
(1984) 12 MAD CK 0033

In the Madras High Court

Case No : Writ Petition No. 3858 of 1977

R. Ganapathy Subramaniam

APPELLANT

Vs

Enfield India Ltd., Madras, The Additional Commissioner for
Workmens' Compensation Madras-4

RESPONDENT

Date of Decision : 18-12-1984

Acts Referred:

Factories Act, 1948 — Section 2

Citation : (1985) 2 LLJ 77 : (1984) 97 LW 651

Hon'ble Judges : V. Ratnam, J; Ramanujam, J

Bench : Division Bench

Judgement

Ratnam, J.—The appellant was an employee of the respondent herein as Godown Keeper in its premises located at No. 216, Thiruvottiyur

High Road, Madras 81, which was covered by a Factory licence relating to the "spare parts division." In May 1973, it was found that in the

godown there had been tampering with the seals of some boxes and that some others were kept open and this led to the preparation of an

inventory which revealed that goods worth about Rs. 20,013.26 were found missing. A show cause notice was issued to the appellant on 12th

June, 1973 why disciplinary action should not be taken against him for gross negligence resulting in the loss of goods. After conducting an enquiry

on 7th September, 1983, the services of the appellant were terminated. Against the order of termination, the appellant preferred an appeal before

the Appellate Authority, the second respondent herein, under S. 41(2) of the Tamil Nadu Shops and Establishment Act, 1947 (for short, Shops

Act). Even at the preliminary stage, the first respondent raised the objection that the appellate forum was not the appropriate forum for the

appellant to ventilate his grievances, as the premises where the godown of the first respondent was located, namely No. 216, Thiruvottiyur High Road, Madras 81, had been covered by licence under the Factories Act as its spare parts division where manufacturing process was carried on by the use of power and therefore, by reason of the exemption granted under G.O.Ms. No. 545, dated 10th February, 1950, the appellant would be outside the purview of the provisions of the Shops Act. This Objection was not countenanced by the second respondent herein, as, according to him, the licence issued for the premises bearing door No. 216, Thiruvottiyur High Road, Madras-81, was confined to the spare parts department and did not include the godown department, and the godown department was separated by a wooden partition and the first respondent had not filed the attendance register for the godown department. Thereupon the first respondent filed W.P. 3858 of 1977, praying for the issue of a writ of certiorari to quash the order of the second respondent on the ground that the spare parts division as well as the godown did not constitute distinct and separate departments; but they had all been covered by one licence under the Factories Act in respect of the entire premises attracting the provisions of the Factories Act and G.O.Ms. No. 545, dated 10th February, 1940 would therefore render the provisions of the Shops Act inapplicable to the establishment of the first respondent. In his counter, the appellant maintained that there were two separate entities, viz, the spare parts department and the godown with two separate managers and therefore, the licence covering only the spare parts department would not enable the first respondent to claim that the entire premises fell within the purview of the Factories Act and G.O.Ms. No. 545, dated 10th February, 1950, can therefore have no application. It was also the further case of the appellant that the manufacturing process was done at the factory situated about 3-1/2 miles away from the premises in question and finished goods alone were received at the department located in door No. 216, Thiruvottiyur High Road, Madras-81 and the supervision by the appellant of the packing of finished goods there, would not alter the position and therefore, the appeal was properly laid under the Shops Act before second respondent.

2. The learned Judge after referring to the definitions of "manufacturing process", "worker" and "factory" under the Factories Act, and the

evidence of the appellant, found that the appellant was supervising packing, which is a manufacturing process under S. 2(k) of the Factories Act

and since, the premises bearing door No. 216, Thiruvottiyur High Road, Madras 81, had been licensed under the Factories Act, it was

unnecessary to include therein the godown within the precincts of the premises so licensed and therefore, the premises would be a "factory" within

the meaning of the Factories Act, and the appellant would be a worker under S. 2(1) of the Factories Act. The learned Judge therefore, upheld the

applicability of the exemption under G.O.Ms. No. 545, dated 10th February, 1950 and quashed the order of the second respondent. The

correctness of that view is challenged in this appeal.

3. The learned counsel for the appellant placing reliance upon the licence issued in respect of the premises No. 216, Thiruvottiyur High Road,

Madras-81, contended that it covered only the "spare parts division" and did not take in the godown and therefore, it can be assumed that the

godown portion of the factory was also premises governed by the provisions of the Factories Act. Per contra, the learned counsel for the first

respondent submitted that the licence obtained was one and indivisible with reference to the entire premises bearing door No. 216, Thiruvottiyur

High Road, Madras-81, and therefore, the circumstances that spare parts division alone had been mentioned in it, would not make the rest of the

premises anything other than a factory or the activities carried on in the premises so licensed any the less processes or activities carried on in a

factory as defined under the Factories Act.

4. There is no doubt that the entire premises No. 216, Thiruvottiyur High Road, Madras-81, had been licensed under the provisions of the

Factories Act. We may now notice a few definitions in the Factories Act S. 2(m) of the Factories Act defines a "factory" as under :-

2(m). "Factory" means any premises including the precincts thereof -

(1) Whereon ten or more workers 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 or were working on any day of the proceeding 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, or (ii) whereon

twenty or more workers 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, but does not include a mine, subject to the operation of the Mines Act, 1952, or a mobile unit belonging to the armed

forces of the Union, a railway running shed or a hotel, restaurant or eating place.

Explanation. - For computing the number of workers for the purpose of this clause all the workers in different relays in a day shall be taken into

account.

Section 2(1) defines a "worker" as follows :

S. 2(1). "Worker" means a person employed directly or by or through any agency (including a contractor) with or without the knowledge of the

principal employer, whether for remuneration or not in any manufacturing process, or in cleaning any part of the machinery of premises used for a

manufacturing process, or in any other kind of work incidental to, or connected with, the manufacturing process, or the subject of the

manufacturing process, but does not include any member of the armed forces of the Union.

"Manufacturing process" is defined in S. 2(k) thus :-

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, sewage or any other substances; 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; or

(v) construction, reconstruction, repairing, refitting, finishing or breaking up ships or vessels; or

(vi) preserving or storing any article in cold storage.

The nature of the work done by the appellant, even as per his evidence, consists of receiving motor cycles, supervising the packing of motor cycles

and despatching them as per the instructions of the Marketing Manager. No power is used in the godown and no manufacturing process is carried

on in the godown, according to the appellant. On the other hand, the evidence of

R.W. 1, who is the Senior Assistant to the Spare Parts Manager, establishes that the spare parts and godown departments are situate within the same compound and deal wood cases are being manufactured with the aid of power to pack some of the important items and that the licence covers the entire premises, though only spare parts division has been mentioned. Even on the evidence of the appellant, packing is done in the premises and such packing is so done with a view to sell, transport or deliver or dispose of the motorcycles and that process would therefore, be undoubtedly a "manufacturing process, within the meaning of S. 2(k) of the Factories Act. The appellant, though not connected with the main manufacturing process, in the production of the motorcycles, has been attending, even according to his evidence, to the work incidental to or connected with the manufacturing process and would, therefore, be a workman under S. 2(1) of the Factories Act.

5. We are of the view that the absence of the mention of the godown in the licence issued under the Factories Act, is not really material. Any manufacturing activities involves the inter-action of different departments, each with a distinct and separate function and when the whole premises consisting of the different sections is licensed for the manufacturing purpose under the provisions of the Factories Act, it would really be unnecessary to set out in detail, the different departments comprised in it. We are unable to read the relevant provisions of the Factories Act, as obliging a person engaged in any manufacturing process to take out licence with reference to each one of the activities undertaken by the different component parts of the establishment. All that it required is that the premises within the precincts of which any manufacturing activity or a part thereof is carried on, should be licensed. In this case, as stated earlier, there is no dispute that the premises bearing door No. 216, Thiruvottiyur High Road, Madras 81, has been licensed under the Factories Act and that, in our opinion, would suffice to consider the premises No. 216, Thiruvottiyur High Road, Madras 81, as a "factory" for the purposes of this Act, subject, of course, to the fulfillment of the other requirements. The separation of the spare parts department and the godown by a wooden partition, would not in our view, make any difference, when the whole premises, wherein the two departments are located, has been licensed. Similarly,

the maintenance of separate attendance registers for each department for purposes of convenience would not in any manner detract from the identity of the premises as one licensed premises, though comprising of different departments or sections. We are therefore unable to accept the contention of the learned counsel for the appellant that in view of the omission of the godown from the licence issued under the Factories Act, the provisions of the Factories Act do not stand attracted.

6. We may next advert to the nature of the manufacturing process carried on by the first respondent in the licensed premises. There is no dispute

that the motorcycles as such are manufactured in the main factory in Thiruvottiyur. Equally, there is no dispute that in the place where the appellant was working, the spare parts division and godown are located. The packing process which is in the nature of a "manufacturing process" under S.

2(k) of the Factories Act and supervision thereof by the appellant, consisted of packing the manufactured motorcycles and other parts and

accessories with hessian and also deal wood boxes. In his evidence, the appellant stated dealwood cases for such packing used to be purchased

and that no power is used in the godown, as according to him, no manufacturing process was at all carried on there. R.W. 1 in his evidence has

stated that dealwood cases are being manufactured in the godown to pack some of the important items and that two power machines are used for

that purpose. In the course of his cross-examination R.W. 1 reiterated that the dealwood cases are manufactured there for the purpose of packing

the batteries, ignition coil, chain, etc., and that the manufacture of dealwood cases would depend upon the number of Vehicles dispatched and the

dealwood required for that purpose used to be purchased. It was also his further evidence that in case of shortage, dealwood cases used to be

brought. The employment of a carpenter for making dealwood cases is also spoken to by R.W. 1. We do not see any reason for not accepting this

evidence of R.W. 1 in relation to the packing activity carried on in the licensed premises with the help of dealwood cases manufactured there with

the aid of power. We therefore hold that in the licenced premises, the which was carried on with the aid of power, in that the dealwood boxes,

were also made there.

7. That leaves for consideration the question whether the first respondent has

established that 10 or more workers were working in the premises 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. We have already held that the process of packing carried on in the licensed premises in question involved the use of power for making dealwood boxes. The only other requirement in order to bring the premises within the definition of "factory" under S. 2(m) of the Factories Act is that ten or more worker were working or had worked on any day of the preceding twelve months. It is in this connection that the learned counsel for the appellant contended that the relevant attendance registers, which would throw considerable light on this question, had not been produced by the first respondent and from that the Court should draw the inference that if produced, they would not establish the case of the first respondent that ten or more worked or were working. Reliance was also placed by the learned counsel upon the evidence of R.W. 1, regarding the destruction of the attendance register relating to 1973, as supporting the case of the appellant that there are no materials to show the number of persons employed in the licensed premises. In the course of the cross-examination of the appellant, he frankly admitted that he does not know how many employees are there in the spare parts division and he does not know the total number even. R.W. 1 gave the names of six of the employees and was obliged to admit that three others were casuals and packers. Thus, even on the evidence of A.W. 1, it is clear that inclusive of himself ten workers had worked or were working in the licensed premises. R.W. 1 categorically stated that the attendance registers particularly relating to the appellant were not available, as they had all been destroyed due to efflux of time. He denied the suggestion that there is a separate attendance register for the godown and that the attendance registers relating to 1973 were purposely withheld, On a due consideration of the evidence of A.W. 1 and R.W. 1., we are inclined to hold that appellant had not established that the attendance registers for the 1973 are available, but their production has been deliberately withheld by the first respondent. We may also point out that even on the evidence of A.W. 1, he was unaware of how many employees were there in the spare parts division, though he would name six workers in the godown and would give three more names as packers.

As pointed out earlier, inclusive of the appellant himself, the godown had employed ten persons, not to take into account those employed in the spare parts section in the premises, the whole of which has been licensed under the Factories Act. The evidence thus clearly establishes that in the godown, ten workers had been employed. The appellant stated that he did not know how many employees were there in the spare parts section.

The absence of knowledge on the part of the appellant with reference to the number of persons employed in the spare parts section would not lead to the conclusion that none was so employed. Taking into account the employment of not less than ten persons in the godown and the evidence of R.W. 1, to the effect that the supervisory staff like Manager, senior store keeper, spares sales executive, senior assistant and steno in charge of godown etc., were also employed though in the spare parts section, it is evident that more than ten workers were or had been working in the premises of the first respondent at No. 216, Thiruvottiyur High Road, Madras 81, licensed under the Factories Act. In this state of affairs, the benefit of G.O.Ms. No. 545 Development, dated 10th February, 1950 exempting permanently persons employed in any kind of work in factories and governed by the Factories Act, 1948 from all the provisions of the Shops Act, would be available to the first respondent and therefore, the appeal filed by the appellant before the Appellate Authority constituted under that Act, viz., the second respondent herein, was not maintainable.

We therefore agree with the conclusion of the learned Judge that the finding of the second respondent herein regarding the maintainability of the appeal filed by the appellant before it, cannot be sustained and deserved to be quashed. We, accordingly, dismiss the writ appeal. There will be, however, no order as to costs.