

(2017) 02 GUJ CK 0009
In the Gujarat High Court
Case No : First Appeal No. 74 of 2002

Employees State Insurance Corp

APPELLANT

Vs

Sumangalam Restaurant

RESPONDENT

Date of Decision : 07-02-2017

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(12), Section 2(14AA)
Factories Act, 1948 — Section 2(k)

Citation : (2017) 2 CLR 420 : (2017) 153 FLR 162 : (2017) LabLR 541 : (2017) LIC 1453 : (2017) 1 LLJ 633

Hon'ble Judges : Mr. Rajesh H. Shukla, J.

Bench : Single Bench

Advocate : Mr. Shashikant S. Gade, Advocate, for the Appellant 1 and 2; Mr. Umesh A. Trivedi, Advocate, for the Defendant No. 1

Final Decision : Dismissed

Judgement

Mr. Rajesh H. Shukla, J. (Oral) - The present first appeal is filed by the appellant ESI Corporation under section 82(2) of the Employees' State Insurance Act, 1948 (hereinafter referred to as "the ESI Act") being aggrieved with the impugned judgment and order in ESI Application No. 19/2013 by the ESI Court dated 9.11.2001 on the grounds stated in the memo of appeal.

2. Heard learned advocate Shri Shashikant Gade for the appellant and learned advocate Umesh Trivedi for the respondent.

3. Learned advocate Shri Gade referred to the background of facts that the respondent is a restaurant and therefore the court below has failed to consider that the ice-cream, cold drinks and foodstuff are preserved with the aid of deep freezer and was employing more than 10 employees and therefore it would have been covered as per the definition of the provisions of the ESI Act. For that, he referred to section 2(12) and submitted that the word "factory" has been defined in the ESI Act where the manufacturing process is being carried on. He submitted that the word "manufacturing process" is defined in the Factories Act,

1948 and it has been specifically stated in section 2(14AA) of the ESI Act that "manufacturing process" shall have the same meaning as assigned to it in the Factories Act, 1948. Learned advocate Shri Gade submitted that the respondent was therefore carrying on the business of hotel with the use and aid of power and therefore it would amount to manufacturing process with the aid of power. In support of his contention he has referred to and relied upon the judgment of the Hon'ble Bombay High Court reported in 1995 Lab. I.C. 744 in the case of M/s. Ritz Hotel (Vegetarian) v. Joint Regional Director, Sub-Regional Office, Employees State Insurance Corporation.

4. Learned advocate Shri Umesh Trivedi, however, referred to the background of facts and submitted that the respondent is a small restaurant and does not employ 10 or more persons as it is specifically observed. He also submitted that merely because the power is used in the restaurant would not make it a manufacturing process. For that he has also referred to the definition of "factory" as provided in section 2(12) of the ESI Act and submitted that it would not be attracted as there is no manufacturing process. He submitted that the word "manufacturing process" as defined in section 2(14AA) of the ESI Act has a reference to the Factories Act. He pointedly referred to the Factories Act and the definition of manufacturing process in section 2(k) of the Factories Act. He submitted that section 2(k)(vi) refers to "preserving or storing any article in a cold storage." He therefore submitted that it refers to cold storage and not merely use of freezer deep freezer. He submitted that this aspect has been considered by the court below and has discussed in para 12 and therefore the present appeal may not be entertained. He submitted that the appeal under section 82 could be entertained if there is a substantial question of law which can be said to have been involved.

5. In view of these rival submissions it is required to be considered whether the present first appeal deserves consideration.

6. As could be seen from the provisions of section 82(2) of the ESI Act, it provide, "an appeal shall lie to the High Court from an order of the Employees State Insurance Court if it involves substantial question of law."

In the facts of the case, there is no substantial question of law which can be said to have been involved and it has not been posed also.

7. However, the submissions which have been made by learned advocate Shri Gade referring to the provisions of ESI Act and particularly section 2(12) which defines the factory to contend that the respondent restaurant would be covered in this definition with the aid of section 2(14AA) of the ESI Act is misconceived. A close look at the provisions would make it clear that as per section 2(14AA) of the ESI Act which defines the manufacturing process has a reference to the Factories Act. Section 2(k) in the Factories Act defines "manufacturing process". The emphasis on section 2(k)(vi) which refers to "preserving or storing any article in a cold storage" requires a closer scrutiny. It refers to preservation or

storage in a cold storage and not some article preserved or stored in a refrigerator. The word "cold storage" has a different connotation and meaning as discussed in the impugned judgment where the goods could be stored and the word cold storage will have a separate meaning and connotation than the appliances like freezer deep freezer.

(emphasis supplied)

8. The reference to the judgment of the Bombay High Court in the case of Ritz Hotel (supra), on the contrary, do not support the submission as it has been clearly observed,

"refrigerator cannot be treated as place of cold storage and hence storage of milk or curd in refrigerator would not amount to "manufacturing process".

9. In another judgment of the Delhi High Court FAO 4/2006 in the case of Mohd. Arif v. Employees State Insurance Corporation, which has been relied upon by learned advocate Shri Trivedi it has been observed in para 15 of the judgment after discussing about the definition of "manufacturing process" etc. as provided in the Factories Act. It has been observed,

"Applying the principles laid down by the Bombay High Court and Hon"ble Supreme Court to the facts of this case, it cannot be said that merely because the hotel/lodging house belonging to the appellant was using a refrigerator which was being used with the aid of electricity, the said hotel was engaged in the manufacturing process for the purpose of bringing it within the definition of Factory under Section 2(12) of the Act so as to cover the said hotel under the provisions of the Act as was sought to be done by the respondents."

10. Therefore, in light of this judgment and findings, the present first appeal does not call for any interference with the impugned judgment and order as this court is in agreement with the findings and conclusion arrived at by the ESI Court and the present appeal deserves to be dismissed and accordingly stands dismissed.