

Before G. C. Mital, J.

EMPLOYEES STATE INSURANCE CORPORATION,—Appellant.

versus

TRIPLEX DRY-CLEANERS and others,—Respondents.

F.A.O. No. 405 of 1978.

October 22, 1982.

Employees State Insurance Act (XXXIV of 1948)—Section 2(12)—Factories Act (LXIII of 1948)—Section 2(k)—Business of dry-cleaning—Whether involves a ‘manufacturing process’ within the meaning of section 2(k)—Employees State Insurance Act—Whether applicable to the premises where such business is carried on.

Held., that a reading of the definition of ‘manufacturing process’ would go to show as if all washing and cleaning processes would come under the definition of ‘manufacturing process’ but a deep probe of the definition and the scheme of the Factories Act, 1948, would show that what looks apparent is not the intention of the law makers. The washing and cleaning has to be with a view to its use, sale, transport, delivery or disposal. Wherever any washing or cleaning is done of any article or substance with a view to its use, that is, of use in such a way that a new marketable commodity would come into being known commercially for being used as such or for selling the same and so on, then the process would certainly come within the definition of manufacturing process. Wherever that result will not ensue, the washing or cleaning process would not be called ‘manufacturing process’. Whether any “process is a manufacturing process” or not has to be decided on the facts of each case and there has to be a new marketable commodity and the process must involve washing and cleaning so that by doing so something new comes into being which can be used, sold, transported, delivered or disposed of. Since the cleaning or washing of clothes does not produce a new article or substance and it is not a case where before washing and cleaning, the article could not be used and became capable of use only after washing and cleaning, it cannot be said that there was any ‘manufacturing process’ involved. In the case of a dry-cleaners’ shop the customer brings clothes and gets them dry-cleaned. Although there would be an element of washing and cleaning involved but it is not with a view to its sale, use, transport, etc. and without that the dry-cleaning would not come within the definition of ‘manufacturing process’. The Employees State Insurance Act, 1948, would not, therefore, apply to such premises.

(Paras 4 and 5).

First Appeal from the order of the Court of Mrs. Bakshish Kaur, Employees Insurance Court, Jullundur, dated the 21st January, 1978, accepting the application and holding that the applicant is not liable to pay the contribution as claimed by virtue of the demand notice issued by the respondent.

K. L. Kapur, Advocate, for the Appellant.

Nemo, for the Respondent.

JUDGMENT

Gokal-Chand Mittal, J.—

1. Whether carrying on dry-cleaners business would fall within the definition of 'manufacturing process' as contained in section 2(k) of the Factories Act, 1948, read with section 21(12) of the Employees State Insurance Act, 1948, and, therefore, would come within the ambit of the Employees State Insurance Act, 1948 (hereinafter called the Act) is the sole point involved in this appeal.

2. M/s Triplex Dry-cleaners moved an application under section 75 of the Act before the Employees State Insurance Court, Jullundur, challenging the demand of Rs. 1316/35 made by the Regional Director on account of contributions for certain periods under section 40 of the Act. The plea raised was that the dry-cleaners business would not fall within the definition of 'factory' contained in section 2(12) of the Act. Section 2(12) of the Act contains expression 'manufacturing process' and the expression 'manufacturing process' occurring in this definition has been given the same meaning as assigned to it in the Factories Act. Therefore, the definition of 'manufacturing process' contained in the Factories Act will have to be seen. The plea of the applicant-firm was disputed by the Employees State Insurance Corporation (hereinafter called the Corporation) and their plea was that the dry-cleaning business was being run with power and old unusable clothes on dry-cleaning become usable and, therefore, 'manufacturing process' was involved with the result that the Act became applicable to it. The matter was considered by the court below and by a well-reasoned order, dated 21st January, 1978, it was held that dry-cleaning business would not be a manufacturing process and, therefore, the Act would not be applicable. The application filed by the firm was allowed and it

Employees State Insurance Corporation v. Triplex Dry-cleaners
and others (G. C. Mital, J.)

was held that no claim could be made on the basis of demand notices issued for payment of the contributions. The Corporation has come to this Court in this appeal.

3. In order to appreciate the point which arises for consideration in this case, the definition of 'factory' contained in section 2(12) of the Act and the definition of 'manufacturing process' contained in section 2(k) of the Factories Act, 1948, are reproduced hereunder:—

"2. (12) 'factory' means any premises including the precincts thereof 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 with 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 or a railway running shed" * * * *

* * * *

"The expressions 'manufacturing process' and 'power' shall have the meanings respectively assigned to them in the Factories Act."

"Section 2(k), The Factories Act, 1948

'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 * *

* * * *

A reading of definition of 'factory' shows that where the requisite number of employees work in a premises, wherein any part of it a 'manufacturing process' is carried on with the aid of power, would be considered a factory. Therefore, even if the requisite number of employees work in a premises and in no part of which manufacturing process is carried on with power it would not be covered by the definition of factory and, therefore, the Act would not be applicable. Lest the aforesaid conclusion is misunderstood in a different context, it is made clear that the Act will be applicable to administrative offices, branch or zonal offices as well although no manufacturing process is carried on at those places but are connected with some

factory where manufacturing process is carried on as held by the Supreme Court in *Hyderabad Asbestos Cement Products Ltd. vs. Employees Insurance Court and another* (1). Therefore, my aforesaid observations are subject to that decision.

4. Coming to the definition of 'manufacturing process', a reading of the same does go to show as if all washing and cleaning processes would come under the definition of 'manufacturing process' but a deep probe of the definition and the scheme of the Factories Act would show that what looks apparent is not the intention of the law-makers. The washing and cleaning has to be with a view to its use, sale, transport, delivery or disposal. Wherever any washing or cleaning is done of any article or substance with a view to its use, that is, of use in such a way that a new marketable commodity would come into being known commercially for being used as such or for selling the same and so on, then the process would certainly come within the definition of manufacturing process. Wherever that result will not ensue, the washing or cleaning process would not be called 'manufacturing process'. There is no direction case on the point but the interpretation of the provision has been made by some courts which deserves to be noticed. Ramaswami J., in re. *A. M. Chinniah, Manager, Sangu Soap Works, Kattumavadi Road, Arantangi* (2) interpreted the definition to mean as follows:—

"It will depend upon the circumstances of each case whether a particular business carried on comes within the definition of 'manufacturing process'. To constitute a manufacture there must be a transformation. Mere labour bestowed on an article even if the labour is applied through machinery, will not make it a manufacture, unless it has progressed so far that transformation ensues, and the article becomes commercially known as another and different article from that as which it begins its existence."

The Rajasthan High Court in *Col. Sardar C. S. Angre vs. The State and another* (3) held as follows:—

"The premises was used for storing potatoes in the cold storage hall and removing them from cold storage hall; drying

(1) AIR 1978 S.C. 356.

(2) AIR 1957 Madras 755.

(3) AIR 1965 Rajasthan 65.

Employees State Insurance Corporation v. Triplex Dry-cleaners
and others (G. C. Mital, J.)

them grading or sorting them according to quality and size and refilling them in bags. It was proved that (i) gradation or sorting was not done with a view to bring into existence standardized goods of a particular category or variety saleable as such, (ii) the process of drying was adopted only to remove the moisture collected during the process of refrigeration and not with a view to adapt the potatoes for sale, (iii) the cold storage was used only for storage purposes and refrigeration was not with a view to the adaptation of potatoes to their sale, (iv) the process of emptying the potatoes from the bags for the purposes of placing them in the cold storage and subsequently re-filling them in bags are done only casually and not with a view to adapting them for sale.

No process could be called a manufacturing process and various processes taken together could not have the effect of bringing the premises into the category of factory."

A Division Bench of the Allahabad High Court in *Shree Gopal Paper Mills Ltd. v. Inspector of Factories, U.P.* (4) came to the following conclusion:—

"Packing, in the widest sense, means any kind of wrapping up or tying up of goods. But the packing referred to in S. 2(k) (i) is not meant to be interpreted so widely. The packing that is aimed at in section 2(k) (i) is the packing of the finished manufactured article, which is done to facilitate or make possible its sale or transport for sale to customers. This form of packing is in effect the last operation in the series of operations that taken together constitute the manufacture of the article for sale. Many kinds of raw materials have to be packed for delivery to the factory by being placed in sacks, baskets or packing cases or by being tied into bundles; but it cannot be said that the Legislature intended that such preliminary packing of the raw material should be treated as a 'manufacturing process'. Moreover, the mere transport of the raw

material to the factory is not in itself 'manufacturing process', as defined in section 2(k) (i). The operation of bailing grass with the aid of manually operated bailing presses, for being sent to a paper mill as raw material, is not a 'manufacturing process' and hence the depot wherein this process is carried on is not 'factory' within the meaning of section 2(m)."

5. A reading of the aforesaid decisions clearly goes to show that the matter has to be decided on the facts of each case and there has to be a new marketable commodity and the process must involve washing and cleaning so that by doing so something new comes into being which can be used, sold, transported, delivered or disposed of. As in the case of storing potatoes in a cold storage, it was held that there was no manufacturing process involved, so also where a finished and packed product was put in boxes for purposes of transport was held to be not a manufacturing process, the cleaning or the washing of clothes does not produce a new article or substance and it is not a case where before washing and cleaning the article could not be used and became capable of use only after washing and cleaning. Various things which constitute process of manufacture were enacted to apply to the processes where by doing any of the acts detailed in the definition, some new article or substance comes into being with a view that the same can be used, sold, transported, delivered or disposed of and if that happens then the process would certainly be called 'manufacturing process'. Coming to the facts of the present case, the customer who brings clothes to the dry-cleaner's shop gets them dry-cleaned. Although there would be an element of washing or cleaning involved, but it is not with a view to its sale, use, transport, etc., and without that the dry-cleaning would not come within the definition of 'manufacturing process'. Moreover, as held by the Allahabad High Court in *Shree Gopal Paper Mills Ltd.* case (supra), such a wide interpretation cannot be given to the words 'washing and cleaning' so as to include dry-cleaning business within the definition of 'manufacturing process'.

6. The scheme of the Act seems to be that if washing and cleaning is one of the processes in a manufacturing concern, then the part of the premises where washing and cleaning is being done would be deemed to be 'manufacturing process'. Similarly, where only washing and cleaning process is run with process in such a way

Raison Tailors v. Employees' State Insurance Corporation
(G. C. Mital, J.)

for example that coarse cloth is turned into fine cloth with the result that a superior marketable commodity, article or substance is produced, which is independently known in the market than the commodity, article or substance as it was before the same was washed or cleaned, then the process of washing and cleaning would be termed 'manufacturing process'. Therefore, in either of the afore-said two situations, the process of washing and cleaning would come within the definition of 'manufacturing process'. The dry-cleaning business does not fall in any of the two.

7. It was then urged that power was used for dry-cleaning but that by itself is not sufficient because it is not shown that if in a given case a manufacturing process is being carried on without the aid of power it will come within the definition of 'factory' as contained in the Act and, therefore, the Act would not be applicable.

8. For the reasons recorded above, I am of the view that the Court below was right in coming to the conclusion that the dry-cleaners business would not come within the definition of 'manufacturing process' and hence the Act would not be applicable to the respondent-firm. The appeal is dismissed. Since there is no representation on behalf of the firm, there will be no order as to costs.