
(1961) 05 CAL CK 0006
In the Calcutta High Court

Limton (Private), Ltd.

APPELLANT

Vs

Employees" State Insurance Corporation

RESPONDENT

Date of Decision : 10-05-1961

Acts Referred:

Employees State Insurance Act, 1948 — Section 1, 2

Citation : (1961) 2 LLJ 361

Hon'ble Judges : S.K. Niyogi, J;B.N. Banerjee, J

Bench : Division Bench

Judgement

B.N. Banerjee, J.—For recovery of employees" contribution due from the appellants, for the period from 14 August 1955 to 20 December 1956, the respondents, the Employees" State Insurance Corporation, filed an application before the Employees" State Insurance Court, West Bengal, praying for a decree for the amount due.

2. According to the respondent the appellant 1 is a factory as defined in Section 2(12) of the Employees" State Insurance Act, 1948 (hereinafter referred to as "the Act"), and the opposite parties 2, 3 and 4 (appellants 2 to 4) were the principal employees of the appellant 1, Limton (Private), Ltd., being respectively its joint managing directors and manager and that they were liable to pay the employees" contribution as required by the Act, which they did not do.

3. The appellants contended that the appellant 1 was not a factory within the meaning of the Act and therefore they were not liable to pay the contribution as demanded.

4. The Employees" Insurance Court held that the appellant 1, Limton (Private), Ltd., was a factory and that the present appellants were liable to pay the contribution as claimed. In that view of the matter It allowed the application.

5. The propriety of the order aforementioned is being disputed before us.

6. The definition of "factory" in Section 2(12) of Act is:

"factory" means any premises including the precincts thereof whereon twenty or more persons are working or were working 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 Indian Mines Act, 1923, or a railway running shed.

7. The expressions "manufacturing process" and "power" as used in the section are not defined in the Act, but under the third paragraph of Section 2(12) they are to have the same meaning as in the Factories Act.

8. Turning now to the Factories Act, we find the following definition of "manufacturing process" and "power":

2(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 or sewage, or

(iii) generating, transforming or transmitting power, or

[(iv) composing types for printing, by letterpress, lithography, photogravure or other similar process or bookbinding:]

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

2(g) "power" means electrical energy, or any other form of energy which is mechanically transmitted and is generated by human or animal agency;.

9. Keeping the definitions in view we have now to turn to the evidence adduced in this case, both oral and documentary.

10. From the evidence of P.W. 1, S.K. Haldar, it appears that the number of employees in the workshop of appellant 1 was twenty or over. D.W. 1, the manager of appellant 1, also admits that about 20 or 21 persons worked in the workshop of appellant 1.

11. The nature of the work carried out by the appellant 1 is admittedly "repairing of watches, clocks, timepieces, etc." The doing of business in repairing works of the nature carried on by appellant 1, fits in, in our opinion, with the definition of "manufacturing process."

12. The point for consideration is whether the appellant 1 uses power for manufacturing process. From Ex. 3, a report submitted by appellant 1 to the respondent on 19 September 1952, it appears that it uses power in its workshop although such use is stated to be nominal. The inspection report (Ex. 1) dated 27 December 1954 shows that "power is used in polishing work of watches."

13. From the above evidence it will appear that appellants fell within the mischief of the definition of "factory" up to the year 1954.

14. The question for our consideration is whether thereafter the appellants ceased using power and thereby their workshop ceased to be a factory.

15. Hiralal Chakravarty, the manager of Limton (Private), Ltd., in his evidence said:

we are not using any power in our repairing department for polishing.

Sudhir Kumar Haldar, Inspector of Employees" State Insurance Corporation, in his evidence stated:

the machinery that I found was run by ? horsepower. I noticed that machinery in course of my first visit. I do not remember if I saw that machinery in course of my second visit, nor do I remember if I noticed any machineries in the course of my second visit.

16. The inspection report, dated 25 May 1956 (Ex. 1A), is silent as to the use of power.

17. There is thus considerable doubt whether the appellants were using power during material time. If it was not, then, it may be difficult to bring the appellants" workshop within the mischief of the definition of "factory." If it is not a factory, then, it is not liable to contribute under the Act because the Act at present applies only to factories. This will appear from the provisions of Sections 1(4) and 1(5) of the Act--

1(4) It shall apply, in the first instance, to all factories including factories belonging to the [Government] other than seasonal factories.

(5) The appropriate Government may, in consultation with the Corporation (where the appropriate Government is a State Government, with the approval of the Central Government), after giving six months" notice of its intention of so doing by notification in the official gazette, extend the provisions of this Act or any of them, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

18. The extension as contemplated in Section 1(5) has not yet been made.

19. While the appellant must not be made liable to pay the contribution under the Act, if not liable, it shall not be allowed to escape payment if really the workshop of the appellants falls within the definition of "factory."

20. In these circumstances, the best course is to remand the matter to the Employees" State Insurance Court with a direction to that Court to allow opportunities to both the parties to establish by better evidence, whether or not the workshop of the appellants is a factory. If it was a factory at the relevant, period, then only it will be liable to pay the contribution as claimed.

21. We order accordingly.

22. This appeal is allowed and the matter is remanded for retrial in the light of observations contained in this judgment.

23. Costs of this appeal shall abide the final result, hearing fee being assessed at three gold mohurs.

S.K. Niyogi, J.

23. I agree.