only with getting beedies rolled in a particular style with certain contents and that how the beedies were rolled was not his concern. On the facts of this case I don't think the said two decisions relied on by the learned Counsel for the appellant will help him. The Supreme Court in *Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra*, had laid down the principles for distinguishing a contract of service from a contract for service. The principal requirement of a contract of service is the right of the master in some reasonable sense to control the method of doing the work, the nature of the extent of the control necessarily varying from business to business as it is by its very nature incapable of precise definition. In *Kandaswami Weaving Factory and Co., a registered Partnership firm by managing partner J.K.K. Sundararajan Vs. Regional Director, Employees' State Insurance Corporation and Another*, Ramakrishnan J., had dealt with persons engaged in a handloom and powerloom factory. Applying the principle laid down by the Supreme Court in *Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra*, the learned Judge has held that where the master had a voice in the selection of the goods to be manufactured and also in the quality of the same and the work is to be done in his own premises, the workmen have to be treated as persons employed in the factory even though they may be paid on a piece rate basis. In *B.M. Lakshmanamurthy Vs. The Employees' State Insurance Corporation, Bangalore*, the Supreme Court has expressed the view that the Act being a beneficial piece of social security legislation in the interest of labour in factories, the provisions of that Act will have to be construed with that end in view to promote the scheme and avoid the mischief, that, the work undertaken even by independent contractors as preliminary or incidental to the work in the main factory turning out the finished product having an intimate correlation and being a piece of integrated whole, such work of contractors done through their labour should ordinarily be treated as part of the work of the principal factory and that therefore, the owner of the factory has to pay contribution in respect of the workers employed by the independent contractors.

9. In the present case it is clearly seen that the appellant had a voice in the selection of the goods to be manufactured and also in the quality of the goods. The Weaving work is normally done in the premises by workers even though they are being paid on piece rate basis. In this case it has been found that the workers have to weave the towels in accordance with the specification given by

the management with regard to the measurement and colour and that they are also expected to do the work without any damage. It is, therefore, clear that the appellant had control and supervision over the manner of work of the workers engaged in the weaving section, though they used to undertake the work of weaving according to their own convenience without any restrictions as to the hours of work. On the facts of this case the decision of Balakrishna Ayyar. J., in *S. Palaniappa Mudaliar Vs. Additional First Class Magistrate and Others*, , and the decision of the Supreme Court in *Shankar Balaji Waje Vs. State of Maharashtra*, , cannot apply, and the decision of the lower Court has, therefore, to be upheld.

10. The learned Counsel for the appellant points out that some of the persons employed in the factory are casual workers and they cannot be included for the purpose of coverage under the Act. The learned Counsel refers to a decision in *Dhala Tanning Company, Gemini Studios, Madras, Vijaya Productions (P.) Limited, Lessees of Vijaya Vauhini Studio Vs. Employees State Insurance Corporation*, , wherein a Division Bench of this Court has observed

therefore, even if on one single day 20 or more persons had been employed for wages, it would be a factory, provided in any part of the premises a manufacturing process is carried on with the aid of power, etc. That would prima facie show that even a casual labourer has to be counted in order to determine whether a particular premises is a factory as defined under the Act or not. But whether a casual worker is entitled to insurance cover under the Act may be a different question.

In that view, the learned Judges had left that question open, though they have referred to the decision of Ramamurti, J., in *Gnanambikai Mills Ltd. Vs. Employees' State Insurance Corporation*, , holding that the provisions of the Act would not apply to casual workers. Though the appellant has raised a contention before the lower Court that some of the persons employed by him are casual workers and, therefore, they cannot be taken into account for the purpose of determining whether his premises is a factory or not, it has not specifically raised the question that even if the casual workers can be taken into account for the purpose of finding out whether 20 or more persons are working in the factory, such casual workers are not entitled to the coverage under the Act. It is not, therefore, open to the appellant to raise the contention in this appeal. It is, however, open to the appellant to raise specifically the question that a particular person employed as casual worker is not an employee in respect of which contribution is payable by him, by filing a separate application u/s 75.

11. With these observations, the appeal is dismissed. There will, however, be no order as to costs.