(1987) 01 CAL CK 0002

In the Calcutta High Court

Case No : F.M.A. No. 853 of 1982

M/s. Baranagar Service Station APPELLANT

Vs

Employees'' State Insurance Corporation RESPONDENT

Date of Decision : 30-01-1987

Acts Referred:

Factories Act, 1948 — Section 2, 2(12), 2(g)(1), 2(k), 2(k)(i)
Transfer of Property Act, 1882 — Section 106

Citation : 91 CWN 761

Hon'ble Judges : Sukumar Chakravarty, J;Gobinda Chandra Chatterjee, J

Bench : Division Bench

Advocate : Biman Kanti Basu and Manik Chandra Das, for the Appellant; Debesh Ch. Mukherji and Jayanti Mukherjee, for the Respondent

Judgement

Sukumar Chakravarty, J.—In this appeal u/s 82 of the Employees'' State Insurance Act, 1948, against the judgment and order dated 16th May, 1979 passed by Shri P.K. Ghosh Judge, Employees'' Insurance Court, West Bengal in Case No. 40 of 1977 u/s 75 of the aforesaid Act, the only substantial question of law which has been urged and agitated before us for our consideration and decision is whether the appellant firm (M/s. Baranagar Service Station) is a ''factory'' as defined in section 2(12) of the Estates'' State Insurance Act (hereinafter referred to as the Act) to bring the said firm under the coverage of the Act. The Appellant firm as applicant filed the application u/s 75 of the Act against the respondent opposite party Employees'' State Insurance Corporation praying for a declaration that the applicant firm was not covered under the Act and that the firm was not liable to pay any amount under the Act to the opposite party and for permanent injunction restraining the opposite party from taking any steps for recovery of the money as demanded through certificate proceeding.

2. The brief case of the applicant firm was that it was a petrol pump registered under the Shops and Establishment Act and it carried on business of sale of petrol, diesel, motor spirit, lubricants etc. and carried on also the servicing of the

vehicles brought by the customers and other things incidental thereto and that it had nothing to do with any manufacturing process. The firm accordingly being not a factory as defined in the Act did not come under the coverage of the Act. The certificate proceeding started at the instance of the opposite party for realisation of certain amounts under the Act from the firm was therefore illegal. Accordingly the application u/s 75 of the Act was filed for the relief as already stated.

3. The application was opposed by the opposite party contending inter alia that the nature of the work and business carried on by the firm with the aid of the power and with the employment of labourers numbering more that 20 made the firm a factory as defined in the Act and accordingly brought the firm under the coverage of the Act.

4. Before the learned Judge, the work and carrying on the business of the firm with the aid of the power and with the employment of the labourers numbering more than 20 was not disputed. The only dispute was raised with regard to the carrying on of any manufacturing process which is also one of the essential ingredients to bring the firm or establishment under the category of the factory as defined in Section 2(12) of the Act. The learned Judge on consideration of the materials and the provisions of law in this respect, found the firm to be a factory as defined in the Act and accordingly held that the firm rightly came under the coverage of the Act. The learned Judge therefore dismissed the application u/s 75 of the Act by the impugned judgment and order.

5. Mr. Bose appearing for the appellant firm has confined his submission only to the question whether the nature of the work and business carried on by the firm is the manufacturing process as defined in Section 2(k) of the Factories Act to make the firm a factory as defined in Section 2(12) of the Act for the purpose of bringing the firm under the coverage of the Act. Mr. Bose''s submission is that It does not and he has relied on the following decisions:

(i) In Re: A.M. Chinniah, Manager, 786 Sangu Soap Works Kattumavadi Road Arantangi,

(ii) Employees'' State Insurance Corporation v. M/s. Triplex Dry Cleaners & Ors., 1982 Lab. I. C. 944

(iii) Col. Sardar C.S. Angre Vs. The State and Another,

(iv) Allenbury Engineers Pvt. Ltd. Vs. Ramkrishna Dalmia and Others,

6. Mr. Mukherji appearing for the respondent has made his submission in support of the impugned judgment and order and has relied on the following decisions placing stress upon the fact that regard being had to the labour welfare legislation like the Employees'' State Insurance Act and the Factories Act, the meaning of the word ''manufacturing process'' as defined in Section 2(k) of the Factories Act should be accepted as stated and enumerated in the section itself without bringing any other word like ''transformation'' or ''new marketable

commodity'' in the section which was not intended by the law-makers.

(a) Laxmibai Atmaram Vs. Chairman and Trustees, Bombay Port Trust,

(b) M/s. Kalpana Dresses v. Employees'' State Insurance Corporation 1976 Lab. IC 1791

(c) Gateway Auto Services v., Employees'' State Insurance Corporation & Anr., 1981 Lab. I.C. 49

(d) Andhra University Vs. Regional Provident Fund Commissioner of Andhra Pradesh and Others,

(e) Osmania University v. Employees'' State Insurance Corporation, Andhra Pradesh & Ors., 1986 Lab. I.C. 105

7. Before we discuss the respective decisions as referred to by the learned Advocates of the parties and as stated above for coming to a decision on the question whether the nature of the work and business carried on by the appellant firm comes within the ambit of the ''manufacturing process'' as defined in Section 2(k) of the Factories Act, we are quoting here the relevant portions of Section 2(12) of the Act and 2(k) of the Factories Act.

8. The relevant portion of Section 2(12) of the Act runs as follows:

''Factory'' means any premises including the precincts thereof 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 with the aid of power or is ordinarily so carried on but does not include a mine subject to the operation of Mines Act 1952 (35 of 1952) or a railway running shed;

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The expression ''manufacturing process'' and ''power'' shall have the meaning respectively assigned to them in the Factories Act 1948.

9. The relevant portion of Section 2(k) of the Factories Act 1948 defining ''manufacturing process'' is as follows:

(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.

10. It is an undisputed fact and the materials in the record including the partnership deed of the appellant firm has proved also, that the firm carries on the business of the sale of diesel oil, motor spirit, lubricant etc. and carries on also the servicing of the cars and lorries with the aid of power and does also the

repairing of the vehicles and charging of batteries with the aid of power by the employment of labourers numbering more than 20.

11. The sale and supply of diesel or petrol to the respective vehicles necessitates the pumping of oil from the storage with the aid of power.

12. The servicing of the vehicles means the washing, cleaning and oiling of the vehicles brought by the customers for the purpose. Washing and cleaning of the vehicles are done by jetting water by pumping the water from the storage with aid of power. The servicing of the vehicles is no doubt carried on with a view to the use of the vehicles by the customers. Similarly the repairing of the vehicles and recharging of the batteries with the aid of power are done for the use of the vehicles. So the provisions of Section 2(k)(i) of the Factories Act as they stand, apparently bring the servicing of vehicles, and their repairing within the ambit of manufacturing process as defined therein. Pumping oil from the storage for supply thereof to the vehicles brought by the different customers also comes under the ambit of manufacturing process as defined in Section 2(k)(ii).

13. In the Single Bench decision reported in In Re: A.M. Chinniah, Manager, 786 Sangu Soap Works Kattumavadi Road Arantangi, in connection with a criminal revision case, while dealing with the meaning of ''manufacturing process'' as defined in Section 2(k) of the Factories Act, it was held as follows:

It will depend upon the circumstances of each case whether a particular business carried on comes within the definition of ''manufacturing process'', the different processes enumerated in the clauses being merely illustrative. To sum up, to constitute a manufacture there must be a transformation. Mere labour bestowed on an article even if the labour is applied through machinery, will not make it a manufacture, unless it has progressed so far that a (sic)ormation ensues and the article becomes commercially known as another and different article from that as which it begins its existence.

14. In the aforesaid decision it has also been held: "In In Re: V. Ramanadham, (A) the words ''manufacturing process'' do not necessarily refer to something produced but to the business carried on in Owner v. Cottinghan Sanitary Steam Laundry Co. Ltd. 1910, 74 J.P. 249 (B). Thus a laundry carried on for the purpose of gain and in which mechanical power is used for driving machines used in aid of the work of washing clothes is within the definition of a factory."

15. In the Single Bench decision reported in 1982 Lab. I.C. 944, while referring to the decision in In Re: A.M. Chinniah, Manager, 786 Sangu Soap Works Kattumavadi Road Arantangi, , it has been observed as follows:

Coming to the definition of ''manufacturing process'', a reading of the same does go to show as if all washing and cleaning process would come under the definition of ''manufacturing process'' but a deep probe of the definition and the scheme of the Factories Act would show that what looks apparent is not the intention of the law-makers. The washing and cleaning has to be with a view to its use, sale transport, delivery of disposal, wherever any washing or cleaning is done of any article or substance with a view to its use, that is, of use in such a way that a new marketable commodity would come into being known commercially for being used as such or for selling the same and so on, then the process would certainly come within the definition of manufacturing process. Wherever that result will not ensue, the washing or cleaning process would not be called ''manufacturing process''.

16. In the Single Bench decision reported in Col. Sardar C.S. Angre Vs. The State and Another, on a case where the premises was used for storing potatoes in the cold storage hail and removing them from cold storage hall, drying them, grading or sorting them according to quality and size and refilling them in bags, not with a view to bring into existence standardized goods of a particular category or variety saleable as such and not with a view to adapt the potatoes for sale, it was held that no process could be called a manufacturing process.

17. In the case reported in Allenbury Engineers Pvt. Ltd. Vs. Ramkrishna Dalmia and Others, while dealing with the ''question whether the lease was for manufacturing purpose as contemplated in Section 106 of the Transfer of Property Act, the Supreme Court has held that "the expression ''manufacturing process'' in Section 106 is used in its popular and dictionary meaning, the Transfer of Property Act not having applied any dictionary of its own for that expression. The word ''manufacture'' implies (sic)ange, but a mere change in the material is not manufactured. There must be such a transformation that a new and different article must emerge having a distinctive name, character and use."

18. The word ''manufacturing process'' has been defined and has been given a special meaning of its own in Section 2(k) of the Factories Act and that definition has been accepted in the Employees'' State Insurance Act also. The Supreme Court decision in Allenbury Engineers Pvt. Ltd. Vs. Ramkrishna Dalmia and Others, on the word ''manufacturing process'' based on different facts and different laws like the Transfer of Property Act, will not be applicable to the facts and circumstances of the present case based on labour welfare legislation like the Estates'' State Insurance Act and the Factories Act.

19. The decision in Col. Sardar C.S. Angre Vs. The State and Another, based on different facts not apparently complying with the provisions of Section 2(k) of the Factories Act is not applicable in the instant case.

20. The principle of law laid down in other two single bench decisions reported in In Re: A.M. Chinniah, Manager, 786 Sangu Soap Works Kattumavadi Road Arantangi, and 1982 Lab I.C. 944 will be considered in the light of the decisions as referred to by Mr. Mukherjee, the learned advocate for the respondent and also in the light of the labour welfare legislation as enjoined in the Act and the Factories Act.

21. In K.P. Srivastava''s commentaries on the Factories Act, 1948, 2nd Edition 1967, while commenting on ''manufacturing process'' in paragraph 38 it his been

observed as follows:- "The emphasis appears to be not so much upon the process but upon the number of workers working, which the Parliament in its wisdom, tending towards the building up of a (sic)alist pattern of society, has placed in 1948 when it appended the definition. Before independence Section 2(g)(1) of the Factories Act XXV of 1934, which was repealed by the Act, did not contain sub-clauses (iv) and (v) and words ''oiling, washing, cleaning, breaking up and demolishing'' in the definition of manufacturing process. The comprehensiveness of the definition in the Act does not limit the ''manufacturing process'' to its generic and natural import.... Under the Indian Act even transporting, washing, cleaning, oiling and packing which do not involve any transformation as such which is necessary to constitute a manufacturing process in. its generic sense, are nonetheless treated as manufacturing process. The definition is artificially projected (sic)vend the scope of the natural meaning what the words might convert thus covering a very wide range of activities."

22. Keeping in mind the philosophy, behind the making of labour welfare legislation, and the carrying on of the business by the Firms and Establishments by the employment of labourers numbering more than 20 and with the aid of power, we find sufficient substance in the aforesaid commentaries. The decisions as referred to by Mr. Mukherji, the learned Advocate for the respondent also support such view.

23. In the case reported in Laxmibai Atmaram Vs. Chairman and Trustees, Bombay Port Trust, , a process employed for the purpose of pumping water was held to be a manufacturing process by the Division Bench. Section 2(k)(ii) of the Factories Act states so. Transformation or the emergence of new marketable commodity was not the sine qua non for making that process a manufacturing process.

24. In the case reported in 1976 Lab.I.C. 1791, the ready-made garments in a shop used to be. ironed before they could be sold in the market.- The Division Bench held that as it was a process of treating the articles for their sale, the process was the manufacturing process, although there was no transformation in character and no emergence of new marketable commodity.

25. In the Single Bench decision reported in 1986 Lab.I.C. 49 the facts were similar to the facts of the present case. M/s. Gateway Auto Service used to supply petroleum products such as fuel and lubricants to its customers and undertake lubrication service of motor vehicles. It was held therein that washing, cleaning and oiling of the vehicles brought by the customers for the servicing of the vehicles for their use are the ''manufacturing process'' as defined in Section 2(k)(i) of the Factories Act. It was further held that pumping of oil for supply to the customer''s vehicles is also a manufacturing process as defined in Section 2(k)(ii) of the Factories Act. We feel inclined to agree to such view although there occurs no transformation in character and no emergence of new marketable commodity by the aforesaid processes. Jetting wafer for washing the vehicles in connection with the servicing of the vehicles by pumping water from storage is

also a process as enumerated in Section 2(k)(ii). So this process is also a ''manufacturing process'' as defined in Section 2(k)(ii) of the Factories Act.

26. The decisions of the Supreme Court in Andhra University Vs. Regional Provident Fund Commissioner of Andhra Pradesh and Others, holding that the printing of text books, journals, registers, forms etc. by the department of- the Publication and Press run by the Universities concerned, constitute the ''manufacturing process'' as relied on by Mr. Mukherji are not on the facts and points as raised in the instant case.

27. Be that as it may, the ratio dedcidendi of the aforesaid decisions as discussed above has established that a process as contemplated in Section 2(k)(i) and 2(k)(ii) without causing any transformation to the article or substance under process and without causing any emergence of the new marketable commodity to such article or substance may constitute the ''manufacturing process'' as defined in the Act and the Factories Act. On a careful reading of the relevant provisions of the Act the Factories Act together with the provisions of Section 2(k) of the Factories Act defining the ''manufacturing process'', we do not find that the law-makers while making such labour welfare legislation had any intention to give such meaning to the definition of ''manufacturing process'' as has been given in the decision in In Re: A.M. Chinniah, Manager, 786 Sangu Soap Works Kattumavadi Road Arantangi, and 1982 Lab. I.C. 944 by adding the meaning of transformation or emergence of new marketable commodity to the meaning of ''manufacturing process''.

28. In view of what has been discussed above, we are of the view that the nature of the work and business as carried on by the appellant firm comes within the definition of ''manufacturing process'' and accordingly the same comes under the coverage of the Act. The learned Judge therefore did not commit any mistake in dismissing the application u/s 75 of the Act by his impugned judgment and order.

29. In the result the appeal is dismissed and the judgment and order of the learned Judge are confirmed.

We make no order as to costs. The drawing up of the formal decree is dispensed with.

Sd/- S. Chakravarty, J.

Gobinda Chandra Chatterjee, J.

30. I agree. But would like to add a few observations of my own.

31. According to the definition of Halsbury''s Laws of England, ''manufacture'' means manner of adapting natural materials and making of an article or material by physical labour or applied power. In consonance with Halsbury''s Laws, the word manufacture has been defined in a series of our Indian Acts. All the definitions of these Acts are not evidently and indeed cannot be identical with

one another. They vary from one another so as to suit the individual requirements or purposes of the Acts themselves. The matter needs some clarification by way of a few illustrations. Thus in Bengal" Excise Act (vide Section 2) the expression ''manufacture'' has been defined to include "every process whether natural or artificial by which any intoxicant is produced or prepared."

32. In Narcotic Drugs and Psychotropic Act 1985 the expression manufacture has been defined to imply "all processes other than production by which drugs or substance may be obtained and also refining of such drugs." (Vide Section 2). According to our Factories Act (also Section 2) and also according to E.S.I. Act the expression ''''manufacturing process'' is stated to mean and include amongst other things any process of making, repairing, washing for its use for sale or delivery. The expression also includes any process for pumping oil or water etc. The underlining in mine. I have underlined them only to emphasise the point that the wordings as they stand do not admit of any restricted or narrow interpretation. My Lord has already assigned reasons as to why petrol pump engaged in pumping oil and washing and servicing cars in general should come within the definition of these special statutes (E.S.I. Act and Factories Act). I do not think that I should dialate upon them further. I should, however, point out that the materials on the record reveal that the Inspector who visited the petrol pump found to his surprise that manifold activities like washing, servicing and oil pumping and even repairing of machineries and re-powering of batteries were being carried out there by the help of a sufficiently large number of workers (Vide Ext. A2 - Inspector''s report). The implication is clear. I do restrain myself from over emphasizing the facts. The facts on the record stand ail undisputed. At least the facts noticed by the Inspector were not questioned or challenged before us by Mr. Bose. Ext. A1 shows that at least 25 men were working there as employees.

33. The bone of contention of Mr. Bose is that petrol pump engaged in using petrol by way of pumping cannot by any stretch of imagination be said to be manufacturing any substance. He has referred to the view of our Supreme Court in that respect. Mr. Bose has contended that manufacture means bringing in existence of a new substance known to the market. The word manufacture according to him necessarily implies a change or transformation so much so that a new and different article must emerge. With respect to Mr. Bose we are constrained to observe that we are unable to accept the contention as aforesaid. The law laid down by the Supreme Court in that respect in Delhi Cloths and General Mills case (A.I.R. 1963 S.C. 79) and South Bihar Sugar Mills case (A.I.R. 1969 S.C. 922) is not applicable to the facts and circumstances of the instant appeal where unlike cases referred to above, we are dealing with petrol pump engaged in manifold activities already disclosed hereinbefore. We are not oblivious of the fact that we are taking a very bold view of the matter in issue. Indeed the matter is of far reaching consequences. We have therefore pondered over the matter for days together focusing all the time our anxious consideration to the facts and circumstances of the case. In our day to day experience we very

often come across such types of petrol pumps (with which we are dealing here) employing a large number of persons including even children earning lucidly at the costs of the employees. Most of these concerns are reluctant to come under the purview of the Factories Act or E.S.I. Act clearly with intent to avoid payment of license fees, tax or ''their contribution'' to the Government. The owners of such organisation (numerous throughout our State) know that if they are brought within the purview of such Acts they shall have to discharge various duties and obligations. The Payment of Wages Act, for example, will then apply to their case with its pang. They would be also precluded from employing children. Minimum wages under the law will have to be given henceforth. The paramount question of considerable public and economic importance which does thus arise in this appeal is whether we will be justified in keeping such types of organisations outside the ambit of the E.S.J. Act or for matter of that the Factories Act. We have already indicated before that the wordings used in the definition portion of the Factories Act are simple and self-contained such that those do not admit of any narrow and confined interpretation. In view of the overall facts'' and circumstances of the case we are thus inclined to take a broad and comprehensive view of the thing necessitating us to interpret the phrase ''manufacturing process'' In tune with our Labour Welfare Legislation. This broad and comprehensive outlook is the very keynote of the preamble of the L.S.I. Act which runs thus:

Whereas it is expedient to provide for certain benefits to employees in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto. It is hereby enacted as follows:

Likewise the Factories Act is another species of our labour welfare legislation.

