

(1977) 02 MAD CK 0006
In the Madras High Court

Non-Ferrous Rolling Mills (P) Ltd.

APPELLANT

Vs

The Regional Director, Employees State Insurance Corporation

RESPONDENT

Date of Decision : 15-02-1977

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(17)

Citation : (1977) ILR (Mad) 324 : (1977) 90 LW 422 : (1977) 2 MLJ 169

Hon'ble Judges : V. Balasubrahmanyam, J

Bench : Division Bench

Judgement

V. Balasubrahmanyam, J.—This civil miscellaneous appeal raises a point of some nicety concerning the legal position of a Manager in a

factory under the Employees State Insurance Act, 1948. The Regional Director of the Employees' State Insurance Corporation at Madras, who is

the respondent in this appeal, took the view that the Manager is an employee within the meaning of that Act, in respect of whom the employees'

contribution and the employer's special contribution have to be paid to the Corporation. The appellant contested that position and moved the

Employees State Insurance Court, Madras, for a ruling on the subject. That Court, however, agreed with the view of the Employees' State

Insurance Corporation. The correctness of that determination is questioned in this appeal.

2. The company is a private company incorporated under the Companies Act, 1956. It runs a factory at Valasaravakam village. The factory is

engaged in the manufacture of aluminium rods and conductors. The company employees' a number of workers in the factory. They are insured

under the Employees' State Insurance Act. The company has been paying to the

Employees" State Insurance Corporation both the employers"

special contribution and the employees" contribution, recovering the latter from the factory hands by way of deduction at source from their wages.

From 1961 onwards one Vimal Chand Galada is a director of the company in charge of the factory. He is also named as Manager of the Factory

for the purposes of the Factories Act, 1948.

3. While so, the Regional Director of the Employees" State Insurance Corporation issued to the appellant-company a communication dated 16th

June, 1975 to the effect, that the company had not taken into account the wages paid to Vimal Chand Galada for the purpose of calculation of the

employees" contribution and the employer's special contribution in respect of the quarters ended 30th September, 1970 to 30th June, 1973. This

letter was followed up by two notices of demand issued by the same authority on 16th June, 1975 and 17th June, 1975. Under the former notice,

a sum of Rs. 3,758.23 was demanded as being the arrears of the employer's special contribution, together with interest, for the quarters ended

30th September, 1970 to 30th June, 1973 in respect of the wages paid by the company to Vimal Chand Galada. By the latter notice a sum of Rs.

2,188.87 was demanded from the appellant-company as representing the employees" contribution together with interest for the quarters beginning

from 1st July, 1970 to 30th June, 1973 in respect of Vimal Chand Galada's wages.

4. The company thereupon filed a petition before the Employees" State Insurance Court questioning the validity of the above demands. It was

pointed out that Vimal Chand Galada was a Director of the company and Manager of the factory. As such, far from his being an employee he must

be held to be "principal employer" for purposes of the Employees" State Insurance Act. On this basis it was contended that the notices of demand

issued by the respondent were illegal.

5. The Regional Director of the Employees" State Insurance Corporation, on the other band, maintained that since Vimal Chand Galada was in

actual receipt of remuneration for managing the factory, he was an employee in receipt of wages within the contemplation of the suit.

6. The Employees" State Insurance Court, Madras, found as a fact that Vimal Chand Galada was paid remuneration for administering the factory

as manager. The Court took the view that as factory manager he was an "employee". The Court relied on the inclusive definition of Section 2(9) of the Act to hold that any person employed for wages on any work connected with the administration of the factory was also an employee for the purposes of the Act. The Court expressed the further view that the remuneration paid to Vimal Chand Galada fell within the definition of the word "wages" under the Act.

7. In the present appeal, Mr. S. Rajagopalan, learned Counsel appearing for the company, presented his client's case as a matter of first principle and also as a matter of construction of the relevant statutory provisions. He said that Vimal Chand Galada occupied the position of a principal employer in the factory, and as such principal employer he cannot at the same time also be an employee for the purposes of this Act.

8. Mr. Ali Mohamed, learned Counsel for the respondent, contended on the other hand, that the principal employer in this case was the company which owned the factory and exercised ultimate control over its affairs. Vimal Chand Galada, although a director of the company, was being paid remuneration for working as manager of the factory, and this circumstance, according to learned Counsel, made him an employee for purposes of the Employees' State Insurance Act in respect of whom contributions had to be paid to the Corporation. Two questions arise for my consideration on the contentions urged before me : (i) Is Vimal Chand Galada the principal employer of this factory? (ii) If so, would that rule out his being an employee as well? The first is a mixed question of fact and law. The second raises a matter of principle. Both require an examination of the relevant provisions of the Employees' State Insurance Act.

9. The record in this case contains a few documents marked by the appellant company. A clerk of the company also gave oral evidence as P.W.1. The evidence shows that Vimal Chand Galada was appointed as a director of the company and also as manager of the factory. As factory manager it was his responsibility to recruit workers, levy fines and penalties from them and report their accidents to the appropriate authorities. He was named as the manager of the factory for the purposes of the Factories Act, 1948. The remuneration paid to him by the company was Rs. 500 per mensem. The amount was debited in the accounts of the company, which

were being maintained by the office accountant and also duly audited. Vimal Chand Galada's appointment was under a resolution adopted by the General Body of the company on 24th June, 1961. A copy of the said resolution has been marked in this Court as Exhibit B-1 by consent of both parties. The resolution appointed Vimal Chand Galada as a Director of the company and also named him as a "factory in charge". The latter designation was apparently a colloquial synonym for manager of the factory. The resolution also fixed his remuneration at Rs. 500 per month. Under the terms of the resolution, this payment was in addition to the fees and allowances payable to him as Director of the company. It may be observed that under the Articles of Association of the company, Exhibit P-1 every Director of the company was entitled to a sitting fee of Rs. 100 for every meeting attended by him. From those materials, it is reasonable to infer that Vimal Chand Galada was engaged by the company to render services as manager of the factory in consideration of payment to him of a monthly salary.

10. Learned Counsel for the Employees' State Insurance Corporation stressed these aspects in the evidence, and contended that Vimal Chand Galada cannot be held to be the "principal employer" of this factory when he was only a paid manager. I am, however, unable to agree with this contention. u/s 2(17) of the Employees' State Insurance Act, the expression "principal employer" with reference to a factory ordinarily denotes either the owner of the factory or its occupier. But Section 2(17) also includes within the ambit of the definition, a person who is "named as manager of the factory under the Factories Act, 1948". In the face of this last provision I must hold that Vimal Chand Galada fulfils the character of principal employer within the meaning of the Employees' State Insurance Act. It is in evidence that Vimal Chand Galada actually functioned as manager of this factory. In that capacity he had filed statutory copy of one such return which is marked as Exhibit P-2. It contains the signature of Vimal Chand Galada as manager.

11. Stress was laid by Mr. Ali Mohamed on the circumstances that as factory manager Vimal Chand Galada was paid a monthly remuneration, and hence he could not be regarded as a principal employer for purposes of the Employees' State Insurance Act. This argument, in my view, is

based on a misconception. The Act regards as a principal officer any one who functions as a manager of the factory for purposes of the Factories

Act. The statutory definition does not exclude stipendiary managers from the definition. The receipt of a monthly salary for managing the factory by

Vimal Chand Galada cannot, therefore, derogate from his position as "principal officer" of the factory for purposes of the Employees' State

Insurance Act.

12. At this stage, I think I may dispose of a wider position for which Mr. Rajagopalan had argued. He said that Vimal Chand Galada answered the

statutory definition of principal employer u/s 2(17)(i) of the Employees' State Insurance Act not only as a manager but also as an occupier of the

factory. An "occupier" has the same meaning both under the Employees' State Insurance Act and under the Factories Act--vide Section 2(15) of

the former Act and Section 2(n) of the latter Act. Under this common definition, an occupier is "a person who has the ultimate control over the

affairs of the factory". Mr. Rajagopalan pointed out that Vimal Chand Galada was appointed specifically as a director of the company in sole

charge of the factory. This, according to learned Counsel gave him ultimate control over all the affairs of the factory, making him an occupier in his

own right. Learned Counsel pointed out that Vimal Chand Galada was described as occupier in the statutory return, Exhibit P-2 made under the

Factories Act.

13. I am not, however, persuaded by these considerations to hold that Vimal Chand Galada is an occupier of the factory within the meaning of the

statute. His status as a company director cannot, by itself, clothe him with the authority of a statutory occupier. While the resolution of the general

body, Exhibit R.1 appointed him as a director, it by no means named him as the managing director. The company's Articles provide for a

managing director as distinguished from other directors. Nor can a director be regarded as a managing agent of the company. It is true that Vimal

Chand Galada was named as the "factory-in-charge", but as the evidence of P.W. 1 shows this designation meant no more than that he was to

function as factory manager. It is not possible to equate a manager, and a paid one at that, to a person in authority possessing the ultimate control

over the affairs of the factory. The Articles of Association of this company, Exhibit

P-1 shows that the ultimate direction and control of the affairs resided with the board of directors, if not with the general body of shareholders. It is difficult to believe that in this corporate set up Vimal Chand Galada engaged as a manager of the factory and even as a director, was entitled to exercise unfettered ultimate control over all the affairs of the factory. Much less is there any acceptable evidence to show that he actually exercised any such absolute authority. P.W. 1 did assert in his evidence that Vimal Chand Galada was in "overall administration of the entire company and the factory." But P.W. 1 is a mere clerk of the factory and there are portions of his evidence relating to the administrative set up both of the factory and of the company which shows that he was not quite well informed on the subject. In this state of the evidence, I am not in a position to agree with Mr. Rajagopalan and hold that the ultimate control over the entire affairs of the factory was in the hands of Vimal Chand Galada. I must, therefore, reject the contention that this person fulfilled the role of occupier of the factory. However as I had earlier held, even as a factory manager he fulfils the character of a "principal employer" within the meaning of Section 2(17) of the Employees' State Insurance Act. On this basis, Mr. Rajagopalan's further submissions are certainly in point and call for careful consideration for they raise matters of principle.

14. Mr. Rajagopalan contended that if once it is accepted that Vimal Chand Galada was a principal employer for purposes of the Employees' State Insurance Act, he cannot at the same time also be regarded as an employee of the factory. Both capacities, in his submission, cannot inhere in one and the same individual because they are mutually exclusive. Learned Counsel illustrated his point by reference to some of the provisions enacted in the Employees' State Insurance Act itself. Section 40, which he referred to imposed a duty on the principal employer to pay to the Employees State Insurance Corporation the contributions payable under the Act. Section 44 imposed on the principal employer various responsibilities, such, as, for instance, maintenance of registers, submission of return, and the like. Section 68 was another provision to which learned Counsel referred. This section laid down what the penal consequence to a principal employer would be if he should fail or neglect to pay

any contribution which under the Act he was liable to pay to the Corporation in respect of any employee. On the basis of these and other

provisions, learned Counsel urged that it would be odd to refer to Vimal Chand Galada as an employee of the factory for purposes of this Act,

when all the while he had to discharge, under the same Act, vital functions as a principal employer.

15. Mr. Ali Mohamed, however, submitted that the position assumed by the Employees State Insurance Corporation in this case was not such an

incomprehensible paradox as was made out to be. He said that it was not incongruous under our present legal system for two different jurial

capacities to inhere in one and the same person. According to learned Counsel, Vimal Chand Galada can at once be a principal employer of the

factory and also be an employee thereof. In the realm of abstract logic, be granted, it might possibly be difficult to conceive of a master being his

own servant, but in law the two capacities of master and servant can recognisably co-exist in the same person under given legal situations. Learned

Counsel said that this is not the first time that a Court of law was up against a problem of this kind. He pointed out that similar questions have

arisen before. He added that the Courts have always approached Such questions, not as problem in the abstract, but as matters demanding the

interpretation of statutory provisions and their application to concrete facts. Mr. Ali Mohamad cited before me two decisions, in particular. One

was of the Privy Council in *Lee v. Lee's Air Farming Ltd.* (1961) A.C. 12. The other was a decision of the Court of Appeal in England reported

in *Boulting v. Cinematograph Association etc.* (1963) 1 All. E.R. 716.

16. The case before the Privy Council concerned the position of one Lee who was the governing director of a private limited company formed for

the purpose of carrying on the business of serial top-dressing. This person was a shareholder in that company holding all the shares, save one.

Besides, he was also a qualified pilot, manning the company's air-craft. While piloting one of the company's aeroplanes, Lee was killed. His

widow claimed compensation for his death under the New Zealand Workers Compensation Act, 1922. She made a claim on the company. Under

the New Zealand statute, an employer was under a liability to pay compensation on the death or injury of a "worker". A worker was defined in the

statute as "any person who has entered into or worked under a contract of service with an employer whether remunerated by wages, salary or

otherwise." The company opposed the claim for compensation on the ground that Lee was not a "worker" within the statutory definition. The New

Zealand Court of Appeal upheld the company's objection. On further appeal to the Privy Council, that decision was reversed. The Judicial

Committee began by observing that the company was a different entity from Lee. It expressed the view that although Lee was the governing

director of the company, he was none the less a worker under the company while flying its aircraft for wages. It was in evidence in that case that he

was paid wages and they were debited in the company's accounts. On these facts, the Privy Council focussed attention on the position in law in

the following terms:

Ex facie there was a contract of service. Their Lordships conclude, therefore, that the real issue in the case is whether the position of the deceased

as sole governing director made it possible for him to be the servant of the respondent company in the capacity of chief pilot of that company. In

their Lordships' view, for the reasons which have been indicated, there was no such impossibility. The respondent company and the deceased

were separate legal entities. Their Lordships consider, therefore, that the deceased was a worker.

The other case decided by the Court of Appeal in *Boulting v. Cinematograph Association* (1963) 1 All. E.R. 716, when examined, goes even a

step further. In this case the Court of Appeal had to decide the question whether two brothers who bore the name of Boulting and who were the

managing directors of a film company called the Charter Film Production Company Ltd., (called "charter" for short) could be regarded as

employees of the company, because they also did work for the same company on the technical side of film production of film directors, film-

producers, film editors and film script-writers. The question arose out of a controversy with a trade union of workers of the film industry in Britain.

Eligibility for membership of this trade union was governed by Rule 7 of the Articles of Association. This rule provided that the association shall

consist of all employees engaged on the technical side of film production, including film directors, script writers, etc. The Court of Appeal, by a

majority held that the two managing directors were employees within the meaning of the rule above quoted and none the less so for their being

managing directors of the employer-company. Lord Denning, M.R., wrote a dissenting judgment to hold otherwise. He passed the hypothetical

question whether an industrial dispute between the company and the managing directors as to the amount of remuneration payable to them could

be regarded as a trade dispute within the meaning of the United Kingdom Trade Disputes Act, 1906 and whether in any such dispute the trade

union could intervene on behalf of the managing directors. The learned Master of the Rolls answered the query by observing ""I cannot believe that

a dispute between the company and its managing directors as to the amount of their remuneration is a trade dispute."" The majority of the Court of

Appeal, however, did not agree with this line of reasoning. Upjohn, L.J. who was a member of the majority, observed thus:

I cannot myself escape from the conclusion that the position of the Boulting brothers, although anomalous perhaps is strictly within the wording of

Rule 7, for they are in fact employees of Charter engaged on the technical side of film production. True it is that, as directors, they are not

employees but it cannot I think, be doubted that a managing director may for many purposes properly be regarded as an employee.

17. To the same effect were the observations of Diplock, L.J. Apparently answering the hypothetical question passed by the learned Master of the

Rolls, as to what the position of the managing directors would be in a trade dispute between the company and its workman, Diplock, L.J.,

observed as under:

But it is said that Rule 3(c) makes it one of the objects of the union to negotiate on behalf of its members differences and disputes between those

members and their "employers" and where Charter are the employers, the persons who would negotiate on behalf of Charter would be the

Boulting brothers. No doubt they would, but the fact that they negotiate with the union on behalf of Charter, as a personnel officer who was not a

director might do if Charter employed one, does not make them employers or prevent their being employees any more than it would in the case of

the personnel officer.

Incidentally, this last of observation of Diplock, L.J., which, with respect, I accept

as laying down the correct position, would dispose of an argument addressed by Mr. Rajagopalan in this case on the basis of Exhibit P-3. The document concerned is a certified copy of a memorandum of settlement arrived at between the factory management, on the one hand, and the workers of this factory, on the other. It related to certain outstanding issues between the two parties relating to wages etc., for a certain period. The point of Mr. Rajagopalan's submission is that this settlement before the conciliation officer was signed by Vimal Chand Galada as representing the management while a trade union representative signed for the workers. According to learned Counsel, Exhibit P-3 illustrated the position that the only manner in which Vimal Chand Galada could act was to act as an accredited representative of the management, and this excluded the idea of his ever being capable of functioning as an employee in the same factory. I do not, however, see how the act of signing a conciliation proceeding on behalf of the management would rule out his being an employee. As pointed out by Diplock, L.J., a personnel officer may also legitimately represent the management in industrial disputes, but the fact that he does so has never been held to rule out his character as an employer of the management. The position was picturesquely described in argument before the Court of Appeal in the case above cited, when it was said that a man may have two hats, one of which he may wear when functioning as an employer and the other when functioning as an employee. It may be that in certain transactions he may have to bear both the capacities and, in such cases, he might be forced not only to wear two hats on his head but also to do a bit of mono-acting, now in this character and the next moment in the other. But, the Lee case (1961) A.C. 12 and the Boulting Brothers case (1963) 1 All E.R. 716 show very clearly that there is nothing but of the way in this kind of situation, and in the eye of the law, at any rate playing a dual role is not a feat impossible of performance.

18. In our country, the Courts have recognized the co-existence of two different legal status in the same individual as in the case of kartha of a joint Hindu family representing it, on the one hand, and employing himself as its salaried servant on the other, or that of a managing director of a company contracting to be a paid employee of the company; vide Jugal Kishore

Baldeo Sahai Vs. Commissioner of Income Tax, U.P., Lucknow,
; Commissioner of Income Tax, Madras Vs. S.A.P. Annamalai, Madras, , Ram
Pershad Vs. The Commissioner of Income Tax, New Delhi, .

Questions have often arisen in the context of our taxation laws as to the precise nature of the payments under such contracts of employment. The

Courts had to decide whether such payments, looked at from one point of view, were taxable as salary or wages, and whether, from another point

of view, they were deductible as proper business outgoings. The discussion of these questions was often riddled, as in the present case, with quite

a few metaphysical conundrums, but the ultimate conclusion was easily reached by the Courts by planting their feet firmly on facts and by getting

into grips with the relevant statutory provisions.

19. In Ram Pershad Vs. The Commissioner of Income Tax, New Delhi, , which was an Income Tax case, the factual details of which are not of

moment for the present discussion the Supreme Court made the following relevant observations:

A managing director may have a dual capacity. He may both be a director as well as an employee. In the capacity of a managing director he

maybe regarded as having not only the capacity or persona of a director but also has the persona of an employee, or an agent depending upon the

nature of his work and the terms of his employment. Where he is so employed the relationship between him as the managing director and the

company, may be similar to a person who is employed as a servant or an agent, for the term "employed" is facile enough to cover any of these

relationships. The nature of his deployment may be determined by the articles of association of a company and or the agreement, if any under

which a contractual relationship between the director and the company has been brought about whereunder the director is constituted an employee

of the company. If such be the case, his remuneration will be assessable as salary u/s 7. In other words, whether or not a managing director is a

servant of the company, apart from his being a director, can only be determined by the articles of association and the terms of his employment.

Mr. Ali Mohamed relied on the terms of the resolution found in Exhibit R-1 to urge that Vimal Chand Galada although appointed as a director,

was nonetheless an employee in so far as he was appointed to be in charge of

the factory on a remuneration of Rs. 500 per month. Learned

Counsel added that the mere-circumstance that the same individual had also to discharge the responsibility of a principal employer under the

Employees' State Insurance Act, cannot derogate from the fact that he was an employee under quite a different provision of the same Act.

20. I must accept the position taken by the Corporation as correct, both on the authorities above cited and on the terms of the definition of

employee"" occurring in Section 2(9) of the Employees' State Insurance Act. The fact that he is a principal employer within the meaning of Section

2(17) for certain purposes under this Act does not altogether exclude his being also an employee under the Act. In my opinion, the definition of an

employee"" u/s 2(9) is sufficiently clear and is also act to apply to this person. The section, in terms, refers to ""any person employed for wages on

any work connected with the administration of the factory """. It cannot be denied that the manager of the factory, Vimal Chand Galada is employed

in a work connected with the administration of this factory. Nor could it be controverted that he was paid remuneration in consideration of such

work. This remuneration, in my view, also fits in with the definition of "wages" u/s 2(22) of the Act which refers to ""all remuneration payable to an

employee if the terms of the contract of employment express or implied were fulfilled."" The resolution of the general body, Exhibit R. 1 serves as

the contract of employment in this case for it is under this resolution that Vimal Chand Galada was entitled to receive Rs. 500 per mensem for his

work as factory-in-charge. It is in evidence that the monthly remuneration, as fixed in the resolution, was actually paid to him and duly recorded in

the company's books. In the circumstances it would be unreal to argue that Vimal Chand Galada is not an employee of the factory employed on

wages.

21. Mr. Rajagopalan argued that the definition of ""wages"" in Section 2(22) must not be given a wide meaning merely by reference to the first part

of the definition containing the words ""all remuneration payable"". According to him, these words are limited by what is found in the inclusive part of

the definition in which are included ""any payment to an employee in respect of any period of authorised leave, lockout, strike which is not illegal.

According to Mr. Rajagopalan, a payment to an employee in respect of lockout or

strike has reference only to a workman strictly so called, and cannot apply to the manager of a factory or a director of the company for the simple reason that it is impossible to conceive of a manager going on strike with the workers or being under a lockout announced in his own factory. Learned Counsel referred, in this connection to the entire gamut of the provisions of Chapter V-A in the Industrial Disputes Act relating to lay off and retrenchment and urged that payments under the provisions of this Chapter to workers in respect of any period of lay off or lockout can only be: understood in the sense of payments made to factory hands and cannot refer to remuneration received by a director in the position of a manager or occupier of the factory.

22. I do not agree with the method of construction urged by Mr. Rajagopalan. In my view, the language of the definition of ""wages"" in Section

2(22) of the Act does not require us to see that all parts of that definition, including the part relied on by learned Counsel applied in every case of

payment of wages. I cannot accept the thesis that in order that a particular payment of wages may answer the statutory definition their recipient

must be an employee of such a kind as would be capable of receiving not only wages strictly so-called but also of payments under a strike,

lockout, layoff, etc. If the wage-earner is a factory hand, for instance, it is plain to see that the inclusive part of the definition would fit his case to

perfection. But this result flows because he is a workman and recent changes in law ensure that under certain condition he is to be granted some

payment even where he does not do any work. However, the positive conception of wages as payment for doing some work still rules the day,

and I believe, it has not been given up as yet either by our Legislatures or even by modern pundits of labour jurisprudence. At all events, the

definition in this Act seems to be clearly oriented from the point of view of wages being a payment under a contract of employment between an

employer and an employee. To apply this part of the definition one has to see whether there is a contract of employment and whether it fixes a

remuneration. If these are present, then any amount actually paid under the contract would be wages. So too, under the definition would be any

amount not actually paid, but payable on the fulfilment of the terms of the employment. The inclusive definition which follows the main part of

Section 2(22) does not make mention of payment, or payability under a contract. It must, therefore, refer to payments otherwise than under the contract of employment. Draftsman obviously had in mind payments made pursuant to the provisions of a statute, payments under an award or decree, etc. These payments also, under definition, would be wages. But, there are certain payments which are specifically excluded from the purview of the definition and they are listed under the concluding part of Section 2(22). In the face of this statutory scheme, it would be a mistake to suppose that all parts of the definition of wages must be capable of being fitted to an individual so as to bring him within the definition of an employee. There is yet another consideration. It seems to me that the essential function of the definition of wages under the Act is to be found in the context of fixing the quantum of wages, and in the context of determining the quantum of contributions payable under the Act. This is clear from the detailed rules of calculation found in the First Schedule to the Act read with Section 39(2). The calculations, it will be seen, are related to the quantum of wages of each employee. This, then, being the function of ascertainment of wages, it would be a topsyturvy way of reading the definition to say that unless a person were given payment for the time he is off work, what he receives while on work cannot be regarded as wages. For these reasons, I hold that the monthly remuneration voted by the general body of this company to Vimal Chand Galada must be regarded as wages, notwithstanding the circumstances that he may not be expected to range himself on the side of the factory workers during strikes and lockouts and may not be entitled to payment for non-employment during such periods.

23. Mr. Ali Mohamed cited a direct authority on the subject in his favour. It is an unreported judgment of a Division Bench of the Kerala High Court consisting of Subramanian Poti and Bhaskaran, JJ., in *Insurance Inspector v. Victoria Tile Workers A.S.* No. 320 of 1969 dated 8th June, 1973 (unreported). In the case before the Kerala High Court, as in the instant case, the Employees' State Insurance Corporation sought to treat the manager of a factory as an employee, for the purposes of the Employees' State Insurance Act. As in the present case, so too in that case objection was raised to the effect that the manager of the factory being a "principal employer" cannot be held to be an employee for purposes of

the Act. The learned Judge, however, overruled the objection and held that the manager can at once be both the principal employer and an

employee as regards the same factory. Subramanian Poti, J. speaking on the Bench, after referring to the terms of the definitions of "employee" and

principal employer" and other related provisions of the Act and after referring to the avowed objects of the Act, observed as under:

It is clear from the scheme of the Act that there is no apparent conflict of interest between the principal employer and the employee and there is no

reason why if a person satisfies the definition of "employee" and belongs to that class, he cannot in certain cases be also a "principal employer". It

is not as if his obligations as the principal employer are irreconcilable with his obligations or rights as an employee. In his character as the principal

employer he is bound to pay contribution even in regard to himself and that could be recovered from his salary which he is bound to do as the

manager and thereby the principal employer.

Proceeding, the learned Judge further observed:

We have no doubt that all wage-earners within the limits prescribed in the statute itself are intended to be covered by the enactment whether they

be managers, supervisors, clerks, workmen or any class of employees, provided they fall within the definition.... If a person happens to be a

manager who is not named under the Factories Act as such, it is not disputed that he will come within the coverage of the Act. But in case he is

named as the manager under the Factories Act the statute says that he becomes a principal employer. Would that circumstance constrain us to

hold that thereby he will forfeit the benefits which he is otherwise entitled to as an employee? We see no reason to adopt such a construction.

On the basis of the above reasonings, the learned Judges held that the manager of the factory, notwithstanding that he is so named under the

Factories Act, is an employee under the Employees' State Insurance Act. With respect, I agree with the conclusion and the reasonings of the

learned Judge, which I have quoted at same length. Mr. Rajagopalan sought to make out some kind of factual distinction between the Kerala case

and the present one, on the score that the manager of the tile factory in that case was not a director in charge. I do not think that can make any

difference. For I have already expressed the view that Vimal Chand Galada is the

principal employer under the Act and can properly be so

regarded only by virtue of being a manager named under the Factories Act and not by virtue of his position as an ordinary director of the company.

This being so, I have no doubt whatever that the decision of the Kerala High Court is exactly in point and cannot be distinguished or explained

away as turning on different facts material for the decision.

24. For the reasons stated above, I hold that the demands made by the Regional Director of Employees' State Insurance Corporation on the

appellant company are valid, founded, as they are, on a correct determination of the status of Vimal Chand Galada as an employee of the

company's factory. The Employees' State Insurance Court's decision under appeal will, therefore, have to be affirmed as correct in every respect.

25. In the result, the civil miscellaneous appeal is dismissed, but in the circumstances without costs.