
(2008) 09 BOM CK 0112
In the Bombay High Court
Case No : E.S.I. Appeal No. 2 of 2001

Regional Director, E.S.I. Corporation	Vs	APPELLANT
Serofie Bernard Vaz		RESPONDENT

Date of Decision : 12-09-2008

Acts Referred:

Employees State Insurance Act, 1948 — Section 2(12), 45A
Factories Act, 1948 — Section 2

Citation : (2008) 6 ALLMR 115 : (2009) 1 BomCR 347

Hon'ble Judges : Chavan R.C., J

Bench : Single Bench

Advocate : A.A. Agni, for the Appellant; S.G. Bhobe, for the Respondent

Final Decision : Dismissed

Judgement

Chavan R.C., J.—This appeal by the Employee's State Insurance Corporation is directed against Judgment of Employee's State Insurance Court, South Goa, in Employee's State Insurance Case No. 1-92, whereby the learned Judge set-aside appellant's order dated 14.2.92 u/s 45-A of the Employee's State Insurance Act (hereinafter referred to as the Act").

2. Facts which are relevant for deciding this appeal are as under. Respondent runs a Hotel & Bar which employed more than ten workers in 12 months period commencing from April 1990. Respondent was using power for a deep freezer and a bottle cooler to preserve raw materials and for cooling drinks.

3. The learned Judge of Employee's State Insurance Court, relying on Judgment of this Court in (Ritz Hotel v. E.S.I.C. Pune) reported at 1995(1) C.I.R. 289 held that there was no nexus between preparation of food and the use of deep freezer/ bottle cooler and that use of these gadgets on power is not for manufacturing or preparing food. He, therefore, concluded that the respondent's establishment was not covered and allowed respondent's application.

4. I have heard Advocate Ms. Agni for the appellant and Advocate Shri S. G.

Bhobe for respondent. Clause (4) of State Insurance of Employee's State Insurance Act makes the provisions of the Act applicable to all factories. Clause 12 of Section 2 defines a factory to include a place where ten or more persons are employed for wages on any day in preceding 12 months and in which manufacturing process is carried on with the aid of power. Clause 14-AA of Section 2 prescribes that the term "manufacturing process" shall have the same meaning as assigned to it in the Factories Act. Section 2(k) of Factories Act defines manufacturing process as under:

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;

5. Hotels employing more than 20 persons where food is cooked have been held to be factories by Judgment of this Court reported at 1980 L.I.C. 100 (Poona Industrial Hotel Ltd. v. I.C. Sarin and Anr.) and of the Supreme Court G.L. Hotels Limited and Others Vs. T.C. Sarin and Another, . It would be a factory" when it employs more than 10 but less than 20 persons and where manufacturing process is carried on with the aid of power. The question in this case is whether use of a deep freezer or water cooler run on power would imply that respondent's establishment is carrying on a manufacturing process with the aid of power.

6. Learned Counsel for appellant, relying on the Judgment of Supreme Court in Regional Director, Employees' State Insurance Corporation Vs. Ram Chander, , pointed out that when an electric iron was used to iron clothes in a tailoring shop, the Court held that such establishment was covered by the provisions of Employee's State Insurance Act. However, that decision may be unhelpful since ironing would amount to "finishing" a garment for sale, covered u/s 2(k)(i) of Factories Act.

7. In face of judgment of this Court in Ritz Hotel v. E.S.I.C. Pune reported at 1995(I) C.L.R. 289, where Sub-clause (vi) of Section 2(k) of Factories Act was specifically considered in relation to a hotel, it may not be open to come to any difference conclusion. Deep Freezer is used to preserve raw material and is not shown to be used to process the food articles before they are served to patrons.

8. The learned Counsel for appellant urged that cooling bottles of drinks before they are served amounts to treating an article with a view to its use and, therefore, would fall under "manufacturing process". The learned Counsel for respondent submitted that use of a bottle cooler cannot amount to "a process for" adapting the article with a view to use it.

9. I have carefully considered rival contentions. The key to the questions posed lies in the definition of "factory" in Section 2(12) of Employee's State Insurance Act (or even Section 2(m) of Factories Act). The legislature intended to cover establishments where 20 or more persons are employed in a manufacturing process. This limit was reduced to 10 when the process was carried out with the aid of power. Obviously, since use of power reduces the need of work force. The object is to ensure that an establishment does not escape from the applicability of benevolent provisions of these statutes by using power to mechanize processes and reduce work force. Thus if power has been used for performing a task for which labour would have otherwise been required, then such a process aided by power would be relevant. No amount of manpower is likely to achieve preserving articles by cooling them, which a freezer does, or cooling bottles for which a bottle cooler is used. Therefore, use of these gadgets does not bring the establishment within the ambit of Employee's State Insurance Act, so long as it employs less than 20 persons.

10. The learned Counsel for appellant next submitted that "preserving or storing any article in cold storage" in itself is a manufacturing process, u/s 2(k)(vi) of the Factories Act and once it is shown that this process is carried on with the aid of power provisions of Employee's State Insurance Act would be attracted. First, this aspect has already been dealt with in *Ritz Hotel (Vegetarian), Pune v. E.S.I.C., Pune* 1995(I) C.L.R. 289, in Para 10 in the following words:

10. Section 2(k)(vi) of the Act applies where a business is carried on of preserving or storing article in cold storage. It is common knowledge that there are several business concerns or companies owning cold storage equipments which are approached by others for preservation or storage of their articles in the cold storage apparatus of the owner. Perhaps it was little doubtful prior to amendment of Factories Act, 1948 as to whether the business of mere preservation or storing of articles in cold storage could be considered as a factory or whether the process of such storage could be considered as manufacturing process or not. To my mind, the definition of "manufacturing process" was extended by Amending Act 94 of 1976 from this point of view. The expression "cold storage" used in Section 2(k)(vi) of the Factories Act cannot be interpreted literally and mechanically de hors the object of the Act. If preservation or storage of an article in a domestic refrigerator is to be treated as preservation or storage of an article in cold storage, it would be doing violence to the language. The definition of manufacturing process" is liable to be interpreted in business sense of the term having regard to the meaning of the words in common parlance and the usage of the trade. If the test is to be applied, it shall become clear that the

trial Court was not right in treating a small refrigerator in the restaurant or the hotel as a place of cold storage.

11. Secondly, at the cost of repetition, it may be pointed out that the provisions of the Act are made applicable to factories employing 20 persons or even 10 persons when manufacturing process is aided by power. Thus, it is only when power replaces manpower that reduced strength of persons employed also attracts the provisions of the Act.

12. In view of this, the impugned order does not call for any interference. Appeal is dismissed.