

(2010) 08 KAR CK 0036

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 6876 of 2003

J.P. Lights India

APPELLANT

Vs

The Regional Director E.S.I. Corporation

RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:

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

Citation : (2010) 08 KAR CK 0036

Hon'ble Judges : Aravind Kumar, J

Bench : Single Bench

Advocate : V. Srinivas, for the Appellant; V. Narasimha Holla, for the Respondent

Final Decision : Dismissed

Judgement

Aravind Kumar, J.—This appeal is directed against the order passed by the Employees State Insurance Court in application No. 2/2002 and 65/2002 dated 29.09.2003 whereunder the application filed u/s 75 of the ESI Act, challenging the orders passed u/s 45(a) by the competent authority has been dismissed is questioned herein.

2. This Court by order dated 17.10.2003 had admitted the appeal and it is agreed by the learned Advocates appearing for both the parties at the time of admission substantial question of law had not been formulated and consent for formulating the following substantial questions of law for consideration:

1) Whether the Appellant would not come within the definition of Factory as defined u/s 2(12) of the ESI Act?

2) Whether the Appellant business being carried on with the aid of power as defined u/s 2(15)(C) would not be applicable or not?

3. Heard the learned Advocates appearing for the parties.

Sri.V. Srinivas, learned Counsel appearing for Appellant would submit that by reading of Clause (a) of Sub-Section 12 of Section 2, it would emerge that

Appellant has to employ more than 10 persons preceding 12 months and would draw the attention of the Court to para 12 of the order of the ESI Court to contend that registers produced at Ex.A1 would reveal that during certain months there were less than 10 employees and hence, the establishment being brought under the purview of the ESI Act is erroneous. He would also submit that by reading of Section 2(12)(a) r/w Section 2(15)(C) to contend that the provisions of the factories Act, 1948 will have to be looked into to ascertain the meaning of "power" and when so examined the word "power" having not been defined under ESI Act the definition of "power" as defined under Factories Act will have to be relied and when so examined it would emerge that establishment of the Appellant would not come within the said definition and hence submits that order of the competent authority holding that Appellant-establishment is liable to be covered under the ESI Act is erroneous and he would also submit that finding of ESI Court in not appreciating these facts has resulted in great prejudice to the Appellant's claim. On these grounds he prays before this Court that substantial questions of law are to be answered in favour of the Appellant and against the Respondent.

4. Per contra Sri. V. Narasimha Holla, learned Counsel appearing for Respondent-Corporation would support the order passed by the competent authority as also the ESI Court and contends that if the words used in Section 2(12)(a) read as a whole in conjunction with Section 2(15)(C) it would not emerge that Appellant-establishment would remain outside the purview of ESI Act and the object and intent of the legislature will have to be looked into for the purposes of extending the application of the Act to the Appellant herein and while reading down the provision of ESI Act it is to be held in favour of whose benefit it has been enacted and accordingly he seeks for dismissal of the appeal. In support of his submission he relies upon the decision of the Co-ordinate Bench of this Court in the case of Employees State Insurance Corporation v. Ambika Appliances (P) Ltd., reported in ILR 2007 Kar 963.

5. The substantial question of law formulated herein above being interlinked with each other they are being taken up for consideration together by this Court.

Re: Questions 1 and 2:

6. In order to consider the contentions raised by the respective Advocates, it would be necessary to extract the relevant provisions of ESI Act, 1948 pressed into service for consideration namely, Section 2(12)(a), 2(12)(b) and Section 2(15)(C) as also Section 2(g) of the Factories Act. They read as under:

ESI-ACT, 1948

2(12) "Factory" means any premises including the precincts thereof-

(a) whereon ten 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, or

(b) whereon 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 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 (35 of 1952) or a railway running shed;)

2(15-C) "power" shall have the meaning assigned to it in the Factories Act, 1948 (63 of 1948);

FACTORIES ACT, 1948

2(g) "Power" means electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency;

7. The first contention of Mr. Srinivas that Appellant-establishment could not have been covered under the ESI Act is examined with reference to Section 2(12) (a) and reading of said Section it would clearly emerge that when 10 or more persons are employed or were employed on any day preceding 12 months of which manufacturing process is carried on by the establishment such establishment would come within the purview of the ESI Act. It is the contention of the learned Counsel for Appellant that in some of the months preceding 12 months of commencement of manufacturing activity namely in the month of July, 1997 there were less than 10 employees and to establish this fact the attendance register came to be produced and marked as Ex.A1 before ESI Court. A perusal of Ex.A-1 reflects that only 9 persons were employed by the Appellant during July 1997. When there is short of the minimum prescribed employees during a particular month the establishment would not go out of the purview of the Act and such contention cannot be accepted since the words used in Section 2(12) (a) would bring any establishment within its sweep if any one of the criteria mentioned therein is satisfied namely, if an establishment is having 10 or more persons employed for wages "on any day" preceding 12 months of commencement of manufacturing activity and the words "preceding 12 months" will have to be understood so as to include even in a case of particular month or months, day or days if there are more than 10

employees establishment will have to be covered. Thus, it is not an exclusive definition but inclusive definition. In view of the same, contention of the learned Counsel for Appellant cannot be acceded to and is liable to be rejected.

8. Insofar as the contention with regard to the word used in Clause (a) of Section 2(12) namely "power" has to be understood and applied by taking into consideration the definition envisaged u/s 2(g) of the Factories Act would also clearly go to show that the words used in Section 2(g) of the Factories Act brings within its sweep any establishment if it uses electrical energy or any other form of energy which is mechanically transmitted which means that any energy generated in any form which is mechanically transmitted would also come within

the scope of the definition "power". The only energy which is generated by use of human or animal agency would get excluded. For eg: Bio Gas and the like. Thus, exclusion words in

Section 2(g) would be confined to energy generated by human agency and animal agency and not any other agency. As such contention putforward by the learned Counsel for Appellant that power which is generated in the course of the business of the Appellant-establishment cannot be held to fall within the exclusion clause.

9. In view of the same substantial questions of law formulated herein above are to be answered in favour of the Respondent-Corporation and against the Appellant-establishment.

10. This Court following the judgment of the Apex Court has analysed the scope of the ESI Act and its interpretation in Ambika's case referred to supra and has come to a conclusion as under:

In the light of the aforesaid law laid down by the Apex Court, both with regard to the object of the ESI Act and with regard to the liberal construction, in the instant case having regard to the wide definition of manufacturing process, the activity carried on by the Respondent viz., sales and service of electrical appliance brings it within the fold of the aforesaid definition and even AW1 examined on behalf of the Respondent-establishment has admitted that establishment is engaged in selling household electrical appliances and he further admits that these appliances are obtained from dealers and wholesale merchants and in turn sold by the Respondent-establishment to customers.

11. In view of the above discussion I am not inclined to accept the contention raised by the learned Counsel for Corporation and substantial questions of law are answered in favour of the Corporation by holding that Appellant-establishment comes within the purview of ESI Act. Hence the substantial question of law are answered as follows:

Sl. No.

Substantial question of law

Answer

1

Whether the Appellant would not come within the definition of Factory as defined u/s 2(12) of the ESI Act?

It is held that Appellant would come within the definition of Factory as defined u/s 2(12) of the E.S.I. Act

2

Whether the Appellant business being carried on with the aid of power as defined

u/s 2(15)(C) would not be applicable or not?

The business carried on by the Appellant is with the aid of power as defined u/s 2(15)(C) of the Act

12. In view of the discussion made herein above, following order is passed:

ORDER

(i) Appeal is dismissed by answering the substantial questions of law against the Appellant and in favour of the Respondent.

(ii) Order dated 29.09.2003 passed by ESI Court in ESI application No. 2/2002 and 65/2002 are hereby confirmed.

(iii) No order as to costs.