(1972) 08 MAD CK 0010

In the Madras High Court

P. Natarajan, Business Manager, Coimbatore Co-operative Milk Supply Union Limited and Another	APPELLANT
Vs	
Employees' State Insurance Corporation and Others	RESPONDENT

Date of Decision : 22-08-1972

Acts Referred:
Factories Act, 1948 — Section 2(k)

Citation : (1973) 86 LW 607 : (1973) 1 MLJ 5

Hon'ble Judges : N. Krishnaswamy, J;N. Krishnaswami Reddy, J

Bench : Division Bench

Judgement

N. Krishnaswamy, J.—These two appeals arise out of a common judgment of the Court of the Employees'' State Insurance and the District

Judge of Coimbatore. P. Natarajan, Business Manager, Coimbatore, Co-operative Milk Supply Union Limited the respondent in proceedings No.

12 of 1965 before that Court is the appellant in C.M.A. No. 112 of 1971. The petitioner in proceeding"" No. 3 of 1966 who is an employee of the

Coimbatore Co-operative Milk Supply Union Limited is the appellant in C.M.A. No. 113 of 1971. The Coimbatore Co-operative Milk Supply

Union Limited is the respondent in both the proceedings.

2. The Employees'' State Insurance Corporation (hereinafter called the ''Corporation'') filed an application for recovery of employees'' contribution

of Rs. 2,316 for the period from 1st July, 1962 to 30th June, 1963, against the Coimbatore Cooperative Milk Supply Union Limited (hereinafter

called ''the Union'') on the ground that the Union was a factory within the meaning of the Employees'' State Insurance Act, 1948 (hereinafter called

''the Act''). The appellant in CM. A. No. 113 of 1971 filed an application for a declaration that the Act does not have any application to the Union and the Corporation was not entitled to claim any contribution under the Act.

3. The case of the Union is substantially the same as that of the appellant in C.M.A. No. 113 of 1971.

4. The learned Judge held that the Union is a ''factory'' within the meaning of the Act and, therefore, the Corporation would be entitled for

contribution and decreed the claim made by the Corporation for contribution and dismissed the application filed by the employee.

5. The Union has been in existence from 1937 onwards. The object of the Union is to procure milk from people owning milch cattle and distribute

milk to the members of the public. For the purpose of collecting milk from various places, the Union has got milk vans and the vans are driven by

its employees. For the purpose of distributing the milk, there are 75 employees who carry the milk in pails fitted to cycles. Some of the vans are

also used for the purpose of distribution. The Union has got an office with a Manager, Superintendent, Accountant and some Clerks.

6. The business and office premises of the Union is situate in Sambandham Road. There are two other roads adjoining the premises of the Union,

viz., Thadagam Road on the one side and Rand Street on another side. Three gates are provided, which give access to the premises from all the

three roads. In the compound, the office, the sales depot, the milk pastemisation plant and the by-product section are housed in separate buildings.

Retail sales of milk are effected in the sales depot. In the pasteurisation plant, the milk is pasteurised. In the by-products section, excess milk is

converted into ice cream, gova, butter etc. In the office building, the clerical and administrative staff of the Union carry on their functions. On the

other side of the Rand Street, there is a workshop. In this workshop, the vans of the Union are repaired and serviced. Near the workshop, there is

a cattle feed section wherein two employees are working. They grind with a mechanised grinder cotton seeds, oil cakes etc., and supply it to some

of the cattle owners who regularly supply milk to the Union. Though separate door numbers are given to the pasteurisation unit and the office and

though they are in separate buildings, all the four buildings, viz., the office, the pasteurisation plant building, the sales depot and the by-products

section are all situated within the same compound and there is no partition wall between any of these building.

7. According to the Corporation, there are 31 employees in the office section attending to the maintenance of accounts, registers, correspondence,

etc. and also to the collection and disbursement of amounts. There are 75 employees in the distribution department and their duty is to carry the

milk and distribute it to the customers. In the by-products section, there are seven employees for manufacturing ice cream, gova etc., There are 16

employees in the workshop section and two employees in the cattle feed section. In the pasteurisation unit, there are 32 employees, Viz., 13

persons designated as operators of the plant and 19 persons designated as attenders in the milk plant section. The Union would contend that there

are only 17 employees working in the pasteurisation unit.

8. It was contended by the Union that the pasteurisation Unit or any other unit of the Union is not a ''factory'' within the meaning of the Act as the

pasteurisation of milk is not a manufacturing process and even assuming that it was a manufacturing process, the Union has not employed the

minimum number of persons, namely ''20'' to bring it within the definition of factory''. It was also contended that the other units, namely, clerical,

distribution etc., are not connected to the pasteurisation unit, so as to bring all units within the definition .

9. The contention of the Union were negatived by the lower Court. The Union has reiterated the same contentions before me.

10. It is, therefore, necessary to note the relevant provisions in the Act. ""Factory'' is defined in Section 2 (12) of the Act as follows:

''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 (IV of 1923) (or a railway running shed).

From this definition, it is clear that the following ingredients are required to bring the premises under the definition of ''factory'': (1) there must be a

premises where the work is carried on; (2) 20 or more persons must be working; (3) 20 or more persons were working on any day of the

preceding twelve months; (4) a manufacturing process must be carried on in the premises or any part of the premises; and (5) such manufacturing process must be carried on or so ordinarily carried on with the aid of power.

11. ""Manufacturing process"" is not defined specifically under the Act; but it is stated u/s 2 (12) of the Act that the expressions ""manufacturing

process"" and ""power"" shall have the meanings respectively assigned to them in the Factories Act, 1948. Section 2 ''(k) of the Factories Act, 1948

defines """'manufacturing process"". According to this section, ""manufacturing process"" means any process for 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 etc. Thus, this definition of ''manufacturing process'' is so wide as to include the various acts

performed on any article or substance with a view to its use, sale, transport, delivery or disposal. This definition takes in all acts enumerated therein

and similar other acts which bring in not only some change in the article or substance but also the acts done for the protection and maintenance of

such article by packing, oiling washing, cleaning etc.

12. ""Power"" is defined in Section 2 (g) of the Factories Act as follows:

Power"" means electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal agency.

There is no dispute that electrical energy is used for pasteurisation of milk by the Union in the premises. The question now is whether pasteurisation

of milk comes within the definiton of ''factory''.

13. In pasteurisation of milk, the process consists of heating the milk upto 72ï¿½C to bring it under particular temperature and then chilling it to

destroy germs harmful to the health of the community. The word ""pasteurisation"" has been defined in the Shorter Oxford English Dictionary a?

follows:

To sterilize by Pasteur''s method, to prevent or arrest fermentation in milk, wine etc., by exposure to a high temperature so as to destroy microbes

or germs, to treat by the Method of Pasteurism, 1886.

The process employed by the Union will undoubtedly come within the definition of ''factory'' as the milk originally purchased from various persons

is treated by a particular process with the aid of power for the purpose of sale and distribution to the customers. The milk is treated by heating it to high temperature and then bringing it to the low temperature, for the purpose of destroying harmful microbes. Treating an article or substance is a

manufacturing process under the definition of Section 2 (k) of the Factories Act. It is not in dispute that the milk so treated by power is

transported, sold and delivered to the customers. The premises where the pasteurisation of milk is carried on is, therefore, a'' factory'' within the

meaning of the provisions of the Act.

14. The next question is whether the persons employed in the sales depot where sales of milk are effected and the by-products section where the

milk is converted into ice-cream, gova, butter etc. are employees within the meaning of Section 2 (9) of the Employees'' State Insurance Act.

15. Section 2 (9) (i) of the Act, so far as it is relevant for this case, is as follows:

''employee'' means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and--

(i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or

establishment, whether such work is done by the employee in the factory or establishment or elsewhere....

The other clauses of this section are omitted as not relevant. The above-said clause makes it clear that any person employed by the employer on

any work of, or incidental or preliminary to or connected with the work of the factory or establishment, whether such work is done by the

employee in the factory or establishment or elsewhere, will be an employee within the meaning of the Act. It is not in dispute that the office where

the administrative and clerical staff work, the sales depot where the milk after pasteurisation is sold and the byproducts section where such

pasteurised milk is converted into gova, ice-cream etc., are housed within the same compound where the pasteurisation plant is located for the

purpose of treating the milk. All those categories are connected with the work of the factory and they are directly employed by the Union. Some of

them work in the manufacturing process, some in the sales depot, some in the office, some in the by-products plant and some are employed as

drivers for transporting the treated milk in lorries and vans for distribution and sale. The work is done by the employees in all these sections and

their work irrespective of the fact whether it is clerical or non-manual, is connected with the work of the factory as such work is carried on by all to

achieve the object of the Union in running the factory. The duties of every one employed in various sections housed in the same compound are

directly connected with the work of the factory. Even those persons who are working in the workshop, though situate separately opposite to the

factory will also come under the definition of ''employee'' within the meaning of the Act as their work in repairing the lorries, vans etc. is connected

with the work of the factory.

16. In Nagpur Electric Lights and Power Co. Ltd. Vs. Regional Director Employees State Insurance Corporation, etc., , the Supreme Court held

that all the workers including the Clerks and the administrative staff engaged in connection with the work of the factory and the employees working

outside the factory, but whose duties are connected with the work of the factory are all employees within the meaning of Section 2 (9) (i) of the

Act.

17. A Division Bench of this Court consisting of S. Ramachandra Iyer, C.J. and Venkataraman J. in K. Thiagarajan Chettiar Vs. Employees'' State

Insurance Corporation, held that the gardeners, building workers, office attenders, watchmen etc. of a textile mill are ""employees"" within the

meaning of the Employees'' State Insurance Act.

18. The learned Counsel for the appellants brought to my notice a decision in Mahalakshmi Oils Mills Vs. Employees'' State Insurance

Corporation, , where Maharajan, J., held that the fact that all the persons were employed in the same premises would not make all of them

employees and certain persons who were engaged in selling oil would not come within the definition of ''employees'' under the Act. In that case the

persons employed in the sales depot of the Company which was running the oil mills were engaged not only for selling oil manufactured in the

premises belonging to the company but also for buying the oil from others and selling the same. Those employees while buying and selling oil, not

manufactured by the Company, would not come within the meaning of Section 2 (9) (?) of the Act as their work is not directly connected with the

factory.... The said decision is of no use to the appellants as the facts in that case are different.

19. Therefore, I find, concurring with the lower Court, that more than 20 persons

are employed in the factory of the Union and all the employees in

all the sections of the factory including the employees working in the workshop excluding the employees, engaged in preparation of cattle-feed

opposite to the premises where the pasteurisation plant and other offices are accommodated are ''employees'' within the meaning of the Act.

20. In the result, the orders of the lower Court in both the proceedings are confirmed and these appeals are dismissed. No costs.