

(1991) 02 DEL CK 0090
In the Delhi High Court
Case No : First Appeal No. 141 of 1990

India Medico Instruments

APPELLANT

Vs

Employees State Insurance Corporation

RESPONDENT

Date of Decision : 13-02-1991

Acts Referred:

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

Citation : (1991) 44 DLT 11 : (1991) 63 FLR 275

Hon'ble Judges : R.L. Gupta, J

Bench : Single Bench

Advocate : M.R. Malhotra and G.R. Nayar, for the Appellant;

Judgement

R.L. Gupta, J.

(1) This appeal is directed against the judgment dated 26 9 89 passed by the Judge, Employees Insurance Court, Delhi by which he dismissed the petition of the appellant.

(2) The appellant filed a petition alleging that it was a registered partnership concern and running two units one at 14, Angoori Bagh Market Delhi and the other at 759, Gall No. 9, Raghobar pura No. 2, Gandhi Nagar Delhi. It further alleged that there was no inter-dependence or inter transferability employees. The number of employees in each Unit was alleged to be less than 10 and, Therefore, the respondent-corporation wrongly covered the appellant firm under the Employees State Insurance Act. Therefore, the appellant was not liable to pay any contribution.

(3) The petition was contested on behalf of the respondent alleging that both the units run by the appellant stood covered in the definition of factory as given in the Act on the basis of 01 Form submitted by the appellant. It was held by the learned Judge that the order dated 6.8.86 passed by the respondent covering both the units in one factory as defined u/s 2(12) of the Act was legal.

(4) I have heard the learned counsel for the parties. Sh. Y.P. Arora, partner of the appellant appeared as PW-1 and admitted in his statement that the appellant was a registered partnership firm. It had two units situated at 759, Gali No. 9, Raghbarpura-2, Gandhi Nagar and 14, Angoori Bagh Market, Delhi. There were 7 or 8 employees in each Unit. He admitted in his cross examination that both the Units were being run under one partnership and that account books of both the Units were the same. Also there was only one bank account in respect of both the Units. On the basis of these facts we are to see whether both the Units fall within the definition of "Factory" as defined in Section 2(12) of the Act. Factory is defined in the aforesaid sub section as follows: "factory" means any premises including the precincts thereof where on twenty or more persons are employed or were employed for wages 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 but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed. various authorities have been cited at the bar. However, the matter is fully covered by the case of Agents & Manufacturers ^Employee State Insurance Corporation etc., 1980 Rlr 567 a Division Bench Authority of this Court. That was also a case under the Esi Act. In that case it was held, "If a person or Company is doing manufacturing processes at different places then employees at all these places can be clubbed together for purposes of finding if total number comes within the definition of factory." The case of employees State Insurance Corporation v. Sankar Lal and another, 1971 (40) Fjr 499, a single Bench authority of this Court relied upon by learned counsel for the appellant was dissented from by the Division Bench. In the case of Agents & Manufacturers Delhi v Employees State insurance Corporation and another 1973 (44) F.J R 57 cited on behalf of the appellant the facts were that the aforesaid concern carried on the business of manufacturing wooden furniture in three separate premises in two of which the furniture was manufactured and in the third the furniture so manufactured was polished, finished and packed. The argument that each of the three premises being located separately and being not within the same precedent was repelled and it was held that all the three premises would constitute one factory to which the provisions of the Act would be applicable because the total number of persons employed in them exceeded 20. This authority goes against the appellant. Learned counsel for the appellant also relied upon the case of Isha Steel Treatment, Bombay Vs. Association of Engineering Workers, Bombay and Another, . This authority will not be applicable to the facts of the present case for two reasons. One that the Industrial Disputes nowhere defines a Factory and it is applicable only to Industries and two the firm was found to be maintaining separate store, separate account and obtaining separate factory Municipal licenses. One of the factories run by the appellant was closed. Closure of the factory was challenged. Provident Fund account and Employees State Insurance account of both the factories were found having common numbers with Authorities. There was also in existence a settlement containing similar terms between the Management and the workmen of the two Units. These two factors were held to be not sufficient to conclude that

the two Units were one and the same, notwithstanding the fact that the nature of business carried on by them was the same. However as already stated above, it was also found that separate stores, accounts and Municipal licenses were being maintained in respect of both the firms. Therefore the aforesaid authority is not applicable to the facts of the present case. As already stated, present case is squarely covered by the Division Bench authority of this Court in the case of Agents & Manufacturers (supra).

(5) Therefore, I am of the view that the view taken by the Learned Judge El Court is correct and it cannot be inferred with. The appeal is accordingly dismissed with no order as to costs.