
(1969) 10 MAD CK 0004
In the Madras High Court

South India Flour Mills Private Ltd.

APPELLANT

Vs

The Regional Director, Employees State Insurance
Corporation

RESPONDENT

Date of Decision : 29-10-1969

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(9)

Citation : (1970) 83 LW 179 : (1970) 2 MLJ 110

Hon'ble Judges : A. Alagiriswami, J

Bench : Division Bench

Judgement

A. Alagiriswami, J.—The petitioner is the South India Flour Mills Private Limited. In or about the middle of 1964, it commenced the

construction of another building in the compound of the existing factory and workmen were engaged for construction of the work. The petitioner

alleges that the construction work was of a casual nature and the workmen were not employees within the scope of Section 2 (9) of the Employees

State Insurance Act. The respondent Corporation called for particulars regarding the number of persons so engaged in order to enable it to claim

the contribution payable by the petitioner. Ultimately the respondent addressed the Collector of Madras to recover a sum of Rs. 10,500 as special

contribution on wages paid to building workers from 30th June, 1963 to 30th June 1965 under the Revenue Recovery Act. This writ petition is

filed to quash these proceedings.

2. The simple contention on behalf of the petitioner is that persons employed for the construction of a building even for a factory are not persons

employed in the factory or in connection with the work of a factory. Section 2 (9) of the Act defines an employee as meaning any person

employed for wages in or in connection with the work of a factory or establishment to which the Act applies. I am satisfied that this contention must prevail and that the construction workers cannot be said to be employed in or in connection with the work in the factory.

3. The Madhya Pradesh High Court in *Jamul Cement Works v. State Industries Court* (1968) M.Page.L.J. 132, had to consider the case of

construction of a building in connection with a cement factory. The construction of a cement factory was started in 1960-61. The factory went into

production in 1965. Even after 1965, construction of two kilns continued. With reference to the employees engaged in that construction, an

industrial dispute was referred to an Industrial Tribunal and the Industrial Tribunal held that the constructional work was isolated and detached

from the work, of the factory itself, but was essential for the purpose of bringing into existence the necessary factory building with proper

installation of machinery for the purpose of producing cement and that, therefore, the constructional work was a part of the cement industry. In

dealing with this question the Court observed.

The word " cement " means cement manufacturing industry and activities or operations incidental to the main industry of manufacturing cement. The

setting up and construction of a cement factory is no doubt essential before cement can be manufactured and thereafter distributed and sold. But

the construction of a cement factory cannot in any way be likened to any activity or operation in the manufacture of cement or its distribution or

sale. It is not necessary that a company engaged in the manufacture should itself set up the cement factory. The constructional work can be

entrusted to any contractor or a firm of structural engineers and when the construction is complete, the company can take over the completed

construction and commence manufacturing cement. For the same reason, if a company which intends to manufacture cement, itself undertakes the

constructional works of its factory, then it cannot be said that the cement industry has come into existence from the moment the constructional

work started. Again, the constructional work of a cement factory cannot be said to be an activity or operation incidental to the main industry of

cement manufacturing.

4. It was observed that the constructional work is not something which follows or

depends upon or appertains to the manufacture of cement as the primary activity, and to say that the construction of a cement factory is a part of cement industry, is to ignore totally the real nature both of the cement manufacturing industry and the construction of a cement factory. They, therefore, held that the constructional work of the setting up of a cement factory undertaken by the cement factory producer of cement was not an industry or a part of the cement industry and the employees working on the constructional side cannot be regarded as "employees" within the definition of the term given in Section 2 (13) of the Act. The decision is very apposite in the circumstances of the case.

5. The decision of our High Court in K. Thiagarajan Chettiar Vs. Employees' State Insurance Corporation, , cannot help the respondent-

Corporation because the Court was concerned in that case with building workers, who were connected with the maintenance of the factory

building. I am, therefore, satisfied that the workers employed in the construction of a new unit of the factory are not employees within the meaning

of the term in Section 2 (9) of the Act, and therefore, no contribution is payable in respect of them.

6. It is contended that the proper remedy for the petitioner is to have approached the Employees Insurance Court u/s 75 of the Act. That is no

doubt true. But as the case has been pending for nearly three years and the fact that an alternative remedy is available, does not prevent this Court

from entertaining this writ petition in connection therewith. I do not think that this writ petition should be dismissed simply on the ground that the

remedy provided by the statute was not availed of.

7. The writ petition is allowed; but in the circumstances of the case there will be no order as to costs.