

(1963) 08 AP CK 0005
In the Andhra Pradesh High Court
Case No : A.A.O. No. 330 of 1961

Sirsilk Ltd., Sirpur, Kaghaznagar

APPELLANT

Vs

Regional Director, The Employees' State Insurance
Corporation, Andhra Pradesh, Hyderabad

RESPONDENT

Date of Decision : 16-08-1963

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(9), 40
Factories Act, 1948 — Section 46
Factories Rules — Rule 67

Citation : AIR 1964 AP 291 : (1964) 9 FLR 365

Hon'ble Judges : P. Chandra Reddy, C.J.;Narasimham, J

Bench : Division Bench

Advocate : D. Narsaraju, General and G.V.V.S. Ramachandra Rao, for the
Appellant; B. Krishna Rao, M. Krishna Rao, (Amicus Curiae), for the Respondent

Final Decision : Dismissed

Judgement

Chandra Reddy, C. J.

1. This is an appeal u/s 82(2) of the Employees State Insurance Act (34 of 1948) (hereinafter referred to as the Act) against the order of the Employees' Insurance Court, Hyderabad, holding that the workmen in the canteen attached to the Sirsilk Limited, Sirpur-Kagaznagar, are employees of the appellant, and, consequently, the appellant is liable to contribute to the Employees' insurance fund.

2. The Regional Director, the Employees' State Insurance Corporation called upon the appellant to make a contribution to this fund for the staff of the canteen. It is to avoid compliance with the requisition of the Regional Director that the appellant had recourse to Section 75 of the Act inviting the decision of the Employees' Insurance Court. The Insurance Court took the view that the workmen of the canteen are the employees of the appellant for purposes of the Act and hence the appellant was obliged to contribute to the insurance fund for

the workers in the canteen. It is this conclusion of the Insurance Court that is challenged before us.

3. It is urged by the learned Advocate General appearing for the appellant that the canteen being an autonomous body managed by the canteen committee, it is a separate entity unconnected with the factory, that there was no contract of service between the employees of the canteen and the management of the factory, that separate accounts are maintained for the canteen and that the employees of the canteen are not under the control and supervision of the management and, therefore, there is complete dissociation between this institution and tin factory. The learned Advocate-General fortified this argument by adverting to the testimony of D. K. Birla, member of the Managing Committee. On the basis of his evidence, the learned Advocate-General contended that there is no scope for the workmen of the canteen to invoke the aid of the provisions of the Act. He maintains that It is difficult to bring the staff of the canteen within the range and sweep of the relevant sections of the Act.

4. To appreciate the contentions urged on either side, it is necessary to lead the sections of the Act and also of the Factories Act (63 of 1948) in so far as they have a material bearing on the present enquiry. Section 2(9) of the Act defines an "employee" thus:

" "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; or

(ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

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5. We are unconcerned with Clause (iii) and, therefore, we need not extract it here.

6. Pausing here for a moment, we see that any person employed for wages in or in connection with the work of a factory or establishment or who satisfies the tests propounded in Clause (i), (ii) or (iii) is an "employee". We are unable to accede to the proposition of the learned Advocate-General that the two elements contemplated by the main Clause and any of the Clauses (i) to (iii) should exist before a person could satisfy the definition of an "employee". It looks to us that the word "and" at the end of the main clause is disjunctive. We do not think that it has to be read cumulatively with one or other of the Clauses (i) to (iii) because

if the employment must of necessity be in connection with the work of the factory the provisions of Clause (ii) would be intelligible as that clause provides for the work which is inter alia incidental to the purpose of the factory or establishment. Of course, if both the expressions, "in connection with the work of a factory or establishment" and "incidental to the purpose of the factory or establishment" are intended to convey the same thought, it is a different matter. But the learned Advocate-General argues that the two expressions embody two different concepts. If that were so, that would be importing repugnancy between the two.

7. Even assuming that the interpretation sought to be put upon this section is correct, we do not think that it will make much difference in the ultimate conclusion to be reached by us.

8. It was next contended by the learned Advocate-General that the definition of "employee" should be read in conjunction with the definition of "worker" in the factories Act, as, according to him, it is only a "worker" that could take advantage of the State Insurance Act. According to Section 2, Clause (1) of the Factories ACT,

""worker" means a person employed, directly or through any agency, whether for wages or not in any manufacturing process or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the manufacturing process;"

"Manufacturing process" is defined in Clause (k) as meaning:

"any process for making, altering, repairing, ornamenting, finishing, packing, Oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal."

9. On the language of this clause, It is submitted by ins learned Advocate-General that it is only a person who is engaged in the process of manufacturing that would fulfil the requirements of the definition of "worker" and that since the staff of the canteen cannot be said to be engaged in the manufacturing process, they could not be termed as the employees of the appellant. He argues that the work in the canteen, by no stretch of imagination, could be described as being incidental to or connected with the manufacturing process and, consequently, a worker in the canteen cannot avail himself of the benefits of the Act.

10. In support of the proposition that only such things as are integrally connected with the manufacturing process or with the actual working of the factory that could be described as being incidental to or connected with the manufacturing process, some of the decisions of English Courts are cited to us.

11. In London County Council v. Attorney General(1902) A C 165 at p. 169, the question arose whether the statutory powers of the London County Council to

purchase and work tramways would include the power to work omnibuses in connection with the tramways and It was answered in the negative since it was thought that the omnibus business was not incidental to the tramway business. In the speech of Lord Macnaghten occurs the following passage:

"The London County Council are carrying on two businesses -- the business of a tramway company and the business of omnibus proprietors. For the one they have the express authority of Parliament; for the other, so far as I can see, they have no authority at all. It is quite true that the two businesses can be worked conveniently together but the one is not incidental to the other. The business of an omnibus proprietor is no more incidental to the business of a tramway company than the business of steamship owners is incidental to the undertaking of a railway company which has its terminus at a seaport"

The argument founded on these observations is that though the canteen is run for the convenience of the workmen in the appellant-factory, it could not be said that the canteen was incidental to or in connection with the work in the factory.

12. In the same trend of thought is *Attorney General v. Pottypriidd Urban Council* (1960) 2 Ch 257. The problem that was to be solved there was whether the erection and use of the refuse destructor was ancillary to the supply of electricity. The Court of Appeal decided that the erection and use of the refuse destructor could not be considered to be ancillary to the supply of electricity though the surplus heat produced by the consumption of refuse was useful to the machinery for generating electricity. Collins M. R., who delivered the main opinion of the Court, observed that the use of the refuse destructor was not something which was incidental to the main purpose and, therefore, was not covered by the authority to carry out the main purpose and that it was an independent undertaking of a different nature by which it was found to be convenient to combine the purpose of discharging the obligation to remove refuse with the purpose of generating electric power. He further remarked that it was not a necessary adjunct for the carrying out of the main purpose of the electric lighting. It was also observed that the erection of the refuse destructor was undertaken really to enable the council to carry out their duties, as a sanitary authority, to get rid of the refuse at the same time and on the same land as they were carrying out their purpose of generating electricity.

13. To a like effect is the decision of the English Court in *Attorney General v. West Gloucestershire Water Co.*(1909) 2 Ch 338. There, a water company was authorized by their special Acts to erect waterworks and supply water within the limits of a particular parish. Despite this limitation, the company agreed with the owner of a residential property situated in an adjoining parish to supply water. For this purpose, the company had to extend their main in the parish -- the supply of water to which alone the company was authorized to its boundary where the residential property mentioned above was situate and thereafter the main was laid along the high-way for some distance at the cost of the owner and then pipes were laid to the property. It was held by the Court of appeal that the

water company were acting ultra vires in extending the main and supplying water to the property not lying within the limits of the parish to which alone the company was authorized to supply water, as they were not empowered to supply water outside the limits of the particular parish.

14. We do not feel that these easements are in point. On an analysis of these three cases, it is clear that none of the purposes undertaken by any of the concerns other than those to the execution of which they were authorized, were intimately connected with the main task they were entrusted with. Although the second purpose which was sought to be undertaken by the authorities concerned might be said to be convenient and of some help to them in the discharge of their main duty, it could not be said that it was incidental or ancillary to the main purpose.

15. That is not the situation here. We shall presently show that a canteen is essential for enhancing the efficiency of the workmen employed in the factory. We cannot, therefore, derive much benefit from these rulings.

16. We shall next turn our attention to another English decision which was placed before us by the learned Advocate-General, *Luttman v. Imperial Chemical Industries Ltd.* (1955) 3 All ER 481. The point that presented itself there was whether a canteen attached to a factory was part of the factory within the terms of the Factories Act, 1937. The question arose this way. An action was laid for recovery of damages for breach of a statutory duty in that the defendants did not provide a hand-rail in a canteen which resulted in a person employed in the canteen as a cleaner slipping, falling and sustaining an injury. The defence to the action was that the canteen was not part of the factory by reason of Section 151 (6) of the Factories Act and, consequently, the plaintiff could not avail herself of the remedies under that Act. Judgment was entered for the plaintiff by the Court in the view that the canteen formed part of the factory because the canteen was not solely used for some purpose other than a process carried on in the factory as it was used for feeding and entertaining the people working in the factory, which was a purpose incidental to the process of manufacture carried on in the factory.

We are unable to see how the appellant in the present case can take advantage of the principle enunciated in this case. On the other hand, it furnishes an answer to his contention, namely, that a canteen serves a purpose which is incidental to the process of the factory. This decision establishes the proposition that the canteen workers are persons employed in connection with the work in the factory and thus they satisfy the definition of the "employees" in Section 2(9) of the Act, even if a cumulative effect is to be given both to the main clause and anyone of the sub-clauses under it. If a canteen is to be regarded as part of a factory, how can we escape the conclusion that the workers in that canteen are employees of the factory? Any person who is working in a part of the institution can be said to be working in the Institution.

17. Our attention was also drawn by the learned Advocate-General to the

decision of the Bombay Labour Court in *Employees' State Insurance Corporation v. C. H. Raman* (1957) I L L J 267. There, the question was whether a person employed in the administrative office of a factory mainly for the purpose of taking down dictation from the Manager and other officers and typing letters could claim the benefits of the State Insurance Act. It was held that such a person could not answer the description of an "employee" as contained in Section 2(9) of the Act for the reason that his duties could not be said to be either incidental, preliminary to, or connected with, the work of the factory. We do not think that this decision is of any help to the appellant because the administrative office was concerned with the sale of the products of the factory and the work of the factory ended with the production of these goods. As such the duty of the person employed in the administrative office of the factory was not connected with the purpose of the factory.

In the course of the judgment, Gajendragadkar, J., who spoke for the Court, observed as follows:

"A person engaged on the management side would not have been a worker within the meaning of the Indian Factories Act. A person engaged on the management side may be an employee provided the management is carried on in an office and the management, on the facts, can be said to be connected with the work of factory itself. Even so, we do not think that the work which the respondent admittedly does in discharging his duties can be said to be either incidental, preliminary to or connected with the work of the factory."

On the facts of that case, there could be little doubt that the duty of the person concerned had nothing to do with the purpose of the factory. So, that ruling is not of much avail to the appellant

18. We shall now turn to the judgment of a Division Bench of the Madras High Court relied on by the learned Employees State Insurance Corporation, *Madras Vs. S.M. Sriramulu Naidu*, . There, a cinema studio was engaged in the production of cinematograph films. The work in the studio was done in the following departments, (i) electrical (ii) camera, (iii) sound, (iv) setting, (v) moulding, (vi) carpentry, (vii) laboratory (viii) editing, (ix) office and Watch and Ward, (x) art and (xi) make up. The question arose whether these departments could come within the term "factory" under the Factories Act and it was held that they did. The learned Judges observed that if within the same premises or compound, a number of departments are situate and the departments are engaged in the work in connection with or incidental to, the manufacturing process of the factory, they would prima facie all form part of the factory. We do not think that this decision in any way conies to the rescue of the appellant. What was laid down there was that the expression "employee" in the Act was of wider import than the word "worker" occurring in the Factories Act and that having regard to the nature of the benefits secured to the insured employee under the State Insurance Act, the term "factory" should have a different and wider interpretation than that of the same word in the Factories Act which was

intended to safeguard against the risks attendant in a factory to workers connected at least in a way with the manufacturing process. We are in entire agreement with the interpretation placed by the learned Judges on the term "employee" in the Act.

The word "employee" has a larger denotation than the expression "worker" in the Factories Act, and there is no scope for limiting the meaning of the word "employee" to a "worker" as defined in the Factories Act.

This being a beneficial legislation, should receive a liberal construction. To read it in a restricted sense as applying only to persons engaged in the manufacturing process would be to defeat the very purpose of this enactment and will be opposed to the well recognised canons of construction.

19. Another ruling of a Division Bench of the Madras High Court on which strong reliance was placed by the learned Employees' State Insurance Corporation with its Regional Office at Coimbatore Vs. Ganpathia Pillai and Others, . In this case, the question for decision was whether seven of the employees of the managing agents of the Lotus Mills, Limited, Coimbatore, could be described as the employees of the Lotus Mills, so as to cast an obligation on the latter to contribute to the insurance fund for these persons. After referring to the nature of the duties performed by six of these persons who were utterly unconnected with the work of the factory in any way, the learned Judges remarked that their duties being connected only with the office of the managing agents their work could not be regarded as being incidental or preliminary to or connected with the work of the factory. As one of these persons was entrusted with the task of disbursing not only the pay of the Manager and staff but also the wages to the workers of the mill, it was held that he was entitled to the insurance contribution. This decision if at all, is authority for the proposition that although a person is unconcerned with the manufacturing process, still he would be an "employee" for the purpose of the Act if his work is in some way connected with the purpose of the factory.

Surely, if an employee of the managing agents of a factory whose duty was only to disburse salaries to the staff and wages to the workmen could be regarded as engaged in a work which serves the purpose of the factory, it is difficult to resist the claim of the worker in a canteen which is attached to the factory. This decision supports the contention of the respondent that a canteen worker discharges functions connected with the purpose of the factory.

20. Two more decisions, one of the Madras High Court in Thyagarajan Chettiar v. Employees' State Insurance Corporation, Madurai 1953 2 MLJ 77 : (AIR 1953 Mad 361) and another in Royal Masonic Institution for Boys (Trustees) v. Parkes 1912 3 KB 212 are brought to our notice by Sri Krishna Rao. In the first of them it was held that the gardeners, building workers, office attender and watchman employed in a Textile Mill were employees within the meaning of the State Insurance Act. The learned Judges remarked that the maintenance of the garden

would be conducive to the health of its manual workers and would also enhance their efficiency and health and that, therefore, they would come within the definition of "employees" in the Act. It is seen from this ruling that the gardeners, building workers and office attendee who were in no way connected with the process of manufacture in the factory, were held to be entitled to the benefits of the Act,

21. In the second of the cases, it was ruled that a laundry which served the inmates of a school, which was a public institution within the meaning of the Factory and Workshop Act, 1907, was incidental to the purpose of the school and therefore, fell within the provisions of the Act.

22. We will lastly refer to the recent pronouncement of the Supreme Court in the State of Punjab and Another Vs. British India Corporation Ltd., , which is of much importance and which helps us considerably in resolving the controversy raised in this appeal. The question that fell to be considered there was whether certain buildings situated within the premises of a factory could claim exemption from taxation under the Punjab Urban Immovable Property Tax Act, 1940, which exempted buildings and lands used for the purpose of a factory from taxation. A claim was made on behalf of the management of the factory for exemption on the ground that some of the buildings were used either for running a canteen or for other similar purposes. It is seen that the Act that fell to be interpreted by the Supreme Court had also employed the language "used for the purpose of a factory as may be prescribed." Their Lordships of the Supreme Court held that buildings used for housing a canteen or for other allied purpose must be held to be "used for the purpose of the factory". In reaching that conclusion their Lordships referred to the various provisions of the Factories Act which were conceived for the welfare of the workmen employed in the factory and said that in order that a factory may function in accordance with law, buildings or parts of buildings have to be provided by the owner for the use of the workmen for the purposes mentioned in the several sections and that such use of the buildings must be held to be "use for the purpose of a factory". They added:

"Advances in scientific knowledge as to how Industrial efficiency can be improved have made it clear that even other facilities and amenities, other than those required by the factory legislation, conduce in a great measure to a rise in the efficiency of the industrial worker and that some of these are indeed necessary to the maintenance of a proper standard of efficiency.

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In our opinion, the use of buildings for the provision of such facilities and amenities which are necessary to the maintenance of a proper standard of efficiency of the factory workers must also be held to be "use for the purpose of a factory."

23. It is plain from this pronouncement that the running of a canteen in a factory serves the purpose of the factory in that it conduces to the efficiency of the

workmen employed in the factory i.e., it feeds and entertains persons engaged in the process of manufacturing. If a building in which a canteen is located is said to be used for the purpose of the factory, it follows as a necessary corollary that the persons employed in the canteen should be regarded as persons engaged in a work connected with the factory.

24. The learned Advocate-General then fell back upon the provisions of the Factories Act, which east an obligation on a factory which employees more than 250 workers to maintain a canteen, and urges that when a canteen is opened in accordance with such statutory obligation, it cannot be postulated that the canteen is essential for the purpose of the factory. We are unable to appreciate this argument, If the running of a canteen is a statutory obligation, it is all the more an essential requisite of a factory. The mere fact that the management is obliged to run a canteen on pain of being punished for failure to do so, does not alter the character of the work done in the canteen.

25. We will now look at the provisions of Section 46 of the Factories Act. It reads:

"(1) The State Government may make rules requiring that in any specified factory wherein more than two hundred and fifty workers are ordinarily employed, a canteen or canteens shall be provided and maintained by the occupier for the use of the workers.

(2) Without prejudice to the generality of the foregoing powers, such rules may provide for --

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(b) the standards in respect of construction, accommodation, furniture and other equipment of the canteen;

(c) the foodstuffs to be served therein and the charges which may be made therefor;

(d) the constitution of a managing committee for the canteen and representation of the workers in the management of the canteen;

(e) the delegation to the Chief Inspector, subject to such conditions as may be prescribed of the powers to make rules under Clause (c)".

26. It is in exercise of the powers conferred by this Section that rules were made by the Madras Government, which were amended by the Government of Andhra Pradesh subsequently. These rules provide inter alia for the situs of the canteen, for the equipment of the canteen, for the constitution of the managing committee and for maintenance of its accounts, The rules that are relevant in the contest of this enquiry are Rules 67 to 70. Rule 67 says :

"(1) There shall be provided and maintained sufficient utensils, crockery, cutlery, furniture and any other equipment necessary for the efficient running of the canteen. Suitable clean clothes for the employees serving in the, canteen shall

also be provided and maintained."

Sub-rules (2) and (3) are unnecessary for the present enquiry.

We will next read Rule 70. It says:

"(1) The manager shall appoint a Canteen Managing Committee which shall be consulted from time to time as to --

(a) the quality and quantity of food stuffs to be served in the canteen;

(b) the arrangement of the menus;

(c) times of meals in the canteen; and

(d) any other matter as may be directed by the Committee."

It is abundantly clear from Rule 70 that the Managing Committee functions only in a consultative capacity. Under Rule 67, the manager of the factory has to provide and maintain sufficient utensils, crockery, cutlery, etc. It is, therefore, an obligation on the part of the factory to supply utensils, crockery, cutlery etc. Under Rule 70, the manager should appoint a Canteen Managing Committee. It is in consonance with these rules that the manager of the factory nominates the members of the Managing Committee which gives advice to the manager of the canteen, who is invariably an employee of the factory in regard to matters enumerated in that sub-rule.

27. If we turn to the admissions made in the evidence on record, it is plain that the real management of the canteen vests in the factory in that the finances for the running of the canteen are provided by the factory, that the persons working in the canteen are ordinarily appointed by the manager of the factory and that the employees in the canteen work under the control and supervision of the factory. P. W. 1, D. K. Birla, admitted that canteen was solely run by an employee of the factory from its inception in 1958 till February 1959, when the Managing Committee was constituted by the factory manager. It appears from his evidence that large sums of money advanced by the appellant to the canteen were written off and they were adjusted as losses for aiding the canteen and for the welfare of the employees. We cannot also lose sight of the fact in this context that the canteen is run solely for the benefit of the workers in that factory.

Another factor to be taken into account in this connection is that utensils, crockery, cutlery, furniture etc. and other equipment necessary for the efficient running of the canteen have to be provided by the factory as per Rule 67. It is also pertinent to note that it is the manager of the factory that appoints members of the Managing Committee from the employees of the factory (i) chosen by the manager of the factory and (ii) chosen by the workmen among themselves and the Chairman of the Committee is invariably a nominee of the management of the factory. It further emerges from his evidence that the minutes of the meeting are sent to the management and guidance of the management is also sought for on certain matters. It appears from the

proceedings recorded by the Insurance Court that it is the manager of the factory that employs the workmen for the canteen and that out of the 37 workers at the relevant time 20 were old workers. There is significant admission by P.W. 1, namely, that all the members of both the committees of 1958 and 1960 including the workmen are the employees of the Sirsilk Ltd. This admission was a sequel to the question as to whether Sri Misra, the canteen manager, was not an employee of the mill and whether he was not running the canteen since its inception in September 1958. To this question, in emphatic terms, he says:

"Why, I agree that all the members including the workmen are the employees of the Sirsilk Ltd." No doubt, this statement is not conclusive on the question as to whether the workers of the canteen could be regarded as employees of the factory. But this shows how the management itself regarded these workmen.

28. On a consideration of the evidence, the material on record, the statutory provisions and the decided cases to which our attention was drawn, we have reached the conclusion that the staff in the canteen are employees for the purpose of the Act and that the management of the appellant-factory is liable to contribute to the insurance fund for the staff in the canteen. So, the decision of the Employees' Insurance Court, Hyderabad, cannot be successfully impugned.

29. In the result, the appeal fails and is dismissed with the costs of Sri M. Krishna Rao, who ably assisted us *amicus curiae*, which we fix at Rs. 250/- (two hundred and fifty).