

(1981) 09 KAR CK 0022
In the Karnataka High Court
Case No : Misc. First Appeal No. 6 of 1980

E.S.I.C., Bangalore

APPELLANT

Vs

Brooke Bond India Ltd.

RESPONDENT

Date of Decision : 11-09-1981

Acts Referred:

Employees State Insurance Act, 1948 — Section 2 (12), 75
Factories Act, 1948 — Section 2 (K)

Citation : (1982) 2 LLJ 395

Hon'ble Judges : S.G. Doddakale Gowda, J;G.N. Sabhahit, J

Bench : Division Bench

Judgement

Sabhahit, J.—This appeal by the Employees State Insurance Corporation is directed against the Judgment and order dated 28-9-1979 passed by the E.S.I. Court in E.S.I. Application No. 28 of 1978 before it, holding that the respondent is a seasonal factory.

2. The present respondent, namely, the Brooke Bond India Limited, White Field, gave an application under S. 75 of the E.S.I. Act before the E.S.I. Court at Bangalore at No. 28/78 on the following averments :

The Regional Director, E.S.I. Corporation, Bangalore claimed that the factory maintained by Brooke Bond India Ltd., White Field was not a seasonal factory and hence, he demanded for E.S.I., Contribution. That was resisted by the factory. They contended that they are engaged in manufacturing process of coffee and by definition in the E.S.I. Act itself they became seasonal factory and as such they were excluded from the operation of the E.S.I. Act. The Regional Director resisted the application by contending that since after amendment, the factory admittedly was working throughout the year and not merely for 7 months or less, it did not fall within the definition of seasonal factory. The Corporation contended that it was not a seasonal factory at all. The E.S.I. Court raised the following issues as arising for its consideration :

(1) Whether the applicant proves that its factory at White Field is a Seasonal

Factory ?

(2) Whether the Applicant proves that its factory at Whit Field is not liable to be covered under the provisions of the E.S.I. Act ?

(3) Whether the Applicant is entitled for the declaration and exemption ?

(4) Whether the applicant proves that it is carrying on any manufacturing process ?

4. The E.S.I. Court recorded the evidence, of A.W. 1 and R.W. 1 and marked Exts. A1 and 2 on behalf of the applicant.

5. Appreciating the evidence on record, the Court answered the first and second issues in the affirmative and in that view the Court held that the factory was a seasonal factory and as such it was excluded from the operation of the E.S.I. Act. Aggrieved by the said judgment and order the E.S.I. Corporation through its Regional Director has come up with the above M.F.A. before the Court.

6. The learned Counsel Sri Papanna, appearing for the Corporation strenuously urged before us that the Court below was not justified in holding that the factory in question was a seasonal factory. According to him A.W. 1 examined on behalf of the factory clearly admitted that the factory was working throughout the year. Having regard to his evidence he submitted that the Court ought to have declared the factory as not seasonal but liable for contribution to E.S.I. Corporation. As against that, Sri Kasturi, appearing for the respondent-factory argued supporting the judgment of the E.S.I. Court.

7. The sole point, therefore, that arises for our consideration in this appeal is, whether the E.S.I. Corporation was justified in holding that the factory in question was seasonal factory ?

8. The term "Factory" is defined under S. 2(12) of the E.S.I. Act and the seasonal factory is defined under the same provision. It reads :

("Seasonal 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 processes :

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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;

(b) in such other manufacturing process as the Central Government may, be notification in the Official Gazette, (.....)"

9. This Court by a Division Bench decision in the case of Regional Director, ESIC v. High Land Coffee Works (1976) 2 KarLJ 404 had occasion to consider the effect of amendment and after consider the effect of amendment and after considering the meaning of inclusive definition and reviewing the case law, this Court has observed :

"In view of these settled principles of interpretation, the import of amendment in the present case is clear and beyond doubt. The legislative intent is clearly in favour of widening of the definition of Seasonal factory. In so far as and in relation to a factory exclusively engaged in the manufacture of coffee is concerned, even the original definition of the expression "Seasonal Factory" brought within its ambit a factory exclusively "engaged in the manufacturer of coffee and engaged in the process of blending, packing or repacking" of coffee as incidental to or connected with the manufacture of coffee even though such factory may work throughout the year. After the amendment this position is unaltered and continues. In addition a factory which was engaged in "blending, packing, or repacking" of coffee not as incidental to or connected with, but independently of the "manufacture of coffee" is also brought within the statutory rubric of a seasonal factory provided such factory worked for a period not exceeding seven months in a year. This, in our opinion, is the result of the extension of the idea of a seasonal factory" brought about by the amendment. The amended is not restrictive of the scope of the definition originally obtaining but is on the contrary an expansion of it. The contention urges Sri Papanna that the amendment was intended to and does restrict the scope of the statutory concept of the "Seasonal factory" in the unamended definition cannot be accepted."

10. A.W. 1 his deposition before the Court has clearly stated that after obtaining beans and from the Coffee Board, they would subject them to the manufacturing process in the factory. Thus, it is obvious that the factory falls within the ambit of the original definition of "Seasonal factory". It is not a case of the factory merely obtaining the manufactured coffee and packing it and repacking and putting it for sale on next market. Therefore, the inclusive determination is not attracted on the facts of the case. The factory becomes a seasonal factory even under the unamended definition of seasonal factory. It is no doubt true that A.W. 1 has stated that occasion ally in order to keep workers engaged they obtain manufactured tea and pack it also. But that is occasional and the main work is manufacturing coffee which goes on throughout the year.

11. As explained above, even if the manufacturing process goes on throughout the year, the law has specifically made such a factory, a seasonal factory. The term "Manufacturing process" is defined under the factories Act :

"Manufacturing process" as defined in clause (K) of S. 2 of the factories Act mean any process for 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"

Thus, it is obvious that the present factory in question is engaged in manufacturing process of coffee which certainly falls within the ambit of seasonal factory, without even looking into inclusive definition, as pointed out above. The inclusive definition comes in only to expand the concept and not to restrict it.

12. Sri Papanna who appeared in this case as well as in the earlier case cited above, argued that the inclusive definition is restrictive which the Division Bench of this Court has earlier rejected. We have no reason to differ.

13. In the result, therefore, we find that there is no substance in the appeal and the same is rejected. No costs.