

---

**(1965) 10 MAD CK 0036**  
**In the Madras High Court**

Prabhulal Bros.

APPELLANT

Vs

Employees' State Insurance Corporation

RESPONDENT

---

**Date of Decision :** 28-10-1965

**Acts Referred:**

Employees State Insurance Act, 1948 — Section 2

**Citation :** (1966) 1 LLJ 687

**Hon'ble Judges :** Venkatadri, J

**Bench :** Single Bench

---

## Judgement

Venkatadri, J.—These appeals arise out of proceedings under the Employees' State Insurance Act. The Insurance Inspector called upon the appellant to contribute Rs. 377 and 213.70 towards the employees' contribution. The appellant opposed the applications on the ground that he was not running any factory and even assuming that it was a factory there were only nineteen persons working. Therefore, the only question that arises for consideration is whether the concern of the appellant is a factory within the meaning of the Employees' State Insurance Act.

2. The appellant is manufacturing and selling umbrellas at No. 2, Narayana Mudali Lane, Madras-1. Admittedly, there are eighteen workmen engaged in manufacturing umbrellas. There is one accountant and two sales clerks working in the premises. At the time of the inspection by the Insurance Inspector, he found 25 persons working in the premises of the factory .If, according to the contention of the appellant, the accountant and the sales clerks are not employees, then he cannot be called upon to contribute to the fund. Therefore, the decision naturally turns upon the question whether the accountant and the sales clerks are employees within the meaning of the definition " employee " in the Act. Section 2(9) defines " employee ":

employee" means any person employed for wages in or in connexion 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;

3. The definition has come up for judicial interpretation in this Court a number of times. In *Employees' State Insurance Corporation v. S.M. Sriramulu Naidu* 1960 I L.J. 699 the facts were: The employer, the owner of a studio, was called upon to pay contribution to the fund. He contended that the studio was not a factory, because every department was working as a separate entity. The question as to the meaning of "employee" did not arise in that case. It purely turned upon the question whether it can be called a factory. It was found in that case that more than twenty persons were working in the premises which was called a studio. Their lordships came to the conclusion without going into the definition of the word "employee" that though there were several departments functioning as separate entities or units within the studio, still it can be called a factory. It was observed in that decision at p. 705:

... The Workmen's Compensation Act, the Factories Act and the Maternity Benefit Act are based on the liability of the employer. The benefits conferred by the Employees' State Insurance Act cover a larger area of employees than what the Factories Act and allied legislations Intended....

\* \* \* Understood in the light of its object, the Employees' State Insurance Act Should be treated as intended to cover a wider class of employees than those contemplated by the Factories Act....

4. In *Employees' State Insurance Corporation v. Ganapathia Pillai and Ors.* 1961 I L.J. 593 their lordships had to consider the scope of the definition of the word "employee" in the Act, In that case, the Employees' State Insurance Corporation called upon the mills concerned to pay contribution to the fund. Objection was taken that it was not a factory if certain categories of persons working in the factory were excluded. The office concerned was the managing agency of a textile mill. Several persons were working in the managing agency of the textile mill, such as, general supervision of the work of the managing agents' office, assistant secretary in charge of managing agents' office, supervisory official in charge of the managing agency, cashier for disbursement of pay, typists in the managing agents' office, clerks attending to general clerical work and a ledger clerk in charge of maintenance of ledgers and cash book of the managing agents' office. Their lordships held that, except the cashier, the other persons cannot be said to be employees of the textile mill, the Lotus Mills, Ltd., Podanur. Relying on this decision, the learned Counsel for the appellant contended before me that the accountant and the two sales clerks should be excluded from the category of employees. The duty of the accountant, in the instant case, is to maintain accounts in respect of manufacturing umbrellas in the factory premises. He is directly or indirectly connected with the course of manufacture of umbrellas.

5. In *Employees' State Insurance Corporation v. Raman* (Chittur Harihara Iyer) 1957 I L.J. 267, Gajendragadkar, J. (as he then was), and Chinnani, J., had to consider whether a general assistant in the administration office of a company is an "employee" within the meaning of the word in the Act. In that connexion, the learned Judges observed at p. 269:

...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. The work of selling cannot be said to be incidental or preliminary to the work of the factory. It is obviously not preliminary; and it cannot be incidental in that sense....

6. Relying on this decision, the learned Counsel for the appellants contended before me that, in any event, the two sales clerks cannot be said to be employees within the meaning of "employee" under the Act. If these two persons are eliminated, then, admittedly, the concern belonging to the appellant will not fall within the meaning of factory as defined under the Act. But this contention was met by the learned Government Pleader appearing for the Insurance Corporation, by citing *K. Thiagarajan Chettiar v. Employees' State Insurance Corporation* 1963 I L.J. 207. There, the question was whether gardeners, building workers, office attenders and watchmen of a textile mill in Madurai could be included within the term "employee" under the Act, The learned Judges observed at p. 209:

...The factory maintains a garden evidently for the purpose of keeping the factory in healthy surroundings. There can be little doubt that the maintenance of the garden would be conducive to the health of its manual workers and would also enhance their efficiency and health. It can, therefore, be said that all the workers in the present case would be employees coming within the definition of the term in the Act....

7. The unreported decision in *M. Balasubramaniam v. Employees' State Insurance Corporation* and Anr. C.M.A. Nos. 319 to 321 of 1962] was relied on for the respondent. It was held there that an office-boy whose duties were to distribute mails received and post letters or attend to work at the post office, carry files from different sections and be on hand whenever summoned by officers for the purpose of carrying on this type of work and a stenographer of the district sales manager, whose duties were to take down letters dictated by the sales manager were held to be employees of the factory. In *Johnson & Co, v. Employees' State Insurance Corporation* C.M.A. Nos. 100 and 101 of 1962, an employee, who was distributing soda bottles manufactured to various retailers,

was held to be an employee under the Act. Relying on these decisions, it was contended before us for the respondent that the two sales clerks also should be treated as employees within the meaning of the Act. The two sales clerks' duties are only to maintain accounts in regard to sales of the finished products and they cannot be deemed to be directly or indirectly connected in the manufacturing process. They are not at all concerned with the finished products. Their main duties are only to enter in the accounts the finished products sold and delivered to the customers. In the circumstances, I am of opinion that the sales clerks cannot come within the definition of employee under the Act. If these two clerks are eliminated, then the concern of the appellant cannot be called a factory and is not liable to contribute to the fund. These appeals are allowed. No costs.