
(1973) 06 BOM CK 0010
In the Bombay High Court
Case No : First Appeal No. 719 of 1972

New Grand High Class Bakery	Vs	APPELLANT
The Employees" State Insurance Corporation		RESPONDENT

Date of Decision : 27-06-1973

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(12), 75, 82, 92
Factories Act, 1948 — Section 2(g)

Citation : (1974) 76 BOMLR 359 : (1974) MhLj 622

Hon'ble Judges : Apte, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Apte, J.—This is an appeal u/s 82(2) of the Employees" State Insurance Act, 1948 (hereinafter referred to as "the Act") from the order made by the Employees" Insurance Court at Bombay in Application No. 9 of 1969 filed by the present appellant tinder Section 75(1)(g) of the Act for a declaration that the appellant concern was not governed by the provisions of the Act.

2. The facts are shortly these:

3. The appellant, M/s. New Grand High Class Bakery, is a partnership firm and carries on business of Bakery. Admittedly more than 20 persons are employed as employees in this Bakery. It manufactures breads and biscuits with the help of manual labour. It is not in dispute that there is an electric oven in the premises of the Bakery. According to the appellant, however, it does not make use of that oven but the ovens which are used for baking purposes are fired by wood. After the breads are prepared, they are wrapped in paper also by manual labour. Part of the loaves manufactured are however taken to the slicing machine operated by electrical energy and are sliced there for the purpose of sale and are thereafter packed in paper.

4. It appears that the Regional Director of the Employees" State Insurance

Corporation established under the Act informed the appellant by a letter that inasmuch as it employed more than 20 workers and used electrical power in the manufacturing process, they were governed by the provisions of the said Act with effect from June 4, 1968. According to the appellant, the provisions of the Act were not applicable to them inasmuch as electrical energy was not used by them in the actual manufacturing process of loaves. The appellant, therefore, filed the application which has given rise to this appeal for the aforesaid declaration and a declaration that it was not liable to pay any contributions towards the insurance of its employees or to file any periodical returns as required under the provisions of the Act.

5. The application was opposed by the Corporation contending that the appellant concern was a factory within the meaning of the definition of that expression as contained in Section 2(12) of the Act and that therefore it was governed by the provisions of the Act and was liable to make contributions and file returns.

6. The Employees' Insurance Court upheld the contention of the Corporation and came to the conclusion that the appellant's establishment was a factory as defined in the Act. Consequently it dismissed the application. It is against this order that the present appeal is directed.

7. The short question that arises for consideration in the present appeal, therefore, is whether the appellant establishment can be held to be a "factory" as defined in Section 2(12) of the Act, which runs thus:

2. (12) "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 the Mines Act, 1952 (35 of 1952) or a railway running shed.

This clause also defines "seasonal factory" but that definition is not relevant for our purpose. It also provides that the expressions "manufacturing process" and "power" shall have the meanings respectively assigned to them in the Factories Act, 1948 (63 of 1948).

8. Sub-clause (k) of Section 2 of the Factories Act defines "manufacturing process" thus:

(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, printing by letter-press, lithography, photogravure or other similar process or book-binding;

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

9. The expression "power" is defined in Clause (g) of Section 2 of the Factories Act as follows :

(g) "power" means electrical, energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency.

10. Now, in the present case, it is not in dispute that more than 20 persons have been employed for wages in the manufacturing process which is carried on by the appellant on its premises. It is also not in dispute that breads, loaves and biscuits are prepared with the help of manual labour and they are baked in ovens. There is some dispute as to whether baking is done in ovens run by electrical energy or with the help of ovens fired by wood. At the same time it is not in dispute that one electrical oven is there on the premises. The case of the appellant is that it does not use it. The learned Judge of the Court below has, however, held that no reason was pointed out as to why it was not used. He has, therefore, impliedly come to the conclusion that this oven must also be in use. However, there is no positive evidence in this behalf. All the same, even if it is assumed for the purposes of this appeal that the electrical oven is not used but the breads and biscuits are baked in ovens fired by wood, still there is no dispute that after these loaves and breads are prepared, part of them are taken to the slicing machine near the counter and are sliced there with the help of the machine which is electrically operated. In other words, there is no dispute that for the operation of slicing, electrical power is used.

11. It is the contention of the appellant, however, that slicing of breads or loaves in this manner does not form part of the manufacturing process because it is done after the loaves are actually manufactured and taken out of the oven. In other words, it is submitted that the process of slicing is subsequent to baking and therefore it cannot be regarded as part of "manufacturing process" within the meaning of the definition quoted above. It is, however, difficult to accept this argument in view of the express wording employed in the definition of "manufacturing process". In this connection the words "otherwise treating or adapting any article or substance with a view to its use, sale" are very material. They show that after manufacturing an article, even if any operations are undertaken to treat or adapt the article or substance so manufactured with a view to its use or sale, such operations are also part of the manufacturing process.

12. Now, in the present case, it is true that loaves are manufactured as soon as they are taken out of the ovens. However, before they are disposed of, they are required to be packed, and before packing, part of the manufactured material is sliced on a machine run on electrical energy. This is admittedly done in order to

suit the requirements of some of the customers. Such slicing is therefore certainly adapting the article with a view to its use by the customers or sale to the customers. Therefore, in my view, the slicing of part of the loaves manufactured would in this case be covered by the expression "manufacturing process."

13. In support of the argument advanced for the appellant, reliance was placed on some rulings to which reference may now be made. The first case relied upon was *Angre (C.S) v. State* [1965] I L.L.J. 214. The question that arose in that case was as to whether the process of taking out moisture collected on the potatoes during the process of their refrigeration could be regarded as part of the "manufacturing process" within the meaning of the aforesaid expression as defined in Section 2(&) of the Factories Act. It appears that in that case the appellant brought potatoes from countryside for preservation by cold storage, emptied, sorted and packed again and put them on racks. When required, such bags were again removed and emptied and potatoes were sorted according to quality and size and refilled in the bags. Process of drying was also adopted to remove the moisture collected on the potatoes during the process of refrigeration. Such storage was done for preservation of potatoes and not for making them marketable. Grading and sorting of potatoes was also not done with a view to bring into existence standardized goods of a particular category or variety saleable as such but it was only of a casual nature. On these facts it was held that the process of grading, sorting, drying or storing by cold process taken together or separately was not "manufacturing process". It is pertinent to point out that in that case the potatoes were not manufactured nor were they converted into any other article. They were simply stored for preservation and whenever required, they were taken out and before they were sold, moisture was required to be taken out so that they should not be spoiled. The moisture was not required to be taken out for the purpose of adapting them to the needs of the customers and therefore it was rightly held that such drying, sorting or grading could not be regarded as part of "manufacturing process."

14. In *V. Md. Haneef & Go. v. E.S.I. Corpn* [1969] LabIC 549 the question that arose was whether, in the case of a tannery, the mere use of power for pumping of water which was used for the subsequent manufacturing purposes could be described as the use of power in the manufacturing process so as to bring the tannery within the definition of "factory" under the Employees' State Insurance Act. It was held that the mere existence of the pump set worked by power could not make the premises a factory. The requirement of the definition was not just that power was used in any part of the premises but the essential postulate was that power must be used in aid of the manufacturing process in the premises. It is obvious that in that case pumping of water was an operation which was prior to the actual starting of any process of manufacture and, therefore, such pumping was rightly held to be not a part of manufacturing process.

15. Third ruling relied upon was *S.G.P. Mills v. Inspector of Factories* [1969]

LabIC 1323. The appellant in that case, Shree Gopal Paper Mills Ltd., manufactured paper at Yamuna Nagar in Punjab. Raw material for manufacture of paper was obtained in the shape of "bankas" grass from the forests of Nepal. The grass used to be brought to various rail heads, including Nepalganj Road where it was compressed into bales with the aid of manually operated baling presses and was then loaded on railway wagons for being transported to the paper mills at Yamuna Nagar. The question that arose was whether such bailing of grass at Nepalganj Road was part of the manufacturing process. It was held that the packing that was aimed at in Section 2(k)(i) was the packing of the finished manufactured article which is done to facilitate or make possible its sale or transport for sale to customers and not packing of raw materials to be transported to the place of manufacture.

16. Next reliance was placed on Insp. of Fact. Junagadh v. Gordhandas (1970) 12 GLR 252. There the respondent Gordhandas Purshottamdas who was the partner of Ramesh Textile carried on business of printing Sarees in their premises which consisted of a building and an open compound enclosed by walls. These premises were taken by Ramesh Textiles on rent from Dinesh Dying Works. For the purposes of printing, water was taken to the terrace with the help of an electric motor which was installed on the well situate just outside the compound wall. The printing of Sarees and other operations were done by manual labour. The Factories Inspector was of the view that pumping of water which was used for manufacturing process of printing of Sarees was part of the manufacturing process and the respondent, not having obtained any licence as required by the Factories Act, was prosecuted for committing an offence punishable u/s 92 of the Act. It appears that the water was pumped from the well to a tank on the terrace of the house so that it could be used without having the necessity to carry it manually from the level of the ground to the first floor. Although water was used in the process of printing, water itself did not undergo any change but it remained precisely in the same condition and quality in which it was before being pumped into the reservoir on the first floor. It was, therefore, held that Sub-clause (ii) was not applicable to such a case where pumping of oil or water or sewage was necessary in order to enable its use, sale, transport, delivery or disposal and not merely for use in the manufacturing process. That case also, therefore, has no application in the present case.

17. The next decision relied upon was In Re: A.M. Chinniah, Manager, 786 Sangu Soap Works Kattumavadi Road Arantangi, . The question that arose in that case was whether the total number of workers employed in the soap factory was 20. The total number of workers in, that factory was, no doubt, 20, but those who were engaged in the manufacture of soap were only 18. One worker was employed as a carpenter for preparing packing cases and one boy was employed to hold a paint tin. If these two workmen were included among the workers employed in the manufacturing process, certainly the total number of workers was 20 and in that case the concern would fall within the definition of "factory". If the last two workers were excluded, then, as the total number did not amount

to 20, it could not be regarded as "factory" within the definition in the Factories Act. On a consideration of the facts of that case, it was held that the boy who held a paint tin was not a worker employed in the manufacturing process of soap and therefore it was held that it was not a factory within the meaning of the Act. This case is, therefore, of little assistance to the appellant.

18. Some English decisions were also referred to in the course of arguments. They were *McNicol v. Pinch* [1906] 2 K.B. 352 *Grove v. Lloyds British Testing Co. Limited* [1931] A.C. 466 and *Longhurst v. Guildford Water Board* [1961] 3 All. E.R. 545.

19. In *McNicol's* case it appears that the appellants subjected certain "330 saccharin" (i.e., saccharin 330 times as sweet as sugar) to a chemical process, the result of which was that in some cases "550 saccharin" (i.e., saccharin 330 times as sweet as sugar) and in others a mixture sweeter than 330, but not so sweet as 550 saccharin, and in a few cases a mixture less sweet than 330 saccharin was produced. The question arose whether the appellants were manufacturing saccharin within the meaning of the Finance Act, 1901, so as to require them to obtain a licence. It was held on the facts of that case that the appellants were in fact, not manufacturing saccharin within the meaning of that Act so as to be compelled to take out the excise licence required by Section 0 of the Finance Act and Section 2 of the Revenue Act of 1903, because they did not themselves manufacture saccharin but only subjected saccharin manufactured by others to certain chemical process only so as to increase its potency.

20. In *Grove v. Lloyds* the question that arose was whether the premises in which the respondent company carried on the testing of cables and anchors manufactured by others were an industrial hereditament. What the respondent company did was only to test cables and anchors manufactured by others and for that purpose they cut out three links from the cables sent to them for testing and subjected them to a specific breaking strain. If they came away, three more links were cut out from the same length of cable. If these also came away, the cable was rejected and no certificate of fitness was granted. If anyone of the sets of three links resisted, the cable was joined together again by means of a new link forged on the premises and subjected to a tensile strain. If the cable failed, it was rejected, but if it passed the test, a certificate was granted. On these facts the question arose whether the respondent company manufactured cables. It was held that they did not adapt cables for sale within the meaning of the Factory and Workshop Act. It is obvious from the facts of this case that the respondents only tested products manufactured by others by certain process and if they satisfied the particular requirement, granted certificate of fitness. They did not themselves manufacture or adapt any articles for the purpose of sale.

21. In the last case, *Longhurst v. Guildford Water Board*, the question was whether a pump house where filtered water was pumped out in the mains came within the purview of the Factories Act of 1937. The pump house was just close to the filter house maintained by the respondents themselves. It appears that

under b. 151(6) of the Factories Act, where a place within the precincts forming a factory was solely used "for some purpose other than the processes carried on in the factory" it was deemed not to form part of the factory for the purposes of the Act. In view of this expression, it was held that the pump house was not a factory.

22. Thus, it would be seen that all the English cases turn upon the wording of the particular enactments and hence they are not helpful in the interpretation of our enactment.

23. It was also urged that only 5 per cent, of the product manufactured in the ovens by the appellants was sliced on the electrically operated machine. There is however no positive evidence on record as to what part of the product is so sliced. Even assuming for a moment that only 5 per cent, is so sliced, since it is done for adapting the same with a view to its sale to the customers, it certainly falls within Sub-clause (i) of Clause (k) of Section 2 of the Factories Act.

24. In the result, therefore, the lower Court was right in holding that the appellant concern was a "factory" within the meaning of Section 2(12) of the Employees' State Insurance Act and was therefore governed by the provisions of that Act.

25. The appeal is, therefore, dismissed with costs.