
(1983) 06 GUJ CK 0010
In the Gujarat High Court
Case No : Spl. C.A. No. 2552 of 1979

Gujarat Electricity Board

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 27-06-1983

Acts Referred:

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

Citation : (1984) 1 GLR 51 : (1984) 2 LLJ 370

Hon'ble Judges : R.J. Shah, J; B.K. Mehta, J

Bench : Division Bench

Judgement

R.J. Shah, J.—In the above petition, the Gujarat Electricity Board has challenged the directions contained in the order dated 15th January, 1979 passed by the second respondent and has prayed that the same be quashed and set aside. State of Gujarat is respondent No. 1

2. According to the petitioner, it is engaged in the business of generation, supply and distribution of electrical energy and for that purpose it has thermal power stations at several places. At the thermal power stations, the work of generation of electricity is done. The petitioner has also got several sub-stations where conversion of high voltage into low voltage is done with the help of transformers and other devices which are installed at such sub-stations. No generation of electricity is done at the sub-stations. The petitioner contends that the sub-stations, whether big or small, are not factories and therefore the provisions of the Factories Act, 1948 cannot apply to the sub-stations. Since the office of the Factories Inspector was raising an objection in this connection and was insisting that the said sub-stations should be registered as factories even though no manufacturing activity was done at such-substations, the petitioner had addressed a letter dated 13th November, 1978 to respondent No. 1 State and had requested the Government to instruct the Chief Inspector of Factories not to compel the petitioner to get the sub-stations registered as factories under the said Act. It is respondent No. 2 who had replied to the same by his letter dated

15th January, 1979 and opined therein that the workmen employed in the sub-stations are engaged in "manufacturing process" in a "factory" within the meaning of S. 2(k) and S. 2(m) of the Factories Act and sub-stations employing 10 or more workers would be covered within the definition of a "factory" under S. 2(m)(i) of the Factories Act, 1948 and so would require registration under the said Act. Hence the present petition.

3. Respondents have not filed any affidavit in this matter.

4. The term "manufacturing process" has been defined in S. 2(k) of the said Act as under :

"(K) "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, or

iii) generating, transforming or transmitting power; or

iv) composing types for printing, printing by letter press, lithography, photogravure or other similar process of book binding; or

v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels, or

vi) preserving or storing any article in cold storage."

The term "factory" has been defined in S. 2(m) of the said Act as under :

"(m) "factory" means any premises including the precincts thereof -

i) Whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

ii) Whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (XXV of 1952), or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place.

Explanation : For computing the number of workers for the purposes of this clause all the workers in different relays in a day shall be taken into account."

5. In order to appreciate the aforesaid definition of "manufacturing process" regarding electric energy, it would be apposite to refer to McGraw-Hill's Encyclopedia of Science and Technology, Vol. 4 (1971 Edition) wherein on the subject under consideration, it has been stated to the following effect :

"Electric power generation implies large-scale production of electric power in stationary plants designed for that purpose. The generating units in these plants convert energy from falling water, coal, natural gas, oil and nuclear fuels to electric energy. Most electric generators are driven either by hydraulic turbines, for conversion of falling water energy; or by steam or gas turbines, for conversion of fuel energy. Electric power generating plants are normally interconnected by a transmission and distribution system to serve the electric loads in a given area or region.

"The transmission system carries electric power efficiently and in large amounts from the generating stations to areas where it is consumed."

"Transmission circuits are designed to operate at voltages upto 765,000, depending on the amount of power to be carried and the distance."

"Power delivered by transmission circuits must be stepped down in facilities called substations to voltages more suitable for use in industrial and residential areas. On transmission systems these facilities are commonly called bulk-power sub-stations; on or near factories or mines they are termed industrial sub-stations; and where they supply residential and commercial areas, distribution sub-stations. Basic equipment in a sub-station includes circuit breakers, switches, transformers, lightning arresters and other protective devices, instrumentation, control devices, and other apparatus related to specific functions in the power system.

"That part of the electric power system that takes power from a bulk-power sub-station to customers" switches, commonly about 40% of the total plant investment, is called distribution. This category includes distribution sub-stations, sub-transmission circuits that feed them, primary circuits that extend from distribution sub-stations to every street and alley, distribution transformers, secondary lines, house service drops or loops, street and highway lighting, metering equipment and a wide variety of associated devices.

"Primary distribution circuits usually operate at 4160-34,500 volts line-to-line and may be overhead open wire on poles, overhead or aerial cable, or underground cable. These circuits supply large commercial, institutional, and some industrial customers directly. Smaller customers are supplied through numerous distribution transformers.

"At conveniently located distribution transformers in residential and commercial areas, the voltage is stepped down again to 120 and 240 volts for secondary lines, from which service drops or loops extend to every customer's lights and appliances.

"An assembly of equipment in an electric power system through which electric energy is passed for transmission, transformation, distribution or switching is known as Electric power sub-station.

"Specifically, sub-stations are used for one or more of the following purposes :

(1) transformation from one voltage level to another, (2) isolating faulted circuits; (3) controlling transmission voltage and power factor; (4) switching to change power flows to or from generating plants or interconnected power companies; (5) converting alternating current to direct current or vice versa; (6) converting from one frequency to another; (7) regulating voltage on feeder circuits; (8) automatic transfer to alternate sources of power; and (9) measuring and controlling electric power.

"Sub-stations are classified by the duty they perform. Transmission, bulk-power, or switching sub-stations are those associated with the higher voltage or transmission portion of the power system. Distribution sub-stations are associated with the distribution system and the primary feeders for supply to residential, commercial and industrial loads. Customer sub-stations are on the premises of utility customers, such as shopping centers, large office or commercial buildings, and industrial plants. Load-center sub-stations are located within large buildings industrial plants as part of the distribution system within a large plant."

(See pp. 483, 497, 498, 491 in McGraw-Hill's Encyclopedia of Science and Technology, Vol. 4 (1971 Edition)

Thus electric power generating plants are normally interconnected by a transmission and distribution system and power delivered by transmission circuits has to be stepped down in facilities called sub-stations to voltages more suitable for use in industrial and residential areas. It is also noteworthy that sub-stations are classified by the duty they perform. At substations electric power generating process is not undertaken.

6. So far as "distribution" is concerned, it will be useful to refer to Encyclopedia Britannica, Vol. 8, 1972 Edition. At page 216 under the caption "Distribution" it has been stated as under :

"The distinction between distribution and transmission circuits is somewhat vague. It may be said that transmission implies larger block of power delivered at higher voltages to a new main sub-stations, while distribution implies smaller blocks of power delivered at lower voltages to many smaller sub-stations or to consumers."

7. Thus distribution in any case will not fall within the definition of "manufacturing process" contained in the aforesaid S. 2(k) of the said Act.

8. "Sub-station" is defined in S. 2(11-A) of the Electricity (Supply) Act, 1948 which provides as under :

"Sub-station" means a station for transforming or converting electricity for the transmission or distribution thereof and includes transformers, convertors, switchgear, capacitors, synchronous condensers, structures, cables and other appurtenant equipments and any buildings used for that purpose and the site thereof, a site intended to be used for any such purpose and any buildings used

for housing the staff of the sub-station."

Thus, a generating station has not been included in the said definition.

9. In the context of the aforesaid and considering the nature of the different activities carried on by sub-stations it will be apparent that the sub-stations cannot be regarded as places where any "manufacturing process" in the sense electric power generating process is going on.

10. A Division Bench of the Bombay High Court had an occasion of consider the aforesaid definition "manufacturing process" contained in the said Clause (k) of S. 2 of Factories Act, 1948 in *Ramlanshan Jageshar v. Bombay Gas Co. Ltd.* [1961-I L.L.J. 38]. The commodity here was gas and not electric energy. It was observed that distribution or transport of an article after it was manufactured was not a manufacturing process and such work could not also be said to be incidental to or connected with a manufacturing process.

11. In the case of *Nagpur Electric Lights and Power Co. Ltd. Vs. Regional Director Employees State Insurance Corporation, etc.,* , a bench of three judge of the Supreme Court has however held while considering the said definition of "manufacturing process" in the context of electric energy that the process of transforming electric energy from a high to low potential and the process of transmitting the energy through supply lines are both manufacturing processes. The said conclusion was arrived at while considering whether the premises constitute a factory within the meaning of S. 2(12) of the Employees' State Insurance Act, 1948.

12. In the case of *Workmen of Delhi Electric Supply Undertaking Vs. The Management of Delhi Electric Supply Undertaking,* , another Bench of the Supreme Court also consisting of three judges has an occasion to consider the aforesaid definitions of "manufacturing process" and "factory". After considering and distinguishing a Calcutta decision, *Calcutta Electric Supply Corporation Ltd. Vs. Employees State Insurance Corporation*, and also considering the decision in *Nagpur Electric Light and Power Company Limited (supra)*, the Supreme Court in para 18 of the judgment has propounded as under :

"Section 2(12) referred to in above quotation (the quotation referred is from *Nagpur Electric Lights and Power Co. Ltd. Vs. Regional Director Employees State Insurance Corporation, etc.,* mentioned above) is of the Employees' State Insurance Act. It is clear from this decision that the factory must occupy a fixed site or premises. The evidence on record clearly shows that several substations and zonal stations are left unattended. This will not be the case if a manufacturing process takes place in those premises. A perusal of the nature of the work that the concerned workmen have to do even as enumerated in their statement of claim before the Tribunal clearly shows that they have no part in any manufacturing process. Their functions appear to be to maintain the existing lines of generation, transmission and transformation of power in their respective areas, to attend to installation and other incidental matters when a new

connection has been given to a consumer. They have to attend to daily complaints from the consumers, keep regular reports and attend to the defects in the consumers' premises. They have to go out for field work and they have to sit on office for maintenance and preparation of the relevant records. It cannot be said that any manufacturing process either takes place in the sub-stations or in the zonal stations and they do not satisfy the definition of "factory" under S. 2(m) of the Factories Act."

Thus before reaching the said conclusion regarding the said definitions, the facts of the case and activities carried on at sub-stations have been closely examined by the Supreme Court as also the aforesaid decisions. The Supreme Court in this decision has not considered the said definitions divorced from the facts of the case. By doing so, it has clearly pointed out that the said definitions require to be construed in the light of the facts of the case and the activities carried on at sub-stations. Considering from this angle, it does not seem that there is any real conflict between the aforesaid two Supreme Court decisions.

13. A single Judge of the Andhra Pradesh High Court has also dealt with the said definition in the case of *The Public Prosecutor, High Court of Andhra Pradesh Vs. B. Babu and Another*, while hearing Criminal Revision Cases Nos. 360 of 1978 and 361 of 1978 and Criminal Revision Petitions Nos. 357 of 1978 and 358 of 1978. It was urged before the learned single Judge on behalf of the respondent that there was no transformation of the electric energy received at the two sub-stations, that what was done at the sub-stations was only to reduce the energy from a high potential to a low potential and that the process should not be regarded as transformation of energy within the meaning of S. 2(k)(iii) of the Factories Act, 1948. Reliance was also placed upon the meaning of the word, transformation, contained in the Concise Oxford Dictionary (5th Edition). "Transformation" has been defined in the said dictionary as metamorphosis, especially of insects; changes from solid to liquid or from liquid to gaseous state or vice versa ... It was further submitted that all the three processes, generation, transformation and transmission of electric energy took place only at the power station and not at the sub-station where only conversion of the electric energy from a high potential to low potential took place. The learned single Judge accepted the submission that there was no transmission of electric energy in the sub-stations as laid down in *The Management of Delhi Electric Supply Undertaking* (supra). The learned single judge also accepted the submission that there was no transformation of electric energy at the sub-stations. The learned single judge, however, felt that he was bound by the aforesaid earlier Supreme Court decision in the case of *The Nagpur Electric Light and Power Company Limited* (supra). As stated above, there is hardly any real conflict between the aforesaid two Supreme Court decisions.

14. In view of all the aforesaid it would seem that the approach and the view expressed in the said letter dated 15th January, 1979 by respondent No. 2 cannot be endorsed and must be held to be erroneous. The petitioner cannot be

required in the manner in which it is done to get all its sub-stations registered as factories. The directions contained in the said letter are hereby quashed. We hereby direct respondent No. 2 to enquire into the facts of each individual sub-station of the petitioner in the light of what has been observed hereinabove and afford an opportunity of hearing to the petitioner before requiring it to get all or any of the sub-stations registered as a "factory" under the provisions of the Factories Act, 1948. Petition therefore succeeds to the extent mentioned above.

15. Rule is accordingly made absolute to the extent mentioned above. In the circumstances of the case, there will be no order as to costs.

16. Petition partly allowed.