

(2006) 12 KAR CK 0009
In the Karnataka High Court
Case No : M.F.A. No. 1904 of 2002

Employees State Insurance Corporation	APPELLANT
Vs	
Ambika Appliances (P) Ltd.	RESPONDENT

Date of Decision : 20-12-2006

Acts Referred:

Constitution of India, 1950 — Article 39 (e)
Employees State Insurance Act, 1948 — Section 2 (9) (a), 39, 75
Factories Act, 1948 — Section 2 (k)

Citation : (2007) 114 FLR 378

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : M.P. Geetha Devi, for the Appellant; H.M. Ravish, for the Respondent

Judgement

V. Jagannathan, J.—In this appeal the question that arises for consideration is, whether an establishment engaged in the business of sales and service of electrical appliance like mixers, fans, air conditioners etc., comes within the definition of manufacturing process so as to attract the applicability of Employees' State Insurance Act, 1948 (in short "the Act of 1948").

2. The facts which have led to this appeal briefly stated are to the effect that the appellant-ESI Corporation demanded contribution from the respondent-establishment for the period from 1.4.1999 to 30.9.1999 and from 1.10.1999 to 31.3.2000 in a sum of Rs. 30,674/- and the said order of the corporation came to be assailed before the ESI Court under an application filed u/s 75 of the Act of 1948 by the respondent and based on the material placed by both sides, the ESI court came to the conclusion that the respondent-establishment was neither engaged in the manufacture of any of the home appliances with which it was dealing nor the establishment was doing anything so as to give a finishing touch to the appliance and as such, the question of any manufacturing process being carried on by the respondent-establishment will not arise and following the said reasoning, the ESI Court allowed the application filed by the respondent by

holding that the respondent-establishment is not coverable under the ESI Act and consequently, the order passed by the corporation came to be set aside giving rise to this appeal by the ESI Corporation.

3. I have heard the submission made by the learned Counsel for the parties.

4. Learned Counsel for the Corporation Smt. Geetha Devi contended that the definition of manufacturing process is wide enough to cover the activity carried on by the respondent and the very fact that power was used and more than 10 persons were employed by the respondent coupled with the fact that the respondent is engaged in sales and service of electrical appliance, all the requirement of manufacturing process is, therefore, met with and as such, the respondent was coverable under the purview of the ESI Act. The Court below has failed to take note of the definition of manufacturing process and also the law laid down by the Apex Court in this regard and has just passed the order which is unsustainable in law.

5. On the other hand, learned Counsel for the respondent-establishment Sri. Ravish submitted that it is not in dispute that the respondent-M/s. Ambika Appliances (P) Ltd. is engaged in sales and service of home appliances like mixers, fridge, T.V. etc., but as no manufacturing process is actually carried on by the respondent and as the respondent is in no way connected with either the manufacturing process or the end product, the question of any manufacturing process being carried on by the respondent will not arise and consequently, the ESI Act has no application to the respondent and as such, the order of the ESI Court calls for no interference.

6. Having thus heard both sides and after carefully going through the entire material on record as well as the evidence let in by the parties and the rulings cited by the learned Counsel for the appellant as well as learned Counsel for the respondent, the only point for consideration is, whether the respondent can be considered to have been engaged in manufacturing process so as to bring it within the fold of the ESI Act? Since the facts concerning the respondent using power and the further fact that more than 10 persons were employed by the respondent and that the respondent is engaged in sales and service of electrical appliance not being in dispute, I confine, the discussion only with regard to the activity of the respondent being covered within the definition of "manufacturing process" or not and the answer to this question would decide the out come of this appeal also.

7. "Manufacturing process" is defined u/s 2(k) of the Factories Act, 1948 thus:

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, 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]

A plain reading of the above said definition would make it clear that the definition of manufacturing process does not depend upon and is not in any way co-related with any end product being manufactured out of the manufacturing process. This inference has to be drawn in the light of the definition mentioning that "manufacturing process" also includes various kinds of activities like repairing, making ornaments, packing, cleaning or otherwise treading or adopting any article or substance with a view to use, sale, transport, delivery or disposal. Therefore, the definition of "manufacturing process" does not permit one to take the view that the activity concerned must lead to manufacture of something or production of a different article. The word "manufacturing process" cannot be interpreted in a narrow sense, particularly in respect of an Act which is meant for the purposes connected with social welfare. In this connection, it is relevant to refer to the law laid down by the Apex Court in the case of *Kirloskar Brothers Ltd. Vs. Employees' State Insurance Corpn.*, . Dealing with the object of the ESI Act, the Apex court has observed thus:

6. The object of the Act is to provide certain benefits to employees in case of sickness, maternity, employment injury and for certain other matters in relation thereto. Section 39 of the Act enjoins upon the employer to make payment of contribution and deduction of the contribution of the employees from their wages at the rates specified in the First Schedule to the Act and to credit the same to their account. The employees covered under the Act in return would receive treatment for sickness, maternity, payment for employment injury etc. Every human being has the right to live and to feed himself and his dependents. Security of one's own life and livelihood is a pre-condition for orderliness. Liberty, equality and dignity of the person are intertwined precious right to every citizen. Article 1 of the Universal Declaration of Human Rights, 1948 assures human sensitivity and moral responsibility of every State and that all human beings are born free and equal in dignity and rights. Article 3 assures everyone the right to life, liberty and security of person. Article 25(1) assures that everyone has a right to a standard of living adequate for the health and well-being of himself and of his family, including, among other things, medical care, and right to security in the event of sickness, disability etc. Article 6 of International Covenant on Civil and Political Rights, 1966 assures that every human being has inherent right to life. This right shall be protected by law. Article 7(b) recognises the rights of everyone for the enjoyment of just and healthy conditions of work which ensures in particular safe and healthy working conditions. The preamble of the Constitution of India, the Fundamental rights and Directive Principles constituting trinity, assure to every person in a welfare

State social and economic democracy with equality of status and dignity of person. Political democracy without social and economic democracy would always remain unstable. Social democracy must become a way of life in an egalitarian social order. Economic democracy aids consolidation of social stability and smooth working of political democracy. For welfare of the employees, the employer should provide facilities and opportunities to make their life meaningful. The employer must be an equal participant in evolving and implementing welfare schemes. Article 39(e) of the Constitution enjoins upon the State to secure health and strength of the workers and directs that the operation of the law is that the citizens are not forced by economic necessity to work under forced labour or unfavourable and unconstitutional conditions of work. It should, therefore, be the duty of the State to consider that welfare measures are implemented effectively and efficaciously. Article 42, therefore, enjoins the State to make provision for just and human conditions of work and maternity relief. Article 47 imposes a duty on the State to improve public health.

10. In expanding activity in liberalised economy Part IV of the constitution enjoins not only the State and its instrumentalities but even private industries to ensure safety to the workman and to provide facilities and opportunities for health and vigour of the workman assured in relevant provisions in part IV which are integral part of right to equality under Article 21 which are fundamental rights to the workman. Interpretation of the provisions of the Act, therefore, must be read in the light not only of the objects of the Act but also the constitutional and fundamental and human rights referred to hereinbefore.

8. As far as interpretation of the definition manufacturing process is concerned, since the ESI Act is a welfare legislation, liberal construction will have to be applied while interpreting the definitions of the Act. In this connection, the observations of the Apex Court in the case of P.K. Mohammed Pvt. Ltd., Cochin v. ESI 1993 LLJ 482 is worth recalling. The Apex Court has observed thus:

Thus the benefits conferred by the Act cover a large area of employees than what the Factories Act and akin legislations intended. The conclusion is inescapable that it is a welfare it is a welfare legislations. The endeavour of the Court should be to place a liberal construction so as to promote its object to which a reference has been made.

In the light of the aforesaid law laid down by the Apex Court, both with regard to the object of the ESI Act and with regard to the liberal construction, in the instant case having regard to the wide definition of manufacturing process, the activity carried on by the respondent viz., sales and service of electrical appliance brings it within the fold of the aforesaid definition and even AW1 examined on behalf of the respondent-establishment has admitted that establishment is engaged in selling house hold electrical appliances and he further admits that these appliances are obtained from dealers and wholesale merchants and in turn sold by the respondent-establishment to the customers.

9. One other decision which will have to be referred having regard to the nature of activity carried on by the respondent is the case of Blue Star Ltd. Vs. Blue Star Workers Union and Another, Madras High Court (Division Bench). In the said decision it was held that the activity of receiving motorcycles from factories where they are manufactured, supervising the packing of the same and despatching them as per the instructions of the Marketing Manager is "a manufacturing process".

In the light of the aforesaid decisions, the activity carried on by the respondent falls within the ambit of "manufacturing process" and as such, the ESI court was in error. As regards the rulings referred to by the learned Counsel for the respondent that the salesman will not be an employee within the ESI Act is concerned, in the said decision, it was observed that the work of selling the products is not connected with any preliminary work of the factory. As far as this submission is concerned, learned Counsel for the appellant submitted that, no such pleading was taken before the ESI Court by the respondent and for the first time that ground is urged before this Court.

10. As rightly put by the appellant's counsel, no such stand was taken by the respondent-establishment before the ESI Court nor is there anything in the evidence of AW1 in this regard. Yet, having regard to the definition of "employee" as defined u/s 2(9)(a) of the ESI Act, the only class of persons who are excluded by the said definition are persons engaged in naval, military or air force or any person employed, drawing wages exceeding the ceiling limit fixed by the Central Government by notification and therefore, the question of any other person being excluded from definition of the employee as defined u/s 2(9)(a) of the Act will not arise. Therefore, the aforesaid decision referred to by the learned Counsel for the respondent is not applicable to the case on hand.

11. As regards the submission of the learned Counsel for the respondent that the Corporation has worked out the contribution based on the assumed wages and there is no material placed before the E.S.I. Court as regards the actual wages of the employees working in the establishment and, therefore, the E.S.I. Court has rightly observed that the impugned order is not sustainable in law, is concerned, in the decision of the Apex Court in the case of Modella Woollens Limited v. Employees State Insurance Corporation , it has been held that when the employer does not furnish the necessary information regarding the wages, the assessment made by the Corporation on ad hoc basis cannot be found fault with and, therefore, where the E.S.I. Court accepted the said ad hoc assessment, no wrong is committed by the court in doing so without any further scrutiny.

12. In the light of the aforesaid observations of the Apex Court, in the instant case also, as the employer has failed to furnish necessary information regarding the wages paid to the employees, the ad hoc assessment made by the Corporation cannot be termed as incorrect. The respondent is at liberty to approach the Corporation in case of difference in the amount claimed by the Corporation over the wages actually paid to the employees and in such an event,

the E.S.I. Corporation shall consider any such request made by the respondent in this regard.

13. For the foregoing reasons, the order of the ESI Court will have to be held unsustainable in law and accordingly, the said order is set aside by allowing the appeal filed by the Corporation.