

(1991) 12 P&H CK 0025
In the Punjab And Haryana At Chandigarh
Case No : F.A.F.O. No. 479 of 1986

Employees' State Insurance Corporation	APPELLANT
Vs	
Amar Dry Cleaner	RESPONDENT

Date of Decision : 13-12-1991

Acts Referred:

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

Citation : (1999) 3 LLJ 88 : (1992) 101 PLR 583

Hon'ble Judges : B.C. Verma, C.J

Bench : Single Bench

Advocate : K.L. Kapur, for the Appellant;

Final Decision : Allowed

Judgement

B.C. Verma, C.J.—This judgment shall also dispose of F. A. O. Nos. 648 of 1982 and 488 of 1982 as they involved identical questions of facts and law.

2. The respondents are engaged in the business of dry cleaning. For this purpose, they have employed with them, certain number of persons. They are being subjected to the provisions of the Employees' State Insurance Act, 1948. Their contention is that the process involved in dry cleaning and washing is not a manufacturing process within the definition of the term "factory" u/s 2(12) of the Act which defines factory to mean, "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 or a railway running shed" and further stated that the expressions "Manufacturing process" and "Power" shall have the meaning respectively assigned to them in the Factories Act, 1948. "Manufacturing process" under the Factories Act, is defined as follows:

"(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) pumping oil, water, sewerage or any other substance or,

(iii) generating, transforming or transmitting power, or

(iv) composing types for printing, printing by letterpress, 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"

The Employees' State Insurance Act, 1948, applies to all the factories other than seasonal factories. Section 1(5) of the Act empowers the appropriate Government, by a notification in the official gazette to extend the provisions of the Act or any of them to any other establishment or class of establishments, Industrial, Commercial, Agricultural or otherwise. In exercise of the powers so conferred, the Chief Commissioner, Chandigarh, by notification No. 10102-SA-III-76/ 10308 dated August 30, 1976, with the approval of the Central Government, extended the provisions of the Act, with effect from September 5, 1976, to the class of establishments, specified in column 2 of the Schedule annexed to the notification and situate within the area specified in column 3 thereof. The notification covers these three types of establishments:

1. Any premises including the precincts thereof whereon ten or more persons but in any case less than twenty 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 excluding a mine subject to the provisions of Mines Act, 1952 (35 of 1952), or a railway running shed or any establishment which is exclusively engaged in any of the manufacturing process specified in Clause (12) of Section 2 of the Employees' State Insurance Act, 1948 (34 of 1948);

2. Any premises including the precincts thereof whereon twenty or more persons 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 excluding a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a railway running shed or an establishment which is exclusively engaged in one or more of the manufacturing process specified in Clause (12) of Section 2 of the Employees' State Insurance Act, 1948 (34 of 1948).

3. The following establishments whereon twenty or more persons employed, or were employed, for wages on any day of the preceding twelve months, namely,--

(i) Hotels;

(ii) Restaurants;

(iii) Shops:

(iv) Road Motor Transport establishment;

(v) Cinemas including preview theatres ;

and

(vi) Newspaper establishments as defined in Section 2(d) of the Working Journalists (Conditions of Services) and Miscellaneous

Provisions Act, 1955 (45 of 1955). Undoubtedly, in *Raison Tailors v. Employees' State Insurance Corporation* F.A.O. No. 139 of 1980 decided on November 2, 1981, the view taken was that dry cleaning was not a manufacturing business and the main reason for this conclusion was that no process was involved by which any new or independent marketable commodity came into being after the process of dry cleaning. On this view, the Presiding Officer of the E.S.I. Court, Chandigarh, by the impugned order, held that the dry cleaning business carried on by the respondent was not manufacturing process and, therefore, the provisions of the Employees' State Insurance Act, were not attracted. Consequently, it quashed the demand raised against the respondent. This view of the learned Single Judge of this Court has been departed from and overruled by a Full Bench of this Court in *Employees' State Insurance Corporation Vs. Bhag Singh*, . The Full Bench adverted to the definition of the term "manufacturing process" as used in the Factories Act and held that the definition is wide enough to include the dry cleaning process. Following that decision, it has to be held that the respondent's establishments where the dry cleaning process is carried on is within the mischief of the Employees' State Insurance Act and the provisions thereof apply to those establishments.

4. The finding of the Employees' State Insurance Court is that more than ten but not more than twenty persons are employed in the establishment. In view of the notification noticed above, on this finding, it has to be held that the notification applies to the respondent establishment.

5. For the aforesaid reasons, this appeal is allowed and the impugned order of the Employees' State Insurance Court is set aside. Since the opposite party was not represented at the time of the hearing there shall be no order as to costs.