

(2006) 12 RAJ CK 0036

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 571 of 2006

Sahil Guest House

APPELLANT

Vs

Employees State Insurance Corp.

RESPONDENT

Date of Decision : 13-12-2006

Acts Referred:

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

Citation : (2007) 1 WLN 242

Hon'ble Judges : P.C. Tatia, J

Bench : Single Bench

Judgement

Prakash Tatia, J.—Heard learned Counsel for the parties.

2. The appellant's unit is hotel and according to respondent Employees State Insurance Corporation since the appellant is falling in the definition of factory as given in Section 2(12) of the Employees State Insurance Act, 1948, and engaged in manufacturing process as defined in Sub-section (14-AA) of Section 2 of the Act of 1948 read with Sub-clause (k) in Section 2 of the Factories Act, the appellant's unit is though, a hotel is a factually engaged in manufacturing process and therefore is covered under the E.S.I. Act, 1948. The contention of the appellant is that the appellant is not engaged in manufacturing process nor a factory and not engaging in manufacturing process.

3. The E.S.I. Court vide its order dt. 4th March 2006 held that the appellant is engaged in manufacturing process as per the Clause 2k of the Factories Act, 1948.

4. I considered submission of the learned Counsel for the parties and perused the relevant provisions of law.

5. The only reason and ground for including the appellant's unit under the Act of 1948 is that the appellant's unit is falling in the definition of factory as per Sub-section (12) of the Section 2 of Act of 1948. A factory which is engaged in

manufacturing process is covered under the Act of 1948 and otherwise also manufacturing process in unit may make a unit a factory. Manufacturing process for the purpose of Act of 1948 is the manufacturing process as defined in Sub-clause (k) of Section 2 of Factories Act, 1948. The Section 2 K of the Factories Act is as under:

(K) "manufacturing process" means 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 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; (or)

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

According to the learned Counsel for E.S.I. the appellant is engaged in preserving and storing articles in cold storage and the Court below found that there was deep freezer in the hotel of appellant, therefore, appellant is engaged in manufacturing process as defined in Sub-clause (vi) of Clause (k) of section 2 of the Factories Act whereas according to learned Counsel for the respondent the "hotels" have been excluded from the definition of factory specifically which is clear from the Clause (m) of Section 2 of Factories Act, 1948 and, further, submitted that keeping a deep freezer is not and cannot be termed as "cold storage". It is submitted that cold storage is different than a deep freezer.

6. It is clear from the definition of manufacturing process given in Sub-clause (k) of Section 2 of the Factories Act, 1948 that where there is cold storage for the purpose of preserving and storing articles than that is treated to be manufacturing process by deeming statutory definition irrespective of the fact that whether new products came out from that process or not. If interpretation which is sought to be given by the ESI is accepted then the hotel which is engaged is not engaged in manufacturing process as defined under the Factories Act will be treated to be engaged in manufacturing process despite its specific exclusion by Clause (m) of Section 2 of the Factories Act, 1948. As per Sub-section 12 of Section 2 itself it is clear that in the definition of factory itself which it is provided that manufacturing process for a factory is a condition precedent. The preserving or storing any article in deep freez is different than keeping a cold storage itself. In view of above the appellant's hotel is not covered under the definition of factory as given in Sub-section 12 of Section 2 of the State Insurance Act 1948 read with its Sub-section (14kk) and Sub-clause (k) and (m)

of the Section 2 of Factories Act, 1948.

7. It is submitted by the learned Counsel for the appellant that admittedly appellant unit is having motor for water lifting and therefore, the appellants unit is covered under Sub-clause (2) of Clause (k) of Section 2 of the Factories Act, 1948. Arguments deserves to be rejected on the ground that such meaning cannot be given to Sub-clause (2) of Clause (k) of Section 2 of Factories Act, 1948. Mere keeping motor for lifting water in business place also cannot make the business place a factory. A Division Bench decision relied upon by the appellant on 1980 Lab. I.C. 100 (Bom) where it has been held that various electrical appliances were placed for preparation of food in kitchen of the hotel involves manufacturing process as defined in Section 2K (under the Factories Act 1948). That was not specific plea taken by the respondent but even if definition as examined above is looked into, it is clear that Factories Act itself excluded the hotel by inserting the exclusion of hotel from the definition of factory.

8. In view of the above, the appeal deserves to be allowed, hence, it is allowed. Order of the Court below dt. 4th March 2006 is set aside. The application filed by the applicant appellant u/s 75 is allowed. It is held that the appellant is not covered under the provisions of the Employees State Insurance Act. The amount which has been deposited by the appellant in the trial Court be refunded to the appellant.