

SUPR EME COUR T OF I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 5840 OF 2004

M/S. QAZI NOORUL H.H.H. PETROL PUMP &ANR

Appellant (s)

VERSUS

DY. DIRECTOR, E.S.I. CORPORATION

Respondent(s)

(With appln(s) for exemption from filing O.T.,directions and prayer for interim relief and office report)

Date: 29/07/2009 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE MARKANDEY KATJU

HON'BLE MR. JUSTICE H.L. DATTU

For Appellant(s)

Mr. Dinesh Dwivedi, Sr. Adv.

Mr. Prateek Dwivedi, Adv.

Ms. Vandana Mishra, Adv.

Mr. Manish Kumar, Adv.

Mr. Ashutosh Kr. Sharma, Adv.for

Mr. Shail Kumar Dwivedi,Adv.

For Respondent(s)

Mr. V.J. Francis,Adv.

UPON hearing counsel the Court made the following
ORDER

The appeal is dismissed in terms of the Reportable signed order.

No costs.

(Parveen Kr. Chawla)

Court Master

(Indu Satija)

Court Master

[Reportable Signed Order is placed on the File]

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5840 OF 2004

M/s. Qazi Noorul H.H.H.

Petrol Pump & Another

..Appellants

versus

Dy. Director, ESI Corporation

..Respondent

ORDER

Heard learned counsel for the parties.

This Appeal has been filed against the impugned judgment

of the Allahabad High Court dated 24th January, 2003 passed in Civil Misc. Writ Petition No.53564 of 2002. By the impugned judgment, the High Court has dismissed the writ petition filed by the appellant herein.

The appellant is running a petrol pump (public retail outlet) for dispensing petrol/diesel. He filed the aforesaid Writ Petition No. 53564 of 2002 in the High Court of Allahabad challenging an order dated 17th October, 2002 issued by the Deputy Director, Employees State Insurance Corporation, Regional Office, Kanpur directing the appellant to make contribution under the Employees' State Insurance Act, 1948 (for short 'the Act') from August, 1993 to May,

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2000 and interest on the aforesaid amount failing which recovery shall be issued under Sections 45-C and 45-G of the Act.

The short question in this case is whether the appellant is covered by the Act. Section 1(4) of the Act states that the Act, in the first instance, shall apply to all factories. Section 2(12) of the Act provides:

"(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 (35 of 1952) or a railway running shed;)"

The expressions "manufacturing process" as well as

"power" used in the Act have been given the same meaning as in the Factories Act, 1948, vide Sections 2(14-AA) and Section 2(15-C) of the Act.

Section 2(k) of the Factories Act, 1948 defines

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"manufacturing process" as follows:

- "(k) "manufacturing process" means 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;
 - (v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; or
 - (vi) preserving or storing any article in cold storage;"

A perusal of the aforesaid provision shows that pumping oil is also a manufacturing process.

In this connection, it may be stated that the words "manufacturing process" in different statutes have different meanings. For instance, in the Central Excise Act, 1944, the word "manufacture" means bringing into existence a different commodity, though this is not the definition of "manufacturing process" in the Factories Act, 1948. We cannot apply the definition of "manufacturing process" in one Statute to another Statute.

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Section 2(k), sub-clause (ii) of the Factories Act, 1948 states that pumping oil is a manufacturing process. Admittedly, the appellant does the work of pumping oil. When we go to a Petrol Pump for getting petrol or diesel, the petrol or diesel is in a tank and it does not on its own flow from the tank to the pipe and thereafter into the vehicle, but only by means of a pump by using power.

Learned counsel appearing for the appellant has submitted that we should see the object and intention of the Statute. It is well settled that once the Statute is clear, the literal Rule of Interpretation applies, and there is no need to go into the

object and intention of the Statute (vide article entitled 'A Note on Interpretation of Statutes' by Markandey Katju, J., published in the Journal Section of AIR 2007 SC page 22). In the present case, Section 2(14-AA) of the Act states that "manufacturing process" shall have the meaning assigned to it in the Factories Act, 1948. In the Factories Act, 1948, Section 2(k) of the Act includes pumping oil as a manufacturing process.

In our opinion, the only rule of interpretation which applies to the facts of the present case is the Literal Rule of Interpretation, which means that we should go simply by

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the wording of the Statute and nothing else and there is no scope for applying any other Rule of Interpretation. In our opinion, the language used in Section 2(k)(ii) of the Factories Act, 1948 is clear. Hence, the Act applies to the appellant and the respondent was right in issuing notice to the appellant for making contribution and interest thereon for the period in question.

Accordingly, this appeal is dismissed. No costs. However, we reduce the rate of interest to 10% on the principal amount.

.....J.
[MARKANDEY KATJU]

NEW DELHI;J.
JULY 29, 2009. [H.L. DATTU]