(1982) 04 MAD CK 0001

Madras High Court

Case No: A.A.O. No. 19 of 1981

Pondicherry State Weavers' Co-operative Society		APPELLANT
	Vs	
Regional Director, Employees' State Insurance Corporation, Madras		RESPONDENT

Date of Decision: April 1, 1982

Acts Referred:

- Employees State Insurance Act, 1948 - Section 75(1)

Citation: (1983) 1 LLJ 17 : (1984) 97 LW 674

Hon'ble Judges: G. Ramanujam, J; G. Maheswaran, J

Bench: Division Bench

Judgement

Ramanujam, J.
This appeal is directed against the order of the Employees'' State Insurance Court at Pondicherry in E.S.I. O.P. No. 2 of

1978.

2. The appellant filed an application under S. 75(1)(g) of the Employees'' State Insurance Act of 1948 for a declaration, that the said Act is not

applicable to it. Its contention was that if was a registered co-operative society of weavers, that though weavers come and work in the factory

owned by the Society, the payment made to them for the work done cannot be taken to be ""wages"" and that they cannot be taken as ""employees"",

whatever is paid to them should be taken to be dividend and not wages. Thus, the contention of the appellant-society on the basis of which the

relief set out above was claimed, was that all the alleged employees are the members of the Society and whatever was paid to them towards the

work done by them has to be taken as dividend and not as wages.

3. The application was opposed by the Employees'' State Insurance Corporation on the ground that the Act is intended to cover all persons who

receive wages for the work done by them, that merely because the workers happen to be shareholders of the Society they do not cease to be

workers and that the wages paid to them cannot be taken to be dividends.

4. The Employees'' State Insurance Court, after considering the rival contentions, found that the Act is applicable to all the persons working under

the Society and that the fact that the workers happen to be the shareholders of the Society will not take them out of the coverage of the Act. The

said finding is challenged by the Co-operative Society in this appeal.

5. It is contended by the learned counsel for the appellant-Society that the weaving who undertaken the job of weaving for the society cannot be

taken to be employees under the Society. Nor can the amounts received by them for that work be taken as wages, as defined in the Act, and

whatever they do for the Society should be taken as having been done in their capacity as shareholders and whatever was received by them as

such shareholders can only be taken as dividends are not as wages. According to the learned counsel for the appellant, unless a person is an

employee of the Society, and receives wages from the Society, he is not entitled to be covered by the Act. The question is, how far the above

submission of the learned counsel could legally be sustained.

6. The Employees'' State Insurance Court has adopted three tests to find out whether the Act is applicable to the appellant-Society or not. The

first test is to see whatever the persons sought to be covered by the Act are not employees in receipt of wages, as defined under the Act. It was

found, after consideration of the evidence, that the appellant Society maintain a ''Register of Wages'', and an ''Attendance Register'' in which the

names of the persons employed are entered. The report of the Inspector of Employees'' State Insurance Corporation, Exhibit R-1, has been

referred to. In a letter, Ext. R-2, written by the appellant-Society to the respondent, it has been stated that if the Society were compelled to pay all

of a sudden a huge sum by way of contribution, more than 100 persons would be thrown-out of employment. This shows that the appellant-

Society, in fact, employs more than 20 persons. The lower Court also found that it is not a case of the appellant-Society working without any

employees and that the entire work of the society is done by the shareholders engaging themselves in different occupations under the Society.

7. The second test applied by the Court below was as to see whether any manufacturing processes carried on by the Society. In this connection, it

found that the Society is actually engaged in the process of manufacturing clothes and, therefore, it is clear that the appellant-Society is engaged in

the process of manufacturing. The third test adopted by the Court below was to see whether power was used in the manufacturing process. It was

held, relying on Exhibit R-3, the survey report of the Inspector, that three power machines are found in the appellant''s concern one of 10-hp for

power looms, another of 3-hp, for bore-well and the third of 2-hp for winding machine.

8. Thus, the findings of the Court below that the appellant-Society is employing more than 20 persons and that it is engaged in the cloth

manufacturing process with the aid of power have not been questioned before us.

9. The only substantial question that is urged before us by the learned counsel for the appellant-Society is that all the persons who were engaged in

the process of manufacture of clothes are shareholders of the Society and, therefore, they cannot be taken to be employees of the Society, as

defined in the Act. According to the learned counsel, once the persons who are engaged in the manufacture of clothe are found to be the

shareholders of the appellant-Society, they cannot come within the definition of employees, for a shareholder of a co-operative society cannot be

an employee of the Society. In support of this contention the learned counsel refers to the decisions in Commissioner of Income Tax, Madras Vs.

R.M. Chidambaram Pillai and Others, and South Arcot Co-operative Motor Transport Society Ltd. Vs. Syed Batcha and Others, . After going

through the above decisions we are not able to see how these decisions will come to the aid of the appellant. In Commissioner of Income Tax,

Madras v. R. M. Chidambaram Pillai etc. (supra), the question was whether a partner of a firm can be its employee. Having regard to the legal

concept of a firm, which is normally taken to be a compendious name to denote all the partners, it was held that a partner cannot be said to be an

employee of the firm. The said decisions cannot obviously be applied to the case of a shareholder in a limited company or a shareholder of a Co-

operative Society. A shareholder in a limited company or in a registered Co-operative Society has always been treated as being independent of the

company or the Society, as the case may be. Therefore, the mere fact that one happens to be a shareholder of a Co-operative Society cannot

disable him from entering into a contract of employment with the Co-operative Society. Thus, the decision in Commissioner of Income Tax,

Madras v. R. M. Chidambaram Pillai etc. (supra), has no application to the facts of this case.

10. The decision in South Arcot Co-operative Motor Transport Society Ltd. v. Syed Batcha and others (supra), was a case where a member of a

Co-operative Society raised an industrial dispute as against the Society, of which he has a member, regarding certain amounts payable to him for

the work done to the Society. The question that arose in that case was whether the claimant could raise an industrial dispute without asking for an

arbitration under S. 51 of the Madras Co-operative Societies Act, 1932, which provided that all disputes between a Society and its members

touching the business of the Society should be decided on a reference to arbitration under that Act. The decision was that the claimant being a

member of the Society all disputes between him and the Society should be settled by way of arbitration under that section and he cannot raise in

industrial dispute. We do not see how the said decision will help the appellant herein. It is because of the fact that the claimant was a member of

the Society he was asked to invoke S. 51 of the Co-operative Society Act. But this decision cannot be taken to lay down that a member of a Co-

operative Society cannot be an employee of the Society on any account and under any circumstances.

11. It is well-established that a Co-operative Society, on registration, becomes a body corporate with a perpetual succession and it is legally

independent of its members who constitute the Society. This is made clear by S. 38 of the Pondicherry Co-operative Societies Act, 1972. Once

the Society is independent of its members and has a separate legal existence apart from its members, then there is no bar for the Society employing

its members and there being a contract of employment between the Society and its members. If such a contract of employment is entered into

between the Society and its members, then the members so employed should be taken to have two independent capacities - one as a member of

the Society, and the other as an employee of the Society. We do not think that there is any merger of the said two position or capacities. One''s

position as a shareholder is different from one''s position as an employee of the Society. In Lee v. Lee''s Air Farming Ltd. [1961] A.C. 12, the

Privy Council held that even a person having all the shares except one in a company can be an employee of the company. In that case the person

holding all the shares except one in the company was also a governing director of the company. He was nonetheless held to be a worker under the

company while flying its aircraft for wages. In that case also the wages paid to the governing director were debited in the company''s account, as in

the present case, where the wages paid to the employees, who are also shareholders of the Society, were debited against the Co-operative

Society. The Privy Council laid down the position of law thus :

Ex facie there was a contract of service. Their Lordships conclude, therefore, that the real issue in the case is whether the position of the deceased

as sole governing director made it possible for him to be the servant of the respondent-company in the capacity of chief pilot of the company. In

their Lordships'' view, for the reasons which have been indicated, there was no such impossibility. The respondent-company and the deceased

were separate legal entities. Their Lordships consider, therefore, that the deceased was a worker.

In Boulting v. Cinematograph Association the Court [1969] 1 All E.R. 716 , of Appeal has gone a step further. In that case of the Court of Appeal

had to decide the question whether two brothers who bore the name of Boulting and who were the managing directors of a film company called

the charter Film Production Company Ltd., could be regarded as employees of the company because they also did work for the same company

on the technical side of film production. The Court of Appeal by a majority held that the two managing directors were employees, within the

meaning of Rule 7 of the Articles of Association of the company. Upjohn, L.J., who was a member of the majority, observed thus :

I cannot myself escape from the conclusion that the position of the Boulting brothers, although anomalous perhaps is strictly within the wording of

Rule 7, for they are in fact employees of Charter engaged on the technical side of film production. True it is that, as directors, they are not

employees but it cannot, I think, be doubted that a managing director may for many purposes properly be regarded as an employee.

In Ram Pershad Vs. The Commissioner of Income Tax, New Delhi, , the Supreme Court while considering the question as to whether there could

be a contract of employment between a managing director and a company, made the following observations :

A managing director may have a dual capacity. He may both be a director as well as an employee. In the capacity of a managing director he may

be regarded as having not only the capacity or persona of a director but also has the persona of an employee, or an agent depending upon the

nature of his work and the terms of his employment. Where he is so employed the relationship between him as the managing director and the

company, may be similar to a person who is employed as a servant or an agent, for the term (employed) is facile enough to cover any of these

relationships. The nature of his employment may be determined by the articles of association of a company and or the agreement, if any, under

which a contractual relationship between the director and the company has been brought about whereunder the director is constituted an employee

of the company. If such be the case, his remuneration will be assessable as salary under S. 7. In other words, whether or not a managing director is

a servant of the company apart from his being a director, can only be determined by the articles of association and the terms of his employment.

Having regard to the legal position enunciated in the decisions referred to above, it is clear that a shareholder of a Co-operative Society registered

under the Pondicherry Co-operative Societies Act, 1972, can also be its employee if a contract of employment is established. The fact that an

employee happens to be a shareholder of a Co-operatives Society does not make him nonetheless an employee. In this case that there was an

employment of persons who were shareholders of the Co-operative Society is clear from the registers of the Society wherein the amounts paid to

the employees as wages have been debited against the company and the employees'' names also find a place in the attendance register, therefore,

can it be said that merely because the employees were members holding shares in the Co-operative Society, they cease to be its employees ? Thus

it cannot be said that they are not entitled to be covered by the Employees'' State Insurance Act. In this view of the matter, we have to uphold the

decision of the Employees'' State Insurance Court and dismiss the appeal.

12. The appeal is accordingly, dismissed. There will be no order as to costs.