(1974) 02 MAD CK 0035

In the Madras High Court

Alavai Industries (Private) Limited APPELLANT

Vs

Employees' State Insurance Corporation RESPONDENT

Date of Decision : 08-02-1974

Acts Referred:
Employees State Insurance Act, 1948 — Section 2, 75

Citation : (1974) 2 LLJ 430

Hon'ble Judges : S. Maharajan, J

Bench : Single Bench

Judgement

S. Maharajan, J.—This appeal is directed against the order of the Employees'' State Insurance Court, Madurai, dismissing the appellant''s petition u/s 75 of the Employees'' State Insurance Act and holding that the appellant is a factory within the meaning of Section 2(12) of the Employees'' State Insurance Act and is liable to pay employees'' contribution of Rs. 621 demanded by the Employees'' State Insurance Corporation, Madras (respondent).

2. The appellant is the Alavai Industries (Private), Ltd., carrying on the business of manufacturing bricks at Kozhimedu in Madurai. In Kozhimedu village, the appellant is preparing wire-cutting bricks, tiles and hand-made country bricks. In the petition, it is alleged that the unit, which is engaged in the manufacture of the hand-made country bricks is separate from and independent of the unit, which is engaged in the manufacture of wire-cutting bricks and tiles and that electric power is used only in the manufacture of wire-cutting bricks and tiles. It is not stated in the petition whether the two units are situate in two different premises or in different portions of the same premises, In the course of the evidence, however, P. W. 1., the clerk of the appellant, started saying that the two units are separated by a distance of 3/4 furlong or one furlong. He, however, admitted that both the premises belong to the appellant and the intervening space between the two premises also belongs to the appellant. Prosecution witness while admitting that the entire factory is situate in 3 1/2 acres of land, would try to make out that the two units of the factory are separated by a

pathway. Prosecution witness 3 who is the accountant of the appellant, admits that as per the accounts, both the sections of the factory are treated as one unit. The acquaintance registers maintained by the factory (exhibits A4 and A5) go to show that the employees are treated as employees of one and the same unit. Exhibit B2. a return made by the managing director of the Alavai Industries (Private), Ltd., to the Employees'' State Insurance Corporation, as early as on 23rd December, 1963, lets the cat out of the bag; it says that the Alavai Industries is engaged in the manufacture of tiles, that power came to be used in the factory since 15th December, 1963, that the total number of persons employed including those employed through immediate employers, was about thirty or forty, that the number of male manual workers was about twenty-five and the number of female workers was about five and that the total number of clerical or supervisory employees was eight. It is important to note that exhibit B2 makes no reference either to the separate and independent existence of the two units or to the fact that they are situate in separate premises, It is also found that since 1963, the appellant has been paying the employer''s contribution without any protest. For the first time in 1970, the appellant stated protesting against the levy after the employer''s contribution had been raised from 3/4 per cent to 3 per cent. Even in exhibit A3, the registered notice sent by the appellant to the Regional Director of the Employees'' State Insurance Corporation, Madras, on 19th February, 1970, no distinction was sought to be made between the hand-made country bricks unit and the wire-cutting bricks and tiles unit. This is what the appellant stated in exhibit A3 ;

In Kozhimedu village we are preparing wire-cutting bricks and tiles and also hand-made country bricks. So far as hand-made country bricks are concerned, there is no power in the process of manufacturing bricks. Further, the persons engaged in the work are only casual labourers. Hence, we are not liable to pay any contribution in respect of those casual workers. We submit that power is used only in the manufacture of wire-cutting bricks and tiles. But the persons engaged in the work are only casual contractors. They have been paid at the rate of Rs. 9-50 per thousand for supply of unburnt bricks and Rs. 5 10 per thousand for carrying unburnt bricks to choolai and removing unburnt bricks from chonlai and arranging the same. Further, twenty or more persons are not doing work incidental or preliminary to or connected with the work of the factory with the aid of power. In the circumstances, we are not liable to pay any contribution as claimed in your notice.

The above passage shows that the appellant had no consciousness of the existence of two independent and separate units in the Kozhimedu village; one concerned with the manufacture of hand-male country backs, and the other with that of the wire-cutting bricks and tiles.

3. Now, the question for determination is:

whether the Alavai Industries (Private), Ltd., is a factory within the meaning of the Employees'' State Insurance Act.

Section 2(12) of the Act defines the factory to mean:

any premises including the precincts thereof whereon twenty or more persons are working or were working 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 Indian Mines Act, 1923 (4 of 1921), or a railway running shed.

The word, '"premises" has been defined in the "Concise Oxford Dictionary" to mean

house, building, with ground and appurtenances.

According to the same dictionary "precincts" (in the plural) would mean the environs of. By using the expression "including the precincts thereof" the Legislature has made it clear that the premises of the factory should be given the widest meaning so as to include the environs of the premises. If, in any part of the premises of the factory or its environs, a manufacturing process is carried on with the aid of power or is ordinarily so carried on, the factory would fall definitely within the meaning of Section 2(12) of the Act.

4. In Ramanathan v. King Emperor ILR (1927) Mad. 834, the question arose whether a drying yard situate about 5 or 6 yards from the wall of a building in which a groundnut decorticating machine was installed, was included in the factory within the meaning of the Factories Act. Jackson, J., held that a factory, as defined by the Factories Act, would include everything, machine rooms, shed, godowns, and yards, and that, if within these premises or precincts mechanical power was used in aid of any process for altering for transport or sale of any article, then these premises or precincts were a factory and in that view, the drying factory yard which was used for drying groundnuts, would form part of the factory, although there was no connexion with the machinery or any work incidental to the manufacturing process.

5. In Luttman v. Imperial Chemical Industries. Ltd. (1955) A.E.L.R 481, a question arose whether a canteen which was intended to serve the person employed in the factory, stood within the factory and would come within the definition of the term, ''"factory" under the English Factories Act, 1937. It was held that the canteen was part of the factory, as it was used for feeding and entertaining people working in the factory, which was a purpose incidental to the process of manufacture carried on in the factory.

6. In Regional Director, Employees'' State Insurance Corporation v. Sriramulu Naidu (1960) I M.L.J. 257, a Division Bench of this Court held that a factory within the meaning of Section 2(12) of the Employees'' State Insurance Act is a physical area in any part of which a manufacturing process is carried on, and that where within the same premises or compound a number of departments are situate and the departments are engaged in the work in connection with or incidental to a manufacturing process of the factory, they would prima facie all

form part of the factory. It was further held in that ruling, that inasmuch as the Employees'' State Insurance Act is a piece of social security legislation, which covers a large class of employees than legislations such as the Factories Act or Workmen''s Compensation Act, the term "factory" in the Act should have a wider interpretation than that in the Factories Act, It was further observed that the scope of the term "factory" in the Act and the application of the Act cannot be decided on the basis of what the employer does, either for the sake of efficiency or convenience, by dividing a factory into various departments, that provided the statutory requirements of the number of persons employed and the carrying on of a manufacturing process with the aid of power in any part of the premises are satisfied, any premises, viz., a geographical area within a defined boundary, would come within the scope of the Act and that it is not necessary that all the twenty persons (the statutory minimum) should be working in the same section or department nor need the premises be a single building to satisfy the definition of a factory under the Act. It could, therefore, follow that the entire premises need not be occupied by the manufacturing process and that it is sufficient, if, in any part of the premises, the manufacturing process is carried on with the aid of power. In this case, the premises measured about 3 1/2 acres. In one part of the premises, hand-made bricks are manufactured, whereas in another part, wire-cut bricks and tiles are manufactured with the aid of electric power. The raw material for making both kinds of bricks is the same. Two separate registers are not maintained by the appellant for the two sections, evidently because the same labourers would be carrying the raw material to both the sections and transporting the unburnt bricks whether hand-made or wire-cut to the choolai and removing the burnt bricks from the choolai and arranging the same in stacks. In these circumstances, I accept the view of the Court below that both the sections constitute one factory within the meaning of Section 2(12) of the Employees'' State Insurance Act, This view receives further support from the definition of the word "employee" in Section 2(9) of the Act. It is to the following effect:

"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 or any work of or incidental or preliminary to or connected with the work, of the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere ; or

(ii) who is employed by or through an immediate employer or on the premises of the factory or establishment or under the supervision of the principal employer or his agent or work which is ordinarily part of the work of the factory or establishment or which is preliminary, to the work carried on in or incidental to the purpose of the factory or establishment ; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service.

This section makes it clear that it is immaterial whether the employees are directly employed by the principal employer or are merely casual labourers employed or through an immediate employer or contractor. In fact, it has been admitted by the appellant in his returns to the Employees'' State Insurance Corporation that the number of persons employed by the Alavai Industries (Private), Ltd., including these employed through immediate employers had been in excess of twenty. If twenty or more persons were employed on any day of the preceding twelve months, in the factory premises in any part of which a manufacturing process is being carried on with the aid of power, the factory would be liable to pay contribution under the Act. As I have already stated, only after the contribution was raised from 3/4 per cent to 3 per cent the appellant started raising contentions which militate against his own earlier admissions. According to Section 2(12) of the Employees'' State Insurance Act, the expression "manufacturing process" contained in the definition of the expression ''''factory" must hold the meaning assigned to it in the Factories Act, 1948. Section 2(k) of the Factories Act, 1948, defines "manufacturing process" to mean,

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 or sewage; or

(iii) generating, transforming or transmitting power; or

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

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

From this definition, it would follow that the making of wire-cut bricks and tiles is certainly a manufacturing process. As this process is being carried on admittedly with the aid of electric power, it is difficult to contend that in no part of the factory premises is a manufacturing process carried on with the aid of power. What is contended by the learned Counsel for the appellant is that Jess than twenty persons are employed in the manufacturing process relating to the wire-cut bricks and tiles and that the number of persons employed in the hand-made bricks section, which is carried on without the aid of electric power, shall not be taken into account in considering whether the Alavai Industries (Private), Ltd., is a factory within the meaning of the factory. I regret I am unable to accept this interpretation. The appellant''s factory carries on the manufacture of bricks and tiles in certain premises, wherein twenty or more persons are employed for wages. If in any part of the premises, a manufacturing process is being carried on with the aid of electric power, the factory would at once fall within the meaning of Section 2(12) of the Act. "Manufacture" means:

making of articles by physical labour or machinery, especially on a large scale.

Process " means:

course of action, proceeding, especially method of operation in manufacture.

Different processes may be resorted to different stages in the manufacture of bricks and tiles. Some of the processes may be carried on manually or mechanically without the aid of electric power ; and some other processes may be carried on with the aid of electric power. If any process in the course of the manufacture of a product, whether it is preliminary, intermediate or final, is carried on with the aid of power, the circumstance that some other processes are carried on without the aid of electric power will not take the factory out of the ambit of Section 2(12) of the Employees'' State Insurance Act. That I conceive is the true meaning of the expression.

In any part of which a manufacturing process is being carried on with the aid of power.

If the definite article "the" had been used, the expression might be construed as covering the entire manufacturing process from beginning to end, but the indefinite article " a " has been used to indicate that if any of the processes involved in the manufacture of the goods is carried on with the aid of power, the factory would come within the ambit of Section 2(12) provided the other ingredients of the definition are also present.

7. Consequently. I agree with the Court below and hold that the appellant is a factory within the meaning of the Employees'' State Insurance Act, and it is liable to pay the employers'' contribution claimed by the respondent.

8. In the result, the appeal fails and will stand dismissed, but in the circumstances, without costs.

