
(2005) 10 MP CK 0012
In the Madhya Pradesh High Court
Case No : M.A. No. 1039 of 2000

E.S.I. Corporation

APPELLANT

Vs

M/s Volga Restaurant

RESPONDENT

Date of Decision : 04-10-2005

Acts Referred:

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

Citation : (2006) 3 MPJR 316

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Advocate : Vivek Sharan, for the Appellant; Vandana Kasrekar, for the Respondent

Final Decision : Allowed

Judgement

N.K. Mody, J.

Being aggrieved by the order dated 23.6.2000 passed by Employees State Insurance Corporation Court, Indore in Case No. 23/97 MPIR, whereby the application filed by Respondent u/s 75 of the Employees' State Insurance Act, 1948 has been allowed and the order of coverage passed by the appellant on 9.6.1997 has been declared as illegal, the present appeal has been filed.

Short facts of the case are that on 28.6.1997 the appellant informed the respondent that the employees of the respondent are covered under the ESI Act. This order was challenged by the respondent by filing an application u/s 75 of the ESI Act, which was allowed by the impugned order dated 23.6.2000.

Learned counsel for the appellant submits that respondent is a Restaurant having more than 11 persons in employment. It is also submitted that the respondent is using LPG cylinder for carrying out his work, which is coming under the category of "Power" within the meaning of Section 2 (g) of the Factories Act, 1948. It is further submitted that as per Circular issued by Govt. of India dated 1.2.1996 all

the respondents are covered with effect from 20.10.1989, who are having the employees more than 10 and carrying out the manufacturing process with the aid of power, which includes LPG Cylinder for preparation of food.

Learned counsel for the appellant placed reliance on a decision in the matter of G.L. Hotels Limited and Others Vs. T.C. Sarin and Another, , wherein Hon''ble Supreme Court held as under:

The observation has to be understood in the context in which it was made and cannot be interpreted to mean that in every case, such a connection has necessarily to be established in all respects. It is enough, that the manufacturing activity has a broad connection with the activities carried on in the rest of the premises. For example, in the present case, it cannot be denied that kitchen is an integral part of the hotel-business. Those who occupy a hotel do depend upon the food and the beverages which are prepared in its kitchen. It is not possible to conceive of a hotel without a kitchen. Lodging and boarding are both essential components of the services rendered by a hotel. Hence, it cannot be denied that the activity in the kitchen has a connection with activities carried in the rest of the hotel premises.

It should not further be forgotten that the definition of certain premises as a factory or of certain activities as an industry etc. given in social welfare legislations like the present, are necessarily artificial. The object is to extend the welfare coverage to as large a section of the individuals as possible. Such definitions cannot be tested on the anvil of the common usage of the terms defined.

Learned counsel for the appellant further placed reliance on a decision reported in M/s. Cochin Shipping co. Vs. E.S.I. Corporation, , wherein Apex Court held that,

Employees'' State Insurance Corporation Act (64 of 1948), is welfare legislation. Liberal interpretation should be put on notification extending benefits of Act."

Learned counsel for the appellant further placed reliance on a decision reported in M/s. Whirlpool of India Ltd. Vs. Employees'' State Insurance Corporation, , wherein Apex Court held that,

The Employees'' State Insurance Act is a social legislation enacted to provide benefits to employees in case of sickness, maternity and employment injury and to make a provision for certain other matters in relation thereto. Undoubtedly, any provision of which two interpretations may be possible would deserve such construction as would be beneficial to the working class but, at the same time, one cannot give a go-by to the plain language of a provision.

Learned counsel for the appellant further placed reliance on a decision reported in The Usha Prints India Private Ltd. Vs. The Employees State Insurance Corporation and Another, , wherein Apex Court held that:

"Power" includes any other form of energy which must be transmitted mechanically. Heat is always considered to be a form of energy. Where a boiler is used to generate steam and the pressure in the boiler drives the hot steam through pipes to the drying tables. Since steam in the boiler is not generated by human agency, the only question is whether it is transmitted mechanically. According to science of elementary mechanics, mechanical process of transmission may consist of a sudden or steady pull from the front or a sudden or steady push from behind. If constant pressure is maintained in the boiler which transmits the steam and alongwith it the heat energy to the printing tables of cloth then it follows that the definition in Section 2 (g) of the Factories Act and in Sec. 2 (12) of the Employees' State Insurance Act is satisfied.

Learned counsel for the appellant submits that in view of this position of law the impugned order deserves to be set-aside. Ms. Vandana Kasrekar, who is appearing for the respondent opposed the same.

After going through the definition of "Power" u/s 2 (g) of the Factories Act, 1948 as well as u/s 2 (12) of the ESI Act, since respondent is running the restaurant, wherein more than 10 employees are working and in the process of preparing of food, the power is taken by LPG Cylinder, therefore, there was no justification in holding that respondent is not covered under the provisions of ESI Act. In view of this appeal stands allowed. Impugned order is set-aside.

No order as to costs.