
(1975) 11 MAD CK 0018
In the Madras High Court

N.K.S. Rajarathinam Chettiar

APPELLANT

Vs

The Regional Director, Employees State Insurance
Corporation

RESPONDENT

Date of Decision : 03-11-1975

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(12), 2(22)

Citation : (1976) 89 LW 173 : (1976) 1 MLJ 309

Hon'ble Judges : N.S. Ramaswami, J

Bench : Single Bench

Judgement

N.S. Ramaswami, J.—These two appeals are against the order of the Employees Insurance Court (District Judge, Salem) dismissing two

applications filed by the proprietor of a flour mill in which he prayed that the claim made by the Regional Director of Employees State Insurance

Corporation should be cancelled. There were two claims by the Corporation, one for employees' contribution and the other for employers'

contribution. The proprietor of the flour mill contended that his mill is not a factory as defined under the Employees' State Insurance Act, 1948,

hereinafter referred to as the "Act" and that therefore the claims made by the Regional Director of the Employees State Insurance Corporation are

not valid. The Employees Insurance Court did not accept the contention of the petitioner before it, and hence, the two appeals by him.

2. The admitted fact is that during the relevant period, there were 14 workmen and 5 clerks working in the flour mill. The Inspector of the

Corporation had visited the premises on 4th October, 1967, 7th February, 1968 and 23rd March, 1968 and he has submitted his survey report as

per Exhibit B-1 dated 5th April, 1968. On the three days, he so visited the

premises, admittedly 14 workmen and 5 clerks were working there. It is also not disputed that they are all persons who were working for wages. In addition to them, the petitioner (appellant before me) as the proprietor of the concern was also found in the premises. It may be taken for the present purpose that he was found working in the mill on those days. If the propriety is also to be counted as one of the persons contemplated u/s 2(12) of the Act, then undoubtedly 20 persons were working on the relevant dates. It is not disputed that under such circumstances the flour mill would be a factory as defined u/s 2(12) of the Act. However, the contention on behalf of the petitioner appellant is that he, as the proprietor, is not a person as contemplated u/s 2(12) of the Act as it is nobody's case that he is receiving wages.

3. In the Court below the petitioner had put forward a case that after 2nd June, 1967 he ceased to go to the mill premises because of illness, that only his clerks had been managing the affairs of the mill and that therefore, in any event, he cannot be included as one of the persons working in the premises during the relevant period. It was claimed that on 2nd June, 1967, the petitioner had written to the Inspector of Factories, Salem within whose jurisdiction the flour mill is situated, that he ceased to be the manager of the mill and that only his clerks were actually managing the mill. The petitioner also produced the personnel register in order to show that from 3rd June, 1967 onwards he had not been visiting the mill. This fact of the petitioner's case has been rejected by the Court below and I should say quite rightly. Even, subsequent to the date of the alleged communication in which the petitioner had stated that he ceased to manage the mill the had submitted Exhibit B-2 dated 16th October, 1967 in Form No. 2 to the Inspector of Factories, wherein he has described himself as the occupier of the premises as well as the manager thereof. Under such circumstances, it is not contended before me on behalf of the petition or appellant that as proprietor he was not managing the mill during the relevant period. The evidence of R.W. 1, the then Inspector of the Corporation who had visited the mill on the three dates mentioned above, that on those dates he found the petitioner, who is the proprietor, was working in the mill managing its affairs, is not now disputed. Therefore, I have to proceed on the footing that on the relevant dates, apart from 14 workmen and 5

clerks, the proprietor was also working in the mill.

4. In the Court below the petitioner had contended that even the clerks are not to be counted for finding out whether the premises is a factory or

not. That contention has been rejected and such a contention is not raised before me. Therefore, the only question is whether the proprietor is also

a person coming under the definition contained in Section 2(12) of the Act.

5. The definition of the word "factory" as amended by Act XLIV of 1966 says that a "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, etc. Prior to the

abovesaid amendment, in the place of the words "are employed or were employed for wages", the words "are working or were working" were

found. As the definition originally stood prior to the amendment, if in any premises where twenty or more persons are working or were working,

whether it is for wages or not, on any day of the preceding twelve months, it would be a factory provided that in any part of the premises a

manufacturing process is being carried on with the aid of power etc. But under the definition as it stands after the amendment, the mere fact that

twenty or more persons are working or were working on any day of the preceding twelve months, would not be sufficient for making it a factory.

The persons working should be so working for wages, the word "wages" being defined u/s 2(22) of the Act. Unless a person receives wages for

his work, he is not one to be taken into consideration in order to determine whether the premises is a factory or not. In the present case, as the

employer is not shown to be receiving any wages on any day during the relevant period, he is certainly not to be counted in order to determine

whether the premises is a factory or not. The other requirements of the definition of the word "factory" might be satisfied in this case. But, however,

if the employer is left out from counting, then, only) nineteen persons were found working on the relevant dates, and therefore the premises would

not come under the definition of the word "factory".

6. The Learned Counsel appearing for the respondent referred to certain decisions rendered regarding the definition of the word "factory"; but they

have no bearing at all to the present case because those decisions had been rendered when the definition of the word "factory" had not been

amended by Act XLIV of 1966.

7. Then the Learned Counsel for the respondent contends that the legislation being a social welfare legislation, wide interpretation should be given

in respect of the words ""are employed or were employed for wages"" now occurring in the definition of the word ""factory"" in Section 2(12) of the

Act, and it must be held that the petitioner-appellant should also be counted for making up the total of twenty persons in order to bring the

premises under the definition. He also referred to the objects and reasons for bringing in the amending Act XLIV of 1966. But that does not in any

way help him. As a matter of fact, as far as the amendment relating to the word ""factory"" u/s 2(12) of the Act is concerned, it is clear that the

amendment was only to clarify certain terms and expressions. Whatever that be, when the definition as it now stands says ""twenty or more persons

are employed or were employed for wages"", one cannot possibly take in a person even though he be working in the premises if he has not

received any wages therefore I have already pointed out that it is nobody's case that the petitioner-appellant who is the proprietor of the flour mill

is receiving wages.

8. The Learned Counsel ultimately contended that the clause ""are employed or were employed for wages"" is a disjunctive clause and that therefore

the words ""for wages"" should qualify only the persons Who ""were employed"" and not the persons who ""are employed"". I am afraid that such an

interpretation is wholly uncalled for. A plain meaning of the clause is that any person who is employed in the premises either on the day when the

inspection is made or was employed earlier within the preceding twelve months, should be so employed for wages, in order to count for inclusion

in the definition. It is significant to note that there is not even a ""comma"" after the words ""are employed"" occurring in the definition as it now stands.

I am unable to see how the words ""for wages"" can be said to qualify only the words ""were employed"" and not the words ""are employed"".

9. Of course, the word ""employed"" does not by itself mean that the person would be engaged in any particular work for remuneration or wages.

The word ""employed"" may mean merely working or engaged in work. But the definition as it now stands does not stop with the use of the word

employed"" either in the present or in the past. The person must be employed

for wages, in order to bring him within the definition of the word

factory"". In *Sehgal Industrial Works v. E.S.I. Corporation*, Delhi (1974) 46 F.J.R. 417, the Delhi High Court has taken a similar view as mine

with regard to the amended definition of the word ""factory"".

10. The appeals are therefore allowed. But in the circumstances, there would be no order as to costs.