

(2002) 11 DEL CK 0049
In the Delhi High Court
Case No : FAO No. 291 of 1987

Bhakra Beas Management Board	Vs	APPELLANT
Employees State Insurance Corporation and Another		RESPONDENT

Date of Decision : 14-11-2002

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(12)

Citation : (2003) 66 DRJ 286 : (2003) 97 FLR 376 : (2003) 2 LLJ 637

Hon'ble Judges : S.K. Mahajan, J

Bench : Single Bench

Advocate : G.S. Vashisth, for the Appellant; N.S. Bajwa, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : Employees State Insurance Corporation Vs. Bhakra Beas Management Board and Another, (2009) 123 FLR 318 : (2009) 12 JT 441 : (2009) 13 SCALE 8 : (2009) 10 SCC 671 : (2010) 1 SCC(L&S) 97 : (2009) 14 SCR 656 : (2009) 7 SLR 204

S.K. Mahajan, J.—The short question involved in this appeal is whether the sub-station of the appellant in Delhi could be covered under the provisions of the Employees State Insurance Act when neither the appellant board is covered by the Act nor any manufacturing activity is being carried on in these sub-stations which are meant only for purposes of maintenance and the respondent corporation has itself de-registered them after its judgment in Workmen of Delhi Electric Supply Undertaking Vs. The Management of Delhi Electric Supply Undertaking, A few facts relevant for deciding this appeal are :

2. M/s. Bhakra Beas Management Board (in short referred to as the "Board") is engaged in generating electricity at Bhakra. It supplies electricity to various States including the Union Territory of Delhi. For purpose of supplying electricity to various States and Union Territories, the Board has set up sub-stations in each of the States and Union Territories from where the electricity is supplied to the

consumers. The Generating Board in Bhakra is not covered under the provisions of the Employees State Insurance Act (in short referred to as "the Act"). In 1987, the respondent corporation claimed contribution under the E.S.I. Act from the appellant on the ground that the sub-stations of the appellant board were covered under the provisions of Act as they were factories within the meaning of the Factories Act and were carrying on manufacturing process there from. This action of the respondent seeking to claim contribution from the appellant was sought to be challenged by the appellant by filing an application u/s 75 of the E.S.I. Act before the E.S.I. Court. By the impugned order the E.S.I. Court dismissed the application of the appellant after holding that the sub-stations which were sought to be covered under the Act were factories within the meaning of the Act and consequently the appellant would be liable to contribute under the Act. This order of the E.S.I. Court has now been challenged by way of the present appeal.

3. Learned counsel for the appellant has challenged the order on the following grounds :-

1. That the Sub-Station of the petitioner is not a factory and as such is not covered under the E.S.I. Act.

2. No notification has been issued u/s 1 (5) of the E.S.I. Act for the coverage of the petitioner under the Act.

3. The head office of the petitioner or the generating unit of the petitioner are not covered and as such the petitioner cannot be covered under the Act.

4. The petitioner has been de-registered by the Inspectorate of Factories in view of the judgment of the Hon"ble Supreme Court as Workmen of Delhi Electric Supply Undertaking Vs. The Management of Delhi Electric Supply Undertaking, . The respondent also excluded the various Sub-stations from coverage and as such the respondent himself did not ask for the compliance after 8.10.85.

4. The learned counsel for the appellant has relied upon the judgment of the Supreme Court reported as Workmen of Delhi Electric Supply Undertaking Vs. The Management of Delhi Electric Supply Undertaking, and another judgment of the Madhya Pradesh High Court reported as Madhya Pradesh Electricity Board v. State of over-time allowance as claimed by them. The factory under the E.S.I. at the relevant time was defined to mean a premises where twenty or more persons were employed for wages on any day of the preceding twelve months and in any part of which a manufacturing process was being carried on with the aid of power. At the relevant time, manufacturing process was not defined in the Act. One had Therefore to take recourse to the provisions of the Factories Act to find out as to what was meant by manufacturing process. Under the Factories Act, manufacturing process has been defined in Section 2(K) to mean as under :-

"1 (4) It shall apply in the first instance, to all factories (including factories belonging to the Government) other than seasonal factories".

"2(12) "factory" means 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) (of railway running shed).

"2(K) "manufacturing process" means any process for -(iii) generating transforming or transmitting power; etc

5. It is thus clear that if no manufacturing process is being carried on in the premises, the establishment will not be a factory within the meaning of the Act and consequently it will not be covered under the E.S.I. Act. If the sub-stations were also not generating, transforming or transmitting power, it will also not be a factory. The Supreme Court in *Workman of Delhi Electric Supply Undertaking v. The Management of Delhi Electric Supply Undertaking* (Supra) was considering the exact question as is involved in the present case and while dealing with this, the Court observed as under :-

6. Section 2(12) referred to in the above quotation is of the Employees State Insurance Act. It is clear from this decision that the factory must occupy a fixed site or premises. The evidence on record clearly shows that several sub-stations and zonal stations are left unattended. This will not be the case if a manufacturing process takes place in those premises. A perusal of the nature of the work that the concerned workmen have to do even as enumerated in their statement of claim before the Tribunal clearly shows that they have no part in any manufacturing process. Their functions appear to be to maintain the existing lines of generation transmission and transformation of power in their respective areas, to attend to installation and other incidental matters when a new connection has been given to a consumer. They have to attend to daily complaints from the consumers, keep regular reports and attend to the defects in the consumers' premises. They have to go out for field work and they have to sit in office for maintenance and preparation of the relevant records. It cannot be said that any manufacturing process either takes place in the sub-stations or in the zonal stations and they do not satisfy the definition of "factory" u/s 2(m) of the Factories Act. If these places are not factories. Clause (a) of Regulation No. 17 will not apply to the concerned workmen who are employed therein.

7. From a reading of the aforesaid observation of the Supreme Court, it is clear that since no manufacturing process either takes place in the sub-stations or in the zonal stations, they do not satisfy the definition of factory u/s 2(m) of the Factories Act.

8. In *Madhya Pradesh Electricity Board v. State of Madhya Pradesh* (Supra), the aforesaid judgment of the Supreme Court was relied upon by a Division Bench of the Madhya Pradesh High Court and it was held that where in sub-stations of the electricity generating station the process of only transforming and transmitting

was carried on and there was complete absence of generating process in the sub-stations, the process undertaken in the sub-stations would not fall within the definition of manufacturing process and the sub-stations could not be said to be factories and would not require any registration or license under the Act. According to this judgment, the word "or" as occurring in the definition of manufacturing process in Section 2(K) of the Factories Act must be read as "and". Thus to satisfy the definition of manufacturing process, there should be the process of generating transforming and transmitting power. According to the Madhya Pradesh High Court, the process of merely transforming and/or transmitting was not sufficient to bring a case within the definition of factory u/s 2(K) of the Factories Act.

9. In view of the aforesaid two judgments, the sub-stations maintained by the appellant board will not fall within the definition of factory under the E.S.I. Act. The contention of learned counsel for the respondents, however, is that the Supreme Court in *Workmen of Delhi Electric Supply Undertaking v. The Management of Delhi Electric Supply Undertaking* (supra) was not concerned with the E.S.I. Act, but it was dealing with a question of wages of workmen about which a dispute was pending before the Industrial Court. The contention, Therefore, is that the observations of the Supreme Court in the aforesaid case are only in the passing and should not be relied upon by this Court. Learned counsel has relied upon the judgment of the Supreme Court in *Nagpur Electric Lights and Power Co. Ltd. Vs. Regional Director Employees State Insurance Corporation, etc.*, to contend that the premises Constituting a factory may be a building or open land or both. Inside the same compound wall there may be two or more premises; the premises used in connection with manufacturing process may constitute a factory and the other premises within the same compound wall may be used for purposes unconnected with any manufacturing process and may form no part of the factory. It was held that in view of Section 2(K)(iii) of the Factories Act, the process of transforming electrical energy from a high to low potential and the process of transmitting the energy through supply lines are both manufacturing process. It was further held that where in a part of the premises occupied by the company, the two processes were carried on with the aid of power by means of electrical gadgets and other devices and on the premises more than twenty persons were working and no part of the premises was used for purposes unconnected with the manufacturing process, the premises constituted a factory within the meaning of Section 2(12) of the E.S.I. Act and every inch of the wide area over which the transmission lines were spread was not a factory. The contention, Therefore, is that since the Supreme Court in *Nagpur Electric Light and Power Co. Ltd. (supra)* has held that the premises where the process of transforming electrical energy from a high to low potential and the process of transmitting the energy is carried on would be covered under the meaning of the factory under the E.S.I. Act, the sub-stations of the appellant board would be covered by the said definition and consequently it would be covered under the provisions of the E.S.I. Act.

10. I have gone through the judgment of the Supreme Court both in Nagpur Electric Light and Power Co. Ltd. (supra) as well as, in Workmen of Delhi Electric Supply Undertaking v. The Management of Delhi Electric Supply Undertaking (supra). The question as to whether a sub-station would be covered within the meaning of the factory was directly involved in Workmen of Delhi Electric Supply Undertaking v. The Management of Delhi Electric Supply Undertaking (supra). The Supreme Court in Nagpur Electric Light and Power Co. Ltd., was considering the case of a premises where the electricity supplied after transforming electrical energy from high to a low potential was involved. The Supreme Court has in Workmen of Delhi Electric Supply Undertaking v. The Management of Delhi Electric Supply Undertaking (supra) has duly taken note of the judgment in Nagpur Electric Light and Power Co. Ltd. (supra) and after considering the same, it held that the sub-station of a power company was not a factory within the meaning of the Act. This judgment being of later in time, this Court will rely upon the same to hold that the appellants' sub-stations were not factories and consequently were not covered by the Act. Moreover, the respondent itself, I am informed, has withdrawn its earlier circulars and keeping in view the judgment of the Supreme Court in Delhi Electric Supply Undertaking (supra), has de-registered the sub-stations from being factories within the meaning of the Act.

11. In view of the foregoing since the sub-stations of the appellant board have been held not to be a factory within the meaning of the E.S.I. Act, in my opinion, the appellant was not liable to make any contribution under the Act and the demand made by the respondent corporation is Therefore, illegal and the order of the E.S.I. Court, Therefore, cannot be sustained.

12. I, accordingly, allow this appeal, set aside the impugned order and declare that the appellant was not liable to make any contribution towards Employees' State Insurance in respect of the impugned demand. In the facts of this case, the parties are left to bear their own costs.