

(1982) 09 CAL CK 0014
In the Calcutta High Court
Case No : A. O. D. No. 165 of 1964

Employees" State Insurance Corporation	APPELLANT
Vs	
Bengal Printing Works	RESPONDENT

Date of Decision : 14-09-1982

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(12), 75(1)(g)

Citation : 86 CWN 1105 : (1982) LabIC 82

Hon'ble Judges : N.G. Chaudhuri, J;Mookerjee, J

Bench : Division Bench

Advocate : Debesh Chandra Mukherjee, for the Appellant;Paritosh Kumar Mukherjee (not present), for the Respondent

Final Decision : Allowed

Judgement

N.G. Chaudhuri, J.—In this appeal under the Employees" State Insurance Act, 1948 (hereinafter referred to as the Act) a question of law awaits our consideration. The question is. Do the three establishments of the respondent firm located in closely situate but three different Municipal premises, namely, 1, 2, and 21 Synagegue Street, Calcutta, constitute a "factory" for the purpose of Section 2(12) of the Act? The respondent firm is a partnership firm and under the name and style the Bengal Printing Works runs three establishments located in three different Municipal premises. From the inspection report admitted in evidence without objection or challenge it transpires that the firm is engaged in the work of printing with the aid of electricity. The machine sections are housed in two rooms in premises No. 1 and in one room in premises No. 2 that is to say in the buildings opposite each other on the two sides of the road Synagegue Street, and the composing section is housed in premises No. 21 of the said read. In none of the premises taken separately number of employees engaged exceeded 20, but the aggregate number of employees engaged in the aforesaid three premises admittedly exceeded 20. In its application u/s 75 (1) (g) of the Act, the respondent firm contended that the establishments not being situate

within a common boundary did not come within the definition "factory" as defined in section 2 (12) of the Act. The respondent firm accordingly prayed for a declaration to the above effect, injunction restraining the appellant from taking proceedings under the Act and also for refund of contributions already realised. The Employees Insurance Court framed an issue on lines indicated at the outset, answered the same in favour of the respondent firm and granted the reliefs prayed for. So the Employees State Insurance Corporation has come up in appeal.

2. Mr. Debesh Mukherjee, the learned advocate for the appellant vehemently challenges the findings of the Employees' State Insurance Court and argues that bearing in mind the unity of purpose of the three establishments, use of power in two of the units, close situation of the three units and total number of employees engaged in them, the Court should have answered the issue in the affirmative. No one, however, appears on behalf of the respondent.

3. The records reveal that the respondent firm carries on manufacturing process in the shape of printing and actually the printing works with machines is carried on in two premises earlier mentioned and in the third premises the preliminary work of composing is done manually. The three premises are not only closely located but also ultimately connected with the identical manufacturing process carried on by the respondent firm. The Act is a beneficial legislation intended to confer various benefits on employees and as such should be so construed that the employees get the intended benefit. The Act applies to factories which have been defined in section 2(12) of the Act. According to the aforesaid clause "factory" means "any premise including the presents 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 carried on but does not include....."

4. The definition does not indicate that the factory will have to be located within a single municipal premises or building. It lays emphasise on the use of power for the manufacturing process carried on in any part of any premises and number of employees engaged in the process of manufacture. In the case of Calcutta Electric Supply Corporation Ltd. Vs. Employees State Insurance Corporation, , a question arose if sub-stations situate far away from the Power house or Generating station to the C. E. S. C. employing less than 20 persons in each of the sub-stations could be treated as factories under the Act. P. N. Mukherjee, J. held that the substations were adjoined on corresponding generating stations and were as such parts of the same unit and all of them came within the definition of "factory". Punjab High Court in the case of Dharam Paul Agarwal v. Employees' State Insurance Corporation reported in XXXI F.J.R. 82 confronted with a question similar to ours held that it is not necessary that all the buildings in which the manufacturing process is being carried on should be contiguous or should be located in the same compound in order to satisfy the definition of factory in section 2(12) of the Act. What is necessary is that the work carried on

in different buildings should be interconnected and conducted by the same concern. In the case considered by the Punjab High Court two buildings situate across the road and the third situate at a little distance away from them connected with manufacture of the same product were held to constitute a factory. Similar view has been taken by the Allahabad High Court in *S. P. Varma v. E.S.I. Corporation* reported in 43 F.J.R. 17 where a firm manufacturing table lamps and brackets at a workshop employing 13 persons and having a small machine worked by electric energy and another workshop employing 7 persons only at a different place whereon products of the first workshop were polished up before being sent to the market was held to be running a factory. Similar view has been taken by Bombay High Court in the case of *M/s. Bharati Udyog vs. Regional Director, E.S.I. Corporation* reported in 1982 Lab IC 1644. Such a view has been reiterated by the Division Bench of the Allahabad High Court in the case of *M/s. Noorullah Gaznafarullah vs. Employees' State Insurance Corporation, Kanpur*, reported in 1982 L & I.C. (Labour and Industrial Cases) P. 82. The Madras High Court in the case of *N. B. Araddiah & Brothers v. E.S.I. Corporation* reported in AIR 1967 Madras 111 and Gauhati High Court in the case of *P. D. Vidawatka and Another v. Regional Director E.S.I. Corporation* reported in 1974 Labour and Industrial Cases 874 have expressed similar views. The consensus of judicial decisions appears to be that for interpreting the definition of factory in section 2(12) of the Act emphasise is to be given on the unity of employer, the unity of purpose for which the different units are being run, that is to say if the units are functioning in an integral fashion connected with the manufacture and marketing of one particular product of the same employer with the aid of power in at least some of the units; and on the aggregate number of employees engaged in the different units. There is no reason to attach importance to the point if the different units are located within a common compound or are closely situate. In the prevailing circumstances it may not be possible for the employer to find out one common place to run its different units for some reasons that may not be convenient or economical. The point of greatest importance is unity of purpose of the different units notwithstanding their location far apart. Considering the facts of the case and law we answer the question posed at the out set in the affirmative without any hesitation. We conclude further that the Court below arrived at a wrong conclusion when it answered the question in the negative.

5. Accordingly the appeal succeeds and is allowed.

6. The judgment and order appealed against be set aside.

7. The application of the respondent be dismissed. The reliefs granted to the respondent firm by the court below be denied. No order is made as to costs.

Mookerjee, J.

I agree.