

(1964) 01 MAD CK 0034

In the Madras High Court

Case No : Appeal Against Order No"s. 10 and 11 of 1961

Thulasidas Murarjee and Co.

APPELLANT

Vs

The Employees' State Insurance Corporation

RESPONDENT

Date of Decision : 29-01-1964

Acts Referred:

Cotton Ginning and Pressing Factories Act, 1925 — Section 2
Employees State Insurance Act, 1948 — Section 2(12)
Factories Act, 1934 — Section 4
Industrial Disputes Act, 1947 — Section 25A, 25A(2), 25C, 25D, 25E

Citation : AIR 1965 Mad 287 : (1964) ILR (Mad) 968

Hon'ble Judges : Venkatadri, J

Bench : Single Bench

Advocate : M.R. Narayanaswami, for the Appellant; S.T. Ramalingam, for A. Alagiriswami, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Venkatadri, J.—These two appeals arise out of proceedings under the Employees" State Insurance Act, 1948. The Employees" State

Insurance Corporation through the Insurance Inspector filed two applications out of which these appeals arise for recovery from the Appellant

herein employees" contribution for the periods from 28th October 1957 to 31st January 1959, and 1st February 1959 to 25th July 1959. The

Appellant denied his liability to pay employees" contribution and claimed exemption from the Act on the .ground that the factory is a seasonal one,

its business being cotton cleaning and cotton pressing not covered by the provisions of the Act. The learned District Judge came to the conclusion

that the process carried on by the factory comes within the meaning of manufacturing process as defined in the Factories Act and since the same is

done with the aid of power employing more than twenty persons, the Appellant's factory is a factory covered by the Act and not a seasonal

factory entitled to claim the exemption provided under the Act. He, therefore, held that the factory is liable to pay the Corporation the amounts

claimed by it and granted a decree accordingly. It is against this order that the Appellant, the factory owner, has preferred the above two appeals

in respect of the two periods for which contribution was claimed by the Corporation.

2. Section 2(12) of the Employees' State Insurance Act defines a seasonal factory thus:

"Seasonal factory" means a factory which, is exclusively engaged in one or more of the following manufacturing process, namely, cotton ginning,

cotton or jute pressing, decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing

process which is incidental to or connected with any of the aforesaid processes;

3. The section also says that the expressions manufacturing process and power shall have the same meanings respectively assigned to them in the

Factories Act .LXIII of 1948. It is the contention of the learned Counsel for the Appellant that as per the definition in the Act, the Appellant's

factory is only a seasonal factory. The manager of the factory has given evidence to the following effect. The company purchases waste cotton

from mills, cleans it, presses it into bales and export them to foreign countries. The waste cotton is cleaned by willowing. process with the help of a

willowing machine manned by seven men. The factory will work according to availability of waste cotton. The machines which are installed in the

factory premises are run by power. The manager of the local office of the Employees' State Insurance Corporation has also deposed that the

factory is willowing and cleaning cotton waste and tearing cotton yarn waste with machinery run by power. Thus it is clear that the factory is

exclusively engaged in cotton ginning or cotton pressing.

4. It. may be useful to refer to the definitions of certain terms in the Cotton Ginning and Pressing Factories Act (Central Act XXII of 1925).

Section 2(b): "Cotton" means ginned or unginned cotton, or cotton waste;

Section 2(c): "Cotton ginning factory" means any place where cotton is ginned or where cotton fibre is separated from cotton seed by any process

whatever involving the use of steam, water or other mechanical power or of electrical power;

Section 2(d): "Cotton pressing factory" means any factory as defined in the Indian Factories Act, 1911, in which cotton is pressed into bales;

Section 2(e): "Cotton waste" means droppings, strippings fly and other waste products of a cotton mill or of a cotton ginning factory or of a cotton pressing factory, but does not include yarn waste;

5. In the instant case, the factory is engaged in ginning and pressing waste cotton. After cleaning and willowing the cotton it is pressed into bales

and exported to foreign countries. The nature of the industry is such that it would depend upon the availability of waste cotton.

6. In his commentary on Industrial Disputes Act at page 367 Vithalbhai S. Patel has referred to certain factors that have to be considered in

deciding whether an industrial establishment is seasonal. Among them the following factors may be referred for the purpose of this case.

(1) The expression seasonal should be construed to mean normally seasonal;

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(6) "Seasonal" would certainly appear to imply dependence on nature, over which obviously neither the employer nor the employee in a given

industrial establishment has any control. It would be relevant to consider the dependence of an establishment on, seasons, normal seasons, beyond

the control of the employer wholly.

(7) The period of working in a normal year in a given industrial establishment, whether that period of working is controlled by seasonal condition,

would be a factor for consideration.

7. Chapter V-A of the Industrial Disputes Act deals with lay-off and retrenchment. Section 25A provides that Sections 25C to 25E relating to the

right of workmen laid off for compensation shall not apply to industrial establishments which are of a seasonal character or in which work is

performed only intermittently. But there is no definition in the Act as to what is meant by seasonal character of an industrial establishment. But if a

dispute arises as to whether an industrial establishment is of a seasonal character or not, the matter will have to be referred to the Government and

the decision of the appropriate Government shall be final. In *Kohinoor Saw Mill Co., Ltd. v. State of Madras* ILR [1957] Mad. 353 Rajagopalan

J had occasion to consider the meaning of the expression industrial establishment of a seasonal character. The learned Judge observed at page 365

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It may not be difficult to visualise an industrial establishment engaged in an industry, predominantly seasonal even in a given region, working

normally all through the year. The industry will be seasonal, but nonetheless the industrial establishment will not be seasonal within the meaning of

Section 25A(2). A sugar mill in a given area, where most of the sugar mills work or are compelled by circumstances to work only during given

season, may work all through the year. Such a mill would be a seasonal factory within the meaning of Section 2(12) of the Employees' State

Insurance Act, 1948, but it would not be an industrial establishment of a seasonal character within the meaning of Section 25A(2) of the Industrial

Disputes Act. Section 2(12) of the Employees' State Insurance Act would make the nature of the industry conclusive in deciding whether the

factory engaged in any of the industries enumerated in that section is a seasonal factory.

8. The above observations will be very useful for the purpose of deciding whether the factory in the instant case is a seasonal factory or not. What

is a seasonal factory is defined in various Acts. Section 4 of the Factories Act XXV of 1934 defines a seasonal factory as one

which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing....

9. But this provision was deleted when the Factories Act (LIII of 1948) was as pointed out by Rajagopalan J., in the decision referred to above.

Provident Fund Scheme, 1952, defines a seasonal factory as meaning a factory which is exclusively engaged in the manufacture of tea, sugar or

rubber. But as pointed out by Rajagopalan J, in the decision referred to above.

the definitions in other enactments, repealed or still in force, cannot always furnish a safe basis of interpreting a statutory expression in a given Act.

10. On the facts of the instant case, it is clear that the factory is dealing with cotton waste. It may be that the cotton waste undergoes a

manufacturing process which includes cleaning, breaking up or otherwise treating the said waste by machinery run by power and the same is

pressed into bales which are then transported to foreign countries. It may also

be that the Appellants' factory is a factory as defined in the Factories Act. But what we have to decide in this case is whether the factory is a seasonal one or not. It is immaterial whether the manufacturing process is carried on by the factory continuously or only intermittently due to non-availability of the raw material, viz., cotton waste or cotton yarn. What we have to see is whether the factory is exclusively engaged in one or more of the manufacturing processes mentioned in Section 2(12) of the Act. As the factory is exclusively engaged in cleaning or pressing cotton waste, I am of opinion that it is a seasonal factory and hence exempted from the Act and as such the Employees' State Insurance Corporation has no jurisdiction to call upon the Appellant to pay the employees' contribution as provided in the Act.

11. The appeals are accordingly allowed, but in the circumstances without costs.