(1988) 05 P&H CK 0023

High Court Of Punjab And Haryana At Chandigarh

Case No: Letters Patent Appeal No. 692 of 1982

Employees State Insurance Corporation		APPELLANT
	Vs	
Bhag Singh		RESPONDENT

Date of Decision: May 19, 1988

Acts Referred:

- Employees State Insurance Act, 1948 - Section 1(5), 2, 2(12), 75
- Factories Act, 1948 - Section 1(5), 2, 2(12)
- Punjab Shops and Commercial Establishments Act, 1958 - Section 2(5)
- Punjab Trade Employees Act, 1940 - Section 2(1)
- Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 - Section 2

Citation: AIR 1989 P&H 1 : (1989) 2 LLJ 126 : (2001) 1 RCR(Civil) 171

Hon'ble Judges: V. Ramaswami, C.J; Ujagar Singh, J; G.R. Majithia, J

Bench: Full Bench

Advocate: Mr. K.L. Kapur, for the Appellant; Mr. R.L. Chopra, for the Respondent

Judgement

V. Ramaswami, C.J.

The Employees State Insurance Corporation, hereinafter called the Corporation, has filed this appeal under the Letters Patent against the decision of a learned Single Judge of this Court dated December 3, 1981, which is reported in Bhag Singh v. Employees Slate Insurance Corporation 1982 P.L.R. 605, in which the learned Judge has held that M/s National Service and Petrol Pump, which is a proprietary concern of one Bhag Singh, is not covered by the Employees State Insurance Act, 1948, hereinafter referred to as the Act, and the demand made by the Corporation was illegal and could not be sustained.

2. It appears that the establishment was surveyed by an Inspector of the Corporation on September 5,1976, and November 13, 1976, and as per the survey

report, 15 persons on September 5, 1976 and 13 persons on November 13, 1976, were found employed by the establishment and that, therefore, the establishment was covered by the Act. When proceedings were sought to be initiated on that basis, the respondent filed an application u/s 75 of the Act before the Employees State Insurance Court, Chandigarh, praying for a declaration that the coverage of his establishment under the Act is illegal, arbitrary, void ab initio and that the Corporation are not entitled to recover any amount under the Act from him. He pleaded that he was carrying on two independent businesses, one of sale of petrol etc. and the other of running a service station for repair of motor cars etc; that each of these two businesses could be carried on independently and the one was not inter- dependent upon the other so as to make it as one '' business so that one could not be carried on without the other. He further pleaded that the number of employees of each of these two businesses taken separately were below 10 and that, therefore, that Act is not applicable. In any case, even if the employees of both the businesses were clubbed together, the toial number will be below 20 though above 10 and since he was not carrying on any manufacturing process with the aid of power, the Act cannot be made applicable to him. The Employees State Insurance Court held that the petrol pump and the service station are located in one and the same premises, the power connection for both is the same and that the other evidence also showed that they are not separate concerns as claimed, and since more than 10 persons were working in the premises during the relevant period, the business of the respondent is covered by the Act. In the result, it dismissed the application. On appeal, however, the learned Single Judge was of the view that the respondent''s business was not covered by the Act and the demand made by the Corporation is illegal and in that view allowed the appeal.

3. When the appeal against the judgment of the learned Single Judge came up for hearing before the Bench, it was of the view that the point involved in the appeal deserved to be decided by a larger Bench in view of a direct judgment of the Bombay High Court taking a contrary view and accordingly the appeal was referred to the Full Bench.

4. The Employees State Insurance Act, 1948, came into force on August 31, 1948, but applies to all factories other than seasonal factories. Section 1(5) empowered the appropriate Government by a notification in the official Gazette to extend that provisions of the Act or any or them to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. Section 2(12) defines a "factory" as meaning "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 (35 of 1952), or a railway running shed;" and further stated that the expressions "manufacturing process" and "power" shall have the meanings respectively assigned to them in the

Factories Act, 1948 (63 of 1948). "Manufacturing process" is defined in section 2(k) of the Factories Act as follows :-

"Manufacturing process" means any process for -

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewage, or any other substance or,

(iii) generating, transforming or transmitting power, or

(iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process or book-binding; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage;"

5. In exercise of the powers conferred by sub-section (5) of section 1 of the Act, by Notification No. 10102-SA-III-76/10308, dated August 30, 1976, the Chief Commissioner, Chandigarh, with the approval of the Central Government, extended the provisions of the Act with effect from September 5, 1976, to the class of establishments, specified in column 2 of the Schedule annexed to the notification and situate within the area specified in column 3 thereof. The three types of establishments covered by the notification are :-

"1. Any premises including the precints thereof whereon ten or more persons but in any case less than twenty 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, but excluding a mine subject to the operation of Mines Act, 1952 (35 of 1952), or a railway running shed or any establishment which is exclusively engaged in any of the manufacturing processes specified in clause 12 of Section 2 of the Employees State Insurance Act, 1948 (34 of 1948).

2. Any premises including the precincts thereof wherein 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 without the aid of power, or is ordinarily so carried on, but excluding a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a railway running shed or an establishment which is exclusively engaged in one or more of the manufacturing process specified in clause 12 of section 2 of the Employees State Insurance Act, 1948 (34 of 1948).

3. The following establishments whereon twenty or more persons employed, or were employed, for wages on any day of the preceding twelve months, namely -

(i) Hotels;

(ii) Retaurants;

(iii) Shops;

(iv) Road Motor Transport establishment;

(v) Cinemas including preview theatres; and

(vi) Newspaper establishments as defined in section 2(d) of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955)."

As may be seen from this notification, though the definition of the "factory" in section 2(12) of the Act, covered only a premises where 20 or more persons are employed, under the notification, where 10 or more persons but less than 20 persons were employed, and in any part of which, manufacturing process is being carried on with the aid of power, and if in any premises 20 or more persons were employed, they would be covered by the Act even if any manufacturing process is carried on without the aid of power.

6. The Employees State Insurance Court, as already stated, held that the petrol pump or service station are not two different businesses and it is one and the same business carried on by a single individual and that they could not be treated as two separate and independent businesses for the purpose of finding out the applicability of the Act. The learned Single Judge did not go into this question but on the assumption that they are one and the same business and the employees working in the petrol pump and in the service station had to be clubbed together in order to find out the total number of employees employed in the premises for the purpose of determining the applicability of the Act. The Division Bench also did not question the finding of the Employees State Insurance Court on this aspect in the referring order but the reference was only on the scope of the definition of "manufacturing process" and the applicability of the Act on the basis that the business of petrol pump and the service station carried on by the respondent was one and the same. We also find no grounds for interference with this finding of fact and, therefore, this reference is considered on the basis that this is one establishment where more than 10 and less than 20 persons are employed.

7. A number of decisions have been cited at the bar including two other judgments of the same learned Judge whose decision is now under appeal and reported in Employees State Insurance Corporation v. M/s Triplex Dry Cleaners, G. T. Road, Jullundur 1982 P.L.R. 600 and M/s Raison Tailors v. Employees Stale Insurance Corporation 1982 P.L.R. 609. Thus, all the three judgments of this Court are by the same learned Single Judge. In the decision under appeal, the learned Judge considered the two types of businesses, namely, sale of petrol and dicscl and running a service station for repair of motor cars, independently in order to come to the conclusion as to whether any manufacturing process is involved within meaning

of section 2(k) of the Factories Act. In respect of the business of sale of petrol, the learned Judge observed :-

"A reading of the definition of manufacturing process contained in section 2(k) of the Act would show that pumping of oil is one of the manufacturing processes. Whether selling of petrol or diesel at a petrol pump can be called a process of pumping of oil would again be a question to be gone into. A perusal of the definition shows that the process of pumping of oil, water sewage or any other substance has also been defined to be a manufacturing process but to my mind this would not include dealership of peirol or diesel. It is true that some pumping process is involved because petrol and diesel is stored by the petro! dealers in huge tanks but the underlying object of the definition seems to be the pumping of oil from refineries or water from underground the earth and so on. Essentially, the business carried on by a petrol pump dealer is to sell petrol or diesel as the case may be and not pumping of oil. I am, therefore, of the firm view that selling of petrol or diesel by a petrol dealer will not be a "manufacturing process".

As regards the service station, the learned Judge held :-

"As regards service station for repairing motor cars, etc. the counsel for the Corporation wants it to be brought within the definition of ''manufacturing process'' as per section 2(k)(i) of the Factories Act wherein the word ''repairing'' has been used. But this word has to be read along with the words "any article or substance with a view to its use sale, transport, delivery or disposal" coming thereafter. So, the process of repairing has to be with any of these views which would be completely missing in the business carried on in this case. This matter was dealt with by me in detail in F.A.O. No. 405/1978 E.S.L Corporation v. Triplex Dry Cleaners and others 1982(84) P.L.R. 600 decided on 22nd October 1981 wherein the process of dry-cleaning was sought to be included within the definition of ''manufacturing process'' because the definition included the words ''washing and cleaning''. In that case I recorded the finding that un jess a new marketable commodity conies into being after the process and "can be used, sold, transported, delivered or, disposed of, the process cannot be called a manufacturing process. The same reasoning would apply in the present case. Customers bring their vehicles and after repair etc. they pay service charges and take way their vehicles. Therefore, I am of the view that repairing of motor vehicle is also not a manufacturing process."

As may be seen from these passages, the learned Sin-gle judge has considered the meaning of the words "process for pumping oil, water, sewage, or any other substance" in sub-clause (ii) of clause (k) of section 2 of the Factories Act as pumping oil such as from a refinery and water from underground the earth, and so on and that it would not include pumping process involved in the business of sale of petrol and diesel. Similarly, the "manufacturing process" in sub-clause (I) of section 2(k) would take in only a case where a new marketable commodity comes into being after the process which can be used, sold, transported, delivered or disposed of. As

no new marketable commodity comes into being after washing and cleaning of the cars, it will not come within the meaning of sub-clause (1) of Section 2(k). In the decision reported in 1982 P.L.R. 600, the same learned Judge held that the business of dry-cleaners would not fall within the definition of "factory" in the view that whenever a washing or cleaning is done of any article by a dry-cleaner with a view to its use, no separate commercially different marketable commodity comes into being, which could be used, sold, transported or delivered or disposed of and that, therefore no manufacturing process can be said to be involved. In the third of the decisions reported in 1982 P.L.R. 609, almost on the same reasons as in the earlier cases, the learned Judge came to the conclusion that the tailor-master''s business would not come within the meaning of "manufacturing process". In two of these three decisions, the learned Judge also held that the premises in dispute would come within the term "shop" as defined in section 2(5) of the Punjab Shops and Commercial Establishments Act, 1958, and section 2(1)(p) of the Punjab Trade and Employees Act, 1940, on the ground that in these premises business is carried on and services are rendered to customers within the meaning of those provisions. However, since the strength of the employees is less than 20, it will not be covered by the third clause of establishments in the notification of the Chandigarh Administration dated August 30, 1976, above referred to,

8. On somewhat similar reasoning, a learned Single Judge of the Madras High Court in Re. A.M. Chin-niali, Manager, 7S6 Sangu Soap Works, Kattu-niavadi Road, Arantangi AIR 1957 Mad 755, held that " to constitute a manufacture there must be transformation. Mere labour bestowed on an article even if the labour is applied through machinery, will not make it a manufacture, unless it has progressed so far that a transformation ensues, and the article becomes commercially known as another and different article from that as which it begins its existence". However, we find a diametrically opposite view has been faken in two decisions, one by the Bombay High Court in Gateway Auto Services v. The Regional Director, Employees State Insurance Corporation and another 1981 Lab. I.C. 49 and other by the Calcutta High Court in M/s Baranagar Service Station v. The Employees State Insurance Corporation 1988 Lab. I.C. 302. In the Bombay decision, a learned Single Judge of that Court held that on a plain reading of section 2(k), it would mean that whenever a vehicle is brought by the customer for washing, cleaning and oiling with a view to its use, the activity must fall within the definition of "manufacturing process". Manufacturing process in the section would include washing, cleaning and oiling in respect of the vehicle which is brought to the establishment for making it ready for delivery after manufacturing process is undertaken and it is not necessary that it should produce a commercially distinct or different article. In the decision of the Calcutta High Court, which also related to a petrol pump and service station, a Division Bench of that Court specifically dissented from the Madras view in In Re: A.M. Chinniah, Manager, 786 Sangu Soap Works Kattumavadi Road Arantangi, and this Court''s view in the decision now under appea!. The learned Judges held that the

petrol pump engaged in pumping oil, washing and service of vehicles is engaged in the manufacturing process and that transformation or emergence of a new marketable commodity is not a must to constituie manufacturing process.

9. Learned counsel for the respondent relied on South Bihar Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others, , and Commissioner of Sales Tax, U.P. Vs. Dr. Sukh Deo, in support of his contention that unless the process involves bringing into existence or transformation into a new or different article, no manufacturing process can be said to be involved within the meaning of the Act. The decision in South Bihar Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others, related to a case arising under the Central Excise and Salt Act, where the duty is on goods manufactured. The meaning to be given to the word ''manufacture'' in that Act certainly cannot be interpreted or relied on for the purpose of determining the meaning of the words "manufacturing process" in the Employees State Insurance Act. Similarly, the decision in Commissioner of Sales Tax, U.P. Vs. Dr. Sukh Deo, also could not be relied on as that related to the provisions of the Sales Tax Act where it was interpreted that the expression "manufacture" has to be understood and accepted as a wide connotation as meaning of making an article materially different from the basic article.

10. The long title shows that it is an Act for providing certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. The provisions of the Act show that it is enacted primarily with the object of protecting workers employed in factories against industrial and occupational hazards and to secure for them conditions of employment conducive to their health, safety, welfare, proper working hours and other benefits. The provisions are, therefore, intended to apply to all "work places".

11. Being a social enactment to achieve social reform the provisions must receive a liberal construction to achieve legislative purpose without doing violence to the language as held by the Supreme Court in The Patna Electric Supply Co. Ltd. Vs. The Patna Municipal Corporation and Others, . Again, in one of the latest judgments in Andhra University Vs. Regional Provident Fund Commissioner of Andhra Pradesh and Others, . V. Balakrishna Eradi J. speaking for the Court observed :-

"In construing the provisions of the Act, we have to bear in mind that it is a beneficent piece of social welfare legislation aimed at "promoting and securing the well being of the employees and the Court will not adopt a narrow interpretation which will have the effect of defeating the very object and purpose of the Act."

12. Petrol pump and service station is a work place where persons are employed and power is used in the process of its activities. It is not materially different from the other activities of a manufacturing place strictly so-called, in the circumstances, we will not be justified in giving a very narrow construction to the definition of "manufacturing process" so as to restrict its application only to a work place where

by virtue of the manufacturing process a commercially different article is produced.

13. Having regard to the scope of the provisions of the Act and the need for securing the conditions of employment conducive to the health, safety and welfare of the labour, we cannot restrict its applicability with such narrow and restricted approach. The definition of "manufacturing process" is so widely worded in order to project the scope beyond the normal and natural meaning attributed to it in other enactments. Even understanding the words "manufacturing process" in a narrow sense, if it brings about a particular result, not necessarily a commercially different product, then it should be understood that there is a manufacturing process. In the case of a service station, washing, cleaning or oiling a car brings about a particular result in either as a lubricated or cleansed vehicle. That result itself shall, in our opinion, be treated as enough to bring the process within the meaning of the Act. We are also unable to agree with the learned Single Judge that the words "pumping oil, water, sewage, or any other substance" in clause (ii) of section 2(k) are to be read in any restricted way so as to make that provision confined to refer to pumping of oil from refineries and water from underground the earth and so on. Even giving a literal meaning, we cannot restrict the scope of it to pumping of oil from refineries. As normally understood, it would include pumping process involved in a petrol pump.

14. In the circumstances, we are unable to accept the restricted view held by the learned Single Judge and we are in respectful agreement with the view expressed by the Bombay High Court in Gateway Auto Service''s case (supra) and the Calcutta High Court in M/s Baranagar Service Station''s case (supra)

15. One of the grounds on which the Act was held as not applicable was that in the service station and the petrol pump, respondent carries on business of rendering service to the customers and that therefore it would be a "shop" within the third category of establishments referred to in the notification of the Chandigarh Administration and if once it is a shop it cannot be an establishment where manufacfuring process is involved so as to bring it within the other two categories referred to in the notification. This approach of the learned Judge, in our opinion, cannot be accepted. Even if it is considered to be a shop, if it comes within the first category of establishments covered by the notification, it cannot be taken away from that provision. Business is carried on in a premises and ten or more persons are employed therein, and as held by us a manufacturing process is being carried on with the aid of power. These facts bring the establishment in first of the categories in the notification and merely because services are also rendered and it might satisfy the definition of "shop" it cannot be taken out of the provisions as an establishment where manufacturing process is carried on with the aid of power.

16. In the result, we hold that the decisions in Bhag Singh v. Employees State Insurance Corporation 1982 P.L.R. 605, Employees State Insurance Corporation v. M/s Triplex Dry Cleaners, G.T. Road, Jullun-dur 1982 P.L.R. 600 and M/s Raison

Tailors v. Employees State Insurance Corporation 1982 P.L.R. 609 are wrongly decided and are hereby overruled and further we set aside the judgment in Bhag Singh v. Employees State Insurance Corporation 1982 P.L.R. 605, which is (sic) and restore that of the Employees State Insurance Court. However, there will be no order as to costs.