

(1983) 04 MAD CK 0060
In the Madras High Court

The Nilgiris Co-operative Marketing Society Limited	APPELLANT
Vs	
The Chief Inspector of Factories and Another	RESPONDENT

Date of Decision : 26-04-1983

Acts Referred:

Factories Act, 1948 — Section 2(1)

Citation : (1984) 1 MLJ 7

Hon'ble Judges : T. Sathiadev, J

Bench : Division Bench

Judgement

T. Sathiadev, J.—Petitioner seeks to set aside order of first respondent, dated 13th March, 1979, informing petitioner that it may get registered as a factory by applying for registration and grant of licence under Factories Act, 1948; and the order of second respondent, dated 11th January, 1979, informing that on an inspection made on 23rd December, 1978, it was found that certain provisions of Factories Act and Rules framed thereunder were not being followed.

2. Petitioner is a Co-operative Marketing Society, which has been in existence during the past 4 decades helping potato growers to grow potato by supplying fertilizers, seed potatoes and extending such advance to all those who are members of the Society. As and when potato crop is harvested, they are delivered by the grower members at the godown of the petitioner, at Mettupalayam, where the potatoes are unloaded; spread over and spoilt potatoes are removed; they are cleaned and sorted not according to size heaped in units of 45 kilograms, weighed and sold in auction held for the benefit of members to their account; then packed in bags whenever purchasers bring their own bags, by workers who are engaged by independent contractors; and loaded into lorries or other vehicles; and for all these activities, separate contractors engage-their workmen and collect handling charges from the Society which in turn collects the said charges from the grower-members. It only maintains a skeleton staff for the work of supervision, but the entire processes as above listed are carried out by piece-rate contractors, who pay the workmen according to the rates which they

may choose to pay, and" hence, the premises of petitioner cannot be treated as a factory; nor the workmen who are involved in. these processes are workers u/s 2(1) of the Factories Act (hereinafter referred to as the "Act") : nor the process involved is a manufacturing process u/s 2(k) of the Act. It is contended that there are 70 or 80 mundis at Mettupalayam, which follow this sort of procedure in respect of sale of potatoes and they are all private mundies, and not covered by Factories Act, and still, only in respect of petitioner-Society the impugned proceedings were issued and it being discriminatory, the impugned communications requires to be set aside. Respondents plead that petitioner-society is a "factory" u/s 2(m) and it carries on a "manufacturing process" u/s 2(k) of Act, when it is admitted that it is engaged in packing potatoes; in say event, apart from the other processes above listed and merely because contractors are employed and paid on piece-rate basis, the workers engaged by such contractors cannot but be treated as workers u/s 2(1) and in that sense, they would be treated as workers of the petitioner society. Petitioner-society is also having a fertiliser mixing unit and employs 10 regular staff and 15 to 20 contract workers. No attendant benefit under Factories Act having been provided for workers, merely because it is a cooperative society, it cannot avoid implementation of the beneficial, provisions of the Act. It applied for being exempted from the provisions of the Act to the Government, but it was rejected.

3. Since the petitioner filed a reply-affidavit listing out of the activities carried out in its precincts in respect of potatoes belonging to member-growers it was considered that, when no other agency is created under the provisions of the Act to ascertain the factual particulars, it would be in the interests of the parties to direct the concerned officials to inspect the petitioner premises and ascertain the nature of activities going on, and find out from and out of the account books maintained by it, whether it can be made out that the concerned workers could be treated as the workers of the petitioner-society and to what extent there is a manufacturing process being carried out within the meaning of Section 2(k) of the Act.

4. First respondent in his report, dated 27th November, 1982, would state that there are 2 categories of workers, porters and graders Mostly women are engaged as graders for cleaning potatoes, removing spoiled ones, grading them and filling them in bags of 45 kiln-grams each after auction is over. Male porters unload potatoes from the lorries, stitch the bags containing potatoes and load them on carts or Jorries. During season, 60 workers work and during the peak period they are 200. These workers are employed through contractors and petitioner-society employs directly about 9 staff members in each godown to supervise the work, prepare bills for payment etc. It owns 3 godowns. The society pays the bill amount to contractors for the work-done and then collect from purchasers of potatoes for packing and loading and from growers for other work turned out. It collects 1% commission towards handling charges. Hence, the definition of workmen having been amended in 1976, any person employed directly or through any agency (including a contractor) with or without

knowledge of the principal employer, would be a workman, and therefore petitioner-society would come under the provisions of Factories Act.

5. On behalf of petitioner it relies upon the letter it had forwarded to first respondent on 19th November, 1982, wherein it had given in detail the method adopted in selling potatoes belonging to its members and the manner in which it collects piece-rate amounts from its members. It had also stated that only contractors control the workers and there being no relationship of "master and servant" between the society or its members and the men employed by contractors, they cannot be treated as the workers of petitioner-society. . When the number of workmen employed by contractors vary from time to time and there being as fixed period of work, and then they also work in other mundies and further there being no manufacturing process involved converting potatoes into any other product, the application of the provisions of the Act would result in considerable hardship to petitioner.

6. The question whether workers employed by contractors who are paid piece-rate could be treated as "workmen" if petitioner-society, gets resolved in the light of the amendment introduced to Section 2(1) in 1976. Section 2(1) as it stands today is as follows:

"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 or 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).

When persons employed by contractors are thus treated as workers of an establishment which engages contractors, petitioner-society is. the occupier of the "factory" within the meaning of Section 2(1). In *Abu Bucker, P. K., In re* (1982) L.W. 18, such a view has been taken by this Court in a case where the concerned workers were engaged by independent contractors. In *Rohtas Industries Ltd. Vs. Shri Ramlakhan Singh and Others*, , it was held that when raw materials are used in the manufacturing process for producing paper and its various products, undoubtedly, it would be part of the manufacturing process. Hence those workers were also treated as factory workers, u/s 2(1). Hence, on this point it has to be held that the workers engaged by piece-rate contractors, are workers within the meaning of the Act of petitioner-society.

7. The only other aspect is, whether the operations carried out in the 3 godowns of petitioner-society would tantamount to "manufacturing process" within Section 2(k). Several authorities have been placed before this Court for appreciating as to under what circumstances a manufacturing process could be spelt out.

8. Slicing of bread manufactured in a bakery was held to involve a manufacturing

process in *New Grand High Class Bakery v. E.S.I. Corporation* 1975 L.I.C. 533 : 76 Bom. L. R. 359 : 45 F.I.R. 410 : 1974 M.L.J. 622, because it enables customers to use it in a particular form,. In *Kalpna Dresses, Bombay v. E.S.I. Corporation* 1976 L.I.C. 1791, ironing of garments was held to be a manufacturing process because by treating garments to such a process, they could be used for sale in the market. Salt works was treated as a factory since it involves the process of extraction of salt from sea-water involving human efforts though aided by natural forces in *Ardeshir H. Bhiwandiwalla Vs. The State of Bombay*, . If water is cleaned and stored for being supplied, such process was held to involve a manufacturing process in *E.S.I. Corporation v. Municipal Council Waterworks* 1972 L.I.C. 970.

9. Mr. Varadarajan, learned Counsel for petitioner would plead that in these decisions, the process involved results in a different type of product emerging out, and therefore, unless it be established that when potatoes leave the factory of petitioner it assumes a different form, from which it was when they were received in the godowns of the petitioner, it cannot be held that manufacturing process had been involved. He refers to the decision in *F. Flare, Sales Director, The Imperial Tobacco Company Limited v. The State* AIR 1955 All. 2710, which took the view that merely packing or cleaning or even repairing etc., would not fall within the definition of Section 2(k) until it can be shown that such packing cleaning etc., is as a sequence to or directly connected with a manufacturing process. In *V.H. Kotecha, Manager, Lakshmidas Premji, Ghee Merchants, Agraharam, Guntur Vs. The Regional Inspector of Factories, Guntur*, , collection of ghee from various sources, melting and pouring into tins was held to be a manufacturing process. Therefore, he contends that, mere collection of ghee, would not be a manufacturing process if it had not been subjected to heating etc.

10. Already what happens to potatoes from the time of their arrival till their despatch, had been narrated. It is a fact that potatoes arrived and leave the premises of petitioner only in the same form. For the purposes of sale, they are spread over, sorted out and heaped in certain units. Mud in potatoes is removed by women, who are engaged by contractors who are paid on price-rate basis. Loading and unloading is carried out by men, under different contractors. It is an admitted fact that the process of packing is carried on in the premises of the petitioner but by the men engaged by contractors. The word "packing" is mentioned in Section 2(k) as one of the processes which would come within the expression "manufacturing process".

11. Mr. Varadarajan, learned Counsel for petitioner, would state that no doubt these potatoes are packed in the premises of the petitioner; but they are put in bags belonging to purchasers who participate in auctions. The charges for packing are no doubt collected from purchasers, but they are paid over to contractors, by the Society. He would submit that the expression "packing" should be given a liberal meaning. Unless raw materials received, emerged out of the factory in a different form for the purposes of sale or despatch for the

process of packing carried out, Section 2(k) cannot be invoked. He relies upon the decision in *S.C. P. Mills v. Inspector of Factories* AIR 1967 All. 547, wherein a Division Bench held that packing is not meant to be interpreted widely as any kind of wrapping up or tying up of goods and that it could be referable only to finished manufactured articles being packed. The operation of baling grass with the aid of manually operated baling process for being sent to a paper mill as raw "material was held to be not a manufacturing process. But in *Gateway Auto Services, Bombay Vs. Regional Director, E.S.I.C. and Another*, it was held that each word in the definition of manufacturing process must be read independently and not in conjunction with the words making, altering etc. In *Biladhar Muniji v. Inspector of Factories* 1959 K.L.T. 803, it was held that in view of the wide definition in Section 2(k) which expressly describes packing with a view to use, sale, transport, delivery or disposal as a manufacturing process, the process of grading and packing coconuts into bags with a view to transporting them for sale, in a manufacturing process.

12. Therefore, these decisions go to show that each one of the expressions found in Section 2(k) will have to be independently considered and there is nothing to indicate that manufacturing process could be applied only if a different procedure emerges out of a factory. If raw materials are gathered, graded, cleaned and sorted according to size, and thereafter packed in bags, it results in the raw materials collected being put in a form in which they could be sold for different prices to be secured. When they are sorted out according to size or quality they acquire a particular marketable value and attract different types of customers and priced differently. In turn when they are packed, the said process comes within the fold of Section 2(k). This would suffice to hold that the provisions of Factories Act are attracted to petitioner-society and hence, the impugned proceedings being valid it results in the writ petition being dismissed.

13. It is said that about 80 godowns owned by private parties are not covered by the Act. Respondents would state that depending upon the decision in this matter, action would be taken in respect of all godowns. Therefore, the plea of discrimination fails. Hence the writ petition is dismissed. No costs.