

(1995) 02 BOM CK 0094

Bombay High Court

Case No: First Appeal No"s. 31 with 791 of 1987

Employees" State Insurance
Corporation

APPELLANT

Vs

Tiecicon Private Ltd., Bombay

RESPONDENT

Date of Decision: Feb. 10, 1995

Acts Referred:

- Employees State Insurance Act, 1948 - Section 1, 2, 75
- Factories Act, 1948 - Section 2

Citation: (1995) 71 FLR 529 : (1996) 1 LLJ 504 : (1995) 1 MhLj 914

Hon'ble Judges: R.G. Vaidyanatha, J

Bench: Single Bench

Judgement

R.G. Vaidyanatha, J.

These are two Appeals filed by the Company and the Employees" State Insurance Corporation challenging the order of the Employees" State Insurance Court. I have heard the learned Counsel appearing for both the parties.

2. First Appeal No. 31 of 1987 arises out of an Order passed by the E.S.I. Court in Application (E.S.I.) No. 72 of 1980 and it is directed against an Order dated 24th June 1986. This is an appeal filed by the Employees" State Insurance Corporation challenging the Order of the E.S.I. Court.

In the First Appeal No. 791 of 1987, the Company M/s. Tiecicon Private Limited is challenging the Order of the E.S.I. Court dated 17th March 1987 in Application (E.S.I.) No. 35 of 1984.

Both the Appeals are between the same parties and the question involved in both the Appeals is one and the same and hence both the Appeals are disposed of by this common judgment.

3. It appears Employees' State Insurance Corporation Officials issued a notice to the Company demanding contribution under the Employees' State Insurance Act. The notices were issued for different periods. Hence the Company filed two Applications before the E.S.I. Court u/s 75 of the Employees' State Insurance Act for the declaration that it is not a factory and does not carry on manufacturing process and therefore, it is not liable to pay contribution under the Employees' State Insurance Act.

The Employees' State Insurance Corporation filed written statement in both the Applications asserting that the Company is carrying on manufacturing process and therefore, it is liable to pay contribution under the Employees' State Insurance Act.

It is in evidence and also an admitted fact that the Company is providing air cooling facilities to tenants of a building. It is not in dispute that the Company is using power and has employed more than 10 persons to provide air cooling facilities to the other tenants in the same building. The question mooted before the trial Court was whether the Company was carrying on manufacturing process in providing air-conditioning facilities to the other tenants in the building.

The Company examined two witnesses in one case and it has been treated as evidence in other case also. The E.S.I. Corporation did not adduce any evidence.

After hearing the arguments, the E.S.I. Court passed an Order in the earlier Application being Application (E.S.I.) No. 72 of 1980 on 24th June 1986, which is the subject matter in First Appeal No. 31 of 1987, holding that the Company does not carry on manufacturing process and therefore, it is not covered under the Employees' State Insurance Act. Being aggrieved by that Order, the Employees' State Insurance Corporation has come up in Appeal.

Subsequently, the E.S.I. Court passed the second order which is the subject matter in First Appeal No. 791 of 1987 in which it is held that the Company carries on manufacturing process and therefore, it is liable to pay contribution under the Employees' State Insurance Act.

4. It is interesting to notice that the Presiding Officer is one and the same who passed the two impugned orders. While passing the second Order the Presiding Officer has observed that he had missed the amendments made to the Employees' State Insurance Act and therefore, passed the earlier order by oversight and now corrected the same by passing the second order. In the second case he has taken different view.

5. The learned Counsel appearing for the Employees' State Insurance Corporation contended that the Company is carrying on manufacturing process in which ordinary air is treated and adopted by mechanical process and converted into cool air and thereafter air-conditioning facility is provided to other tenants in the building and this amounts to manufacturing process. On the other hand, the learned

Counsel appearing for the Company contended that the Company is not carrying on any manufacturing process and therefore, it cannot be a factory within the meaning of Employees" State Insurance Act and hence, it is not liable to pay the contribution under that Act.

6. In the light of the arguments addressed before me, short and important question to be decided is :

Whether the Company is carrying on manufacturing process within the meaning of Employees" State Insurance Act and liable to pay contribution under that Act or not ?

7. Before considering the point of law involved in this case, let me refer to the oral evidence adduced by the Company.

The first witness is Subhash Samant who was working as a Consulting Engineer for the Company. He says that the Applicant Company was giving air-conditioning facilities to its clients. Whenever he was called, he used to supervise the maintenance and on some occasions operational work. He says that there are 8/10 tenants in the same building where the Company is located and in those tenements air-conditioning facilities are given by the Company. Then he has described the process of giving air-conditioning facilities in the following words :

"By air-conditioning facility I mean sucking the hot air from the premises, passing it through the air cleaners and cooling coils due to which hot temperature of the air inside the premises was removed. It was centralised air-conditioning system."

He has also stated that the facility is given throughout the year except for 20 days when it will be closed for maintenance. In cross-examination he has admitted that the Company was charging the tenants for the air-conditioning facility on the basis of area in the possession of each tenant in terms of particulars rate per square feet.

Then we have the second witness who is Shri Chhabildas Patil, who was working as a Cashier in the Company. His evidence is not relevant for our present purpose.

The Corporation has not adduced any evidence.

8. It is, therefore, seen that providing air-conditioning facility involves sucking hot air from the room and then it passes through air-conditioning system and thereby cool air is let into the premises which brings down the temperature. The question is whether this process amount to a manufacturing process according to law.

9. There is no dispute so far and it is admitted that there are more than 10 workmen in the Company. Further, it is admitted that power is used for providing air-conditioning facility.

Section 1(4) of the Employees" State Insurance Act, 1948 provides that the Act shall apply to all factories. Then section 1(5) of the Act provides that the Government may

issue a Notification extending the application of this Act to other establishments. It is also not disputed that the Corporation has issued a Notification in 1976 extending the application of the Act to all premises where 10 or more persons are working and manufacturing process is being carried there with the aid of power.

The word "manufacturing process" has not been defined under the Employees' State Insurance Act. But u/s 2(12) by defining the word "factory" it is stated that manufacturing process shall have the same meaning as assigned in the Factories Act, 1948. There is also another provision namely section 2(14-AA) stating therein that "manufacturing process" shall have the same meaning as assigned in the Factories Act, 1948. The word "manufacturing process" has been defined in the Factories Act, 1948 to mean any process for -

"2(k) (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 as vessels; or

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

A perusal of the above definition shows that many of the things which cannot be popularly called as manufacturing process are included in the word "manufacturing process".

10. The learned Counsel for the Company contended that manufacturing process implies transformation of one substance into another or creating or preparation of a new substance from some other substance. He argued that in the case of air-conditioning facility, no new product is brought into existence and what is done in this is only to treat the hot air to convert it into cold air and he therefore, submitted that the Company does not carry any manufacturing process. On the other hand, the learned Counsel for the Corporation contended that in view of the extended definition of the word "manufacturing process", there need not be transformation of one substance to another nor bring into existence a new product or a new substance.

Some decisions cited at the Bar may be considered, which throw light on this question.

In 39 F.J.R. 452, Madurai Co-operative Milk Supply Union Ltd. v. Employees' State Insurance Corporation, the Madras High Court held that purchasing and preserving milk in a refrigerator and selling the same to the consumers does not amount to manufacturing process. There is no dispute that purchase and sale of milk cannot and does not amount to manufacturing process. The question was whether preservation of milk in refrigerator amounts to manufacturing process or not. This decision was rendered prior to the amendment of section 2(k) of the Factories Act, 1948. In section 2(k)(vi) an amendment was introduced by the amendment of 1976 which now says that preservation of article in cold storage amounts to manufacturing process. By no stretch of imagination preserving an article cold storage does not amount to manufacturing process since there is no transformation of article and since no new product is produced. The Legislature has in its wisdom given an extended meaning of the definition to say that even keeping articles in cold storage for preservation amounts to manufacturing process.

The learned counsel for the Company invited my attention to a decision of this Court reported in 1995 I CLR 268, Ritz Hotel v. E.S.I.C. In that case, the question was about hotel carrying on manufacturing process with the aid of power. Admittedly there was no manufacture of articles nor the hotel was manufacturing any article with the aid of power except maintaining one refrigerator to preserve milk and curd. It was observed that since no power is used in the kitchen for making the eatables and the refrigerator had been kept only for preservation of milk and curd, there was no manufacturing process as such and hence, the hotel is not liable to be registered under the Act. Hence in my view that decision is based on the facts of that case and has no bearing on the point under consideration.

11. We may make useful reference to a decision of a learned single Judge of this Court reported in 1980 Mh. LJ. 339 : 58 F.J.R. 266, Gateway Auto Services v. E.S.I.C. and Anr., where the question was whether cleaning and oiling of vehicles in a service station and whether the sale of petrol to vehicles amounts to manufacturing process or not. Even in that case similar contention was urged that while selling petrol to the vehicles and while selling petrol to the vehicles and while washing and cleaning vehicles in a service station, no new product is manufactured and there is no transformation of one article to another and therefore, the petrol pump and service station cannot be said to be engaged in manufacturing process. This Court rejected that argument. Then it was observed that having regard to the definition of the word "manufacturing process", cleaning and washing or oiling of a vehicle in a service station amounts to manufacturing process. As far as petrol pump is concerned, it is observed that in view of the definition, running of the pump with power to lift the petrol and supply to the customers amounts to manufacturing process.

The above decision was followed with approval by a Full Bench of the Punjab and Haryana High Court reported in 1988 Lab. I.C. 1170, E.S.I. Corpn. v. Bhag Singh (FB).

It was also a case concerning with a service station and a petrol pump. Similar argument was addressed in that case and which is now being argued that unless a new marketable commodity comes into being after the process, the process cannot be called a manufacturing process. It was observed that the Court has to apply the definition as it is bearing in mind the object of the Act and therefore, even cleaning or washing of vehicles or operating petrol pump with the aid of power amounts to manufacturing process. In paragraph 13 of the reported Judgment, the Full Bench observed as follows :

"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 cleaned 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) is to be read in any restricted way so as to make that provision confined to refer to pumping or 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."

12. In view of the above discussion and the law bearing on the point, it is to be held that the dictionary meaning of the word "manufacturing process" cannot be applied to this case since Legislature has given wide and extended meaning to the word "manufacturing process". As already stated, keeping an article in cold storage for the purpose of preservation is deemed to be manufacturing process by virtue of the definition. Similarly cleaning, repairing, breaking up, washing etc. are included in the definition of "manufacturing process". For our present purpose, the relevant clause is 2(k) (i) of the Factories Act. The relevant words necessary for our present purpose are : "otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal". In the present case the air is adapted or treated with a mechanical process with the aid of power for being used in the form of giving cool air to customers on payment of charges. Therefore, we find that with the aid of power, air has been treated or adapted and made into cool air and given to customers on payment of charges. This amounts to manufacturing process as defined under the Act. It may not be manufacture in the literal meaning of the word "manufacture" but it amounts to manufacturing process in view of the definition given under the Act.

We must also bear in mind that the Employees' State Insurance Act is a social piece of Legislation. Its object is to provide benefit to the employees in case of sickness or injuries etc. that is why the Legislature has given wide meaning in order to cover more establishments to come under the purview of the Act with the object of providing relief to the workmen. We cannot give a restricted or narrow interpretation to the words used by the legislature. Having regard to the object of the social piece of Legislation, the Court must give a liberal construction to achieve the legislative purpose without of course doing violence to the language used in the Act. In one of the cases, the Supreme Court has observed in *Andhra University v. R.P.F. Commr. of A.P.* 1985 II CLR 334 as follows :

"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. Once it is found that there is an establishment which is a "factory" engaged in an "industry" specified in Schedule I and employing 20 or more persons, the provisions of the Act will get attracted to the case and it makes no difference to this legal position that the establishment is run by a larger organisation which may be carrying on other additional activities falling outside the Act."

Hence, in my view, the Company which is providing air-conditioning facilities to the tenants in the building on payment of charges and by engaging more than 10 persons, is an establishment or is a factory for the purpose of coverage under the Employees' State Insurance Act. The learned E.S.I. Court has rightly taken this view in its second decision which is the subject matter of Appeal in First Appeal No. 791 of 1987. Its earlier view in the earlier case which is the subject matter of First Appeal No. 31 of 1987 is erroneous and liable to be set aside.

13. In the result, First Appeal No. 31 of 1987 is hereby allowed and First Appeal No. 791 of 1987 is dismissed. It is held that Tiecicon Private Limited, Bombay, is a Company, carrying on manufacturing process and it is coverable under the provisions of the Employees' State Insurance Act. The Order passed by the E.S.I. Court in Application (E.S.I.) No. 72 of 1980 is hereby set aside and the Order passed by the E.S.I. Court in Application (E.S.I.) No. 35 of 1984 is hereby confirmed. In the circumstances of the case, there will be no order as to costs.

14. Order accordingly.