
(1984) 12 AHC CK 0064

In the Allahabad High Court

Case No : F.A.F.O. No. 110 of 1980 in Original Suit No. 9 of 1974

Kalpana Kala Kendra

APPELLANT

Vs

Employees State Insurance Corporation

RESPONDENT

Date of Decision : 18-12-1984

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Employees State Insurance Act, 1948 — Section 2(12), 82
Factories Act, 1948 — Section 2

Citation : (1985) AWC 297

Hon'ble Judges : A. Banerji, J

Bench : Single Bench

Advocate : J.N. Tiwari, for the Appellant;

Final Decision : Allowed

Judgement

A. Banerji, J.—This is an appeal u/s 82 of the Employees' State Insurance Act, 1948 by M/s Kalpana Kala Kendra, Kanpur, hereinafter referred to as "the Appellant". The Appellant has been held to be running a factory as defined in Section 2(12) of the Employees' State Insurance Act, 1948, hereinafter referred to as "the Act" by the Judge, Employees' Insurance Court, by its order dated 12-5-1977, whereby the Appellant was held liable to pay a sum of Rs. 5825-84 to the Employees' State Insurance Corporation Aggrieved by the above order, the Appellant has come to this Court.

2. The sole question for consideration is whether the Appellant is a factory as defined in Section 2(12) of the Act and is liable to pay the contribution.

3. The relevant facts may be mentioned first. The Appellant is a firm engaged in the preparation of greetings cards etc., for being marketed for sale. According to the Appellant, greetings cards are hand-prepared for which no power is used except manual labour. The firm does not use any "power" as defined in Section 2(g) of the Factories Act, which is applicable to the Act also by virtue of the provisions of Section 2(12) of the Act. An Inspector of the Employees' State

Insurance Corporation, hereinafter referred to as "the corporation" visited the premises of the firm and submitted a report that it was a factory, as power was being used therein. He also stated that there was 220 Volt AC connection to the premises. A notice was thereafter issued to the firm, which is a proprietary firm run by Shri T.R. Batra. Shri Batra admitted that he had electric connection but electric power was not being used in the process of preparation of greetings cards, which was solely done by hand. The fact that there were more than 20 employees was admitted, but it was stated that the firm was neither a factory as defined in Section 2(12) of the Act nor were the provisions of the Act applicable to the firm and, as such, contribution asked for from the firm was unwarranted.

4. The matter came up before the Judge, Employees' Insurance Court, Kanpur. Shri T.R. Batra was examined on oath. He stated that the greetings cards were being prepared by hand and "no power was being used". However, during cross-examination he stated that domestic electric iron or iron using coal were sometimes used. The corporation did not examine any one, not even the Inspector nor filed any documentary evidence in the proceedings before the said Court except the Inspector report and the reply by the proprietor Shri T.R. Batra.

5. The Employees' Insurance Court, Kanpur, held that although greetings cards were being prepared or made in the premises and more than twenty persons were engaged in doing so, the firm was a factory within the meaning of Section 2(12) of the Act, as it was, admitted by the proprietor Shri T.R. Batra that electric-iron was used sometimes and that indicated that power was being used in the making of the cards. Consequently, the firm was held to be a factory and covered by the provisions of the Act and, as such, it was liable to pay the contribution.

6. In this appeal, Mr. J.N. Tiwari, learned Counsel for the Appellant contended that the Act had no application to the facts of the case and, as such, the contribution asked from it was unwarranted. Secondly, there was no evidence from the side of the corporation to hold that electric power was being used by the firm in the process of manufacture and, as such, it could not be deemed to be a factory u/s 2(12) of the Act. Thirdly, there was an error on the face of the record, inasmuch as the oral evidence of Shri T.R. Batra was misread and misconstrued to draw an inference that there was an admission that power was being used in the manufacture of the cards.

7. Learned Counsel for the Respondent Mr. B.N. Asthana contended that an appeal lies only on substantial question of law and the findings on questions of fact cannot be agitated in the appeal u/s 82 of the Act. According to him, the question whether power was being used or not in the manufacture of cards etc., could not be challenged in this appeal, for it did not raise any substantial question of law" Secondly, the term "manufacturing process" as defined in the Factories Act, which was applicable to the Act as well, gave a wider meaning to the term than was understood in common parlance or in various other statutes. The definition of the term "manufacturing process" was sufficiently explained in

Section 2(k) of the Factories Act and each of the words therein by itself is a "manufacturing process". Consequently, the work of ironing the silk material would come under the term "finishing" or under the phrase "otherwise treating" with a view to its use, sale, transport, delivery or disposal. Thirdly, he urged that ironing of cloth with the aid of power was manufacturing process and in support of this contention he cited a decision of a Division Bench of Bombay High Court in *Kalpona Dresses v. E.S.I. Corporation* 1976 LIC 1791.

8. In considering the question that arises in this case, it will be necessary to examine the definition of the word "factory" as contained in Section 2(12) of the Act and the expression "manufacturing process" and "power" as contained in Section 2(k) and 2(g) of the Factories Act which are made applicable to the Act. The definition of factory under the Act is different from the definition of the "factory" in the Factories Act. Under the Act "factory" means where twenty or more persons are employed 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. The relevant words therefore are:

...a manufacturing process as being carried on with the aid of power or is ordinarily so carried on....

9. The first requisite is that there should be twenty or more persons engaged in the premises. Secondly, that there should be a manufacturing process and thirdly, that the said process should be carried on with the aid of power or is ordinarily so carried on. "Power" had been defined, as seen above, in the Factories Act. Power is synonymous with electric energy of any other form of energy which is mechanically transmitted. Energy transmitted by human or animal agency is not "power" within the meaning of Section 2(g) of the Factories Act.

10. The expression "manufacturing process" is very wide. "Manufacturing process" means making any article or substance with a view to its use, sale, transport, delivery or disposal. If any article is made with a view to its use, sale, transport, delivery, it will come within the ambit of the expression "manufacturing process". Similar is the position with other words in Sub-clause (1). The words "making, altering, repairing, ornamenting, finishing, packing, etc., each of them connotes a process. It is not necessary to associate any of them with another process to make a "manufacturing process". If any article is made or altered or repaired or ornamented that by itself would constitute a manufacturing process. But, it must be borne in mind that two things are essential. Firstly, that there should be 20 or more persons employed in the premises and secondly that there should be use of power as defined in Section 2(g) of the Act.

11. In the present case, the Appellant's case is that greetings cards are prepared by hand and power is not used. Greetings cards are made either on paper or on cloth. The cutting of the cloth, the cutting of the paper or other

similar material after making a drawing thereon or changing them or printing them by hand so long as power is not used does not make it a manufacturing process. It is admitted that more than twenty persons the employed. Therefore, only question is whether power was an integral part of the manufacturing process of the greetings cards etc., in the premises.

12. There is no doubt, a finding has been given by the Employees' Insurance Court that power was being used in the manufacturing process. It is correct that a finding of fact cannot ordinarily be challenged in an appeal u/s 82 of the Act, for normally it does not raise a substantial question of law. The question whether power is an integral part of manufacturing process is a jurisdictional fact in the present case. If power is not used, the provisions of the Act would not be attracted, for it would not be a "factory" within the meaning of Section 2(12) of the Act. In case, the finding is correct that power was being used, the question can no longer be agitated in this Court. A fact, which is a jurisdictional fact, if wrongly decided, can certainly be raised even in an appeal u/s 82 of the Act. In the case of Chaube Jagdish Prasad and Another Vs. Ganga Prasad Chaturvedi, , their Lordships were considering the scope and ambit of Section 115 CPC and referred to the term jurisdictional fact. Their Lordships observed that if the subordinate Court decides a jurisdictional fact erroneously and thereby assumes jurisdiction not vested in it, or deprives itself of jurisdiction so vested then the power of interference u/s 115 CPC becomes operative. It is, therefore, relevant to find out whether the jurisdictional fact has been correctly determined or not in the present case.

13. There is no evidence on behalf of the Corporation that electric power was being used by the Appellant in the manufacture of card. The report of the Inspector does not indicate that electric power was being used in the manufacturing process, or in other words that aid of power was being taken in the manufacturing process. The report of the Inspector states:

The employer has been using power vide paras 7 and 8 of the Annexure II though he succeeded to get his factory covered under Factories Act as one without power.

In Annexure II none of the paragraphs are numbered, but 7th, 8th and 9th paragraph therein read as under:

The hot embossing machine does not contain any electric motor and its plates are heated by coal for embossing purpose. We have 220 V current in the premises.

We do not use electric-iron but we use Gron heated toy coal for removing wrinkles from silken cloth.

We are not using industrial electric power in any part of our factory. We are covered under Factories Act since 1-4-67 and our coverage under Factories Act is without power.

14. A perusal of the report of the Inspector and what is contained in Annexure-11 does not indicate anywhere that electric power was being used in the process of manufacture of greetings cards etc. It was very clearly stated there that iron was being used for removing wrinkles, but it was stated that the said iron was heated by coal. It is, therefore, evident that what was being used for embossing purpose or for ironing was not power as defined u/s 2(g) of the Factories Act. In the cross examination of T.R. Batra, the statement which has been held to be an admission by the court below is as follows:

Bijli ki Istree ya koiley ki Istree jo ghareloo kaam ki hoti hai kabhi kabhi do-chaar maahine mey istemaal hoti hai....

This has been construed by the court below as containing an admission that electric iron is used once in two or four months and, consequently, electric power was being used in the manufacturing of the cards. Nothing further was elicited from Shri T.R. Batra in the cross-examination. No questions were asked as to in what stage electric iron was used and for what purpose. There was no question as to whether it was used in the manufacturing process. On the contrary the subsequent question that was asked elicited the following reply:

Mere factory mey koi part bijli ke power se na chalaya jata hai aur na kabhi manufacturing process mey power istemaal hota hai.

The Employees Insurance Court has drawn the inference that power is occasionally used and that is sufficient to conclude that electric power was used as an aid in the manufacturing process. A manufacturing process has a commencement and an end. The placing of the raw materials with the employees is the commencement and the emergence of the finished product-packed and ready for delivery, as the end of the manufacturing process. This entire process is the manufacturing "process and it must be shown that use of power is an integral part of that manufacturing process. In other words, it is essential to show that power is invariably used so as to complete the process before the product is finished or completed so that it may be marketed or sold or delivered for use.

15. Where the use of electric power is an integral part of the operation it can be said that the manufacturing process is being carried on with the aid of power. For example, where a motor car is serviced in a garage, it involves three operations viz., washing, cleaning and oiling, each of which is by itself a manufacturing process. See Gateway Auto Services v. The Regional Director Employees State Insurance Corporation 1981 Lab. I.C. 49.

Where steam is used for drying printing materials on cloth, it amounts to a manufacturing process with the aid of power. Similarly, use of electric energy for ironing of cloth is also a manufacturing process to attract the provisions of the Act. See Usha Prints India Private Ltd. v. The Employees State Insurance Corporation AIR 1964 Bom. 84 . Where grooves are cut on bangle, it amounts to ornamentation of bangle and was held to be a manufacturing process within the

meaning of Section 2(k) of the Factories Act. See K.H. Panjani Vs. State of Uttar Pradesh and Another, .

16. Ironing on cloth with the aid of power has been held to be a manufacturing process in the case of Kalpana Dresses, Bombay v. Employees State Insurance Corporation 1976 Lab.I.C. 1791. In this case, it was held:

A readymade 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 a manufacturing is carried on with the aid of...." There can, therefore, be no manner of doubt that if the use of electric power as an aid in the manufacturing process is an integral part there, it will be held that it is a factory within the meaning of Section 2(12) of the Act. What is, therefore essential to be established is the use of the electric power or mechanical power in the manufacturing process without which the process will not be complete. I am, therefore, of the view that in the present case the use of electric power was not an integral part of the manufacturing process-viz., making of greetings cards. The court, therefore, wrongly decided the jurisdictional fact and assumed jurisdiction to hold that the Petitioner's firm was a factory within the meaning of Section 2(12) of the Act.

17. I am conscious of the fact that the Act has been enacted for giving certain benefits to the employees of a factory and it is a legislation for the betterment of service conditions of the employees. I am also conscious of the fact that widest amplitude should be given to the expressions used in the Act so that the employees may be benefited. The definition of a factory under the Act is applicable when the factory employs 20 or more persons and carries on manufacturing process with the aid of power. The employment of twenty or more persons by itself would not make it a factory unless the aid of power is taken in the manufacturing process. Where aid of power is not an integral part in the manufacturing process at all, such a place of employment would not be a factory within the meaning of the Act.

18. It appears to me rather unfortunate that the Inspector, who made the report about the Appellant factory, did not make proper inquiry nor attempted to get the relevant material. It is no doubt true that there was 220 volt connection to the premises. It ought to have been found out whether it was being used for the purposes of light, fan only or for other purposes. The electric current, which was being used only for the purpose of light and fan, it would not be treated to be an aid in the manufacturing process. I am aware of a decision where lifting of water with the aid of power from tube-well to the top of a building for being used in washing the material has been held to be a use of power in the manufacturing process, but if the same water was stored there only for drinking or washing purposes of the employees, I fail to understand how it should be treated to be a part of manufacturing process with the aid of power. If electric light and fan or drinking water from a cooler or refrigerator was to be interpreted as an aid in the manufacturing process then all those words used in Section 2(k) of the Factories

Act would be rendered nugatory where the premises had only an electric connection. The definition of a factory u/s 2(12) of the Act is different as indicated above.

19. For the reasons indicated above, I come to the conclusion that the Employees' Insurance Court has not correctly decided the question in issue. The Appellants "factory could not be deemed to a "factory" within the meaning of Section 2(12) of the Act and as such the Act was not applicable to the said premises. Consequently, the demand for contribution from the Appellant was uncalled for and must be set aside.

20. In the result, therefore, the appeal is allowed. The order dated 12-5-1977 passed by the Judge, Employees' Insurance Court is set aside. Notice demanding contribution is also set aside. There will be no order as to costs.