
(2005) 03 DEL CK 0085
In the Delhi High Court
Case No : LPA No. 623 of 2003

Kanwarji Bhagirathmal

APPELLANT

Vs

The Employees State Insurance Corporation

RESPONDENT

Date of Decision : 04-03-2005

Acts Referred:

Citation : (2005) 118 DLT 759 : (2005) 81 DRJ 347 : (2005) 106 FLR 642 :
(2005) 2 LLJ 707

Hon'ble Judges : B.C. Patel, C.J.; Sanjay Kishan Kaul, J

Bench : Division Bench

Advocate : Non, for the Appellant; N.S. Bajwa, for the Respondent

Final Decision : Dismissed

Judgement

B.C. Patel, C.J.—This appeal is preferred against the order made by the learned single Judge in FAO No. 18 of 1986 decided on 7.7.2003.

2. In this matter the learned counsel for the appellant was heard by us on the last date of hearing. However, today he has chosen not to be present. As he was fully heard on the last date of hearing, he may be under the impression that it is not necessary for him to be present.

3. An appeal was filed before the learned single Judge against the order made by the Employees State Insurance Court on 21.10.1985 whereby the appellant's establishment is held to have been covered under the provisions contained in Employees State Insurance Act, 1948 (for short "the Act"). It is required to be noted that under the Act one is entitled to prefer an appeal u/s 82 of the Act. However, in view of the language of the section an appeal shall lie to the High Court from an order of the Employees State Insurance Court if it involves a substantial question of law and not otherwise. The High Court is not required to entertain an appeal on question of fact. Before the learned single Judge following questions of law were raised in so far as the present appeal is concerned:-

"1. Whether the provisions of the Act applied to the establishment of the on

petitioner ?.

2. Whether the officers of the Corporation, which passed the impugned orders, were competent to do so?"

4. The appellant is engaged in the business of sweet-meat and salted eatables at Chandni Chowk, Delhi. A notice was issued u/s 45A of the Act on 22.12.1978 for determination of the contributions payable for the period of 29.8.1975 to 30.9.1978 and upon the appellant's failure to show cause an order was issued as to why the amount so determined be not recovered as land revenue in accordance with Section 45B of the Act.

5. The question raised before the Insurance Court was that the appellant was not covered by the provisions contained in the Act inasmuch as the appellant was carrying on business in a shop. According to the appellant the shop is covered attracting the provisions of the Act by a subsequent notification dated 30.9.1988. No doubt, if it is a implicate shop, then it will not be covered for the relevant period. If a person is buying ready sweet from outside and is selling in his shop, the case may be on different footing. But here on facts, the Insurance Court found that the appellant was engaged in the manufacture of sweets. The provisions contained in the Act would be attracted to all the factories in terms of sub-section (4) of Section 1 of the Act. So far as the word "factory" is concerned, one will have to advert to the provisions contained in sub-section (12) of Section 2 of the Act. To understand the meaning of the word "factory" the learned single Judge has considered the said provision in the impugned judgment and for the purpose of "manufacturing process" has examined the provisions contained in clause (14aa) of Section 2 of the Act having the same meaning as assigned to the words in clause (k) of Section 2 of Factories Act, 1948 and the same has been reproduced by the learned single Judge. We reproduce the same 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 for 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."

6. The short question is whether the act of Halwai preparing sweets would attract the provisions of the Act. If 20 persons are employed, without use of electric

power, only then this question will arise. It may be noted that if electric power is used, then the requirement is that of 10 persons. Such number of persons must be working on a day. So far as the fact finding authority is concerned, namely, the Insurance Court, it has come to the conclusion that 20 persons were working with the appellant. As a person is converting one article into another, either by heat generated by electricity or otherwise, it can be said that the process of manufacture is undertaken. Merely because a commodity, namely, milk is boiled and sold in the shop, as such it may be difficult to say that it is a manufacturing process because there is no conversion. Or in the shop curd is being sold, which is converted from milk, but the process being not one of manufacture, the provisions may not be attracted. Therefore, these are the questions to be decided on facts of each case. When the Insurance Court on appreciation of evidence has held that it was a manufacturing process, it will be difficult for this Court to entertain the appeal, after the findings are confirmed on question of law by the learned single Judge. We may have the benefit of findings recorded by the learned single Judge which are reproduced below:-

"It is the appellant's case that it is a "halwai" shop in which sweet meats and salted eatables are made and sold to the customers, but eatables are not served to the customers inside the shop. So it is not a restaurant. But the sweet meat and salted eatables are manufactured in the appellant's premises.?"

"Making of sweet meats and salted eatables by the appellant is indubitably by a "manufacturing process", as defined above. It is not a case of the appellant that he is buying the manufactured sweet meats and other eatables from the manufacturers and was only selling them in the shop."

7. In view of the aforesaid findings, it is not possible for this Court to hold that the learned single Judge has committed any error in deciding the questions. Hence, the appeal is dismissed. C.M. No. 1436/2003 is also dismissed.