

(1972) 05 AHC CK 0024
In the Allahabad High Court
Case No : F.A.F.O. No. 261 of 1970

S.P. Verma

APPELLANT

Vs

Regional Director

RESPONDENT

Date of Decision : 18-05-1972

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 2(g)
Employees State Insurance Act, 1948 — Section 2(2)
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Employees State Insurance Act, 1948 — Section 2(2)

Citation : (1972) 42 AWR 498

Hon'ble Judges : Satish Chandra, J;Gopi Nath, J

Bench : Division Bench

Advocate : Ramo Devi Gupta, for the Appellant; B.N. Asthana, for the Respondent

Final Decision : Dismissed

Judgement

Satish Chandra, J.—The Employees State Insurance Act, 1948 applies to all factories. The question in this appeal is whether the Appellant firm maintains a factory within the meaning of this Act and if so, where its factory is located. The learned Single Judge felt that the question has aroused divergence of judicial opinion in this country. There being no decision of this Court on the point the appeal was referred to a larger bench. That is how the appeal has been laid before this Bench.

2. The Appellant is the managing proprietor of Verma Electric Co., Aligarh. This firm manufactures table lamps and brackets. The offices of the firm are situate in Mamu Bhanja, Aligarh. At this place the Appellant employs thirteen to fourteen persons. Hence the table lamps and brackets are manufactured. The Appellant maintains another establishment at Madar Gate, Aligarh where seven persons are employed. At this place the lamps and brackets manufactured at Mamu

Bhanja are polished up before being sent to the market.

3. The ESI Corporation, being of the opinion that the Appellant was maintaining a factory to which the ESI Act was applicable, demanded a contribution of Rs. 600/- for the period from 18-10-1965 to 17-10-1966. The Appellant moved an application before the Employees Insurance Court, Aligarh praying for a declaration that its firm was not a factory within meaning of the Act and was not liable to pay the contribution. The Corporation contested the application.

4. Before the Employees Insurance Court the parties led evidence. The Court found that thirteen persons were employed at the workshop situate at Mamu Bhanja, while seven persons were employed at the workshop at Madar Gate. Manufacturing process at Mamu Bhanja was carried on with the help of a small machine worked with electrical energy. The two workshops together employed twenty persons. The employees at both the workshops had community of purpose towards the same finished product and its promotion in this business and so they could be regarded as compliments of each other and should be considered together as one unit being engaged in one and the same business under the same management. On this view it was held that the Appellant firm was maintaining a factory within the meaning of the Act and so, liable to pay the contribution. Aggrieved, the firm came up to this Court in appeal u/s 82(2) of the ESI Act, 1948.

5. The learned Counsel for the Appellant did not challenge the findings of fact before us. He, however, submitted that the Appellant firm carried on its business at Mamu Bhanja. That place was not a factory as defined by the Act, because less than 20 persons were employed there. The ancillary workshop at Madargate could not be taken into consideration in order to determine whether the Appellant firm maintained a factory because it was situate neither in the same premises, nor did it have any geographical or physical unity with the premises at Mamu Bhanja.

6. Section 2(2) of the Act defines a factory to mean "any premises including the precincts thereof, where twenty or more persons are working, or were working at any time in 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....". So, any premises including the precincts thereof constitute a factory, if, twenty or more persons are working or were working thereon and if, in any part thereof a manufacturing process is being carried on, with the aid of power. If these two conditions are satisfied, the premises including the precincts thereof constitute a factory although the manufacturing process is carried on in only a part of the premises.

7. The ESI Act does not define the terms "premises" or "precincts". The precise connotation of these terms should, in our opinion, be gathered in the light of the context and the scheme and object of the Act. Assistance can also be taken from other enactments which may be in pari materia and which may provide useful

guidance.

8. The object of the ESI Act is to secure sickness, maternity, disablement and in case of death, dependents' benefits to the employees of factories and establishments. The benefit of this Act extends to employees of a factory even though they may be working outside the factory premises.

9. The Employees Provident Fund Act (No XIX of 1952) was enacted to make provision for the future of the industrial worker after he retires and for his dependants in case of his early death. To this end the Act instituted compulsory contributory provident funds. That Act applies inter alia to every establishment which is a factory, engaged in any industry specified in Schedule I and in which fifty or more persons are employed. By the Employees Provident Fund (Amendment) Act (No. XLVI of 1960) the word "fifty" was substituted by the word "twenty" or more persons; just as was the case in the Employees State Insurance Act.

10. Section 2(g) of the Employees Provident Fund Act defines a factory to mean any premises including the precincts thereof in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid of power.

11. It will be seen that the common feature of a factory within the meaning of both the Acts was the phrase "any premises including the precincts thereof." The Employees Provident Fund (Amendment) Act introduced Section 2-A to the parent Act. It provides:

2-A. Establishment to include all departments and branches. For the removal of doubts, it is hereby declared that where an establishment consists of different departments or has branches whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment.

Under the parent Act an establishment had to be a factory as defined by the Act, in order to attract its provisions. Thus by a declaratory legislation the Legislature clarified its intention that the definition of the term factory was not confined to premises situate at a single place. It will include branches even though they were situate at different places. Since the Employees Provident Fund Act is in pari materia with the ESI Act, we feel that the clarification of intention made by the 1980 Amendment Act shows the legislative intent underlying the phrase "premises including the precincts thereof" was that it need not necessarily be confined to a single place, situate within the same compound.

12. The essential feature of a factory as defined under the State Employees Insurance Act is that a manufacturing process is being carried on with the aid of power and by twenty or more persons. If the requisite number of workers are engaged in work which is an integral part of the manufacturing process, though their work may be carried on at different places, they will not only be employees

as defined in Section 2(g), but they should also be held to be working in the same factory.

13. We feel that the ambit of the definition of the term "factory" should not depend on what the employer, either for the sake of efficiency or convenience of management, or even with a view to avoid the application of the Act, may do. If for the sake of his convenience the employer diversifies the same manufacturing process and conducts it in different places, the workers should not lose the benefits of the Act merely for that reason, if the other conditions are satisfied; the other relevant factors being unity of ownership, management and control of the different places of work as well as the unity of employment. If these unities are established then the various places where part of the same manufacturing process is carried on should, in our opinion, constitute a factory within the meaning of this Act.

14. The Appellant firm manufactures table lamps and brackets. A part of the manufacturing process was carried on at its workshop at Mamu Bhanja, whereas the work of polishing the table lamps and brackets was done at the workshop situate at Madar Gate. Obviously, the work of polishing was a part of the manufacturing process. The manufacturing process was thus carried on at two places. The product, namely, the table lamps and brackets became a finished product ready for the market only after they had undergone the polishing work done at Madar Gate. There is no dispute that the Appellant firm owned both the workshops. It controlled the work at both places. There is no evidence that the management at the two places was not the same. Clearly, there was unity of employment. On these facts, it appears to us that the two workshops together constituted a factory within the meaning of the Act.

15. In *Ardeshir H. Bhiwandiwalla Vs. The State of Bombay*, it was held that the premises constituting a factory may be a building or open land or both.

16. In *Nagpur Electric Lights and Power Co. Ltd. Vs. Regional Director Employees State Insurance Corporation, etc.*, it was observed that inside the same compound wall, there may be two or more premises. If those premises were used in connection with the manufacturing process they all may constitute a factory; and the other premises within the same compound wall if used for purposes unconnected with the manufacturing process, they may form no part of the factory. In that case the Nagpur Electric Co. carried on the work of receiving and transmitting electrical energy in premises which were located within a compound wall. Inside the premises there were several buildings, yards and open spaces. The Company received electric energy in bulk of 11000 volts. This energy was carried to its transformers and was stepped down to 3300 volts and was then carried to sub-stations situate in various parts of the city, where it was again stepped down to 400 volts by other transformers. These sub-stations were situate at different places in the city outside the compound wall of the main premises of the Company. The Supreme Court held that the employees working in the sub-stations attended to work which was directly connected with the work

of the factory at the main station. The sub-stations were not independent factories. The workers at the sub-stations were employees within the meaning of Section 2(9)(i) of the Act. Section 2(9)(i) of the Act defines an employee to mean any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and 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.

17. It is true that this decision is not a direct authority holding that the substations constituted an integral part of the main factory premises. But the employees working at the sub-stations were held to be employees of the Company within the meaning of the Act. It was emphasised that the sub-stations were not independent factories. This would suggest that the court was inclined to include the sub-stations as being within the concept of a "factory" as defined in the Act. This would suggest that the term "premises" including the "precincts" used in the definition of a factory is not necessarily confined to buildings situate within one well defined compound.

18. In *N.V. Radhia v. ESI Corporation* AIR 1967 Mad. 3 the firm manufactured iron safes at one place and did the work of painting them at a different place. The work of painting was held to be a part of the manufacturing process or incidental thereto. Both the places were held to constitute a factory.

19. The case of *V. Mohamed Haneef and Co. and Others Vs. Regional Director, Employees' State Insurance Corporation*, is also interesting. There the Petitioner owned a tannery at Ranipet in North Arcot district wherein the several processes of tanning of hides and skins were carried on by manual labour. The premises where the tanning was carried on were enclosed with walls and within the premises the various processes of tanning were carried on. Water, which is essential to the various stages of the tanning processes was obtained from a well situate in an open space outside the compound wall of the tannery. Water was taken out of the well with the help of a pump worked by electric energy. Electric power was not used within the premises at any stage of the tanning processes. More than twenty people were employed in the process to tanning within the premises but they had no access to the pumping set which was in charge of an independent care taker. The Madras High Court observe that merely enclosing the premises of an establishment where more than twenty persons are employed, within boundary; walls and locating the place where power for the manufacturing process of the establishment is utilised, just outside or on adjoining land may not be sufficient to take the establishment out of the definition of "factory", if all the other conditions are satisfied.

20. In *Employees' State Insurance Corporation Vs. Peter Sewing Machine Co., etc.*, the question was whether the premises were a factory. It was found that the entire work was conducted within a single building by more than twenty workmen, but they were employed by two independent employers. It was held

that the premises did not constitute a factory, because there was no unity of ownership or occupation of the factor or unity of employment. The only unity present was that of geographical or physical unity being confined to the premises including the precincts thereof. This decision is clearly distinguishable. The problem as to whether two or more buildings situate in different compounds would be a factory did not arise for consideration in that case. The observation that a factory must have a geographical or physical unity, being confined to its precincts, was merely an obiter dictum. In our opinion, this case is not an authority for the proposition that all the buildings must be situate within one compound before they can constitute a definite economic unit.

21. In *Swastik Textile Trading Co. Ltd. Vs. Union of India (UOI)*, New Delhi and Others, three separate buildings were situate in the same compound. They were together held to be a factory. In that case the question whether a building situate outside the common compound would be included within the concept of the term factory did not arise for consideration. This case is hence, not directly in point. The only principle decided was that the expression "premises including precincts thereof" takes within itself all buildings and precincts confined within a common compound.

22. In *Hindustan Construction Co. Ltd. v. ESI Corporation* 1969 LAB SC 769 it was held that an essential requisite of a factory was a premises, that is to say, a geographical area within in certain boundary. In that case the firm carried on the construction of piers or the Brahmaputra bridge at places which were not within one compound. It was held that the location of different units could not be said to be within a geographical limit so as to constitute the premises of a factory. For reasons already mentioned we are unable to accede to this restricted interpretation.

23. In our opinion, the Employees Insurance Court was justified in holding that the Appellant firm was maintaining a factory within the meaning of the Act and was, as such, liable to make the contribution.

24. The appeal is accordingly dismissed with costs.