

**(1958) 04 MAD CK 0030**  
**In the Madras High Court**  
**Case No : A.A.O. No. 269 of 1957**

S.M. Sriramulu Naidu

APPELLANT

Vs

Employees' State Insurance Corporation

RESPONDENT

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**Date of Decision :** 25-04-1958

**Acts Referred:**

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

**Citation :** AIR 1959 Mad 457 : (1958) 2 LLJ 596 : (1958) 71 LW 667 : (1958) 2 MLJ 544

**Hon'ble Judges :** Basheer Ahmed Sayeed, J

**Bench :** Single Bench

**Advocate :** V.C. Gopalaratnam and L.V. Krishnaswami Aiyar, for the Appellant;  
Govt. Pleader, for the Respondent

**Final Decision :** Allowed

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## Judgement

Basheer Ahmed Sayeed, J.—This civil miscellaneous appeal is against the order of the Court of the Employees Insurance, Coimbatore, in

proceedings No. 1 of 1956 on the file of that court. The respondent in this appeal took out an application on 21-6-1956, u/s 77, read with Section

75 of the Employees' State Insurance Act, 1948, praying for a declaration that the appellant, Pakshiraja Studios, Coimbatore, is a factory and that

the opposite party, namely, the appellant before me, was liable to pay the employers' special contribution and the employees' contribution in

respect of all the employees employed, and to direct him to pay the same to the corporation.

2. The application was heard by the learned Judge, S. Ganapatia Pillai, presiding over the court of the Employees' Insurance, Coimbatore, and

after considering both the oral and documentary evidence in the case, the

learned Judge came to the conclusion that the respondent was entitled to a declaration in terms of Clause (a) of paragraph 12 of the petition and issued an order directing the appellant to pay the contribution both in respect of employers' special contribution and employees' contribution as indicated in Ex. B. 12. He also directed costs to be paid by the appellant to the respondent. The opposite party namely the owner of the Pakshiraja Studios has preferred this appeal being aggrieved by the said order.

3. It is common ground between the parties that the Employees' State Insurance Act, 1948, applies to factories. "Factory" is defined under Sub-clause 12 of Section 2 of the Employees' State Insurance Act. That definition is in the following terms:

"Factory" means any premises including the precincts thereof whereon twenty or more persons are working or were working 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 Indian Mines Act, 1923 (IV of 1923) or a railway running shed.

"The definition contained in the Factories Act, 1948, Act XLIII of 1948, is in the following terms:

Clause (a), Section (2): "Factory" means any premises including the precincts thereof: (i) where no ten or more workers are working or were working on any day of the preceding twelve months, and in any part of which manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without 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 (Act XXXV of 1952), or a railway running shed.

4. The question that is argued before me by the learned counsel on both sides is whether the appellant's Studio is a factory within the meaning of

Sub-clause 12 of Section 2 of the Employees' State Insurance Act, XXXIV of 1948, as modified up to the 1st May 1955.

5. A study of the two definitions contained in the said Factories Act and also the

Employees" State Insurance Act does not in my opinion appear to make any great difference. Between the two definitions except for the fact that in the Employees" State Insurance Act. in order to constitute certain premises, including its precincts, a factory, it should have 20 or more persons and there should also be power employed in the manufacturing process. Though the terms u/s 2 Clause (m) are somewhat different from those under Sub-clause 12 of Section 2 of the Employees" State Insurance Act, in substance there appears to be very little difference, except for the fact that for making any premises and its precincts a factory under the Employees" State Insurance Act there should be 20 people and there should be power with the aid of which manufacturing process should be carried on.

The common feature in the definition of a factory that is perceivable between the two Acts is that in the case of a factory there should be power employed but in regard to the number of people employed there should be ten or more in the case of the Factories Act and 20 or more in the case of the Employees" State Insurance Act. There is also a slight difference in the matter of the definition of the persons employed in order to constitute any precincts into a factory. In the case of the Factories Act, the term used is ""Worker"", and it is defined in Clause (1) of Section 2 of that Act whereas in the Employees" State Insurance Act the term used is ""persons working"" and it is defined in that Act.

A careful reading of these two terms ""persons working"" and ""worker"" used in the two different enactments makes it clear that though the language used is somewhat different the substance is the same, whether the term used is ""worker"" or ""person working"". Only the term ""person working"" has been more elaborately defined than the term ""worker."" But in effect the terms employed in the definition of a ""factory"" so far as the Employees"

State Insurance Act is concerned and the terms employed in the definition of a ""factory"" under the Factories Act do not make much difference as to what exactly is the connotation and denotation of the terms so employed.

6. The learned Judge presiding over the court of the Employees" State Insurance, Coimbatore, however has sought to make out a difference between the terms employed in the definition of a factory in relation to the ""workers"" and the ""person"" who is working in the factory. I have

carefully examined the definitions of a factory in both the enactments and I do not find there is much justification for any distinction between the terminology used in relation to a "worker" or the "person who works" in the two definitions. The terminology used has the same effect and the same implication in the two definitions contained in the two enactments. Much argument therefore is not capable of being built upon the so called difference in these two definitions of the term "factory" employed in the two enactments. A worker is no other than a person who works, and whether he is called a worker or whether he is called a person who works, to my mind, makes a very little difference.

7. The question then is whether the appellant's Studio comes within the definition of the term "factory" as contained in the Employees' State

Insurance Act. This question has largely to be decided upon the evidence in the case. Two witnesses have been examined for the respondent and

one for the appellant. I have been taken through the depositions of all these three witnesses. First witness for the respondent, Mr. Ramachandra

Rao, deposes that he found at the time he entered the factory for the purpose of inspection 6 men in Camera department, 9 men in the electricity

department, 6 men in the sound department which includes projection, 4 men in the carpentry department, 7 men in the laboratory, 4 men in the

editing department. 6 men in the watch and ward, 9 men in the office and 3 men in the art and make-up department. On the basis of this, it was the

case of the respondent, that, as the number exceeded 20, it would constitute a factory and the studio would be a factory within the meaning of the

Employees' State Insurance Act. As already observed, it is common ground that power is employed in the studio for production of films. In cross-

examination, however, this witness admitted that he did not see manufacturing process being carried on at the time of his inspection. But this does

not alter the case because there was a "lay-off" when this witness inspected the studio and it is enough if at the time the question arose for

consideration and Pakshiraja Studio was working, though it might have been closed subsequently.

Even this witness deposed that he did not find power being used in any department, but he learned from enquiry that it was so. As already

observed, it is common ground that power was utilised in the running of the studio. But the significant part of the deposition of this witness is that he

found all the departments, namely Electricity, Camera, Sound moulding. Carpentry, Laboratory Editing and Art and make-up and office, were all

situated in separate buildings. He also stated that so far as the carpentry section of the studio of the appellant was concerned it was recognised as a

factory under the Factories Act. That means that within the same premises and precincts one of the departments had been recognised as a factory

under the Factories Act. whereas the other departments which were functioning for different purposes were not recognised as factories.

Apparently in the carpentry department there were more than ten persons working and power was employed for the purpose of manufacturing

articles. But in re-examination this witness stated that all the buildings comprising the studio formed a composite whole, because they were all

situated in one compound wall and they were interconnected. But when further examined he could not say which department building was

interconnected with which other department building.

8. The evidence of the second witness for the respondent is not of any great assistance on any point that arises for consideration in this appeal. On

the other hand, the deposition of the Manager of the defendant studio makes it clear that there are several departments situated in separate

buildings and some of the departments also did not appear to be situated or located in the same building. This witness deposed that in each

department at no time were there more than 20 persons working during the relevant period. Even in the non-power using departments this witness

deposed that there were no more than 20 persons employed in order to attract Sub-clause (12) of Section 2 of the Employees' State Insurance

Act.

This witness further deposed that the laboratory and editing departments were situated in the same building whereas office building was separate

from the watch and ward section. He also went on to say that the distance between the carpentry section, which was recognised as a factory, and

the editing section was about 200 yards away and that 50 yards intervened between that section and the moulding section. In cross-examination he

stated that the Art section and the office were not located in the same building. Some of the rooms he added were connected by covered

pathways. This applied to blocks of rooms in which the camera section, the

sound section and the electricity section were housed. He was

however frank enough to admit that in all the departments the total strength of the persons working put together would be more than 20. In re-

examination this witness deposed that the camera, sound and electricity departments were housed in buildings which were structurally separate.

9. On the basis of the evidence of these witnesses the learned counsel for the appellant argued that the decision In Re: K.V.V. Sarma, Manager,

Gemini Studios, Madras, , would apply to the facts of the case. Emphasis was laid upon the penultimate paragraph of that judgment which is to this

effect,

The further question has to be considered whether if any one of these departments is a factory as being situated within the precincts of the Gemini

Studio, then it is legally possible to separate those departments from the others which cannot be styled as factories. The building where carpenters,

moulders, and tinkers are carrying of their work is admittedly a factory and the rule and regulations of the Factories Act apply to those

departments. Evidence is lacking as to whether the other departments can be so separated. It is permissible to separate the carpentry, moulding

and tinkering departments which are really unnecessary for the production of films from the others. There is no evidence to show that the other

departments are so intertwined as to be a composite one without being able to be separated. On that aspect of the case there does not seem to

have been any evidence let in. In our opinion it is possible, even if some of those departments are factories, to separate those which are not

factories from those which are factories. No attention seems to have been paid to this aspect of the case also.

The learned Judge of the Employees' Insurance Court however has sought to distinguish this case on the ground that the definition of factory under

the Factories Act could not be accepted as equivalent to the definition under the Employees' State Insurance Act and as the decision in question

was under the Factories Act it cannot, therefore, be taken as a ruling on that question of the definition of a "factory" under the Employees' State

Insurance Act. This argument does not appear to me to be convincing. The point that really arises for consideration here is whether on the

evidence, particularly, in regard to the constitution of the various departments in

which less than 20 persons are working in the studio of the appellant, the ratio decidendi contained in the penultimate paragraph of the decision relied upon by the appellant could not apply to the present case.

So far as I could see, the evidence in this case does not warrant that the studio of the appellant could be held to be premises which could come within the definition of a "factory" as contained in the Sub-clause 12 of Section 2 of the Employees State Insurance Act. The evidence beyond any doubt establishes that the various departments are located in separate buildings and that in each of the departments the requisite number of 20 persons or workers were not found by the respondent, even though power might not have been employed in each of these departments. This is a case in which it is legally possible to separate the various departments, and unless it is established that even in each of these departments the number of the persons working was 20 and more, it cannot be contended that the requirements of the definition of factory were satisfied by these departments.

It is admitted that only the carpentry department satisfied the definition under the Factories Act and possibly in the definition of "factor" under the Employees' State Insurance Act, even this department of carpentry may not be a factory, because it is not proved that the number of the persons employed therein was 20 and more.

10. The learned Judge presiding over the court of Employees' State Insurance relied upon two other decisions and he was of the opinion that they were direct authorities on the question that was before him for decision. The first of them is the one reported in *In Re: A.M. Chinniah, Manager, 786 Sangu Soap Works Kattumavadi Road Arantangi*, I have read through this judgment of Ramaswami J. and I do not think that this judgment has application to the facts of the present case when on the evidence it is established that the studio of the appellant consists of different departments which can be easily separated and that in each one of the departments the number of workers or persons employed was less than 20.

The decision referred to above does not appear to have much bearing on the issue that falls to be decided in the present case. Of much less assistance is the decision in *Ramanandram v. Emperor*, AIR 1927 Mad 345 relied

upon by the learned judge of the Employees' Insurance Court.

11. The learned Government Pleader, however, argued that all the departments, though they are interconnected and though they are situated in

separate buildings and though in each one of them the number of persons actually working was less than 20, the entire studio should be taken as

one composite unit or entity and should therefore be treated as a factory coming within the definition contained under the Employees' State

Insurance Act. He further argued that the term used is that these persons should be employed in manufacturing process and that manufacturing

process should not be strictly interpreted but should be taken to mean the business of manufacturing something, as in the present case, the

manufacturing of films.

He also laid emphasis upon the decisions relied upon by the learned Judge of the Employees' Insurance court and in addition thereto he also read

out passages from an unreported judgment of Mr. Mukerji presiding over the Court of the Employees Insurance in Calcutta in Case No. 26 of

1957, D/-21-10-1957. The learned Government Pleader wanted to adopt the arguments contained in that judgment for his purpose, Once again I

have to observe that no doubt the persons working in the various departments all put together exceed the prescribed number of 20.

But the question is whether the entire buildings could be taken as one composite unit though they are housed in different buildings which are

structurally separate and in each one of which the number working is less than 20.

Even conceding that the term "manufacturing process" has reference to the business carried on still I am unable to agree with the learned

Government Pleader while he seeks to distinguish the decision in In Re: K.V.V. Sarma, Manager, Gemini Studios, Madras, , from the facts of the

present case. The decisions in In In Re: A.M. Chinniah, Manager, 786 Sangu Soap Works Kattumavadi Road Arantangi, and in AIR 1927 Mad

345, in my opinion, are not of any great significance to the learned Government Pleader. The facts in those cases seem to be different from those

that obtain in the present case.

12. Therefore the answer to the question as to whether the studio of the appellant is a factory coming within the meaning of the definition contained

in Clause 12 of Section 2 of the Employees State Insurance Act in my opinion would be that it is not such a factory in the face of the evidence that has been adduced in the case.

13. I am therefore of the opinion that the order of the learned Judge of the Court of the Employees' Insurance, Coimbatore, has to be set aside

and it is accordingly set aside. The respondent is not entitled to any declaration of the kind which he has prayed for in his petition as he has not

established that the studio of the appellant is a "factory" within the meaning of the Employees' State Insurance Act. In the result, this appeal is

allowed. In the circumstances, there will be no order as to costs throughout.

14. Appeal allowed.