SUPREME COURT OF INDIA

CHRISTIAN MEDICAL COLLEGE

Vs.

E.S.I.C.

23/11/2000

(S.N.Variava, S.R.Babu)

Appeal (civil) 3125 1998

JUDGMENT

S. N. VARIAVA, J.

This Appeal is against an Order dated 25th July, 1997 passed in a Letters Patent Appeal filed by the Appellant. Briefly stated the facts are as follows: The Appellant is a Hospital which is part of a Medical College. The Appellant has a department, which is called the Equipment Maintenance Department. This department maintains the equipment in the hospital such as X-ray, ECG and Radiation equipment, kidney dialysis, heart and lung machine, operating table equipment etc. In effect this department, inter alia, repairs the equipment which is being used in the hospital. Admittedly, in this department there are 45 persons working. In 1978 the Respondent issued a notice to the Appellant stating that the Equipment Maintenance Department fell within the purview of Section 2(12) of the Employees State Insurance Act, 1948 (hereinafter referred to as the ESI Act) and that the Appellant should comply with the provisions of the Act with retrospective effect. The Appellant represented that the ESI Act would not apply to the Equipment Maintenance Department, inter alia, on the ground that this department was part and parcel of the Appellant College. The Respondent did not accept this explanation and threatened the Appellant with legal action. The Appellant filed a Petition under Section 75 of the ESI Act before the District Court, Vellore. By a Judgment dated 4th May, 1985 the District Judge held that the Equipment Maintenance Department was not separate and distinct from the Appellant Hospital and that it was just a limb of the hospital. It was held that the Equipment Maintenance Department was not amenable to the provisions of the ESI Act and that the Respondent was not entitled to apply the provisions of the ESI Act or to demand any contribution. The Respondent filed an Appeal before the High Court. That Appeal came to be dismissed on 27th June, 1994. The learned single Judge held that the Equipment Maintenance Department was just a limb of the Medical College and it could not be separated from the main Institution. It was held that the primary and paramount character of the Appellant Institution was to teach medicines to the students. It was held that this department was merely maintained for proper functioning of the main institution and it, therefore, could not be considered to be a factory, even assuming manufacturing process was carried on there. The Respondent then filed a Letters Patent Appeal which was allowed by the impugned Judgment dated 27th July, 1997. The learned Judges of the High Court relied upon the decision of this Court in the case of Andhara University v. R.P.F. Commissioner of A.P. reported in (1985) 4 SCC 509. In this case the question was whether the Departments of Publication and Press run by the Andhra University and the Osmania University were liable for coverage under the Employees' Provident Funds and

Miscellaneous Provisions Act. Relying upon Section 2-A of that Act it had been submitted that for the purposes of determining the applicability of the Act the entire University must be treated as an establishment. It had been submitted that if the University cannot be said to be a factory, then a Department of that University could not also be covered by the Act. This Court held as follows: "7. We are unable to see how this provision is of any assistance to the appellants. Section 2-A was inserted in the Act merely for the purposes of clarifying the position that the Act applies to composite factories. It is not the intendment of the section to lay down even by remotest implication that an establishment, which is a factory engaged in an industry specified in Schedule I will not be liable for coverage under the Act merely because it is part of a larger organisation carrying on some other activities also which may not fall within the scope of the Act. In construing the provisions of the Act, we have to bear in mind that it is a beneficent piece of social welfare legislation aimed at promoting and securing the well-being of the employees and the Court will not adopt a narrow interpretation which will have the effect of defeating the very object and purpose of the Act. Once it is found that there is an establishment which is a 'factory' engaged in an 'industry' specified in Schedule I and employing 20 or more persons, the provisions of the Act will get attracted to the case and it makes no difference to this legal position that the establishment is run by a larger organisation which may be carrying on other additional activities falling outside the Act.

8. Our attention was drawn to a decision of a learned Single Judge of the Calcutta High Court in Visva Bharati v. Regional Provident Fund Commissioner, W.B. [(1983) 1 LLJ 332 (Cal)], wherein it was held that the provisions of the Act were inapplicable in respect of a "Silpa Sadan", Agricultural Farm and a Hospital run by the Visva Bharati University. The learned Judge was of the view that "if the University as an establishment does not come under the provisions and or the purview of the Act, the different branches or departments of the University which the University is empowered and or entitled to maintain under the provision of the Visva Bharati Act cannot be brought within the mischief of the Act." We have no hesitation to hold that the aforesaid view expressed by the learned Judge is not correct or sound and that the said decision does not lay down correct law.

9. As already indicated, the true tests to be applied is whether there is an establishment which is a 'factory' engaged in any of the scheduled industries and whether 20 or more persons are employed in the said establishment. If the answer is in the affirmative, the provisions of the Act are clearly attracted.

10. In the cases before us there cannot be any doubt that the establishments namely, the Departments of Publications and press are 'factories' as defined in clause (g) of Section 2 of the Act. Under the said definition factory means any premises in any part of which any manufacturing process is being carried on. The printing of textbooks, journals, registers, forms and various items of stationery clearly constitutes 'manufacture' within the meaning of the said expression as defined in clause (i-c) of Section 2 of the Act. That printing is one of the industries specified in the Schedule is not in dispute. It is also not disputed that much more than 20 persons are employed in the concerned establishments of the two Universities. Thus all the requirements of clause (a) of Section 1(3) of the Act are fully satisfied in these cases and hence the conclusion recorded by the High Court that the establishments in question are liable for coverage under the Act is perfectly correct and justified."

In the case of Osmania University v. Regional Director, E.S.I.C reported in (1985) 4 SCC 514, this Court, has on above mentioned principles, held that the ESI Act also applied to Department of Publication and Press of the Osmania University. Based on the above decisions, the Appellate Court held that the provisions of ESI Act would apply to the Equipment Maintenance Department of the Appellant. Mr. Divan assailed this decision on the ground that the Court had not applied the test as

required in cases where a complex of activities, some of which qualify for exemption and others not, are carried on. He submitted that the test of pre- dominant nature of the services and the integrated nature of the Establishment would have to be looked at. In support of this he relied upon the case of Bangalore Water Supply and Sewerage Board v. Rajappa reported in (1978) 2 SCC 213, wherein it has been held as follows: "143. The dominant nature test:

(a) Where a complex of activities, some of which qualify for exemption, others not, involves employees on the total undertaking, some of whom are not 'workmen' as in the University of Delhi case (supra) or some departments are not productive of goods and services if isolated, even then, the predominant nature of the services and the integrated nature of the departments as explained in the Corporation of Nagpur (supra), will be the true test. The whole undertaking will be 'industry' although those who are not 'workmen' by definition may not benefit by the status."

He also relied upon the case of Associated Industries (P) Ltd. v. Regional Provident Fund Commissioner, Kerala Trivendrum reported in 1964(2) SCR 905. In this case the Appellant ran a tile factory and an engineering works. The two industries were independent of each other, but they were carried on by the same company from the same premises. The engineering industry employed only 24 workers, whereas the tile industry employed more than 50. The license under the Factories Act was for the entire premises. The question before the Court was whether the provisions of Section 1(3)(a) of the Employees' Provident Funds Act, 1952 applied to the Appellant. A Constitution Bench of this Court held that the character of the dominant or primary industry will determine the question if a company carries on both dominant and subsidiary industries. It was also held that if a factory runs more industries than one all of which are independent of each other, Section 1(3)(a) will apply to the factory even if one or more, but not all, of the industries run by it fall under Schedule 1. It was held that neither the tile industry was dominant nor the engineering industry was subsidiary, but that both were independent of each other. It was held that the factory of the Appellant would be deemed to be a composite factory and the provisions of Section 1(3)(a) would be attracted as one of its industries fell within that definition. Mr. Divan also relied upon the case of The Regional Provident Fund, Bombay v. Shree Krishna Metal Manufacturing Co., Bhandara reported in 1962 Supp. (3) SCR 815. In this case it was held as follows: "The other construction would be that the expression "engaged in any industry" means "primarily or mainly engaged in any industry". On this construction, if a factory is engaged in several industrial activities one of which relates to the industry specified in Schedule I, it would be necessary to enquire whether the said specified activity is subsidiary or minor; if it is subsidiary, incidental or minor, the factory cannot be said to be engaged in that industry. Cases may occur where a factory is primarily or mainly engaged in other industrial activities and it is only for feeding one or more of such activities that the factory may undertake an activity in respect of the specified industry. But such an undertaking is merely for the purpose of feeding its major activity; it is subsidiary, incidental and minor. In that case, the factory cannot be said to be engaged in the industry specified in Schedule I."

Mr. Divan next relied upon the case of General Manager, Telecom v. A. Srinivasa Rao reported in (1997) 8 SCC 767. In this case the question was whether the Telecom Department of the Union of India was an industry within the meaning of the Industrial Disputes Act, 1947. This Court applied the dominant nature test as given in the Bengalore Water Supply case (supra) and held that on the basis of this test the Telecom Department was an industry. Mr. Divan submitted that the above mentioned decisions clearly lay down that the question has to be decided on the basis of the pre-dominant nature of the activity of the main institution. He submitted that it is not disputed that the Equipment Maintenance Department has been established merely for the purpose of ensuring the proper functioning of the equipment in the hospital such as X-ray, ECG and Radiation equipment,

kidney dialysis, heart and lung machine, operating table equipment etc. He submitted that this department rectifies mal-functioning equipment in order to avert any danger to the lives of the patients. He submitted that this department is maintained as the Indian Medical Council Act requires that such a department be maintained. He submitted that this department is not independent of the Appellant Hospital. He submitted that the department is merely a part and parcel of the hospital. He submitted that it is merely a limb of the hospital and cannot be separated from the main institution. He submitted that the primary and paramount character of the Appellant institution is teaching medicines to the students. He submitted that as the main institution cannot be considered to be a factory this Department, which is merely intended for the proper functioning of the equipment in the main institution, cannot be considered as a factory, even assuming some manufacturing process is carried on therein. Mr. Divan submitted that, therefore, the views taken by the District Judge in his Judgment dated 4th May, 1985 and the learned single Judge of the High Court in the Judgment dated 26th June, 1994 are correct. Mr. Divan pointed out that same view had been taken in respect of the Appellant Institute in the case of Dr. P.S.S. Sundar Rao v. Inspector of Factories, Vellore reported in 1984 (II) LLJ 237. In this case it had been held that the Laundry Department of the Appellant College was not a factory as it could not separated from the main institution and that, therefore, the provisions of the Factories Act, 1948 did not apply to it. Mr. Divan also pointed out an unreported Judgement of the Madras High Court dated 13th October, 1984 in Criminal Misc. Petition No. 6519 of 1984, wherein the High Court had quashed criminal prosecution by the Factories Inspector for offences under Section 6 and Rule 7(1) and (2) of the Factories Act. The criminal proceedings were quashed on the ground that the Equipment Maintenance Department of the Appellant College was not a factory and the provisions of the Factories Act did not apply. In his usual fairness, Mr. Divan, however, pointed out that this Court has in a decision in the case of C.M.C. Hospital Employees' Union v. C.M.C. Vellore Association reported in (1987) 4 SCC 691, held that the provisions of Sections 9-A, 10, 11-A, 12 and 33 of the Industrial Disputes Act, 1947 apply to the Appellant College. Mr. Divan submitted that the decisions in the Andhra University and Osmania University cases (supra) are contrary to the decision of larger benches of this Court relied upon by him. He submitted that a contrary decision was taken as it was clear that the Departments of Publication and Press of the two Universities were independent of those Universities and catering to the needs of outsiders/third parties also. He submitted that in this case the Equipment Maintenance Department is not separate but just a limb of the Appellate Hospital and it does not cater to any outside party. He submitted that if decisions in Andhra and Osmania University cases are to be applied to a department which is just a limb, then they do not lay down the correct law as larger benches of this Court have held otherwise. He submitted that in that case there would be a conflict between these two cases and the cases cited by him. He submitted that if this court was not accepting his submission then in view of the conflict of decisions the question should be referred to a larger bench for determination. We are unable to accept any of the submissions made by Mr. Divan. It is to be seen that all the cases relied upon by him

are cases where the question was whether the entire undertaking or both the undertakings would be covered by the provisions of the various Act referred to therein. The question was whether the entire undertaking was to be covered because a department or some other industry run by that Company was covered. In such cases the test of dominant nature is applied. In this case the question is not whether the Appellant Hospital gets covered by reason of the fact that the ESI Act applies to the Equipment Maintenance Department. Here the question is only whether the Equipment Maintenance Department is covered. For that one has only to see whether this department is a "factory" within the meaning of the term as defined in the ESI Act. Section 2(12) of the ESI Act defines a "factory": "2(12) "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 or a railway running shed."

Section 2(14AA) of the ESI Act provides that the term "manufacturing process" shall have the meaning assigned to it in the Factories Act. Section 2(k) of the Factories Act defines the term "manufacturing process" as follows: "2(k) "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 use, sale, transport, delivery or disposal, or (ii) pumping oil, water, sewage or any other substance; or (iii) generating, transforming or transmitting power, or (iv) composing types for printing, printing by letter-press, lithography, photogravure or other similar process or book-binding; or (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels, or (vi) preserving or storing any article in cold-storage."

Thus, under this definition, amongst other things, if any repairing takes place with a view to use the equipment then it amounts to manufacturing process. It is the Appellant's own case that the Equipment Maintenance Department maintains and repairs their equipment for the efficient use of the equipment in the hospital. Therefore, this department is clearly covered by the term "factory" under the ESI Act. Once, it squarely falls within this term the provisions of the Act become applicable to this department. No question arises of applying the test of dominant nature. The test of dominant nature would have become applicable only if on the basis of this department falling within the definition of the term "factory" the Respondent had sought to make the Appellant Hospital also amenable to the provisions of the ESI Act. As that is not the case here no question arises of applying the dominant nature test. In this case the ratio laid down in Andhra University and Osmania University cases (supra) squarely applies. We see no conflict between the principles laid down in those cases and the principles laid down in the cases cited by Mr. Divan. They apply to different situations and are thus not conflicting. We also see no substance in submission that decision in Andhra University and Osmania University cases was based on fact that the Departments of Publication and Press were independent and/or that they catered to third parties also. A plain reading of these judgments shows that they are based on the principle that if the Departments are covered by the provisions of the Acts then they cannot be excluded. Thus it would have to be held that the provisions of the ESI Act are applicable to the Equipment Maintenance Department of the Appellant. We, therefore, see no infirmity in the impugned Judgment. Accordingly, the Appeal stands dismissed. There will be no order as to costs.