

(1991) 08 RAJ CK 0020

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 775 of 1988

Ravi Shankar Sharma

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 19-08-1991

Acts Referred:

Factories Act, 1948 — Section 2, 22, 6

Citation : AIR 1993 Raj 117 : (1993) CriLJ 1458 : (1993) 2 LLJ 1124 : (1992) 1 RLW 264

Hon'ble Judges : N.L. Tibrewal, J

Bench : Single Bench

Advocate : R.M. Lodha, for the Appellant; B.K. Sharma, Public Prosecutor, for the Respondent

Final Decision : Partly Allowed

Judgement

N.L. Tibrewal, J.—This a petition u/s 482 Cr. P.C. is directed against the judgment dated May 31, 1988 of Additional Sessions Judge, Jaipur-city, Jaipur in Criminal Revision No. 22/88 confirming the order of conviction dated April 4, 1985 passed by the Judicial Magistrate No. 7, Jaipur-city, Jaipur in Criminal Case No. 2206/83, by which the petitioner was convicted u/s 92 of the Factories Act, 1948 and sentenced to pay a fine of Rs. 100/-.

2. The petitioner is the proprietor of the firm M./s. Rambagh Service Station, Jaipur. This firm is an authorised dealer of M/s. Hindustan Petroleum Corporation for selling petrol and high speed diesel. It runs a petrol pump for selling the petrol and high speed diesel and also a Service Station for cleaning, washing and oiling of the vehicles.

On July 20, 1983, the Deputy Chief Inspector, Factories and Boilers, inspected the establishment of the petitioner-firm and found that it was not registered under the Factories Act and was being run without a licence. Consequently, a complaint was filed against the petitioner in the court of Judicial Magistrate No.

7, Jaipur-city Jaipur. The learned Magistrate found that the establishment of the petitioner was functioning without registration and obtaining a licence u/s 6 of the Act. Hence, the petitioner was convicted and sentenced u/s 92 of the Act read with Section 6 as indicated above. The trial Magistrate also gave direction to the petitioner to get his commercial establishment registered under the Factories Act within a period of three months. The revision preferred by the petitioner was also dismissed by the Additional Sessions Judge, Jaipur-city, Jaipur.

3. Normally, after the rejection of the revision petition u/s 397, Cr. P.C. confirming the conviction and sentence of the trial court, this Court does" not entertain a petition u/s 482, Cr. P.C. But, an important question of vital importance with regard to interpretation of Section 2(k) of the Act is involved and there is no reported judgment of this Court on the point involved, while there are divergent views of other High Courts, it has become necessary to decide the same, especially, for the guidance of the subordinate courts.

4. There is no dispute that the commercial establishment of the petitioner's firm has two wings: (1) Service Station; and (2) Petrol Pump. It is also not in dispute that they are under the direct control and supervision of the petitioner. It is also undisputed that at the Service Station, run by the petitioner, washing, cleaning and lubricating of the vehicles are made and the aid of power is also taken. At the Petrol Pump the petrol/ diesel is stored in an under-ground tank and the same is pumped-out to be filled in the vehicles of the customers with the aid of power. On these undisputed facts, I have to consider as to" whether the activities of the petitioner's firm fall within the definition of "Manufacturing Process".

5. The main thrust of Mr. Lodha, learned counsel for the petitioner, is that the provisions of the Factories Act do not apply to the petitioner's establishment, in as much as, it does not fall within the definition of "Factory" as no "Manufacturing Process" is being carried on with or without the aid of power. In order to appreciate the argument of Mr. Lodha, it is necessary to reproduce the definition of "Factory" and "Manufacturing Process" as given in the Act.

Section 2(m) of the Act defines "Factory" as under:--

"(m) "Factory" means any premises including the precincts thereof (i) 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

(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 without 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 (XXXV of 1952), or a mobile unit belonging to the armed forces of the Union, a railway running shed or a hotel, restaurant or eating place;"

"Manufacturing Process" has been defined u/s 2(k) of the Act as under:--

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

(vi) preserving or storing any article in cold storage;"

The argument of Mr. Lodha centres around the definition of "manufacturing process". According to him, the commercial activity of washing, cleaning or oiling of the vehicles at the Service Station does not make any change so far the article/vehicle is concerned. According to him, the article is neither treated nor adapted, but on the contrary, the article/vehicle is returned to the customers in the same form in which it is given to the petitioner's establishment for the purpose of service of the vehicles, i.e. washing, cleaning and oiling. The emphasis is laid on the words "adapting" or otherwise treating "an article". According to Mr. Lodha, "adapting" means something to be done to the article/vehicle so as to make it different from what it was before, and at the petitioner's Service Station the vehicle is brought and the same is hoisted on the rungs in order to facilitate the proper lubrication and greasing after washing and cleaning the same. In the entire process, according to Mr. Lodha, there is no adaptation, as no alteration is made in the vehicle. In other words, the argument of Mr. Lodha is that the words "oiling", "cleaning" and "washing" in the definition of "manufacturing process" should be read jointly with "otherwise treating or adapting any article or substance "with a view to its use, sale, transport, delivery or disposal."

For the Petrol Pump, the argument of Mr. Lodha is that the word "pumping oil" means pumping oil from beneath the earth. According to him, simply because petrol or diesel is lifted through a pump from the storing tank for the purpose of delivery to the customers, such activity should not be included in the definition of "manufacturing process" as given u/s 2(k) of the Act.

On the other hand, the learned Public Prosecutor contended that the above definition of "manufacturing process" is a comprehensive one and covers a wide range. According to him, if the requisite number of workers are employed for any of the activities mentioned in the definition of "manufacturing process" it would make the premises a factory. According to him, each activity of 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 a manufacturing process as the definition is artificially projected beyond the scope of the natural meaning. In other words, the argument of the learned Public Prosecutor is that the words "treating" or "adapting any article or substance" should be read independently and the same are intended to cover any such other activities by extending the definition as otherwise treating or adapting any article or substance with a view to use, sale, transport, delivery or disposal.

6. I have given my careful consideration to the above submissions. Before I proceed further and refer to the various judgments cited before me, I would like to say few words for the Act i.e. Factories Act. It is undisputed that the Act is a social legislature and it provides for the health, safety, welfare and other aspects of the workers in the factories. In short, the Act is meant to provide protection to the workers from being exploited by the greedy business establishments and it also provides for the improvement of working conditions within the factory premises. An adequate machinery of instructions and strict observance of the directions are provided in the Act. Hence, a beneficial construction should be given and the provisions of the Act should be so construed/interpreted so as to achieve its object i.e. the welfare of the workers and their protection from exploitation and unhygienic working conditions in the factory premises. It is also a cardinal principle of interpretation to give effect to the plain, fair and ordinary meaning to the words if such interpretation is not opposed to the intention of the legislature.

7. In the aforesaid background, I have to examine as to whether the activity of the petrol/diesel pump and the activities of oiling, washing and cleaning of the vehicles at the Service Station are covered by the definition of "manufacturing process" or not. If they fall in the said definition, then, the conviction of the petitioner is legally sound, otherwise it is unsustainable as in that case no licence is needed u/s 6 of the Act for the said commercial activities.

In general terms and as per dictionary meaning the word "manufacture" indicates transformation and the article becomes commercially known as another and different article from that as which it begins its existence . However, the definition of "manufacturing process" in the Factories Act is worded in most wide and flexible terms and it is difficult to prescribe any test and thus to limit the flexibility. Similarly, the word "adapting for sale" may have different connotation. One test is whether the article after employment of the manufacturing process was different from what it was before. (Refer *Grove v. Lloyds British Testing Co. Ltd.* 1931 AC 450.

Another test that may be applied has been indicated in *Union Cold Storage Co. Ltd. v. Bancroft*, 1931 AC 459 as whether the finished article is put into the condition of finished article by the process to which it had been subjected.

8. In determining whether a particular process is a manufacturing process or not, reference may be made to the following observations in *G.R. Kulkarni Vs. The*

State,

4. "It is obvious enough that the process of manufacture from one article to another changes and there are so many different processes in existence that to take the analogy of any single manufacturing process is likely to cause confusion. It is better therefore to apply one's mind to the exact process employed by which one article is shaped into another and to see whether the purposes of the Act are satisfied."

However, these observations have been made in connection with the interpretation of the provisions of the Sales Tax Act, but they are of general nature and not with reference to the definition of "manufacturing process" given in the Factories Act.

9. Mr. Lodha has strongly relied upon a judgment of this Court in Col. Sardar C.S. Angre Vs. The State and Another, That was a case of cold storage. The question involved in that case was as to whether the grading of the potatoes for storing in the cold storage or the process of drying of the potatoes amount to a manufacturing process or not. this question was considered in the light of the expression "otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal" as contained in the definition of "manufacturing process" given in the Act. After considering several authorities on the expression "adopting for sale", this Court held as under at page 337 (of Cri LJ):--

"If the gradation or the sorting is with a view to bring into existence standardised goods of a particular category or variety saleable as such, I do not see any difficulty in treating grading or sorting as a manufacturing process. If, on the other hand, grading is only casual and is not done with a view to achieve the object indicated earlier, grading will not be a manufacturing process."

Similarly, for the process of drying, it was held as under:--

"The process of drying has also to be considered in relation to the adaptability of the article for sale or use, In the present case, the process of drying is adopted only to remove the moisture collected during the process of refrigeration and not with a view to adapt the potatoes for sale. In other words, it cannot be said that the process is necessary for making the potatoes saleable as such. The process of drying also in this view of the matter, cannot be considered a manufacturing process."

Then, it was held as under:--

"The essential question to be considered is whether the cold storage is used primarily for the purposes of storage or is used for bringing into existence commodities which may be treated as commercially different from what they were at the time they entered the premises. In the present case, the cold storage appears to be used only for storage purposes and there is nothing in the complaint to suggest that the refrigeration was with a view to the adoption of the

potatoes to their sale."

In the aforesaid judgment, this Court was mainly concerned as to whether the grading or drying of the potatoes fall within the expression "otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal". However, this court did not consider as to whether the words "oiling", "washing" and "cleaning/ incorporated in the definition of Section 2(k) of the Factories Act should be read independently or jointly with the ending portion of, the Section viz." or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal".

10. Another authority relied upon by Mr. Lodha is in Employees' State Insurance Corporation v. Triplex Dry Cleaners 1982 LIC 944 . In this case, the question arose as to whether the activity of washing and cleaning in a dry-cleaners business is a "manufacturing process" or not. Relying upon the judgments of Madras High Court and: Rajasthan High Court in re In Re: A.M. Chinniah, Manager, 786 Sangu Soap Works Kattumavadi Road Arantangi, and in Col. Sardar C.S. Angre Vs. The State and Another, the test for "manufacturing process" was applied that there must be a transformation. In other words, some new article or substance should come into being with a view that the same can be used, sold, transported, delivered or disposed of in order to call the process as "manufacturing process". It was held as under:--

"The scheme of the Act seems to be that if washing and cleaning is one of the processes in a manufacturing concern, then the part of the premises where washing and cleaning is being done would be deemed to be "manufacturing process". Similarly, where only washing and cleaning process is run with power in such a way for example that coarse cloth is turned into fine cloth with the result that a superior marketable commodity, article or substance is produced, which is independently known in the market than the commodity, article or substance as it was before the same was washed or cleaned, then the process of washing and cleaning would be termed "manufacturing process". Therefore, in either of the aforesaid two situations, the process of washing and cleaning would come within the definition of "manufacturing process". The dry-cleaning business does not fall in any of the two."

It may be stated here that the judgment of Madras High Court was based on the definition of "manufacturing process" in a general term and not in relation to the definition of "manufacturing process" given u/s 2(k) of the Factories Act. Similarly, the judgment of Rajasthan High Court in Col. Sardar C.S. Angre v. State (supra), the Court was mainly concerned with the expression "otherwise treating or adopting any article or substance with a view to its use, sale, transport, delivery or disposal. Therefore, the aforesaid judgment of Punjab and Haryana High Court adopted the same line of reasoning without further considering as to whether the words oiling, cleaning and washing should be read independently or jointly with "otherwise treating or adapting any article or substance".

11. The last judgment relied upon by Mr. Lodha is also of Punjab and Haryana High Court in Bhag Singh v. Employees' State Insurance Corporation Chandigarh 1983 LIC 412. This judgment was also delivered by the same Judge who decided the case of E.S.I. Corporation v. Triplex Dry Cleaners. This was also a case of petrol/diesel pump and service station for repair of motor cars. So far the petrol/diesel pump is concerned, it was held that it does not fall within the definition of "manufacturing process". It has been held as under (at page 414):

"A reading of the definition of manufacturing process contained in Section 2(k) of that Act would show that pumping of oil is one of the manufacturing processes. Whether selling of petrol or diesel at a petrol pump can be called a process of pumping of oil would again be a "question to be gone into. A perusal of the definition shows that the process of pumping of oil, water, sewage or any other substance has also been defined to be a manufacturing process but to my mind this would not include dealership of petrol or diesel. It is true that some pumping process is involved because petrol and diesel is stored by the petrol dealers in huge tanks but the underlying object of the definition seems to be the pumping of oil from refineries or water from underground the earth and so on. Essentially, the business carried on by a petrol pump dealer is to sell petrol or diesel as the case may be and not pumping the oil. I am, therefore, of the firm view that selling of petrol or diesel by a petrol dealer will not be a "manufacturing process"."

As regards service station for repair of motor cars etc., applying the principle held in E.S.I. Corporation v. Triplex Dry Cleaners (supra), it was held that the word repairing should be read with the words "any article or substance with a view to its use, sale, transport, delivery or disposal" coming thereafter. It was held as under:--

5. "As regards service station for repairing motor cars, etc., the counsel for the Corporation wants it to be brought within the definition of "manufacturing process" as per Section 2(k)(i) of the Factories Act wherein the word "repairing" has been used. But this word has to be read along with the words "any article or substance with a view to its use, sale, transport, delivery or disposal" coming thereafter. So, the process of repairing has to be with any of these views which would be completely missing in the business carried on in this case. This matter was dealt with by me in detail in FAO No. 405/1978 (ESI Corporation v. Triplex Dry Cleaners) decided on 22nd Oct. 1981 : (reported in 1982 Lab 1C 944) wherein the process of drycleaning was sought to be included within the definition of "manufacturing process" because the definition included the words "washing and cleaning". In that case I recorded the finding that unless a new marketable commodity comes into being after the process and can be used, sold, transported, delivered or disposed of, the process cannot be called a manufacturing process. The same reasoning would apply in the present case. Customers bring their vehicles and after repair, etc., they pay service charges and take away their vehicles. Therefore, I am of the view that repairing of motor

vehicles is also not a manufacturing process."

12. The Bombay High Court in *Gateway Auto Services v. Regnl. Director, E.S.I. Corporation* 1981 Lab IC 49 has taken a different view. A similar argument was made before the Bombay High Court that the different activities of making, altering, repairing etc. mentioned in the definition of "manufacturing process" in the Factories Act should be read along with the ending portion of the Section viz. "or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal". This argument was repelled and it was held as under (at page 53):

"In fact in this definition each of the words has got independent meaning and which itself constitutes the manufacturing process, making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up demolishing. If none of the activities are covered by these words then the Legislature has in its wisdom intended to cover any such other activities by extending the definition as otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal. In my opinion, washing, cleaning or oiling is not necessary for treating or adapting any article. Treating or adapting any article has to be independently read. Therefore on plain reading of Section 2(k), it would mean that whenever a vehicle is brought by the customer for washing, cleaning, oiling with a view to its use, sale, transport, delivery or disposal, such activity must fall within definition of manufacturing process. Even the dictionary meaning of the word "adapt" would suggest to mean to make it suitable to the requirements or conditions, adjust or modify. Whenever the vehicle comes to the establishment of the appellant for washing, cleaning and oiling the same is kept ready for delivery after completing all these activities to the customers. In my opinion, therefore, the definition of word "manufacturing process" means any process such as washing, cleaning and oiling in respect of the vehicle which is brought to the establishment of the appellant for making ready for delivery after the necessary process is undertaken, and such activities would be covered by the Act."

That Hon"ble Judge observed as under (at page 55) ;--

"As stated earlier the service station undoubtedly offers washing service as well as oiling and cleaning service in order to make the article fit or suitable for use. Thus having regard to the interpretation of the phraseology "manufacturing process" used in Section 2(k), Indian Penal Code, 1860 have no doubt in my mind that the service station does not carry on a manufacturing process in the form of washing, cleaning, oiling or otherwise treating any article with a view to its use and delivery to the customers. Such activities are therefore covered by the definition of the word "manufacturing process".

For the pumping of petrol/diesel pump, it has been held as under:--

26. "The fact that pump is installed on the petrol tank and with the aid of the power the petrol is lifted and poured into the tanks of the vehicles, this activity

undoubtedly is an activity covered by the definition of the words "manufacturing process". A similar question had arisen before this Court for consideration in the case of Laxmibai Atmaram Vs. Chairman and Trustees, Bombay Port Trust, and this Court held that the activities of the pumping of the water are covered by the definition of "manufacturing process" under the Factories Act. Thus having regard to the principles laid down in this judgment I have no doubt in my mind that the petrol pump of the appellant establishment is covered as defined in Section 2(k) of the Factories Act."

13. The question now remains which of the above interpretations, to the definition of "manufacturing process" should be accepted. For this purpose, we will have to advert to the definition of manufacturing process" given in S, 2(k) of the Act. This definition starts describing various activities, namely, making, altering, oiling, washing, cleaning etc. then there is "or" before otherwise treating or adapting. The word "or" does not generally mean "and" and "and" does not generally mean "or". A depart from the ordinary and natural sense of the words of an enactment, though is permissible, but only when the literal interpretation is likely to defeat the intention of the legislature and the object of the statute, When the language of the provisions of the Act is clear and unambiguous, there is no necessity to resort to the aids of constructions. Further, the mark of "coma" before the word "or" is also significant and it should also be given weight along with the word "or". If each of the activity mentioned in the definition is read with "any article or substance with a view to its use, sale, transport, delivery or disposal", it gives an independent meaning and there is no reason as to why it should not be given the natural independent meaning. This interpretation will not be opposed to the object to be achieved by the Act, which is a social legislation intended for the welfare of the workers.

It cannot be disputed that at the service station, oiling (which includes lubrication also), washing and cleaning of the vehicles are done with a view to make it fit for use, transport or delivery. The view of the Bombay High Court that the words "or otherwise treating or adapting should be read independently and not in conjunction with the words making, altering, etc. etc. is correct as this interpretation is natural and in consonance to the literal interpretation of the words which are clear and unambiguous. Further, this interpretation also advances an achievement towards the object of the social legislature. Each activity mentioned in the definition is an independent one if the same is done with any article or substance with a view to its use, sale, transport, delivery or disposal. The word "use", "transport" or "delivery" has not been defined in the Act. The Random House Dictionary defines the word "use" as "to employ for some purpose" "put into service" "making use of. In Oxford Dictionary, the word "use" has been defined as "using" "employment" "application to a purpose" "availability" "utility" "purpose for which things can be used". Therefore, if cleaning, washing or lubrication of vehicle is done at the service station for using that vehicle or for Us utility or for purpose for which it can be used then it is covered by the definition of "manufacturing process" as given in Section 2(k) of

the Act.

Similarly, the word "transport" has been defined in the Random House Dictionary as "to carry" "move or convey from one place to another" "the act of transporting or conveying" "conveyance" "a means of transporting or conveying as a truck, bus etc.". Similarly, in Oxford Dictionary, it has been defined as "conveyance or transportation from place to place" "take persons" "goods" "troups" "baggage from one place to another etc. etc.". Therefore, if a vehicle is washed, cleaned or lubricated at the service station to make it fit for "transport" or suitable for transport" then, in my view, it is also covered by the definition of "manufacturing process".

Similarly, the word "delivery" is also important. If the process of cleaning, washing and oiling in respect of the vehicle, which is brought to the service station of the petitioner for making ready for delivery after the necessary process is undertaken, such activity would also be covered by the definition of "manufacturing process".

14. After the above discussions, I have no hesitation in following the view taken up by the Bombay High Court in Gateway Auto Services (supra) and hereby hold that the service station, run by the petitioner for "cleaning", "washing" and "oiling" of the vehicle is a "manufacturing process" within the definition of Section 2(k) of the Act and if the requisite number of workers are employed, then, the premises is a factory within the definition of Section 2(m) of the Act. In that situation, a licence is necessary to be obtained u/s 6 of the Act.

15. However, the pumping of petrol/ diesel at the petrol/diesel pump carried on by the dealer for the purposes of sale is not such a process so as to be covered by the definition of "manufacturing process" given in Section 2(k) of the Act. Pumping of petrol/diesel in such case is only casual and is done with a view to make it available to the customers. Such casual act cannot be treated as a manufacturing process. However, if the pumping of oil is done as a principal act or as an independent act, not in a casual manner insignificantly, then, such process will also be covered by the definition of "manufacturing process" given in Section 2(k) of the Act. Such process may be like pumping of oil from refineries or pumping of oil from wells etc. Therefore, on this score I do not agree with the view taken by the Bombay High Court in Gateway Auto Service's case (supra) and I endorse the view taken by the Punjab and Haryana High Court in Bhag Singh's case (supra).

16. The net result of the above discussion is that the activity of running of a petrol/ diesel pump is not covered by the definition of "manufacturing process", while the process/ activities of "cleaning", "oiling", "washing", "lubricating" or "repairing" of the vehicles at the service station, run by the petitioner, are covered by the above definition of "manufacturing process". In the said process, if the requisite number of workers are employed as mentioned in Section 2(m) of the Act, then, the premises is a factory and for running such factory a licence is

necessary u/s 6 of the Act.

17. Consequently, this petition is allowed partly. The view of the Courts below with regard to petrol/diesel pump of the petitioner is set aside, but the same is maintained with regard to running of a service station by the petitioner. As the petitioner was found running service station in violation of Section 6 of the Act, he was rightly convicted and sentenced by the Courts below. The sentence of fine awarded to the petitioner is quite lenient and requires no interference.