IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2527 OF 2012

M/S J.P.LIGHTS INDIA ..... APPELLANT

VERSUS

THE REGIONAL DIRECTOR E.S.I. CORPORATION, BANGALORE. ..... RESPONDENT

O R D E R

1. The appellant, a sole proprietorship firm, is aggrieved by the judgment impugned dated 26th August, 2010, passed by the High Court of Karnataka, Bangalore, whereby the appeal[1] preferred by it against the order dated 29th September, 2003, passed by the Employees State Insurance Court[2], Bangalore, has been dismissed.

2. The appellant-firm had approached the ESI Court, by filing applications under Section 75 of the Employees State Insurance Act[3], 1948, assailing the notices of recovery and orders passed by the respondent-Corporation, taking a plea that it had never employed more than eleven employees and was not using power and, therefore, the provisions of the ESI Act were not applicable to it.

3. After evidence was led before the ESI Court and issues were framed, the plea of the appellant-firm to the effect that it was

1 M.F.A. No. 6876 of 2003
2 For short 'ESI Court'
3 For short 'ESI Act'

not manufacturing any goods with the aid of power and, therefore, was not a factory as contemplated under the ESI Act, was turned down. The second plea with regard to employing ten or more persons at a given point of time in the preceding 12 months, during which manufacturing process was carried out by the aid of power, was also decided against the appellant-firm, upon going through the records and observing that the appellant-firm had engaged more than ten workmen at its unit, which could be gathered from the attendance register for the relevant period. As a result, both the applications filed by the appellant-firm were dismissed.

4. Aggrieved by the said dismissal order, the appellant preferred an appeal before the High Court, wherein the following two substantial questions of law were formulated:

> ***"1.Whether the appellant would not come within the definition of Factory as defined under Section 2(12) of the ESI Act?***
>
> ***2.Whether the appellant business being carried on with the aid of power as defined under Section 2(15) (C) would not be applicable or not?"***

5. Both the questions of law have been answered against the appellant and in favour of the respondent-Corporation. Aggrieved thereby, the present appeal has been filed by the appellant-firm.

6. It is the contention of Mr. Balaji Srinivasan, learned counsel for the appellant that the appellant-firm does not fall under the definition of "Factory" as defined in Sections 2(12)& 2(14AA) of the ESI Act read with Section 2(k) of the Factories Act, 1948. To test the aforesaid submission, it is considered necessary to

examine the relevant provisions of law, which are extracted hereunder:

"**ESI Act**

2(12) "**factory**" means any premises including the precincts thereof whereon ten or more persons are employed or were employed on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a railway running shed;]

2(14AA) "**manufacturing process**" shall have the meaning assigned to it in the Factories Act, 1948 (63 of 1948);]"

"The Factories Act, 1948

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 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; [or]

(vi) preserving or storing any article in cold storage."

7. It is apparent from a perusal of the definition of the word "Factory", as used in the ESI Act that it means any premises including precincts wherein ten or more persons are employed or were employed on any day of the preceding twelve months, and in any part of which a manufacturing process was being carried out or ordinarily so carried out, with an exception of a mine or a railway running shed.

8. Section 2(14AA) of the ESI Act defines the expression "manufacturing process" as one, defined under the Factories Act, 1948. The said Act defines the expression "manufacturing process" under Section 2(k) that is sub-divided into six sub-heads. For the purposes of the present case, Section 2(k)(i) is relevant which makes it clear that a "manufacturing process" may include 'any process amongst others for altering or repairing or treating/adapting any article for its use or disposal'.

9. In the instant case, the appellant-firm is in the business of selling electrical goods in a shop. Admittedly, the shop premises is used not only for selling goods, but also to service electrical goods. That being the position, it is clear that the appellant-firm falls under the definition of a "Factory" and is using a "manufacturing process", as contemplated under both the Statues.

10. The appellant-firm is an establishment that has been using electrical energy for the sale and repair of electrical goods at its premises by using "power" as has been defined under Section 2(15)(C) of the ESI Act, which again takes us back to the Factories Act, 1948, where the definition of "power" has been spelt out in Section 2(g) and the meaning ascribed to the said word is 'electrical energy, or any other form of energy which is mechanically transmitted and is not generated by human or animal agency'. The observations made in the impugned judgment to the same effect, are based on the provisions of the relevant Statues and are therefore, upheld.

11. In view of the aforesaid discussion, we do not find any infirmity in the impugned judgment for interference. The present appeal is, accordingly, dismissed as meritless, leaving the parties to bear their own expenses.

.....J.
(HIMA KOHLI)

.....J.
(RAJESH BINDAL)

NEW DELHI;
27th JULY, 2023.
PS
RM

ITEM NO.107 COURT NO.14 SECTION IV-A

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 2527/2012

M/S J.P.LIGHTS INDIA APPELLANT(S)

VERSUS

THE REGIONAL DIRECTOR E.S.I. CORPORATION, BANGALORE RESPONDENT(S)

Date : 27-07-2023 This appeal was called on for hearing today.

CORAM :
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE RAJESH BINDAL

For Appellant(s) Mr. Balaji Srinivasan, AOR

For Respondent(s)
Mr. Vaibhav Manu Srivastava, AOR
Mr. Mahesh Srivastava, Adv.
Ms. Prachi Darji, Adv.

UPON hearing the counsel, the Court made the following
O R D E R

1. The appeal is dismissed in terms of the signed order, which is placed on the file.

2. Pending application(s), if any, stand disposed of.

(POOJA SHARMA) (NAND KISHOR)
COURT MASTER (SH) COURT MASTER (NSH)