

(1992) 11 BOM CK 0001
In the Bombay High Court
Case No : First Appeal No. 464 of 1985

Employees State Insurance Corporation	APPELLANT
Vs	
Vyankatesh Co-op. Processors Society and Another	RESPONDENT

Date of Decision : 03-11-1992

Acts Referred:

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

Citation : (1993) 2 BomCR 148 : (1993) 95 BOMLR 16

Hon'ble Judges : S.M. Daud, J;M.G. Chaudhari, J

Bench : Division Bench

Advocate : H.V. Mehta and V. Verma, instructed by H.V. Mehta and Co, for the Appellant; Meena H. Doshi, for the Respondent

Final Decision : Dismissed

Judgement

S.M. Daud, J.—The interesting question arising in this appeal u/s 82(2) of the Employees' State Insurance Act, 1948 (E.S.I. Act), is whether the use of electric power for processing the effluent water preparatory to its eventual dispersal, can be termed as a manufacturing process as contemplated by the use of that expression occurring in section 2(12) of the aforementioned Act?

2. The question posed in the first paragraph has to be determined in the backdrop of the following facts :

Respondent Vyankatesh Co-operative Processors Society Limited of Ichalkaranji in District Kolhapur, of which Pandurang Yeshwant Magdum is the Secretary, was in the business of hand-processing grey-cloth at Ichalkaranji. The business being done by the Society involved the processes of bleaching, dyeing and mercerising. The water employed in these processes got polluted and the same had to be treated before its discharge into the Krishna River basin. For the discharge of the effluent, permission had to be obtained from the Maharashtra Prevention of Water Pollution Board under the Maharashtra Prevention of Water Pollution Act (Pollution Act) and such permission had been obtained by the Society. The

effluent's treatment required the use of a motor operated by electricity. The processes of bleaching, dyeing and mercerising did not involve the use of electricity at all. The Society was in two minds as to whether or not it was covered under the E.S.I. Act, having regard to the fact that it employed a labour force of more than 20 persons. The appellant's Directorate was equally undecided. Initially, the Directorate was of the view that the Society was not covered by the E.S.I. Act, as, though it employed more than 20 persons, it was not using power for any manufacturing process. Subsequently, the Directorate underwent a change of view and called upon the Society to pay contribution under the E.S.I. Act for the period January 1978 to January 1982--both inclusive. That communication led to the Society moving the E.S.I. Court for a declaration u/s 75 of the E.S.I. Act. The declaration sought was that the Society was not covered by the E.S.I. Act and the consequential relief that the notice calling upon it to remit contribution for the aforementioned period, was liable to be withdrawn. The Directorate contested the application moved by the Society. It contended that the manufacturing activity in which the Society was engaged involved the discharge of the effluent. Unless the Society obtained permission to discharge the effluent after treatment, it could not have engaged in the activity of bleaching, dyeing and mercerising grey-cloth. In fact, it would not have been granted permission to start a unit without the requisite permission under the Pollution Act. Treatment of the effluent prior to its discharge was being done with the aid of power and that was an integral part of the manufacturing process. The application moved by the Society was misconceived and liable to be dismissed. The Society and the Directorate examined a witness each in the proceedings before the E.S.I. Court. The Society's witness Pandurang Mohite testified to the nature of the activity being carried on by the Society. The Directorate's witness who was once posted at Kolhapur as an Insurance Inspector, spoke of what he had seen on the occasion of his visit to the Society's factory. He had prepared a report and that report dated 22-7-1981 was proved by the witness. One important answer given by the Inspector, is, that the manufacturing process in which the Society was engaged would not be affected in any manner even if the motor used for the treatment of the effluent was not operated. The learned Judge of the Insurance Court having found in favour of the Society, it is the Directorate, or rather the Corporation of which the Directorate is a limb, that has come in appeal before us.

3. Certain definitions of the E.S.I. Act and the Factories Act of 1948 (F.A.), to the extent relevant, have now to be set out and we do so below.

4. In the E.S.I. Act, the word "factory" as at the time when the issue had to be decided by the Insurance Court, was defined thus :

"factory" means 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..."

The next definition from the E.S.I. Act is that of employee. This definition is as follows :

"employee" means any person employed for wages or in connection with the work of a factory or establishment to which this Act applies."

In the F.A. the expression "manufacturing process" is defined thus :

"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."

The Insurance Court having been moved by the Society, it was for the said Society to establish that it was not a "factory" within the meaning of the word as defined above. That necessarily involved a look into the definition of the expression "manufacturing process" given in F.A. Parties have relied on a number of decisions in support of their rival submissions. Mr. Mehta for the Corporation contended that the E.S.I. Act being a beneficent legislation, a liberal interpretation had to be given to its provisions so as to make its benefits available to employees intended to be protected by the enactment. That this canon of interpretation has to be accepted in the case of welfare legislation is beyond dispute. However, it is not open in the name of a liberal construction to read into the enactment that which does not come within its natural intendment. Mr. Mehta has sought to support his contention by relying upon a decision in Employees" State Insurance Corporation v. Bhag Singh, 1988 L.I.C. 1170. That is a decision of the Full Bench of the Punjab & Haryana High Court occasioned by a reference made by a Single Judge doubting the correctness of certain earlier decisions of the said High Court in view of the judgment of this Court reported in 1981 L. I.C. 947). The Full Bench speaking through the Chief Justice V. Ramaswamy (as His Lordship then was) observed:

"The long title shows that it is an Act for providing certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. The provisions of the Act show that it is enacted primarily with the object of protecting workers employed in factories against industrial and occupational hazards and to secure for them conditions of employment conducive to their health, safety, welfare, proper working hours and other benefits. Being a social enactment to achieve social reform the provisions must receive a liberal construction to achieve legislative purpose without doing violence to the language"

The Full Bench had before it the case of a petrol pump engaged in pumping oil and washing and servicing of vehicles. The pointed issue was whether these activities carried on with the aid of power amounted to a "manufacturing

process" as contemplated by the expression appearing in the definition of factory given in the E.S.I. Act. The learned Chief Justice after referring to the various decisions cited before the Full Bench, observed :

"It is not materially different from the other activities of a manufacturing place strictly so-called. In the circumstances, we will not be justified in giving a very narrow construction to the definition of "Manufacturing process" so as to restrict its application only to a work place where by virtue of the manufacturing process a commercially different article is produced. Having regard to the scope of the provisions of the Act and the need for securing the conditions of employment conducive to the health, safety and welfare of the labour, we cannot restrict its applicability with such narrow and restricted approach. The definition of "manufacturing process" is so widely worded in order to project the scope beyond the normal and natural meaning attributed to it in other enactments. Even under-standing the words "manufacturing process" in a narrow sense, if it brings about a particular result, not necessarily a commercially different product, then it should be understood that there is a manufacturing process."

The next case relied upon by the learned Counsel for the Corporation is Employees State Insurance Corporation v. M/s. Triplex Dry Cleaners, reported in 1982 L.I.C. 944. The question arising in that case was: Whether a dry-cleaning business fell within the definition of a business engaged in a manufacturing process? Mital, J., answered the question in the negative, but while doing so made some useful observations thus :

"If washing and cleaning is one of the processes in a manufacturing concern, then the part of the premises where washing and cleaning is being done would be deemed to be "manufacturing process". Similarly, where only washing and cleaning process is run with power in such a way for example that coarse cloth is turned into fine cloth with the result that a superior marketable commodity, article or substance is produced, which is independently known in the market than the commodity, article or substance as it was before the same was washed or cleaned, then the process of washing and cleaning would be termed "manufacturing process". Therefore, in either of the aforesaid two situations, the process of washing and cleaning would come within the definition of "manufacturing process"."

But the washing and cleaning had to have a nexus to the end-product and this aspect is made clear in decisions relied upon by Counsel for the Society to which decisions we shall come in due course. The last case relied upon by the Counsel for the Corporation is M/s. Baranagar Service Station v. The Employees" State Insurance Corporation, 1988 L.I.C. 302. That again, is a case of a petrol pump engaged in pumping oil and washing and servicing vehicles. A pump was used for these processes and the processes were held to be a manufacturing process within the meaning of that expression. Transforming or emergence of a new marketable commodity, it was held, was not a must to constitute "manufacturing process".

5. Coming now to the cases relied upon by the learned Counsel representing the Society, the first is V. Mohamed Haneef and Co. and Others Vs. Regional Director, Employees' State Insurance Corporation, . That was a case of tannery, where power was used for bringing in water, which water in turn was being used for a subsequent process. This use of power at the penultimate stage was held to be not part of the manufacturing process. In that case, it was observed :

"The question whether the manufacturing process is being carried on with the aid of power is ultimately one of inference from facts. The test is not whether power is necessary for the manufacturing process but whether in fact power is used in the manufacturing process. The nature of the definition is such that for its application no principles in the abstract could be laid down. The mere existence of the pump set worked by power cannot make the premises a factory. The requirement of the definition is not just that power is used in any part of the premises. The essential postulate is that power must be used in aid of the manufacturing process in the premises. The pumping of water has little to do with the actual tanning process. It cannot be said that the pumping process is so integrated with the manufacturing process within the tannery premises as to make it part of the manufacturing process. The pumping of water by power is not incidental to the tannery process which goes on within the premises. It follows that the tanneries in question as worked do not fall within the scope of section 2(12) of the Employees' State Insurance Act read with the Factories Act, 1948."

Last, comes the decision of a learned Single Judge of the Madras High Court in E.S.I. Corporation v. Panicker, 1977 L.I.C. 1332. The facts in that case were that the respondent was manufacturing certain Ayurvedic medicines in his premises employing more than 20 persons for that purpose. For packing of the medicines the respondent was using bottles. These bottles had to be washed and the herbs used in the manufacture of the medicines required to be soaked. For washing the bottles and soaking the herbs, water was being pumped out by means of a 2 Horse Power electric motor from a well. Water pumped out was not used for manufacturing of medicine either as a raw material or as an ingredient. But the use of the water for washing of the bottles and soaking of the herbs led the E.S.I. Corporation to claim coverage of respondent's establishment under the E.S.I. Act. The respondent having succeeded in the Insurance Court, the E.S.I. Corporation came in appeal to the High Court. Ramanujam, J., held.

"As already stated, the question in this case is, whether the necessary connection has been established between the pumping of water and the manufacturing process? The water pumped out from the well is found to have been used for cleaning bottles and soaking herbs. The question is, whether from the said user of water the pumping could be said to be intimately linked up with or integrally connected with the manufacturing process. It is not possible to find such an intimate connection between the cleaning of bottles or soaking of herbs with the ultimate process of manufacturing of Ayurvedic medicines."

Mr. Mehta tried to counter the impact of these decisions by reference to a decision in *M/s. Kalpana Dresses, Bombay v. Employees' State Insurance Corporation*, 1976 L.I.C. 1791, where ironing by means of an electric-powered iron was held to bring the process within the definition of "manufacturing process". In this decision, it was held :

"A ready-made garment must be ironed properly before it can be sold in the market. As it is a process of treating the article, it must be held that a manufacturing is carried on There can, therefore, be no manner of doubt that if the use of electric power as an aid in the manufacturing process is an integral part there, it will be held that it is a factory within the meaning of section 2(12) of the Act. What is, therefore, essential to be established is the use of the electric power or mechanical power in the manufacturing process without which the process will not be complete."

A slightly different view was taken by a learned Single Judge of the Allahabad High Court in *M/s. Kalpana Kala Kendra, Kanpur v. Employees' State Insurance Corporation*, 1985 L.I.C. 763. The establishment in that case was engaged in preparing and marketing prepared greetings cards. The paper used was sometimes wrinkled and a coal iron was used to iron out the wrinkles. This was held sufficient by the learned Single Judge to exclude the establishment from the clutches of the E.S.I. Act. This finding was based on the view that the use of electric power was not shown to be an integral part of the manufacturing process i.e. the making of the greetings cards. The effect of the foregoing decisions has now to be considered in the background of the facts of the present case.

6. The Society was engaged in bleaching, dyeing and mercerising of grey-cloth. Water used for the purpose of these operations was not brought in by employment of power. Power was used for the treating of the effluent before its discharge into the Krishna River basin. The "treatment" of the water was not a part of the manufacturing process. This treatment was enjoined upon the Society by the provisions of the Pollution Act. Even without the operation of the motor used to work the plant which treated the effluent, the manufacturing process in which the Society was engaged, could be carried on without hindrance. There being no nexus between the manufacturing activity and the treatment and eventual discharge of the effluent, it must be held that the use of power in the present case was not for any manufacturing process of the Society's factory. The view taken by the Insurance Court being correct, this appeal fails and is dismissed.

7. Having regard to the complex nature of the question that arose for the determination, we leave parties to bear their own costs.