(1976) 04 BOM CK 0018

In the Bombay High Court

Case No : Letters Patent Application No. 14 of 1974

Kalpana Dresses APPELLANT

Vs

Employees'' State Insurance Corporation RESPONDENT

Date of Decision : 06-04-1976

Acts Referred:

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

Citation : (1978) 80 BOMLR 359 : (1977) MhLj 151

Hon'ble Judges : Vaidya, J;Mridul, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Vaidya, J.—The short point which arises in this Letters Patent Appeal, against the order of summary dismissal of First Appeal No. 638 of 1975, is whether the appellant M/s Kalpana Dresses, are a factory, within the meaning of Employees'' State Insurance Act.

2. On a careful consideration of the evidence of Ratansi Raghvji Sawla, a partner of the appellant''s firm, M/s Kalpana Dresses and Mrs. Rego, Assistant Regional Director, on behalf of the Employees'' State Insurance Corporation, the State Government Employees Insurance Court, Bombay, held in its judgment dated October 8, 1975, that at least from October 6, 1972, when Mrs. Rego visited the factory of Kalpana Dresses the factory was liable to be covered under the provisions of the Employees'' State Insurance Act, as there were then twenty-one persons working. It also held that ironing was done with the aid of power.

3. Mr. Bhatt, the learned Counsel for the appellant, challenged the said judgment firstly on the ground that the Employees Insurance Court wrongly assumed that the number of persons employed was twenty-one and the point was not seriously disputed by the appellant. The Employees Insurance Court has believed Mrs. Rego, who had made a report and which showed that more than twenty-one persons were working there. The question is purely a question of fact and cannot

be agitated before us in a Letters Patent Appeal.

4. Mr. Bhatt then submitted that it is clear from the findings of the learned Judge of the Employees Insurance Court that there were sixteen sewing machines and they were being worked by the workers; and hence no power was used in respect of these machines. Mr. Bhatt argued that the mere fact that electric ironing was done with the aid of power was not enough to constitute the place of factory within the meaning of Section 2(12) of the Employees'' State Insurance Act.

5. The argument is inconsistent with the plain provisions of Section 2(12) of the Act as interpreted by us in New Grand High Class Bakery v. The Employees'' State Insurance Corporation (1976) Letters Patent Appeal No. 134 of 1973. All that is necessary to constitute a factory inter alia with a view of the definition is that (1) more than twenty-one persons working in the premises and (2) in any part of which a manufacturing process is being carried 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).

6. Mr. Bhatt submitted that ironing done with the aid of power cannot be called manufacturing process. But the word "manufacturing process" under the Employees'' State Insurance Act, has the same meaning which is given to it in the Factories Act, 1948. Section 2(k) defines it as follows:

''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 or sewage; or

(iii) generating, transforming or transmitting power; or

(iv) composing types for printing, printing by letterpress, lithography, photogravure or other similar process, or book binding;

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

7. There can be no doubt that ironing is a process of treating the articles with a view to their use for sale in the market. A ready-made garment must be ironed properly before it can be sold in the market. As it is a process of treating the article, it must be held that manufacturing is carried on with the aid of power, that is to say, so as to constitute the appellant''s place or premises a factory as defined under the Employees'' State Insurance Act.

8. Mr. Bhatt further made an ingenious attempt to argue that the words in Section 2(12) of the Employees'' State Insurance Act, 1948, "are employed or were employed for wages" were substituted, by Act 44 of 1966, which came into

force with effect from January 28, 1968, and it is possible that some of the persons were working in the premises, when Mrs. Rego visited the factory. But as stated above, the question cannot be agitated in the Letters Patent Appeal against the order of the summary dismissal of the appeal as no such point appears to have been taken either before the Employees Insurance Court or before the Hon''ble Mr. Justice Apte, who dismissed the appeal.

9. In the result, the Letters Patent Appeal is dismissed with costs.

