Employees' State Insurance Corporation

Vs

Triplex Dry Cleaners and Others

Civil Appeal No. 2404 of 1986

(S.B. Majmudar, B.N. Kirpal JJ)

11.09.1997

ORDER

1. The short question which arises for consideration in this appeal is whether Respondent 1 (hereinafter to be referred to as the respondent) is an establishment within the meaning of that expression under the Employees' State Insurance Act, 1948 (hereinafter to be referred to as "the Act").

2. The respondent is carrying on the business of dry cleaning. According to the appellant, implicit in the dry cleaning of clothes is the ironing thereafter with the help of electric iron and therefore, the respondent has to be regarded as undertaking "manufacturing process" and as it employs more than 10 employees, it is covered under the provisions of the Act.

3. Learned counsel for the appellant drew our attention to the decision of this Court in Regional Director, ESI Corpn. v. Ram Chander (1988 Supp SCC 90 : 1988 SCC (Tax) 153 : 1988 SCC (L&S) 470) and sought to contend that the ratio of the said decision is applicable to the instant case.

4. In Ram Chander case (1988 Supp SCC 90 : 1988 SCC (Tax) 153 : 1988 SCC (L&S) 470) the establishment was that of tailoring shop where electric iron was used after the clothes were stitched. The question which arose there was whether the tailoring shop could be regarded as an establishment where manufacturing process was being carried on with the aid of power. It was held by this Court that inasmuch as the electric iron was used, therefore, the premises in question would be covered by the Act because by stitching of cloth different goods namely clothes were brought into existence.

5. The aforesaid decision has no application in the present case. In Ram Chander case (1998 Supp SCC 90 : 1988 SCC (Tax) 153 : 1988 SCC (L&S) 470) cloth was converted into clothes and a new commodity admittedly came into existence. In the present case, however, dry cleaning merely cleans the clothes either by washing or through the process of dry cleaning. There is no manufacturing activity involved therein. No new product comes into existence. By no stretch of imagination could the activity of dry cleaning be regarded as the manufacturing activity.

6. We, however, hasten to point out that we are here concerned with the show-cause notice dated 21-1-1978. At that point of time, Section 2(14-AA) had not been inserted in the Act which defines manufacturing process as having the same meaning which is assigned to it under the Factories Act, 1948. This provision was inserted with effect from 20-10-1989. We, therefore, express no opinion with regard to the applicability of the Act to an establishment engaged in the business of dry cleaning after 20-10-1989 inasmuch as Section 2(14-AA) attracts the applicability of Section 2(k) of

the Factories Act, 1948 which defines manufacturing process which may conceivably include the process of repairing, washing or cleaning of any article with a view to its use. However, insofar as this appeal is concerned, inasmuch as it relates to a period prior to 20-10-1989 when there was no such definition of manufacturing process applicable to the Act, it must fail and is accordingly, dismissed. There will be no order as to costs.