
(1997) 08 MAD CK 0045
In the Madras High Court
Case No : A.A.O. No. 1181 of 1988

Employees' State Insurance Corporation	APPELLANT
Vs	
Southern Motors	RESPONDENT

Date of Decision : 20-08-1997

Acts Referred:

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

Citation : (1998) 79 FLR 905 : (1998) 3 LLJ 1295

Hon'ble Judges : B. Akbar Basha Khadiri, J

Bench : Single Bench

Advocate : G. Desappan, for the Appellant;

Final Decision : Allowed

Judgement

B. Akbar Basha Khadiri, J.—This civil miscellaneous appeal is directed against the order dated April 26, 1988, passed by the Employees"

State Insurance Judge (District Judge). Kaniyakumari, at Nagercoil, in E.S.I.O.P. No. 2 of 1986.

2. The respondent is a proprietorship concern, a motor servicing and repairing unit. The appellant, Inspector, Amal Raj, inspected the premises of

the respondent on July 11, 1983, and found that during the period from March 1, 1980 to January 28, 1984 more than 20 persons were working

in the respondent concern. Accordingly, proceedings were instituted by the appellant and the appellant passed an order on November 25, 1985,

to the effect that the respondent is a factory which is covered by the Employees" State Insurance Act and demanded Rs. 28,830 as contribution.

3. The respondent contended that only 8 or 9 persons were working in the concern and at no time, more than 20 persons were employed. The

respondent also contended that the respondent is not a factory doing any manufacturing process and therefore, it does not come under the coverage of the Employees' State Insurance Act.

4. The Employees' Insurance Court enquired into the matter and come to the conclusion that more than 20 persons were working in the

respondent concern, but the respondent is not engaged in any manufacturing process and, therefore, provisions of the Employees' State Insurance

Act do not apply to the respondent. Accordingly, the learned Employees' Insurance Court set aside the order dated November 25, 1985 passed

by the appellant herein. As against that order, the Employees' Insurance Corporation has come forward with the instant appeal.

5. The question is whether the respondent is a factory?

Point : It is not in dispute that the respondent, Southern Motors, is a concern repairing automobiles. The learned Employees' Insurance Court has

held that more than twenty persons were working in the respondent concern during the relevant period. As against this finding, the respondent had

not preferred any cross-objection or appeal. Therefore, it is now settled that more than twenty persons were working during the relevant period in

the respondent concern.

The learned Employees' Insurance Court has held that the respondent is not a factory. The expression "factory" has been defined in Section 2(12)

of the Employees' State Insurance Act in the following terms:

2 (12) "Factory" means a factory which is exclusively engaged in one or more of the following manufacturing processes, namely cotton ginning,

cotton or jute pressing, decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including gur) or tea or any manufacturing

process which is incidental to or connected with any of the aforesaid process ; (and) includes a factory which is engaged for a period not

exceeding seven months in a year-

(a) in any process of blending, packing or repacking of tea or coffee; or

(b) in such other manufacturing process, as the Central Government may, by notification in the Official Gazette specify ;

The expressions "manufacturing process" shall have the meanings respectively assigned to them in the Factories Act, 1948 (63 of 1948)".

Section 2(k) of the Factories Act, 1948 (63 of 1948) defines the expression "manufacturing process" in the following terms:

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 of substance with a view to its use, sale, transport, delivery or disposal : or (ii).....

6. From a combined reading of Section 2(12) of the Employees' State Insurance Act and Section 2(k) of the Factories Act, it would appear that

as long as there are twenty or more workers in a premises, where no power is used, would make the premises a factory. The emphasis appears to

be not so much upon the process, but upon the number of workers working. As per the provision even transporting, washing, cleaning, oiling and

packing which do not involve any transformation as such which is necessary to constitute a manufacturing process in its generic sense, are none the

less treated as manufacturing process. The definition is artificially projected beyond the scope of the natural meaning what the words might convey

thus covering a very wide range of activities. Manufacturing process merely refers to the particular business carried on and does not necessarily

refer to the production of some article. Therefore, even in an automobile workshop, if more than twenty persons work to repair the vehicles to put

them to use then it should be construed that a manufacturing process is going on in that premises and therefore, the premises is a factory. The

learned Employees' Insurance Court has referred to a decision in E.S.I. Corporation v. National Service Centre, AIR 1983 P & H. to hold that

the customers bringing vehicles for repairs, etc., who pay the service charges and take away their vehicles is not a manufacturing process. For want

of citation, this decision could not be traced to find the reasonings. The Apex Court in Osmania University v. E.S.I. Corporation, 1986 68 FJR 11,

has held that the Department of University engaged in printing of text books, journals, forms and other items of stationery is carrying on a

manufacturing process. In the instant case, the facts are analogous to the facts of the case cited supra. The Employees' Insurance Court has erred

in holding that the respondent is not engaged in a manufacturing process, and therefore, it is not a factory. The respondent squarely come under the

definition of the ""factory"" as defined u/s 2(12) of the Employees' State Insurance Act.

7. In the result, this Civil Miscellaneous Appeal is allowed and the order dated April 26, 1988 passed by the Employees' Insurance Court is set aside.