

# SUPREME COURT OF INDIA

Bombay Anand Bhavan Restaurant

Vs.

Dy. Director , ESI Corpn.

C.A.No.5640 of 2004

(Markandey Katju and H.L.Dattu JJ.)

02.09.2009

## JUDGEMENT

**H.L. Dattu, J.**

1. These appeals are directed against the judgment and order passed by the High Court of Karnataka at Bangalore, in Misc. First Appeal No.4152 of 2001 and Misc. First Appeal No.1954 of 2002 dated 17.07.2003.

2. Briefly stated the facts are as follows:- The appellant in Misc. First Appeal is a proprietorship concern and is engaged in the activity of making and selling coffee, tea and other beverages, and also sweets and savories. It is registered under Shops and Commercial Establishments Act. Sometime in the year 1997 and 1998, the appellant had purchased a bottle cooler and also a coffee roaster. According to the appellant, even after such purchase, it had not employed more than 10 or more employees.

3. The appellant also states, that power is being used for operating coffee roaster and bottle cooler. It is its further case, that, since it has not employed 10 or more employees, the provisions of the *Employees' State Insurance Act, 1948* (hereinafter referred to as 'ESI Act') are not attracted to the appellants' establishment.

4. The insurance inspector of the ESI corporation had visited the business premises of the appellant on 11.12.1998 and 07.01.1999, and inspected the records from April 1994 and had recorded that the appellant had employed more than 10 employees as on 01.04.1994, as per the records and was using power for the coffee roasting machine and the bottle cooler and as such the appellant's restaurant stood covered under the ESI Act with effect from 01.04.1994, and therefore, the appellant should have started complying with the mandatory provisions of ESI Act.

5. The Deputy Director of ESI corporation, by incorporating the report of the insurance inspector by his letter dated 18.02.1999, had directed the appellant to pay contributions from April, 1994, and submit Form-01 at the earliest. In response to the aforesaid letter, the

appellant by its reply letter dated 08.03.1999, had brought to the notice of the Deputy Director of the Corporation, that, after purchase of bottle cooler and coffee roaster, had not employed more than 10 employees and, therefore, they are not covered under the provisions of the ESI Act and, therefore, they are not obliged to pay any contribution under the ESI Act.

6. The Deputy Director of the Corporation by his subsequent letter dated 09.04.1999, had informed the appellant, that, on verification of the records produced before the insurance inspector, it was observed that the appellant is using LPG gas for preparation of coffee, tea and other beverages and, therefore, covered under the ESI Act and therefore, appellant has to comply with the statutory provisions of ESI Act, failing which contributions would be recovered by resorting to coercive measures as provided under the ESI Act. The proposal so made was objected to by the appellant, inter-alia, contending that the use of LPG gas cannot be equated with the use of power and as per the provisions of the ESI Act, it is only when electric power is used in manufacturing process with 10 or more employees, then alone ESI Act could be made applicable and, therefore, requested the authorities to drop the proceedings, as proposed in their letter dated 09.04.1999.

7. Since the explanation offered by the appellant was not satisfactory, the authorities under the ESI Act, issued a demand notice, inter-alia directing the appellant to pay contribution for the entire period, i.e. from April, 1994 till the date of inspection. Since the appellant did not comply with the demand so made, the Deputy Director of ESI Corporation, passed an order under Section 45-A of the ESI Act, ordering the payment of contribution under the ESI Act for the aforesaid period.

8. The appellant, being aggrieved by the aforesaid order, had filed an appeal before the ESI Court and Additional Industrial Tribunal, Bangalore, as provided under Section 75 of the ESI Act. The ESI Court dismissed the application/appeal, on the ground that use of LPG gas also amounts to use of electrical energy for the purpose of manufacturing activity and that the manufacturing activity is being carried on with the aid of power and since 10 or more employees were employed, the appellant is covered under the provisions of the ESI Act.

9. The appellant had carried the matter further by filing Misc. Appeal before the High Court and the same was dismissed following the earlier ruling in 2001 (2) Labour Laws Journal 973.

10. The appellant being aggrieved by the judgment and order passed by the High Court in Misc. First Appeal No.4152 of 2001, is before us in this appeal.

11. The facts in Misc. First Appeal No.1954 of 2002 are more or less similar to the facts in the other appeal which we have already noticed. The only additional fact is that, the appellants in this appeal manufacture sweets and savories by using cooking gas and the number of employees employed by them was not more than 17 (seventeen) at any point of time.

They were also unsuccessful before all the forums.

12. The learned senior counsel for the appellants submitted, that, liquefied petroleum gas ('LPG for short') by itself is not energy and the transmission of gas to the gas burners is not the transmission of any energy. Elaborating on this issue, the learned senior counsel contended that, it is only when the gas is ignited through the burner, the gas is converted into heat energy and, as such, there is no transmission of any form of energy. Alternatively, it is contended that, even assuming that LPG gas is a form of energy, it is not mechanically transmitted, because the term 'mechanically' pertains to or involves machines and a gas cylinder is merely a container and the tube is not a machine and, therefore, the transmission of gas through the tube is not a "mechanical transmission" either. It is further submitted that the meaning of the expression 'power' as defined under Section 2(g) of the Factory Act, means electrical energy or any other form of energy, which is mechanically transmitted. The learned senior counsel by referring to dictionary meaning of the expression 'mechanical' would submit, that, 'mechanical' pertains to or involves machines operated or produced by a machine made and the meaning of the expression 'machine' is an apparatus made or organized, interacting parts, which takes in a more suitable form for a desired function or a thing or system resembling such an apparatus in acting with regularity as a result of interaction of its component parts and, therefore, it is obvious that the gas cylinder and the tube connected thereto is not a machine and it is merely container of gas and the tube is not a machine. The learned senior counsel in aid of his submission invites our attention to the observations made by *Privy Cossipore and Chitpore Municipality*<sup>1</sup> wherein the Court explained the meaning of 'Machinery' to mean some mechanical contrivances which by themselves or in combination with one or more other mechanical contrivances, by the combined movement and interdependent operation of their respective parts generate power, or evoke, modify, apply or direct natural forces with the object in each case of effecting so definite and specific a result. It is also brought to our notice that the interpretation of the word 'Machinery' by the *Privy Mohammed Ali*<sup>2</sup>. Lastly, it is submitted that, the interpretation of beneficial legislation should not be stretched too far to rope in an industry which would not fall within the ambit of the Act. Reference is made to the observations of this Court in the case of *The The Management and Ors.*<sup>3</sup> and G. Giriappa and and substance of the submission of the learned senior counsel is that LPG gas cannot be considered as power as defined in Section 2(g) of the *Factories Act, 1948*.

13. The learned counsel appearing for respondents submitted that the use of LPG gas for the purpose of cooking has to be treated as use of Power and therefore, the appellants are required to comply with the provisions of the ESI Act.

14. The issues that require to be decided in these appeals are:-

“(I) Whether the establishment of the appellants' is covered under the provisions of the *Employees State Insurance Act, 1948*.

(II) Whether the use of LPG gas is use of power as defined under the Act.”

15. The Employees State Insurance Act is a beneficial legislation. The main purpose of the enactment as the Preamble suggests, is to provide for certain benefits to employees of a factory in case of sickness, maternity and employment injury and to make provision for certain other matters in relation thereto.

16. The Employees State Insurance Act is a social security legislation and the canons of interpreting a social legislation is different from the canons of interpretation of taxation law. The courts must not countenance any subterfuge which would defeat the provisions of social legislation and the courts must even, if necessary, strain the language of the Act in order to achieve the purpose which the legislature had in placing this legislation on the statute book. The Act, therefore, must receive a liberal construction so as to promote its objects. This Court, in the case of *ESI Ltd.*<sup>4</sup> has observed that the ESI Act is a social security legislation and was enacted to ameliorate the various risks and contingencies which the employees face while working in an establishment or factory. It is thus intended to promote the general welfare of the workers and, as such, is to be liberally interpreted.

17. The ESI Act is made applicable to all factories, including factories belonging to the Government other than seasonal factories. Proviso appended to Section 1(4) of the Act carves out an exception. Sub- Section (4) of Section (1) of the Act shall not apply to a factory or establishment belonging to or under control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior benefits provided in ESI Act.

18. Section 2 of the Act defines the meaning of certain expressions for the purpose of the Act. Section 2(12) of the Act defines the meaning of the expression 'Factory', to mean any premises including precincts thereof, wherein ten or more persons are employed or were employed for wages on any day of the preceding twelve months and in any point of which a manufacturing process is carried on with the aid of power or is ordinarily carried on or twenty or more persons employed for wages or were employed for wages on any day of the preceding twelve months in the premises including their precincts where manufacturing process is carried on without the aid of power.

19. Section 2(15c) of the Act is inserted in the Statute Book by Act No.29 of 1989, with effect from 20.10.1989. The sub-section defines the meaning of the expression 'Power' to mean as the meaning assigned to it in the Factories Act, 1948.

20. Section 2(g) of the Factories Act, 1948, defines the meaning of the expression 'power' to mean electrical energy or any other form of energy which is mechanically transmitted and is not generated by human or animal agency.

21. Essentially for qualifying the establishment of the appellants as factory, the following conditions needs to be satisfied:-

“(i) Manufacturing process was being carried out in the establishment.

(ii) There was power being used to aid the manufacturing process being carried out.

(iii) 10 or more workers were working in the establishment any day in the preceding twelve months, if power was being used to aid the manufacturing process, or (iv) 20 or more workers were working in the establishment any day in the preceding twelve months, if power was not being used to aid the manufacturing process.”

22. Therefore, first it needs to be proved as to whether there is manufacturing process carried on in the establishment of the appellants. Manufacturing process is defined under Section 2(k) of the Factories Act as:- "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 (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; (vi) preserving or storing any article in cold storage."

23. Both the appellants prepare sweets, savories and other beverages in their establishments. It is a settled position of law that cooking and preparing food items qualifies as manufacturing process. In the case of *ESI v. Spencer and Co.*<sup>5</sup> the Madras High Court held, while dealing with the case of a hotel run by Sponsor and Company, that preparation of coffee, peeling of potatoes, making bread-toast, etc., in a hotel, involve 'manufacturing process'. Similarly the Bombay High Court in *Poona Industrial Hotel Limited v. I. C. Sarin*<sup>6</sup> held that the kitchen attached to Hotel Blue Diamond run by the Petitioners therein, should be considered as a 'factory' for the purpose of ESI Act. Hence, it is beyond doubt that there is manufacturing process involved in the establishment of the appellants.

24. We need not go into the details of the number of workers in the establishment of the appellants in the 12 months preceding the relevant period as the same has been proved beyond doubt. So, the essential question which comes up for consideration is whether there has been use of power in the aid of the manufacturing process. It is the contention of the respondent corporation that use of LPG gas amounts to use of power.

25. The definition of 'Power' is in two parts. Firstly, it is electrical energy, and includes any other form of energy which is mechanically transmitted.

The second part of the definition provides for exclusion from the definition of power, i.e., it does not include power generated by human or animal energy. The definition is wide enough to include all forms of energy which is mechanically transmitted. We will revert back to this definition little later after understanding what is LPG Gas and the mechanism employed while transmitting the energy from LPG containers.

26. The New Encyclopaedia Britannica, 15th Edition contains an article on liquefied petroleum gas which is also called LP Gas, or LPG. The article is extracted:

"Liquefied petroleum gas, also called LP Gas or LPG, any of several liquid mixture of the volatile hydrocarbons propene, propane, butene, and butane. It was used as early as 1860 for a portable fuel source, and its production and consumption for both domestic and industrial use have expanded ever since. A typical commercial mixture may also contain ethane and ethylene as well as a volatile mercaptan, an odorant added as a safety precaution."

27. LPG or LPG gas is the abbreviation of liquefied petroleum gas. This group of products includes saturated hydrocarbons, propane and butane, which can be stored and transported separately or as a mixture. This is called liquefied petroleum gas, because these gases liquefy under moderate pressure. LPG is used as a fuel for domestic (cooking), industrial, horticulture, agricultural, heating and drying processes. LPG can be used as an automotive fuel or as a propellant for aerosols, in addition to other specialists applications. LPG can also be used to provide lighting through the use of pressure lanterns.

28. The gas cylinder is filled with a liquefied fuel gas, such as liquefied butane or the like, having a relatively low activity. A portion of the liquefied fuel gas is enclosed in the body of the gas cylinder which is vaporized, causing the internal pressure of the gas cylinder to be higher than the outside pressure. Therefore, there is conversion from one form of energy to another. A valve mechanism having a stem is mounted on the body of gas cylinder. The gas cylinder is joined to the gas cooking stove so that the stem is pushed inwards and the valve mechanism is opened. Thus, the fuel gas is discharged owing to the internal pressure.

“The gas cooking stove incorporates a body, which is provided with a valve mechanism for supplying fuel gas to the burner and an operating member for opening/closing the valve mechanism. The valve mechanism in gas cooking equipment is to reduce high pressure gas supply to a lower working pressure. This is done to ensure steady supply of the gas at constant pressure. (Assistance is taken from the internet).”

29. The submission of the learned counsel for the appellant, is that in view of the definition of power in the Factories Act, any other form of energy requires to be 'Mechanically transmitted', which essentially involves use of machinery. It is also suggested that 'mechanical' pertains to the use of machines and, as such, the transmission of LPG from the cylinder through a tube connected thereto does not qualify as a machine.

30. Mechanical transmission is as opposed to manual transmission where human agency is involved in the process of transmission. Transmission is defined in the Collins Discovery Encyclopedia, 2005 (1st ed.) as "the extent to which a body or medium transmits light, sound or some other form of the energy". The word 'Machinery' is defined under Section 2(j) of the Factories Act. 'Machinery' includes Prime movers, transmission machinery and all other appliances whereby power is generated, transformed, transmitted or applied. The expression 'prime mover' means any engine, motor or other appliances which generates or otherwise provides power and the definition of transmission machinery under Section 2(i) of the Factories Act means any shaft, wheel drum, pulley, system of pulleys, coupling clutch,

driving belt or other appliance or device by which the motion of a prime mover is transmitted to or received by any machinery or appliance.

31. LPG is stored in a cylinder fitted with a tube. Upon careful perusal of the definitions, which we have noticed earlier, it is clear that an LPG cylinder would qualify as an appliance which provides power. This power is transmitted by a tube which upon careful reading of the definition qualifies as transmission machinery as it is an appliance or device by which the motion of a primary mover is transmitted. In fact an analogy between the transmission of electricity and transmission of LPG can be drawn. The movement or transfer of electrical energy takes place over an interconnected group of lines and associated equipment between points of supply and points at which it is transformed for delivery to consumers or is delivered to other electric systems. Transmission is considered to end when the energy is transformed for distribution to the consumer. In many countries transmission of LPG also takes place in a similar manner from a large fixed tank. In case of LPG stored in a cylinder the mechanism of transmission is essentially the same as the gas travels from the cylinder where it is stored to the gas cooking stove. While transmission of electricity involves a switch, transmission of LPG involves a valve mechanism or a regulator to ensure smooth flow. Hence, LPG is a source of energy which is mechanically transmitted by way of the tube attached to the machinery.

32. In our view, the use of LPG satisfies the definition of power as it is mechanically transmitted and is not something generated by human or animal agency.

33. Since the establishment of the appellants involves a manufacturing process with the aid of LPG gas, which can now be termed as power, the establishment of the appellants can be termed as factories, and therefore, the ESI Act will apply to these establishments. In view of the above discussion, we see no grounds to interfere with the impugned judgment of the High Court. Accordingly, the appeals are dismissed. No order as to costs.

<sup>1</sup>*AIR 1922 PC 27*

<sup>2</sup>*AIR 1964 SC 1693*

<sup>3</sup>*(1973) 1 SCC 813*

<sup>4</sup>*(1980) Lab IC 1078*

<sup>5</sup>*(1978) L.I.C 1759*

<sup>6</sup>*(1980) L.I.C. 106*