
(1976) 07 MAD CK 0026
In the Madras High Court

E.S.I.C.

APPELLANT

Vs

R. Sreedhara Panicker

RESPONDENT

Date of Decision : 14-07-1976

Acts Referred:

Employees State Insurance Act, 1948 — Section 2, 75, 77
Factories Act, 1948 — Section 2

Citation : (1977) 2 LLJ 280

Hon'ble Judges : G. Ramanujam, J

Bench : Single Bench

Judgement

G. Ramanujam, J.—This appeal arises out of an order dated 6th August, 1971 of the Employees' Insurance Court, Nagercoil, holding that

the respondent's factory will not fall within the definition of factory, in Section 2(12) of the Employees' State Insurance Act, 1968, herein, after

referred to as the Act on an application filed by the respondent under Sections 75 and 77 of that Act.

2. The respondent is manufacturing certain ayurvedic preparations in his premises called "Amrithapradayani. Vydisasala", Vetturu Madam,

Nagercoil, where more than 20 persons have been employed. The said manufacturing premises of the respondent was inspected by the Inspectors

appointed under the Act, on 26th February, 1966 and they came to the conclusion that the premises will come under the definition of "factory" in

the Act on the ground that water is pumped out from the well with the use of two horse power electric motor for the purpose of manufacture of

medicines, and therefore, the manufacturing premises can be said to be carried on with the aid of power. The respondent's case, however, is that

his manufacturing premises would not constitute a factory, as he is not

manufacturing the ayurvedic preparation with the aid of power and that the water pumped out from the well is not at all used for the preparation of Ayurvedic medicines, but is used only for cleaning the bottles and for lavatory purposes. Since the authorities constituted under the Act did not accept the respondent's plea that his manufacturing premises cannot be taken to be a factory as defined in the Act and as such he is not liable to pay the contributions contemplated by the Act, he filed an application under Sections 75 and 77 of the Act. before the Employees' Insurance Court, at Nagercoil. for a declaration that his premises will not come under the definition of "factory" and that, therefore, the employees therein are not covered by the Act.

3. The Employees' Insurance Court found on evidence that the water pumped from the well by the use of 2 horse-power electric motor has been used only for the purpose of cleaning bottles and for soaking the herbs, which are used for ayurvedic preparations. It, therefore, took the view that the mere user of water for the purpose of cleaning the bottles and soaking the herbs, cannot make the user of the electric power integrally connected with the manufacturing premises, and that, therefore, the manufacturing process cannot be said to have been carried on with the use of power so as to bring the premises under the definitions of "factory" as defined in the Act. In this view, it held that the respondent's factory cannot come within the definition of "factory" under the Act, and therefore, the employees therein are not covered by the Act. Consequently, by its decisional order it directed the Corporation to refund to the respondent a sum of Rs. 7,842-67, being the amount of contribution recovered from the respondent, with interest at 12 per cent per annum from 18th December, 1970, the date of the petition, to the date of realisation of the said sum by the respondent.

4. The correctness of the said order of the Employees' Insurance Court has been questioned in this appeal. It has been contended by the learned Counsel appearing for the appellant, the Employees' State Insurance Corporation, that admittedly water pumped from the well by the use of electricity having been used for the purpose of cleaning the bottles and for soaking the herbs, which are used in the manufacture of ayurvedic preparations, the manufacturing process in the premises should be taken to have

been carried on with the aid of power, and that the Court below is not justified in holding that the manufacturing process of the respondent is not carried on with the aid of power. According to the learned Counsel, even the soaking and cleaning will also come under the definition of manufacturing process contained in Section 2(k) of the Factories Act which definition has been adopted for the purpose of the Employees' State Insurance Act, and therefore, once the water pumped by the two horse-power electric motor is used for the purpose of cleaning bottles and for soaking herbs, the process carried on by the respondent straightaway becomes a manufacturing process carried on with the aid of power, and, therefore, the respondent premises should be taken to be a factory covered by the provisions of the Act.

5. From the oral evidence adduced in this case it is clear that the water drawn from the well by the use of electric motor is not used for the manufacture of medicine either as raw material or as ingredient. The respondent, has clearly stated in his evidence as P.W. 1, that the water pumped out from the well is not used for the manufacture of drugs and medicine, that he uses only the water supplied by the municipality for the purpose of manufacture of drugs and medicines, and that the water pumped out from the well is used only for washing and cleaning the bottles used for packing the medicines. This position has not been controverted by the appellant. The inspector who visited the respondent's premises, when examined as R.W. I, does not also say that he found the water pumped out from the well being used directly in the manufacture of medicines. He only says that the water was used for washing purposes and for soaking the herbs. Therefore, we have to proceed on the basis the water pumped from the well by the use of electricity has not been used directly in the manufacture of medicines either as raw material or its ingredients, but it has been used only for the purpose of washing or cleaning the bottles and for soaking the herbs. On this evidence, the lower Court is right in taking the view that the mere use of water pumped out with the aid of electric energy for purposes, unconnected with the actual manufacture cannot, make the premises a factory. From the mere cleaning of bottles and soaking of herbs with the water drawn from the well by the use of electric energy, one cannot say that manufacture of medicines is carried on with

the aid of power, and unless the pumping process with the use of power is so integrally connected with the manufacturing process be as to make it as part of, or incidental to the manufacturing process, it is not possible to say from the mere use of the water pumped from the well for cleaning and soaking purposes, that manufacturing process is carried on with the aid of power.

6. Manufacturing process is defined in the Factories Act as-

making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adopting any articles or substance with a view to its use, sale, transport, delivery or disposal.

It is true the said definition which has been adopted u/s 2(12) of the Employees' State Insurance Act, takes in the process like cleaning, washing,

etc. Even then it is not possible to accept the appellant's contention. Merely because cleaning or washing or soaking process is carried on in the

course of some other manufacturing process, the said process cannot be treated as an independent manufacturing process. The definition

contemplates that each of the processes referred to in Clause (1) of Section 2(k) if carried on as an independent process, then it can be taken to

be a manufacturing process. In my view, therefore, from the mere fact that cleaning or washing or soaking is being carried on with the water

pumped from the well, it cannot be said that the manufacturing process has been carried on with the aid of power.

7. In *Miya Hajee Ismail Sahib and Co. Vs. The Regional Director, Employees' State Insurance Corporation*, Anantanarayanan, J., had to deal

with a case where water pumped and stored by electric power was used for several of the processes connected with the finishing of raw hides and

skins. The question there was whether the pumping and storage of water amounted to manufacturing process. It was found on evidence in that

case that the electric motor was used to secure the flow of water with force and impact for the cleaning of skin for more efficient and economic

working of the factory. The Court, therefore, held that it would be difficult to dissociate the pumping process from the actual tanning process and

that since the use of electrical energy is in the manufacturing process itself, the premises will come within the definition of the factory.

8. In *In Re: Annakamu Chettiar*, Ramachandra Iyer, J., (as he then was) was of

the view that the very pumping and storage of water in the establishment amounted by itself to a manufacturing process as defined in the Factories Act. The learned Judge observed:

It is unnecessary for the purpose of this case to consider that question, as admittedly there is an electric motor for the purpose of lifting water. The definition of the term manufacturing process to which I have already made a reference, would comprehend such a case.

In *V. Mohamed Haneef and Co. and Others Vs. Regional Director, Employees' State Insurance Corporation*, a Division Bench of this Court had

occasion to consider the said two decisions of this Court and it expressed its view as follows:

The question whether the manufacturing process is being carried on with the aid of power is ultimately one of inference from facts, it may happen

that in a particular establishment, the pumping of water and utilization of it in the manufacturing process is so integrally connected with the

manufacturing process that the pumping cannot be dissociated from it. May be that the actual process of tanning is can led on by manual labour. All

the same the pumping of water may in a given case be so intimately linked up with the manufacturing process in its location, object and operation.

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. We can only indicate the true scope of the

several material expression in the definition.

According to the learned Judges in that case the reference to pumping of oil, water or sewage under the definition of "manufacturing process

which is the basis for the decision of Ramachandra Iyer, J., (as he then was), is intended to deal with only pumping installations where the main

process itself was pumping of oil, water or sewage, that the sub-clause is not intended to cover pumping which is merely ancillary to some other

manufacturing process, and that the mere use of power for pumping water which is used for the subsequent manufacturing process, cannot be said

as the use of power in the manufacturing process.

9. In a later decision *Maharajan, J., has held in Swamy and Co. (Tanners) Vaniambadi by V. Narayanaswami Senior partner Vs. Employees'*

State Insurance Corporation, , that the mere pumping of water for use during the tanning process will not establish the requisite connection

between the power and the manufacturing process so as to bring the manufacturing process within the meaning of Section 2(12) of the Act and that

the mere fact that the water pumped by electricity was utilized in the manufacturing process, will not connect the power with the manufacturing

process unless there is a certain interlinking between the pump and the manufacturing process carried on in the factory.

10. As pointed out by the Division Bench in V. Mohamed Haneef and Co. v. E.S.I. Corporation 1989 I L.L.J. 586, the question whether the

manufacturing process is being carried on with the aid of power is ultimately one of inference from facts, and having regard to the nature of the

definition of ""manufacturing process"" it is not possible to lay down any abstract principle for its application. Mere pumping of water unconnected

with the manufacturing process cannot make the premises a factory. However, the pumping of water may in certain cases be so intimately linked

with the manufacturing process, then it can be treated as part of or integrated with the manufacturing process, in which case the premises will come

under the definition of ""factory"".

11. As already stated, the question in this case, is, whether the necessary connection has been established between the pumping of water and

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 use 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

manufacture of ayurvedic medicines. In this view of the matter, I have to uphold the view taken by the Employees' Insurance Court.

12. The learned Counsel for the appellant contends that the lower Court has directed the amount so far paid towards contribution by the

respondent as employer to be recovered from the Corporation with interest at 12 per cent per annum, and that such a direction is contrary to the

Regulation 40 of the Employees' State Insurance (General) Regulation, 1950. Regulation 40 is as follows.

(1) : Any contribution paid by a person under the erroneous belief that the contributions were payable by that person under the Act may be

refunded without interest by the Corporation to that person, if application to that effect is made in writing before the commencement of the benefit

period corresponding to the contribution period in which such contribution was paid.

In this case, the Court has not awarded interest from the date of payment of contribution by the respondent, but only from the date of the

application. Therefore, it cannot be said to be contrary to Regulation 40. However, having regard to the fact that the appellant-Corporation was

also under the bona fide belief that the Act applied to the respondent-factory and on that belief conferred benefits on the employees working in the

respondent's factory till this day, it will be quite unreasonable to make the Corporation liable for interest for the period during which the workers

had the benefit from the Corporation. I, therefore, think it proper to make the Corporation liable for interest at six per cent per annum only from

this date.

13. The result is, the appeal is allowed in part to the extent indicated above. In other respects, the appeal is dismissed. There will be no order as to

costs.