

(1992) 01 BOM CK 0051

In the Bombay High Court

Case No : Misc. Petition No. 370 of 1978

Cricket Club of India Ltd. and Others

APPELLANT

Vs

Esic and Another

RESPONDENT

Date of Decision : 07-01-1992

Acts Referred:

Employees State Insurance Act, 1948 — Section 1(4), 2(12)
Factories Act, 1948 — Section 2

Citation : (1992) 2 BomCR 615 : (1992) 65 FLR 941 : (1993) 1 LLJ 642 :
(1992) 1 MhLj 483

Hon'ble Judges : Ashok Agarwal, J

Bench : Single Bench

Advocate : M.O. Chinoy, for the Appellant; Atul Rajadhyaksha, for the Respondent

Judgement

1. The short question that arises for my decision in the present petition is whether the Cricket Club of India is covered by the Employees State Insurance Act, 1948 (hereinafter, "the Act")

2. Section 1(4) of the Act provides that,

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

The above provision, therefore, makes the Act applicable to factories.

3. Section 2(12) of the Act defines factories in the following terms :-

""factory" means any premises including the precincts thereof -

(a) whereon ten or more persons are 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 the Mines Act, 1952 (35 of 1952), or a railway running shed."

The above provisions, therefore, provide that a factory in which a manufacturing process is being carried on with the aid of power will be covered by the Act.

4. u/s 14AA of the Act, it is provided that "manufacturing process" shall have the meaning assigned to it in the Factories Act, 1948.

Section 2(k) of the Factories Act provides :-

"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 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."

In view of the above provisions, it would appear that the Club is covered by the Act.

5. Counsel for the Club, however, submits that the Club is a members' club and not a proprietary club. The principle object of the Club is to encourage promote various sports, particularly the game of cricket in India and elsewhere, to lay out grounds for the game of cricket, and also to finance and assist in financing cricket matches and tournaments. In addition, it provides a venue for sports and games as well as facilities for recreation and entertainment for the members. It maintains Tennis Courts. It has indoor games which include Billiards, Table tennis, Badminton and Squash. It also maintains a swimming pool. The Club has also provision for residence of members, for which purpose it has constructed residential flats and rooms, some of which are air-conditioned. Members occupying these residential flats and rooms are charged. There is a catering department which provides food and refreshments for the members coming to the Club as well as those residing in the residential portion. It also makes arrangements for dinners and parties at the request of members. The affairs of the Club are managed by an Executive Committee and various honorary office-bearers. The facilities of the Club are not open to the public but are restricted to its members and their guests. Guests are admitted only when they are

introduced by a member. Though the Club has a catering department which provides food and refreshments for their members and guests coming to the Club, the same cannot be equated with a hotel or a restaurant. The catering facility is in the nature of a self-service by the Club to its members.

6. Placing reliance on sub-clause (k) of Section 2 of the Factories Act, Counsel submitted that the food refreshments which is prepared in the Club premises cannot be said to have been manufactured for its use. It is so prepared for the purpose of consumption by the members of the Club. The Counsel further contends that the said food or refreshments is not prepared for its sale. It is merely a catering facility provided by the Club for its members. It is in the nature of a self-service. The object of the service is not so much the sale as to promote the principal activity of the Club viz. to promote sports. A distinction is sought to be made between a hotel or a restaurant on the one side and the Club on the other. In the former case, the principal object is to make a profit out of the sales, whereas in the case of the latter the principal object is not to make profit but to provide a facility to promote sports.

7. Reliance is placed on the case of the Cricket Club of India Vs. Bombay Labour Union and Another, . The aforesaid case, in my view, is not relevant for resolving the present controversy. The question that was decided in the above case was that the provisions of the Industrial Disputes Act are not applicable to the Club. Moreover, the aforesaid decision has been specifically overruled in the case of the Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . In regard to the aforesaid case of the Club, this is what the Supreme Court has stated at pages 399-400 :

Cricket Club of India Vs. Bombay Labour Union and Another, stands in a worse position. It is a huge undertaking with activities wide-ranging, with big budgets, array of staff and profit-making adventures. Indeed, the members share in the gains of these adventures by getting money's worth by cheaper accommodation, free or low priced tickets for entertainment and concessional refreshments; and yet Bhargava, J. speaking for the Court held this mammoth industry a non-industry. Why ? Is the promotion of sports and games by itself a legal reason for excluding the organisation from the category of industries if all the necessary ingredients are present ? Is the fact that the residential facility is exclusive for members an exemptive factor ? Do not the members share in the profits through the invisible process of lower charges ? When all these services are rendered by hired employees, how can the nature of the activity be described as self-service, without taking liberty with reality ? A number of utilities which have money's worth, are derived by the members. An indefinite section of the community entering as the guests of the members also share in these services. The testimony of the activities can leave none in doubt that this colossal "club" is a vibrant collective under-taking which offers goods and services to a Section of the community for payment and there is co-operation between employer and employees in this project. The plea of non-industries unpreventable and

exclusion is possible only by straining law to snapping point to salvage a certain class of socialite establishments. Presbyter is only priest writ large. Club is industry manu brevi, Co-operatives.

Co-operative societies ordinarily cannot, we feel, fall outside S. 2(j). After all, the society, a legal person, is the employer. The members and/or others are employees and the activity partakes of the nature of trade. Merely because co-operative enterprises deserve State encouragement, the definition cannot be distorted. Even if the society is worked by the members only, the entity (save where they are few and self-serving) is an industry because the member-workers are paid wages and there can be disputes about rates and different scales of wages among the categories i.e. workers and workers or between worker and employer. These societies-credit societies, marketing, cooperatives, producers" or consumers" societies or apex societies-are industries."

8. In my view, neither of the aforesaid cases has a direct bearing on the issue involved in the present petition. We have a decision of a Division Bench of our Court which, in my view, will be applicable to the present case. It is the case of the Poona Industrial Hotel Ltd. v. I. C. Sarin more popularly known as the Blue Diamond case reported 1980 LIC 100. In regard to S. 2(k) of the Factories Act which defines the phrase "manufacturing process" the Bench observed (at page 104) :-

"Now the question is whether manufacturing process is employed in the preparation of the food. In our opinion, the preparation of the food necessarily implies making of the food which is an article or substance as mentioned in the definition of the phrase "manufacturing process". Several other articles which go into the preparation of the food are altered or cleaned or otherwise treated or adapted before the ultimate item of food emerges in the kitchen. We do not see how this process for making food or for washing, cleaning or otherwise treating or adapting raw materials with a view to prepare food cannot be treated as manufacturing, as defined in S. 2(k) of the Factories Act."

In my view, the above observations answer the contention of the learned counsel that the food and beverages are not prepared for its use or sale. The Division Bench has stated (at page 104) :

"It must be noted that such manufacturing process is being employed for making of the food article either for use or for disposal."

The Division Bench has thus treated the phrase "use" as found in S. 2(k) of the Factories Act to be sufficient to govern the case of the preparation of food and beverages for its consumption or sale. In my view, it is not possible to accede to the contention of the learned counsel that the food and beverages are prepared not for their sale but merely as a facility for its members in the nature of a self-service. It may be that the members are not required to make cash payment for the edibles supplied and that they make payment at the end of the month. That, however, will not detract from food being supplied by way of sale. It would still

be a sale in exchange of money to be paid at a later date. In the above case, the Division Bench of our Court has held that where hotel employs more than twenty persons and an activity of preparation of food is undertaken with the aid of electrical appliances in kitchen of the hotel it is a factory wherein a manufacturing process is undertaken and hence such an establishment is covered by the Act. The said decision, in my view, applies on all fours and it will follow that the club is covered by the Act. I see no reason to make any distinction between a hotel and the club. In so far as the applicability of the Act is concerned, the profit making motive is not relevant. I have already held that the supply of the food and beverages by the club amounts to sale to its members and their guests. This activity, therefore, is covered by the definition of manufacturing process as found in S. 2(k) of the Factories Act. It is not disputed that the club has employed ten or more persons in its premises. In the premises a manufacturing process is being carried on viz., the preparation of food and beverages for the use of and sale to the members and their guests. Hence, it satisfies the definition of the term "factory" under S. 2(12) and is, therefore, by virtue of S. 1(4) covered by the Act.

9. For the foregoing reasons, I find the petition devoid of merit and the same is dismissed. Rule is discharged with costs.

10. On the application of the learned counsel the interim stay granted at the stage of admission shall continue for a period of four weeks. Counsel agrees to give three days" notice of his intended appeal.