

Before G. C. Mital, J.

BHAG SINGH.—Appellant

versus

EMPLOYEES STATE INSURANCE CORPORATION.—Respondent

First Appeal from Order No. 138 of 1980.

December 3, 1981.

Employees State Insurance Act (XXXIV of 1948)—Sections 1(5) and 2(12)—Factories Act (LXIII of 1948)—Sections 2(k)—Punjab Shops and Commercial Establishments Act (XV of 1958)—Section 2(30)—Petrol pump and service station in the same premises—Either of these businesses—Whether involves a ‘manufacturing process’ within the meaning of section 2(k) of the Factories Act—Provisions of the Employees State Insurance Act—Whether attracted—Premises where such businesses are carried on—Whether a ‘shop’.

Held, that a perusal of the definition of manufacturing process contained in section 2(k) of the Factories Act shows that the process of pumping of oil, water, sewerage or any other substance has been defined to be a manufacturing process, but this would not include dealership of petrol or diesel. It is true that some pumping process is involved because petrol and diesel are stored by the petrol dealers in huge tanks but the underlying object of the definition seems to be the pumping of oil from refineries or water from underground the earth and so on. Essentially, the business carried on by a petrol pump dealer is to sell petrol or diesel, as the case may be, and not pumping the oil. Selling of petrol or diesel by a petrol dealer will not, therefore, be a ‘manufacturing process’. (Para 4)

Held, that unless a new marketable commodity comes into being after the process and can be used, sold, transported, delivered or disposed of, the process cannot be called a manufacturing process. The running of service station for repairing motor cars does not fall within the definition of ‘manufacturing process’ as no new marketable commodity comes into being after the repairs are carried on. Customers bring their vehicles and after repairs, they pay service charges and take away their vehicles. Repairing of motor vehicles, therefore, is not a manufacturing process.

(Para 5).

Held, that ‘shop’ means any premises where any trade or business is carried on or where services are rendered to customers and includes offices, store-rooms, godowns or warehouses, whether in the same premises or otherwise, used for such trade or business. The

premises where a firm is engaged in the dealership of petrol/diesel besides rendering services for repairing automobiles, would certainly be a 'shop'. (Para 6)

First Appeal from the order of the Court of Shri R. S. Sharma, P.C.S., E.S.I. Judge, Chandigarh, dated 30th October, 1979, dismissing the application and leaving the parties to bear their own costs.

R. L. Chopra, Advocate, for the Appellant.

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

JUDGMENT

Gokal Chand Mital, J. (Oral)

(1) M/s National Service and Petrol Pump filed an application under section 75 of the Employees State Insurance Act, 1948 (hereinafter called the Act) before the Employees State Insurance Court, Chandigarh, to challenge the action of the Employees State Insurance Corporation (hereinafter called the Corporation), extending the Act to their establishment. They pleaded that it was carrying on two independent businesses, one of sale of petrol, etc. and the other of running a service station for repair of motor cars etc. and each of the two businesses could be carried on independently and the one was not so inter-dependent on the other that the one could not be carried on without the other. Taking the number of employees of the two businesses separately, they were below ten and, therefore, the provisions of the Act were not applicable to them. In the alternative it was pleaded that even if the employees of both the businesses were clubbed together, they were below 20 and since the petitioners were not carrying on any manufacturing process yet the Act cannot be made applicable to it because the Act becomes applicable to such defined establishments where twenty or more persons are employed in view of serial No. 3 of Notification No. 10102-SA-III-76/10308, dated 30th August, 1976, published in the Chandigarh Administration Gazette (Extra.) dated 30th August, 1976.

(2) The matter was opposed by the Corporation and their stand was that the petitioner was carrying on manufacturing process where one power connection was fitted and therefore, the minimum number of employees required for making the Act applicable was 10. It was

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also the stand of the Corporation that the business of petrol pump and of service station was carried on in the same premises and therefore, the employees of both the concerns had to be clubbed together to find out the applicability of the Act and since the number of employees was more than ten, therefore, the Act was clearly applicable.

(3) This matter was considered by the Court below. It came to the conclusion that admittedly the petrol pump and service station were carried on in one and the same premises having one power connection and since they were not separate concerns and had employed more than ten persons, therefore, the Act was applicable,—vide order dated 30th October, 1979, the application filed by the business concern was dismissed. This appeal is from the aforesaid order.

(4) Assuming for the sake of argument that the employees working in the petrol pump and in the service station can be clubbed together, the total number of employees in this case is more than ten but less than twenty. Therefore, the first question to be determined on these premises would be whether any of the two types of business carried on in this case can be called to be a 'manufacturing process' so as to attract the Act by virtue of serial No. 3 of the aforesaid notification. In the Act, section 2(12) defines 'factory' which has reference to manufacturing process and the expression 'manufacturing process' has got the same meaning as assigned in the Factories Act, 1948. A reading of the definition of manufacturing process contained in section 2(k) of that Act would show that pumping of oil is one of the manufacturing processes. Whether selling of petrol or diesel at a petrol pump can be called a process of pumping of oil would again be a question to be gone into. A perusal of the definition shows that the process of pumping of oil, water, sewage or any other substance has also been defined to be a manufacturing process but to my mind this would not include dealership of petrol or diesel. It is true that some pumping process is involved because petrol and diesel is stored by the petrol dealers in huge tanks but the underlying object of the definition seems to be the pumping of oil from refineries or water from underground the earth and so on. Essentially, the business carried on by a petrol pump dealer is to sell petrol or diesel as the case may be and not

pumping the oil. I am, therefore, of the firm view that selling of petrol or diesel by a petrol dealer will not be a 'manufacturing process'.

(5) As regards service station for repairing motor cars, etc., the counsel for the Corporation wants it to be brought within the definition of 'manufacturing process' as per section 2(k) (i) of the Factories Act wherein the word 'repairing' has been used. But this word has to be read along with the words "any article or substance with a view to its use, sale, transport, delivery or disposal" coming thereafter. So the process of repairing has to be with any of these views which would be completely missing in the business carried on in this case. This matter was dealt with by me in detail in *E.S.I. Corporation vs. Triplex Dry Cleaners & others*, (4) wherein the process of dry-cleaning was sought to be included within the definition of 'manufacturing process' because the definition included the words "washing and cleaning". In that case I recorded the finding that unless a new marketable commodity comes into being after the process and can be used, sold, transported, delivered or disposed of, the process cannot be called a manufacturing process. The same reasoning would apply in the present case. Customers bring their vehicles and after repair, etc., they pay service charges and take away their vehicles. Therefore, I am of the view that repairing of motor vehicles is also not a manufacturing process.

(6) Once the two types of businesses carried on by the appellant-firm are not found to be 'manufacturing process', serial No. 1 of the notification will not apply. Admittedly, serial No. 2 thereof does not apply to the present case and then we are left with serial No. 3 which is as follows:—

"The following establishments whereupon twenty or more persons (are) employed, or were employed, for wages on any day of the preceding twelve months, namely :—

- (i) Hotels,
- (ii) Restaurants,
- (iii) Shops.

(1) FAO 405 of 1978 decided on 22nd October, 1981.

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- (iv) Road Motor Transport establishment,
- (v) Cinemas including preview theatres, and
- (vi) Newspaper establishments as defined in section 2(d) of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955)".

According to the appellant, his case will not fall under serial No. 3 but the counsel for the Corporation-respondent states that it will fall under item No. (iii) of serial No. 3 of the notification because if the business of the appellant is not a manufacturing process it is certainly an establishment where either petrol or diesel is sold or service is rendered to the customers who bring their motor vehicles and the premises in which both these things are carried on would be termed 'shop'. I am of the view that the premises in dispute would come within the term 'shop' 'shop' is not defined in the Act but is defined in section 2(xxv) of the Punjab Shops & Commercial Establishments Act, 1958, as also in section 2(1)(p) of the Punjab Trade Employees Act, 1940. According to these definitions 'shop' means any premises where any trade or business is carried on or where services are rendered to customers and includes offices, store-rooms, godowns or warehouses, whether in the same premises or otherwise, used for such trade or business. As I have already found, the appellant-firm being engaged in the dealership of petrol/diesel besides rendering services for repairing automobiles, the premises in dispute would certainly be a 'shop'. This view of mine finds support from a Full Bench judgment of this Court in *Ram Chander v. The State* (2) wherein it was observed:

"Hence the question arises, what then is a shop? This phrase as understood by a common man denotes nothing more and nothing less than a premises where goods are bought or sold. Where their price is paid or is to be paid, that is, the purchase or sale is either on cash or credit basis. It cannot be said that when goods are being sold to customers, no service is being rendered. Most likely, this additional element has been specifically introduced into the definition

of the shop for the reason that there are certain places known as shops, for instance, tinsmith's shop or a mechanic's shop, where services are sold instead of goods, or, may be partly goods are sold and partly services are rendered. It is primarily for this reason that in the definition of shop, in addition to the carrying on of trade or business, another alternative requirement is envisaged, namely the rendering of services to the customers".

But in spite of the fact that serial No. 3 of the said notification is applicable to the present case, the Act shall not be applicable unless the strength of employees is twenty or more. Since the number of employees in the present case is admittedly less than twenty, the Act would not be applicable.

(7) Since on the aforesaid reasoning, the Act would not be applicable in the present case, I do not propose to enter into the other point raised on behalf of the appellant, namely, that the two businesses run by the appellant-firm are separate and they should not have been clubbed together and the number of employees in each of the two businesses should be twenty or more for making the Act applicable. Accordingly, this point is left open to be gone into whenever the occasion arises therefor.

(8) For the reasons recorded above, this appeal is allowed, the order of the court below is set aside and the application filed by the appellant under section 75 of the Act is allowed and it is held that the appellant-firm is not covered by the Act and the demand made by the Corporation is illegal and cannot be sustained. In case the Corporation has already recovered the amount in question as stay was not granted while admitting the appeal, the appellant will be entitled to refund of the same. I order accordingly. Since question of law of importance was involved, the parties are left to bear their own costs of this appeal.