

Regional Director, Employees' State Insurance Corporation

Vs

Ram Chander

Civil Appeal No. 2904 of 1987

(Sabyasachi Mukharji, G. L. Oza JJ)

27.10.1987

JUDGMENT

SABYASACHI MUKHARJI, J. -

1. Special leave granted.

2. This appeal arises out of the judgment and order of the Division Bench of the Rajasthan High Court dated September 2, 1986. The judgment under appeal was rendered in an appeal under Section 82(2) of the Employees' State Insurance Act, 1948 (hereinafter called 'the Act'). The respondent, Ram Chander, was the proprietor of M/s. Commercial Tailors, Sojati Gate, Jodhpur. At all material times, he used to run a tailoring shop, where clothes were stitched. The shop employed at the relevant time about 10 or 12 persons as tailors. The number of employees, however, never exceeded 20. The clothes were supplied by the customers and these were stitched according to the different sizes of the customers. Such stitchings were done at the shop of the respondent herein manually by electric iron which was also used in the process of stitching. There were ironing of finished clothes also. The Employers State Insurance Court, Rajasthan came to the conclusion as follows :

The applicant is a tailoring shop which has employed more than 20 persons on one occasion and less on other days and makes use of power in the shape of electric press which is used for ironing of stitched clothes for customers. The electric iron is also used during the process of stitching in addition to the ironing of finished clothes.

3. The question before the Rajasthan High Court was whether such establishment was covered by the Notification dated September 20, 1975 and came within the mischief of the Act. The answer to that question would depend on the relevant notification being the Notification dated September 20, 1975 issued under Section 1(5) of the Act. The schedule which extends the scheme to different establishments, inter alia, provided by clause (1)(b) as follows :

#----- Description of Establishments Areas in which the Establishments are situated-----1. Any premises including the precincts 1. Alwar thereon whereon ten or more person 2. Ajmer but in any case less than twenty 3. Bikaner persons are employed or were employed 4. Jaipur for wages on any day of the preceding 5. Jodhpur twelve months, and in any part of 6. Kota which a manufacturing process is being 7. Udaipur carried on which the aid of power or is ordinarily so carried on but excluding a mine subject to the operation of the Mines Act, 1952 (35 of 1952) or a railway running shed or an establishment which is exclusively engaged in any of the manufacturing processes specified in

clause (12) of Section 2 of the Employees' State Insurance Act, 1948 (34 of 1984).-----  
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4. In order to answer the question whether the establishment of the respondent comes within the mischief of the Act, it is necessary therefore, in view of the facts found as noted before to determine only whether manufacturing process was carried on with the aid of power. It is manifest that there is use of electric power in the process of stitching. This is a finding of fact that the establishment or the shop employed more than 10 but less than 20 persons. It cannot also be disputed that by stitching commercially different goods are brought into existence. These are known differently, stitched shirt is indubitably a different commodity than unstitched cloth. It is so commercially known and treated. If by a process a different entity comes into existence then it can be said that this Court in *Empire Industries Ltd. v. Union of India* (1985 Supp 1 SCR 292 : (1985) 3 SCC 314 : 1985 SCC (Tax) 416). It was observed therein that manufacture is complete as soon as by the application of one or more processes, the raw material undergoes some change. If a new substance is brought into existence or if a new or different article having a distinctive name, character or use result from particular processes, such process or processes would amount to manufacture. Whether in a particular case facts and circumstances of the particular case. There is no doubt that the process must bring into existence a new item or a new commodity known differently in the market as such by people who use or deal with that goods. In that process the ironing of clothes has been found to be an essential part and for that power is used. These are facts found and are not disputed. If that is the position, then in our opinion, it comes clearly within the purview of the Act in view of the other facts noted before and the employees are covered by the Act.

5. Our attention was drawn by learned counsel appearing on behalf of the respondent to the observations of this Court in *Deputy Commissioner, Sales Tax v. Pio Food Packers* ((1980) 3 SCR 1271 : 1980 Supp SCC 174 : 1980 SCC (Tax) 319 : AIR 1980 SC 1227) and the decision of this Court in *Chowgule & Co. Pvt. Ltd. v. Union of India* ((1981) 2 SCR 271 : (1981) 1 SCC 653 : 1981 SCC (Tax) 51 : AIR 1981 SC 1014). The effect of both these decisions have been considered in the aforesaid *Empire Industries* case (1985 Supp 1 SCR 292 : (1985) 3 SCC 314 : 1985 SCC (Tax) 416). Learned counsel drew our attention to the decision of this Court in *Ardeshir H. Bhiwandiwalla v. State of Bombay* ((1961) 3 SCR 592 : AIR 1962 SC 29 : (1962) 1 Cri LJ 99), where the question arose under the Factory Act. It was held therein that the salt works was a factory within the definition given in the Act and the appellant therein was rightly convicted for working it without a licence. The decision is of no assistance to the respondent in resolving the contentions involved in this appeal.

6. Our attention was also drawn to the decision of this Court in *M/s. Hindu Jea Band v. Regional Director, ESIC* (AIR 1987 SC 1166 : (1987) 2 SCC 101 : 1987 SCC (Lab) 88), where it was held that it was not that a place where goods were sold was only a shop. A place where services were sold on retail basis was also a shop. The facts of that case were entirely different from those in this case. But the ratio of that decision is apposite to the issue in dispute here. There this Court reiterated that it was not that a place where goods were sold was only a shop. But a place where services were sold on retail basis was also a shop. The place of business of a firm carrying on the business of playing music on occasions, such as, marriages and other social functions which made available on payment of the stipulated price of services of the members of the group of musicians employed by it on wages was a shop to which the Act was applicable by virtue of the notification. The fact that the services were rendered by the employees engaged by the firm intermittently or during marriages did not entitle the firm to claim any exemption from the operation of the Act. In *Metro Readywear Co. v. Collector of Customs* ((1978) 2 ELT 520 (Ker) : 1976 Ker LT 642) of the High Court of Kerala at

Ernakulam it was held that the brassieres were undoubtedly undergarments falling within the description "articles of ready-to-wear apparel (known commercially as readymade garments) and therefore was classified under item 22-D of Central Excise Tariff. Ironing with electric iron amounted to a process of manufacture with the aid of power. It was held that ironing of stitched brassieres is incidental or ancillary to their manufacture since the said process was intended to give a finishing touch in order to render them marketable. In our opinion the ratio or the reasoning of the said decision is applicable to the facts of this case.

7. Our attention was drawn to the unreported decision of the Andhra Pradesh High Court in ESIC v. M/s. New Empire Tailors, where the aforesaid reasoning was accepted by the High Court.

8. In the light of the aforesaid we are of the opinion that the High Court in the instant case was in error and the decision of the ESI court must be upheld. The appeal is accordingly allowed and the judgment and order of the High Court are set aside and the order of the ESI court restored. In the facts and circumstances of the case the parties will pay and bear their own costs. This judgment will apply to the facts as pertinent to the facts in the relevant year in question.

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