

(2004) 04 KAR CK 0001

In the Karnataka High Court

Case No : Writ Petition No. 7803 of 2000

Welcomegroup Windsor Manor Sheraton and Towers

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 06-04-2004

Acts Referred:

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

Citation : (2004) 102 FLR 369 : (2004) ILR (Kar) 2231 : (2004) 4 KarLJ 223 :
(2004) 3 KCCR 257 SN

Hon'ble Judges : Tirath S. Thakur, J;Huluvadi G. Ramesh, J

Bench : Division Bench

Advocate : K. Kasturi, for Kasturi Associates, for the Appellant; B.P. Puttasiddaiah, G.P., for the Respondent

Judgement

Tirath S. Thakur, J.—The short question that arises for consideration in this writ appeal is whether the laundry division of the Star Hotel which the appellant-company runs in Bangalore is a factory within the meaning of the Factories Act. A learned Single Judge of this Court having answered that question in the affirmative, this appeal by the company assails the correctness of that view.

2. The appellant-company is running a Hotel under the name and style of Windsor Manor in Bangalore. For the benefit of its guests, the Hotel maintains a laundry which is used for the upkeep of the rooms, comfort of the guests and cleanliness of the linen used in the restaurants. The appellant had it appears assigned the laundry work to an outside agency on contract basis who was carrying on the said work within the precincts of the Hotel. The Contractor had secured a registration under the Factories Act which it appears to have surrendered with the termination of the contract and removal of its machinery and workmen from the Hotel. The Hotel is ever since then running the laundry with the help of its own machinery and employees.

3. It was in the above backdrop that the appellant received a letter from the

Inspector of Factories asking the appellant to submit details about the laundry contractor and also whether the appellant-hotel had secured a license for running the laundry division. In its reply dated 22.4.1997, the appellant informed the Inspector that Windsor Manor was a Hotel and not a factory within the meaning of Section 2(m) of the Factories Act. The appellant thus insisted that there was no need for it to take any license especially when the laundry service in the Hotel was meant only for washing and ironing of house keeping material for maintenance of rooms, beds, linen etc. The fact that the laundry contractor earlier engaged had taken a license for the establishment was according to the appellant inconsequential.

4. The Inspector did not feel satisfied with the reply received from the Hotel. In terms of another letter dated 18.2.1998, he called upon the Hotel to furnish information regarding the number of employees engaged in the laundry division and the use of electric power for running the same. The Hotel wrote back to say that it had 24 employees on the rolls and its laundry division was consuming around 680 units of energy per day. In terms of his letter dated 23.4.1998, the Inspector pointed out that since the Hotel had appointed 24 persons and was carrying on production activities with the help of electric power, it was violating the provisions of the Factories Act and the rules framed there under by running the factory without prior permission from the Chief Inspector of Factories. The Hotel was accordingly asked to take immediate action in the matter failing which the authorities were to take a serious note of the default.

5. Aggrieved by the above communication, the appellant filed Writ Petition No. 20396/1998 in which it prayed for a writ of certiorari quashing the communication received from the Inspector and a declaration that the provisions of the Factories Act were inapplicable to the Hotel establishment being run by it. The Writ Petition came up for hearing before our esteemed brother M.P. Chinnappa, J., who by his Order dated 30.11.2000 dismissed the same holding that the Factories Act being a piece of welfare legislation brought for the benefit of the workmen had to be given a liberal construction. The Court further held that since there were 24 employees working in the laundry and since there was nothing to show that the washing and cleaning of linen of the Hotel was being done without collecting separate charges, the laundry was a manufacturing unit within the meaning of Section 2(k) of the Factories Act even when the process employed in the laundry did not result in bringing about a new or altered product for sale, use, transport, delivery etc. The Court also found that just because the earlier arrangement had been terminated by the Hotel and the laundry work taken over by it, the same could not exempt the establishment from the purview of Factories Act and the Rules. The present appeal assails the correctness of the said Judgment and Order.

6. We have heard Mr. Kasturi, learned Senior Counsel for the appellant and the Government Advocate for the respondents.

Section 6 of the Factories Act, 1948 empowers the State Government to make

the rules inter alia requiring registration and licensing of factories or any class or description of factories. Rule 4 of the Karnataka Factories Rules, 1969 accordingly provides for registration of factories. The need for registration under the Act and the rules can however arise only if the Hotel of which the laundry being run by the appellant is an integral part, is a factory for the purposes of the Factories Act. That is because if the Hotel is not a "factory" as defined under the Act, there is no question of its being registered as such. Section 2(m) of the Factories Act defines the term "factory" as under:

" "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 shed or a hotel, restaurant or eating place);"

The definition is evidently exhaustive. The use of the term "means" in the definition clearly implies that only such premises including the precincts thereof would constitute a factory as are used for any manufacturing process with or without use of power and in which the stipulated number of workmen are employed to do so. What is significant is that even when a manufacturing process is being carried on with the aid of power by the stipulated number of workers employed in the same, the premises including the precincts thereof will not be a factory if the same is a mine subject to the operation of the Mines Act, 1952 or the same is a mobile unit belonging to the Armed Forces of the Union, a railway running shed or a hotel, restaurant or eating place.

7. The appellant's case before the learned Single Judge and so also before us is that the laundry division which according to the respondents is a factory, is a part and parcel of the Hotel being run by the appellant-company. The laundry division does not exist as a unit distinctly different from the Hotel. It is common ground that the laundry does not offer its service to general public and is entirely dedicated to the needs of the hotel, restaurants in the same and the guests and employees of the establishment. That a laundry established as a distinct unit unrelated to any such bigger establishment could be said to be engaged in a manufacturing process within the meaning of Section 2(m) of the Act was not disputed by Mr. Kasturi. That is because the meaning assigned to the expression "manufacturing process" in Section 2(k) of the Factories Act is wide enough to include a simple activity like washing and cleaning without bringing into existence a distinct article or product. Washing of linen, uniforms or even the clothes of the guests staying in the Hotel may in the context of the wider

connotation of the term be tantamount to carrying on a manufacturing process within the meaning of Factories Act. What distinguishes any such independent laundry unit from the one with which we are concerned in the instant case is the fact that the laundry in the present case is not a unit by itself. It is a part and parcel of a hotel established by the appellant. Its activities are entirely dedicated to the efficient running of the hotel, and the comforts and convenience of those making use of the facilities offered therein. It therefore cannot be viewed to be anything different from the Hotel which is a composite entity and in which varied kind of facilities may be available for the use and enjoyment of the guests and customers visiting the same including the comfort of having an in house laundry. Section 2(m) of the Factories Act however excludes a Hotel from the meaning of the factory. This would imply that any service, which the Hotel offers to its customers would also stand excluded, no matter any such service may independent of the Hotel be analogous to what goes on in a factory. The learned Single Judge was not therefore right in holding that since a manufacturing process was going on in the laundry, it was a "factory" as defined under the Factories Act. The fact that the laundry was but a small though an integral part of the hotel dedicated entirely to the needs of the establishment and the guests making use of the same was obviously overlooked by the learned Single Judge.

8. In the light of the above, we consider it wholly unnecessary to make any such comparison between the definition of the term "factory" as it appears in the Factories Act and that given in the Employees' State Insurance Act, 1948 for nothing would really turn on any such comparative study. But even if such a comparison were to be made it would only show that a "factory" within the meaning of Factories Act is not the same thing as a "factory" defined under the Employees' State Insurance Act, 1948. Section 2(12) of the Employees' State Insurance Act, 1948 defines the term "factory" as under:

""factory" means any premises including the precincts thereof -

(a) whereon ten or more persons are employed or were employed for wages 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

(b) whereon twenty or more persons are employed or were employed for wages 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 (35 of 1952) or a railway running shed;"

It would appear from a plain reading of the above that although other parameters relevant for describing the premises or precincts thereof are the same as in the case of Factories Act, yet when it comes to excluding certain establishments, the exclusion under the Employees' State Insurance Act, 1948 is

limited to a mine subject to the operation of the Mines Act, 1952 and "a railway running shed". The definition of the term "factory" under the Employees' State Insurance Act, 1948 does not specifically exclude a hotel, restaurant or eating place or a mobile belonging to the armed forces of the Union. We are not in the instant case concerned with whether and if so what kind of mobile units belonging to the armed forces are included for purposes of the said Act. What is evident is that a hotel, restaurant or an eating place can also be a factory for purposes of the Employees' State Insurance Act provided other requirements stipulated in Clauses (a) and (b) to Section 2(12) are satisfied. What follows is that the Employees' State Insurance Act, 1948 is wider in terms of its applicability to different establishments than the provisions of the Factories Act. That does not however necessarily support the view taken by the learned Single Judge that the laundry of a hotel is a factory even when it is entirely committed to the requirements of the hotel and is being run by the establishment itself. It is also fairly well settled that a statutory provision cannot be interpreted by reference to the meaning given to it in some other enactment which is not in *pari materia*. See *Lilavati Bai Vs. The State of Bombay*, *The Ahmedabad Mfg. and Calico Printing Co., Ltd. Vs. S.C. Mehta*, *Income Tax Officer and Another*, and *State of Punjab Vs. Okara Grain Buyers Syndicate Ltd. and Others*,

9. On behalf of the respondents, a feeble attempt was made to argue that since the laundry unit had earlier been registered as a factory, there was no reason why it would cease to be a factory just because it has been taken over by the hotel. We do not think that to be a correct perspective from which the matter can be approached. Just because an outside agency had while catering to the laundry requirements of the hotel secured a license or got the unit registered does not imply that the requirement of registration or license is inescapable. Since the hotel is itself exempt from the operation of the Factories Act, there was no need for registration or licensing even when the laundry contractor may have obtained any such registration. Nothing thus turns on the registration of the unit by the outside agency nor does it estop the hotel from arguing that there is no legal compulsion to register the laundry division.

10. We may before parting also point out that we had directed the Chief Inspector of Factories to remain present in person to enable us to verify whether hotels, restaurants and eating places were generally being treated as factories and being registered and licensed as such. We are told by the Deputy Chief Inspector of Factories who attended the hearing, that apart from the present case, there has never been any demand by the authorities under the Factories Act for registration of any Hotel, restaurant or eating place. Even in the instant case, the notice appears to have been issued only because the outside agency employed earlier to run the laundry had obtained such a registration, which as noticed earlier was wholly inconsequential for purposes of determining whether the establishment was legally registerable as a factory.

11. In the result, this appeal succeeds and is hereby allowed. The order passed

by the learned Single Judge is set aside, the Writ Petition filed by the appellant allowed and the communications issued by the Inspector of Factories demanding registration and licensing of the laundry division of the Hotel as a factory quashed. The parties are however left to bear their own costs.