E.S.I. Corporation Vs Dave Griha Udyog

Court: Madhya Pradesh High Court

Date of Decision: June 19, 2000

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Section 100
Employees State Insurance Act, 1948 â€" Section 82

Citation: (2000) 86 FLR 875 : (2001) 1 LLJ 42

Hon'ble Judges: A.M. Sapre, J

Bench: Single Bench

Advocate: V. Saran, for the Appellant; G. Patwardhan, for the Respondent

Final Decision: Dismissed

Judgement

A.M. Sapre, J.
This appeal is preferred by Employees'' State Insurance Corporation u/s 82 of the Employees'' State insurance Act, 1948

(hereinafter referred to Act for brevity) against an order dated December 6, 1997, passed by Presiding Officer (Labour Court, indorc) in case No.

1/ESI/1992. By impugned order, the learned Presiding Officer has allowed the application made by the respondent u/s 75 of the Act and has held

that respondents are not liable to make any contribution under the Act and that demand dated July 17, 1991 raised by the appellant on respondent

to comply with the provisions of Act is bad in law. Facts in brief to appreciate the issue involved in this appeal need mention.

2. A show cause notice u/s 45A of the Act was issued to the respondent alleging inter alia therein that respondent is a factory falling within the

meaning of the word factory defined in Section 2(12) of the Act and hence, it was necessary for them (respondent) to make contribution by

complying with the provisions of the Act. The respondent was asked to make contribution for the period July 17, 1991 to January 11, 1992 and

obviously even after January 11, 1992. The respondent disputed their liability but the same was not accepted by the appellant and hence impugned

demand dated July 17, 1991 was issued. The respondent then invoked the provisions of Section 75 of the Act by applying to the Labour Court

(Indore)-it being a competent Authority under the Act, for determination of their liability to pay the contribution. In the application while challenging

the demand, the respondent alleged that they were at all relevant time engaged in the business of packing (masala) in packets. According to

respondent, the nature or activity, which was undertaken by them i.e. packing of masala in various varieties of packages does not constitute any

manufacturing activity so as to fall within the definition of word ""factory"" under the Act. According to respondent, this activity does not involve any

manufacture nor it requires any power to run the establishment. It was also alleged that even otherwise the respondent never engaged more than 20

employees in their small set up nor even used any power for running the so called factory which is in fact not needed to attract the rigours of the

Act. In conclusion, it was alleged that in fact the small establishment of packing of masala was closed since March 31, 1995 and all activities have

been wound up. On these facts the respondent denied their liability and prayed that show cause notice and resultant demand raised by the

appellant be quashed by giving a declaration as prayed.

3. The appellant contested the application made by the respondent. The appellant placed reliance on their ""two inspection notes dated November

10, 1986 and September 21, 1990 which were carried out in the premises of respondent. On the basis of these notes, according to appellant, it

could be concluded that more than 20 employees were working in respondent premises and that power was being used to run the factory. It was

therefore, asserted that in view of what is contained in these two inspection notes, the impugned demand is liable to be sustained and accordingly, it

be held that respondent is liable to make contribution they being a factory within the meaning of Section 2(12) of the Act.

4. Issues were framed. Parties led evidence before the Labour Court. By impugned order, the learned Presiding Officer allowed the application of

respondent. It was held on appreciation of evidence, that neither it is proved that in respondents establishment, more than 20 employees ever

worked nor it could be proved that respondent used electric power to run the so called factory. On these two factual findings, the Labour Court

held that respondent cannot be subjected to the rigours of the Act. As a consequence, the impugned show cause and demand was quashed. It is

this order, the appellants complain by filing this appeal to be bad in law and ask this Court to set it aside.

5. Heard Shri Vivek Saran, learned counsel for the appellant and Shri C. Patwardhan, learned counsel for the respondent.

6. At the outset, it may be mentioned that this appeal is filed u/s 82 of the Act. Sub-section 2 of Section 82 provides that an appeal shall lie to this

High Court if it involves a substantial question of law. Perusal of appeal memo including the grounds on which the impugned order is assailed does

not mention any substantial question of law arising out of impugned order. The scheme of Section 82 of the Act is akin to Section 100 of C.P.C. It

is therefore, incumbent upon the appellant to formulate the substantial question of law which according to appellant arise/involve in appeal, so as to

invest this Court to entertain the appeal and eventually interfere after hearing both parties. Be that as it may, I made sincere endeavour to find out

after hearing the learned counsel for the parties and perusing the record of the case whether any substantial question of law arises to enable this

Court to interfere. In my opinion, the appeal does involve substantial question of law viz. whether activity of packing (masala) constitutes a

manufacturing process and therefore whether it can be termed as factory as defined u/s 2(12) of the Act.

7. Learned counsel for the appellant mainly urged that finding of learned Presiding Officer that it is not proved that more than 20 employees were

employed and that power was not used in tbe factory by the respondent is contrary to evidence on record and in particular contrary to two

inspection notes. Relying on the definition of factory as defined in Section 2(12) and the definition of word ""manufacturing process"" as defined in

Section 2(14-AA) ibid and the decision of Supreme Court in the case of Osmania University Vs. Regional Director, Employees" State Insurance

Corpn., Andhra Pradesh and Others, the submission of learned counsel was that activity of packing is held or in any event should be held to be

factory thereby attracting the provisions of Act. He, therefore, submitted that learned Presiding Officer of the Labour Court committed an error in

holding against the appellant. According to learned counsel, impugned order, therefore, deserves to be set aside and appeal be allowed.

8. In reply, learned counsel for the respondent supported the impugned order and urged that the appeal does not involve any substantial question

of law for interference. He, therefore, urged for upholding of the impugned order.

Section 2(12) of the Act defines the word ""factory"" as under:

Section 2(12) :-""factory"" means any premises including the precincts thereof-

(a) whereon ten 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, or

(b) 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 without the aid of power or is ordinarily so carried on but does not include a mine subject to the

operation of Mines Act, 1952 (35 of 1952) or a railway running shed.

Similarly, the word manufacturing process is defined in Section 2(14-AA) of the Act as under:

Section 2(14-AA) :-""manufacturing process"" shall have the meaning assigned to in the Factories Act, 1948 (63 of 1948)"".

9. Perusal of Sub-section (a) of Section 2(12) makes it manifest that if the manufacturing process is carried on with the aid of power in any

premises then in that event one has to find out whether 10 or more persons are employed in the said premises on any day of the preceding 12

months so as to make the Act applicable. Whereas Sub-clause (b) makes it manifest that if the manufacturing process is carried on without the aid

of power in any premises then in that event, ""one has to find out whether 20 or more persons are employed in the said premises on any day of

preceding 12 months so as to make the Act applicable to such factory.

10. Similarly, as referred supra, the word manufacturing process as defined in Section 2(14-AA) has the same meaning which is assigned to this

expression in the Factories Act in Section 2(k), which is as under:

Section 2(k):- ""manufacturing process"" means any process for-

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting

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.

11. Their Lordships of Supreme Court in the case of Osmania University (supra) had an occasion to consider the meaning of word factory as

defined in Section 2(12) ibid read with the meaning of word ""manufacturing process"" referred supra with a view to decide whether department of

publication and press of Osmania University is a factory within the meaning of the said expression. Their Lordships while interpreting the

expression manufacturing process as used in the definition of the word ""factory"", held that the department of publications and press of the Osmania

University is a factory. This is what their Lordships held:

Clause (k) of Section 2 of the Factories Act defines the expression ""manufacturing process"". For the purposes of this case we need refer to only

Sub-clause (i) of the said definition clause. That sub-clause states that manufacturing process means any process for ""making, altering, repairing,

ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a

view to its use, sale, transport, delivery or disposal.

In the connected appeal C.A. No. 204 of 1973 reported in 1986 Lab IC 103) filed by the same appellant, we had occasion to consider whether

the Department of Publications and press run by the University is liable for coverage under the Employees'' Provident Funds and Miscellaneous

Provisions Act, 1952 together with Schemes and Notifications. In our judgment in that appeal we have taken the view that the said department is

engaged in carrying on a ""manufacturing process"" in the printing of text books, journals, forms and other items of stationery. The definition of

manufacturing process"", contained in Section 2(i-c) of the Employees Provident Funds and Miscellaneous Provisions Act is identical in all respects

with that contained in Section 2(fk)(i) of the Factories Act.

In the light of the aforesaid conclusion recorded by us in C.A. No. 204 of 1973 (reported in 1986 Lab IC 103) it must be held that the department

in question is a ""factory"" within the meaning of the said expression as defined in Section 2(12) of the Act. The judgment under appeal does not,

therefore, call for any interference.

This appeal is accordingly dismissed.

12. Keeping in view the ratio of Osmania University case (supra) wherein their Lordships interpreted the exhaustive definition of the word

manufacturing process which includes even packing, it is discernible that activity of packing does constitute a manufacturing process and

accordingly falls within the meaning of word factory as defined u/s 2(12) ibid. However, in order to make the Act applicable to such factory, one is

further required to prove that 10 or more persons are/were employed for wages in such factory on any day of preceding 12 months if it is being

run with the aid of power or 20 or more if it is being run without the aid of power. In the present case, the learned Presiding Officer has recorded a

finding that neither the respondent used the power in running the factory nor they ever employed more than 20 persons on any day of preceding 12

months. This being a finding based on appreciation of evidence is binding on me. Even otherwise, I do not find any infirmity in any of these two

findings.

13. The effect of affirming the finding on the aforementioned two factual issues would mean that though the activity of packing undertaken by the

respondent is held to be a factory but since the same was found to carry on with the help of persons less than 20 in number.

14. The effect of affirmance of the finding on these two factual issues would mean it is a factory running without the aid of power but with less than

20 persons. Under these circumstances, it has to be held that respondent can not be subjected to comply the provisions of Act because they never

employed 20 employees in their factory on any cfay.

15. As a result of foregoing discussion, the impugned order is partly set aside and appeal is partly allowed. It is held that respondent did engage in

manufacturing process thereby running a factory without the aid of power as defined in Section 2(12) ibid but since they never employed more than

20 employees on any day of preceding 12 months, they are not liable to pay any contribution under the Act.

No cost.