

(1971) 08 BOM CK 0014
In the Bombay High Court
Case No : First Appeal No. 408 of 1964

American Express Bakery

APPELLANT

Vs

The Employees" State Insurance Corporation

RESPONDENT

Date of Decision : 20-08-1971

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 39, 74, 82
Factories Act, 1948 — Section 2, 30, 39

Citation : (1972) 74 BOMLR 138 : (1972) MhLj 353

Hon'ble Judges : Nain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Nain, J.—This is an appeal against an order of the Employees" Insurance Court, Bombay. It appears that the issues in the matter were tried in three stages and there are three orders dated February 28, 1961, March 15, 1962 and July 6, 1964. By the final order the appellants were ordered to pay a sum of Rs. 2,293.76 as their contribution u/s 39 of the Employees" State Insurance Act, 1948 (hereinafter for the sake of brevity referred to as "the said Act") with interest from the date of judgment and Rs. 50 as costs. u/s 82 of the said Act an appeal lies to the High Court from an order of an Employees" Insurance Court constituted u/s 74 of the said Act, if it involves substantial question of law.

2. The appellants carry on the business of bakers. They are registered as a factory under the Factories Act, 1948. By a letter dated October 22, 1959 the Employees" State Insurance Corporation constituted under the said Act (hereinafter referred to as "the Corporation") called upon the appellants to pay a contribution in respect of their employees u/s 39 of the said Act from the year 1954 onwards. On November 12, 1959 the appellants replied repudiating the claim. On March 22, 1960 the Corporation filed the application from which the present appeal arises claiming contribution from October 3, 1954 to December 31, 1959 amounting to Rs. 4,462.35. It is on this application that as a result of

the three orders referred to hereinabove the appellants have been ordered to pay the contribution. The appellants have filed the present appeal against the said orders.

3. The first contention taken by the appellants is that they are not a "factory" within the meaning of Section 2(12) of the said Act and therefore they are not liable to pay any contribution u/s 39 of the said Act. The admitted facts are that the appellants are a factory as defined in the Factories Act, 1948. They work in five shifts, four during the day and one at night. The day shifts overlap one another. During the day there is a shift for pastry work, another one for cleaning of pastry, a third for kneading flour and the fourth for office work. The night shift is only for cutting and moulding. It is admitted that if the workers employed in the several shifts are taken separately, each shift engages less than twenty employees. But the aggregate number of employees who work in the several shifts exceeds twenty. The contention of the appellants on these facts is that because during no part of a day of 24 hours twenty employees work together at the same time, they were not a "factory" within the meaning of Section 2(12) of the said Act.

4. Section 2(12) of the said Act provides as under:

"factory" means any premises including the precincts thereof whereon twenty or more persons are working or were working (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....

In the above definition at the date material for this appeal the words "are working or were working" existed. The words "are employed or were employed for wages" have been substituted, in place of the original words by Section 2 of Act 44 of 1966 with effect from January 28, 1968. We are not in this appeal concerned with the amended definition. We are concerned with the definition in which the original words "are working or were working" existed.

5. It would, appear from the above definition that premises become a factory within the meaning of the said Act if on those premises twenty or more persons (a) are working or (b) were working on any day of the preceding twelve months. For the purpose of this appeal, part (a) namely "are working" is not material. The only question is whether twenty or more persons "were working on any day of the preceding twelve months" in the premises of the appellants. On the interpretation of this part of the definition depends the contention of the appellants. The appellants contend that in order to fall within the definition twenty or more persons must work together and at the same time on any day of the preceding twelve months. In my opinion, this is not the correct interpretation of this part of the definition. What is required is that twenty or more persons were working in the premises of the appellants on any day of the preceding twelve months. Even if employees work in batches of less than twenty in different shifts on any day of the preceding twelve months, it cannot be said that

on a day consisting of 24 hours more than twenty persons did not work or were not working on the premises. In fact more than twenty persons came to work there during a day of 24 hours. The definition does not require that such twenty or more persons should be working at one and the same time. The premises will fall within the definition of "factory" even if these twenty or more persons did not work at the same time as long as they worked in the premises during a day of 24 hours of the preceding twelve months. By this definition the appellants' premises would fall within the definition of the word "factory" in the said Act.

6. On behalf of the respondents my attention has been drawn to the judgment of the Punjab High Court in the case of Chanan Singh Proprietor Chanan Singh and Sons, Amritsar Vs. Regional Director, Employees' State Insurance Corporation, Amritsar, In the judgment of Falshaw C.J. who delivered the judgment of the the Division Bench, it is observed as under (p. 426):

Regarding the other matter, whether premises become a factory if on any day there are eighteen full time employees working and two who work at different times for part of the day, I can only say that in my opinion the Court has taken the correct view of this matter, since obviously on the relevant date there were twenty people working in the premises even if some of them were doing so at different times. To hold otherwise would open the door to wholesale abuse of the provisions of the Act, and, as pointed out by the Court, an employer might employ 57 persons in the course of the day in his factory by having three different shifts of 19, and still claim it that his business was not a factory. I am quite sure that this was not what the Legislature intended.

7. The judgment of the Punjab High Court not only takes the view that I have taken on the interpretation of the definition but points out that to hold otherwise would open the door to evasion of the provisions of the Act. In interpreting statutes Courts have to put an interpretation which will not result in or lead to or facilitate the evasion of the statute. I have taken the above view on the interpretation of the definition in Section 2(12) itself. The second reason for my coming to the conclusion is the rule of interpretation referred to by me hereinabove. There is yet a third reason which must lead to the same conclusion and that is that in case of beneficent social legislation, Courts must interpret the same even if it were capable of two alternative interpretations in such a way as to confer the benefit of that statute on as many persons as possible.

8. My attention has been drawn on behalf of the appellants to the judgment of Kailasam J. in the case of Chanan Singh Proprietor Chanan Singh and Sons, Amritsar Vs. Regional Director, Employees' State Insurance Corporation, Amritsar, in which the learned Judge on an interpretation of Section 2(m) of the Factories Act, 1948 held that the words "ten or more workers are working" are not satisfied unless ten or more workers work together. I must point out that this was an interpretation of the first part of the definition in the Factories Act, namely, the words "are working" and not of the words "were working on any day of the preceding twelve months". The question arose in connection with a

conviction for an offence. The short judgment does not disclose what the charge was, and in what connection only the first part of the definition came up for interpretation. In any case we are not concerned with that part in this appeal. In the definition in the Factories Act, there is a comma after the words "are working or". This comma does not appear in the definition with which we are concerned. The judgment of the learned Judge also suggests that the interpretation of the latter part of the definition would have been the one that I have put in this judgment.

9. I must further add that after the substitution in the definition of factory in the said Act of the words "are employed or were employed for wages" in 1967, there is now no scope for the argument that the twenty or more persons must work in the premises together and at the same time.

10. The second and the last contention taken in this appeal is that the appellants are not bound to pay contribution u/s 30 of the said Act in respect of hawkers engaged by them for sale of the products of their factory. The appellants engage about eight hawkers. They examined only one of them as a witness, who stated that he sold 20 to 21 breads a day and got 10 paise as commission on each bread. He also stated that he also sold eggs which he procured elsewhere. He stated that he went on leave once in every one or two years and then furnished a substitute. He further stated, that for the last 15 years of his working for the appellants he had been getting a fixed remuneration of Rs. 65 per month which was paid to him in the beginning of each month succeeding the month of work. He also stated that he did not return unsold bread.

11. From the above, evidence it would appear that the hawkers were employed on fixed wages and were either full time or part time employees of the appellants. The appellants contended that the work of the sale of the products of the factory was not the work of the factory and therefore these hawkers were not employees within the definition of the word "employee" in Section 2(9) of the said Act. This definition states that an employee means any person who is employed for wages in or in connection with the work of a factory and includes any person employed for wages for sale of the products of the factory. The employees who sell the products of the factory are therefore expressly included. Apart from this definition, Section 2(22) defines "wages" as meaning all remuneration paid or payable in cash to an employee. In the case of hawkers employed by the appellants they are paid fixed wage. But even if the hawkers were paid a commission it would not make any difference. I have therefore no hesitation in coming to the conclusion that on the facts of this case these hawkers are employees in respect of whom a contribution is payable by the appellants u/s 39 of the said Act.

12. In the result, the appeal fails and is dismissed with costs.