

(1994) 06 MAD CK 0026
In the Madras High Court
Case No : A.A.O. No. 332 of 1986

E.S.I.C., Madras

APPELLANT

Vs

Christian Medical College, Vellore

RESPONDENT

Date of Decision : 27-06-1994

Acts Referred:

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

Citation : (1995) 70 FLR 390 : (1995) 1 LLJ 289 : (1994) 2 LW 491

Hon'ble Judges : Govardhan, J

Bench : Single Bench

Judgement

Govardhan, J.—This appeal arises out of the order passed by the Employees' State Insurance Judge, Vellore (Principle District Judge,

Vellore), dated 4.5.1985 in E.S.I.O.P. No. 1 of 1984 filed u/s 75(1) of the Employees' State Insurance Act praying to declare the Equipment

Maintenance Department of the petitioner is not amenable to the provisions of the Employees State Insurance Act since it is not a factory.

2. The case of the petitioner is that the petitioner-hospital is integral part of the Christian Medical College, Vellore. The Medical College, has

degree course and diploma course in 11 different specialities and postgraduate degree courses. Pursuant to the statutory requirement for the

training of medical students in their course, the hospital, functions as an integral part of the Christian Medical College where the students get their

practical training. The Medical Council of India has prescribed certain standard requirements to be fulfilled. The Equipment Maintenance

Department is established in the hospital in fulfilment of these requirements right from the time of the recognition of the College. This department is

intended to ensure proper, uninterrupted functioning of life saving equipment in the hospital and prompt rectification of any mal-functioning thereof.

It is a vital part of the hospital which in turn is limb of the hospital. A notice has been received by the petitioner-hospital from the Employees State

Insurance Authorities calling upon the petitioner to comply with the provisions of the Act with retrospective effect from 1.9.1969. In spite of

representations made in person and in writing, that the Act would not apply to this Department, the petitioner has been asked to remit contribution

under a threat that legal action will be taken failing compliance. The Equipment Maintenance Department is not in any way separate or distinct from

the hospital, functionally or otherwise. No manufacturing process is being done in that place. The employees of the said Department are required to

maintain the machines like X-ray, E.C.G., E.E.G. Radiation Equipment, etc., and carry out necessary servicing. The maintenance work was

responsible for the smooth functioning of the various equipments and machinery belonging to the hospital. It does not function as a commercial unit.

There are no production machines and no manufacturing process is carried on. The employees of this Department are subject to transfer from one

Department to another of the institution and enjoy the same benefits at par with the other employees of the hospital. Hence, the petition for

declaration that the Equipment Maintenance Department of the petitioner hospital is not amenable to the provisions of the Employees State

Insurance Act.

3. The respondent's case is as follows : The Equipments Maintenance Department is a factory as defined u/s 2(12) of the Employees State

Insurance Act. When the statutory Insurance Inspector inspected the petitioner's factory the records were not produced but, he was informed that

their institution was not covered under the Act. Even the repair of the medical equipments is in the nature of manufacturing process and the

petitioner had himself registered the said Department under the Factories Act and had obtained a licence. The hospital is not doing any free

service. The respondent is entitled to apply the provisions of the Act and collect the arrears with retrospective effect. The petition is therefore liable

to be dismissed.

4. On the above pleadings, after an elaborate enquiry, the learned Employees

State Insurance Judge has held that the Equipment Maintenance

Department is not a factory as defined u/s 2(12) of the Act, that the provisions of the Employees' State Insurance Act will not apply to the said

Department and therefore, allowed the petition holding that the respondent is not entitled to apply the provisions of the Employees' State Insurance

Act or demand contribution. Aggrieved over the said order of the learned Judge, the respondent Employees' State Insurance Corporation has

come forward with this appeal.

5. The learned counsel appearing for the appellant would argue that as per Section 2(k)(i) of the Factories Act, manufacturing process means any

process for making, altering, repairing, among other things adapting the article or substance with a view to its use sale, transport, delivery or

disposal and in the Equipment Maintenance Department, the machineries are being repaired and treated with a view to use the same, again and

again and the said Department comes squarely under the definition of Section 2(12) of the Employees State Insurance Act which defines a

premises wherein ten or more persons are employed for wages on any day of the preceding twelve months and in any part of which manufacturing

process is being carried on with the aid of power and therefore, the Employees State Insurance Act is applicable to the Equipment Maintenance

Department. The learned counsel appearing for the appellant also relies upon a decision reported in Andhra University v. Regional Provident Fund

Commissioner Andhra Pradesh 1985 II CLR 334 wherein the Apex Court has held that the Department of Publications and Press of the Andhra

Pradesh University was running a press where the work of printing of text books, journals and magazines for the various items of stationary for

various Colleges and Departments, registers, receipt books for colleges are carried on comes under the definition of "factory".

6. The learned counsel appearing for the respondent would on the other hand argue that the decision relied on by the learned counsel appearing for

the appellant is not applicable to the case on hand since it was not considered in that decision, that the primary object of the institution under which

the printing press was established. According to the learned counsel appearing for the respondent, Christian Medical College is an educational

institution where the paramount and primary character of the institution is

teaching and the Equipments Maintenance Department forms part of the Christian Medical College which in turn is a wing of the educational institution and therefore it cannot be said that the primary and paramount character of the main institution brings it under the definition of the word "factory" as defined u/s 2(12) of the Employees' State Insurance Act. It cannot be out of context to refer to the decision reported in P.S.S. Sundar Rao (General Superintendent) Christian Medical College and Hospital, Vellore (Now Professor and Head of The Department of Biostatistic of The Christian Medical College) Vs. Inspector of Factories Vellore, , wherein it has been held that the Laundry Department of Christian Medical College does not come under the definition of the word "factory". In the above decision, it has been observed that the laundry attached to the Medical College and Hospital is engaged in washing the linen and clothes of the patients admitted in the hospital, and that it is run by the hospital and it cannot be separated from the main institution viz., the hospital. It has been further held that in order to ensure high degree of hygienic standard, the Hospital is having its own Laundry for washing the linen used in the Hospital, and, therefore, Laundry is only a subsidiary minor or incidental establishment of the Hospital, which is not factory. It is further held that one Department of the Hospital established for the efficient functioning of the Hospital cannot therefore be disjoined from the main institution and termed to be a factory and that the paramount and primary character of the main institution alone has to be taken into consideration and when the main institution is not a factory, a department thereof, cannot become so, even though a manufacturing process is carried on there. When the laundry Department of Christian Medical College is held as not a factory, there is no reason, to hold the Equipments Maintenance Department as a factory. For the purpose of affording better facilities and relief to the patients of the hospital innumerable equipments of very high value such as X-ray equipments, surgical equipments, dialysis machine, infra red sterilisers, etc., are provided in the hospital. The Equipments Maintenance Department has been established for the purpose of ensuring proper and uninterrupted functioning of these life-saving equipments in the hospital and prompt rectification of any mal-functioning thereof so as not to endanger the lives of the patients. The Equipments Maintenance Department is

thus a vital part of the hospital, which in turn is a limb of the medical college and therefore, it cannot be a factory. This Department intended for maintaining machineries in proper order cannot be separated from the main institution whose primary and paramount character being teaching medicines to the students. The main institution cannot be considered as a factory and this Department intended for proper functioning of the main institution cannot be considered as a factory even assuming some manufacturing process is carried on there, as contended by the learned counsel appearing for the appellant. Therefore, I am of opinion that the Equipments Maintenance Department of the Christian Medical College Hospital is not a factory and the judgment of the Employees State Insurance Judge to that effect is well-founded and does not call for any interference by this Court. In that view, I hold that the appeal is without merits and is liable to be dismissed.

7. In the result, the appeal is dismissed confirming the judgment and decree of the Employee State Insurance Judge.