

**(1989) 02 KL CK 0055****High Court Of Kerala****Case No:** None

Kunnathunad C.C. Coop. Society

APPELLANT

Vs

Regional Director, ESIC

RESPONDENT

**Date of Decision:** Feb. 16, 1989**Acts Referred:**

- Industrial Disputes Act, 1947 - Section 33
- Mines Act, 1952 - Section 1, 2, 25F, 9

**Citation:** (1989) 2 LLJ 27**Hon'ble Judges:** Krishnamoorthy, J; Balakrishna Menon, J**Bench:** Division Bench

### **Judgement**

Balakrishna Menon, J.

This appeal by an Industrial Co-operative Society is against the decision of the Employees' Insurance Court, Alleppey that the Society is covered by the Employees' State Insurance Act, 1948 ("the Act" for short) from 8th January 1970 and its employees are liable to be insured under the Act from that date onwards. The Society is registered under the Kerala Co-operative Societies Act. The Society provides employment for its members and the members work in the premises of the Society for wages paid by the Society. There is no dispute that the Society is engaged in a manufacturing process with the aid of power and if the members who work for wages are also taken into account the Society employs more than 20 workers in its manufacturing process.

2. Sub-section (4) of Section 1 enacts that the Act applies to all factories including factories belonging to the Government other than seasonal factories. The expression "factory" is defined in Section 2(12) to mean "any premises including the precincts thereof whereon twenty or more persons are employed or were employed for wages 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 Mines Act, 1952" Section 2(9) defines the expression "employee". The relevant part of the definition is extracted below:

2(9) "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 work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere;◆.

3. A society registered under the Kerala Co-operative Societies Act as per Section 9 is a body corporate known by the name under which it is registered having perpetual succession and a common seal and with power to hold property, enter into contracts, institute and defend suits and other legal proceedings and to do all things necessary for the purposes for which it is constituted. The society is a legal entity distinct from its shareholders. A Division Bench of this Court in Regional Director E.S.J. Corporation v. T.T.I. Coop. Society, Calcicut (1980) Lab. IC. 1301 following an earlier decision in Kerala State Handloom Weavers" Co-operative Society Ltd. Vs. State of Kerala and Others, has held that a society employing its members for wages in its manufacturing process is liable to be covered under the Act for the following reason stated at page 1302:

A member of a Co-operative Society is separate and distinct from the society as such which is a legal person. The property of a Co-operative Society does not belong to the members but to the society though such members have an interest in the society.

4. In arriving at the above conclusion, the Division Bench relies on the following observation of the Supreme Court in Rustom Cavasjee Cooper Vs. Union of India (UOI) :

A Company registered under the Companies Act is a legal person, separate and distinct from its individual members. Property of the Company is not the property of the shareholders. A shareholder has merely an interest in the Company arising under its Articles of Association, measured by a sum of money for the purpose of liability, and by a share in the profit.

The Division Bench differs from the view expressed by the Madras High Court in South Arcot Co-operative Motor Transport Society Ltd. Vs. Syed Batcha and Others .

In that case a Division Bench of the Madras High Court had considered the question whether the claim made by a retrenched member employee of a Cooperative Society u/s 25-F of the Industrial Disputes Act can be adjudicated upon by the Labour Court as a dispute u/s 33(C)(2) of the said Act. The Madras High Court in reversal of the decision of the Labour Court had held at p. 283:

The object of the society among others is to carry on the business of running for hire, goods and passenger transport services. All the shareholders are interested in running the above services. They are members of the society and owners of the concern.

5. This Court in the T.T.I. Co-op. Society's case referred to above had expressly dissented from this decision of the Madras High Court.

6. A Division Bench of the Madras High Court in a later decision reported in [Pondicherry State Weavers" Co-operative Society Vs. Regional Director, Employees" State Insurance Corporation, Madras,](#) has held at page 19:

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 Section 38 of the Pondicherry Cooperative 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 positions or capacities. One's position as a shareholder is different from one's position as an employee of the Society.

The decision in S.A. Co-op. Motor Transport Society v. Syed satcha (supra) is distinguished as relating to a case where the dispute was held to be of the nature falling u/s 51 of the Madras Co-operative Societies Act 1932 and the remedy of the employee was not to raise an industrial dispute, but to have recourse to arbitration as provided for under the said Act.

7. Counsel for the appellant relies on a Division Bench decision of the Andhra Pradesh High Court in E.S.I. Corporation, Hyderabad v. Laxmi P.L.R. Co-operative & Sales Society Ltd. (1966) Lab. I.C. 370 wherein it is held at page 372:

When the very constitution of the society presupposes employment of its members as part of its scheme they cannot be described as employees of the society simply because the society is declared as Corporation and thereby treating the society as the master and the members as the servants. The jural relationship of master and servant cannot be attributed by mere fact of members happened to work for remuneration.

Referring to the decisions of the Kerala and Madras High Courts referred to above, it is stated at page 373:

While agreeing with the view of the Kerala and Madras High Courts that the members of the Society can be employees of the society we dissent with the view

that members working for remuneration become employees of the society simply because the society is a distinct entity from its members because of its corporate status. We are of the opinion that the Insurance Court must enquire into the question whether the members of the society are in fact employees and a contract of employment of members by the society is established. If on the other hand, the members of the society are working under the self-employment scheme and receiving remuneration therefore they cannot be treated as employees within the meaning of the Act.

8. We find it difficult to accept the reasoning of the Andhra Pradesh High Court that the members of the Society working for the society for wages are not its employees. An "employee" as per the definition in Section 2(9) of the Act is a person employed for wages, and the expression "wages" is defined in Section 2(22) to mean "all remuneration paid or payable in cash to an employee, if the contract of employment, express or implied, were fulfilled...". The society is a separate legal entity distinct from its members and if members work for wages for the society they are its employees within the meaning of that expression in the Act.

9. Counsel relies also on the decision of the Supreme Court in Regional Director, Employees" State Insurance Corporation, Trichur Vs. Ramanuja Match Industries, wherein it is held that a partner of a firm is not its employee within the meaning of the Act for the reasons stated at page 71:

The partnership business belongs to the partners and each one of them is an owner thereof. In common parlance the status of a partner qua the firm is thus different from employees working under the firm. It may be that a partner is being paid some remuneration for any special attention which he devotes but that would not involve any change of status and bring him within the definition of employee.

A partnership firm is not a legal entity except for some limited purposes under certain enactments such as the Indian Income Tax Act and the Sales Tax Act or for a suit under Order 30 CPC. The analogy of a partner working for remuneration in the firm cannot be extended to a member of the Cooperative Society employed for wages for the work of the society involving a manufacturing process.

10. For the aforesaid reasons, we are satisfied that the appellant society is covered under the Act. The appeal fails and it is dismissed.