(2008) 08 KL CK 0056

In the High Court Of Kerala

Case No : I.A. No. 42 of 2005

Employees'' State Insurance Corporation	APPELLANT
Vs	
Premlal	RESPONDENT

Date of Decision : 26-08-2008

Acts Referred:

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

Citation : (2009) 120 FLR 406 : (2009) 2 LLJ 441

Hon'ble Judges : M.N. Krishnan, J

Bench : Single Bench

Advocate : T.D. Rajalakshmi, for the Appellant; S. Chandrasenan, for the Respondent

Judgement

M.N. Krishnan, J.—This appeal is preferred against the order of the Employees'' Insurance Court, Kollam, in I.C. No. 38/2001. The applicant before the said Court had challenged the initiation of proceedings covering the applicant''s establishment under the Employees State Insurance Act. Now the Corporation would contend that list of ten employees were furnished by the applicant himself to the Insurance Inspector duly authenticated with the particulars of their address. Further the use of LPG for cooking amounts to use of power for manufacturing process. The EI Court held against the Corporation and also observed that "however the applicant has admitted use of cooking gas for the purpose of preparation and sale of food items in the establishment. But it is not legally established by citing decision of any Court that use of cooking gas alone would amount to manufacturing process in order to attract the establishment as a factory under the Act." So it was for want of decision by a High Court or the Apex Court that the EI Court held that use of cooking gas would not amount to manufacturing process.

2. Now the question to be considered has been precisely answered by the learned Judge of the Karnataka High Court in the decision Employees'' State

Insurance Corporation, Bangalore Vs. Bhagatram and Sons, Bangalore and another, . It was a case 1 where the 1st respondent therein namely Bhagatram and Sons was an establishment carrying the business of manufacturing sweets with the aid of liquefied petroleum gas. It was called upon to pay contribution to the ESI authorities and it was under challenge. The Karnataka High Court held that "the first respondent admittedly was carrying on the manufacture of sweets with the aid of gas. From the definition of "power" in Section 2(g) of the. Factories Act, 1948, it is clear that it may be'' electrical energy or any other form of energy, which is mechanically transmitted and is not generated by human or animal agency. Therefore, from the definition it makes clear, that if the energy is used in the form of heat for: the purpose of manufacturing process, it comes within the meaning of "power." It was common knowledge that for the manufacture of sweets only gas was commonly used and not electricity. "Energy" could be in the form of oil, gas and coal and the burning of these in the'' turbines generate electricity in power stations. The LPG, which was used for the preparation of sweets, was being transmitted through the tube to the stove that created heat, and hence would come within the meaning of transmitting'' power, and thereby, attract the provision of Section 2(12) of the Employees'' State Insurance Act. Therefore, "gas" was also one of the forms of "power" within the meaning of the Act and it need not be in the form of electrical energy. The establishment would, therefore, be liable to pay contribution determined under the Act."

3. Learned Counsel for the respondent would contend before me that it is not proper to interpret that the usage of gas amounts to usage of power. It is also submitted that there is no manufacturing process but only preparation. Manufacturing in a sense means the last product. Whether it is a sweet or other eatables when it reaches the last stage, it attains finality and it will be the outcome or end result of a manufacturing process. When a sweet can be considered as a product coming out of the manufacturing process, I think it may not be proper to differentiate other eatables and that the end product is not coming out of the manufacturing process. So, I cannot agree with the said contention of the learned Counsel. Now it is the usage of power that attributes to these types of cases. Power can be generated or made through various sources. What the Karnataka High Court has held is that the power is made by using liquid petroleum gas and it is supplied through the tube which reaches the stove and it is on account of the gas available and made use of, one is able to carry out the process of making any sweets etc. Therefore I am totally in agreement with the Karnataka High Court that usage of cooking gas also would amount to the preparation and sale of food items by usage of power attracting the manufacturing process under the ESI Act. The said manufacture is referred to in Section 2(12) and the meaning and ingredients are to be referred to under the Factories Act. When both these are complied, the end result is the manufacturing process. So I am not going to the other details of the case. Though 1 have my own reservations, the EI Court jumps to the conclusion that there may not be

even a grinder in an establishment which serves fast food. Since the decision on the cooking gas itself will serve the purpose, I do not want to enter into a discussion on those aspects.

4. Therefore, the order passed by the EI Court is set aside and I hold that the establishment is covered under the ESI Act. At the time of fixing the amount, due consideration may be given to the various factors and maximum leniency be shown in fixing the amount so that undue hardship can be averted to a person who makes his livelihood by hard work. The applicant before the EI Court will be heard by the ESI Corporation before finalising the matter.

The appeal is disposed of accordingly.