



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

FIRST APPEAL NO.291 OF 2016

SHARADA
RANGNATH
WAHULE

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Madhu Malti Enterprises)
Unit No.19, 3rd floor,)
Thakkar Indl. Estate, C.B. Road,)
Mazgaon, Mumbai 400 010.)
...Appellant
(Ors. Applicant)

V/s.

1. The Employees State Insurance Corporation Panchdeep Bhavan, Shahid Bhagatsingh Marg, Colaba, Mumbai 400 005.)
)
2. Shri G. P. Vishvakarma)
Asstt. Director (INS-II), ESI Corporation)
Panchdeep Bhavan, Lower Parel,)
Mumbai 400 013.)
3. Shri A. K. Mohan – Assistant Director)
Employees State Insurance Corporation)
Panchdeep Bhavan, Shahid Bhagatsing Marg, Colaba, Mumbai 400 005.)
4. Shri Hari Krishnan – Recovery Officer,)
Employees State Insurance Corporation)
Panchdeep Bhavan, Shahid Bhagatsing Marg Colaba, Mumbai 400 005.)
... Respondents
) (Ors. Opponents)

Mr. V. P. Vaidya i/by Mr. Mahendra Agavekar for the Appellant.
Mr. Shailesh Pathak for the Respondents.

CORAM : JITENDRA JAIN, J.

DATED : 2nd FEBRUARY 2026

ORAL JUDGMENT:-

1. This appeal filed under Section 82 of the Employees' State Insurance Act, 1948 (for short "**the ESI Act**") was admitted on 19th August, 2019 on following substantial question of law.

(a) Whether the use of refrigerator for storage of medicines in a refrigerator amounts to continuation of process of manufacturing ?

2. This appeal is filed against an order of the ESI Court dated 8th September, 2015 wherein it is held that preservation and storage of medicines in the refrigerator would amount to process of manufacturing since the said process continues till the goods are disposed of by a person who is involved in the trade. The reasoning is given in paragraphs 23 and 24 of the impugned order.

Nature of Activity :

3. The Appellant is in the business of distribution of medicines of several pharmaceutical companies. The Appellant is a trader and the medicines purchased from pharma companies are stored in refrigerator till they are finally sold to various druggist and chemist. These facts are not disputed.

Submissions of the Appellant :

4. Mr. Vaidya, learned counsel for the Appellant states that the Appellant is only a trader and by preserving the medicines in refrigerator they do not engage in the manufacturing of these medicines. The Appellant, therefore, cannot be made liable under the

ESI Act. The principle of extension of manufacturing process applied by the ESI Court is erroneous. He further relied upon following decisions in support of his submissions:-

(a) Ritz Hotel (Vegetarian) Pune V/S Joint Regional Director ¹

*(b) Regional Director Employees State Insurance Corporation V/S Serofie Bernard Vaz*²

(c) Hotel New Nalanda V/S Regional Director ESI Corporation ³

*d) The Management of Kumar Medical Centre (Wholesale Pharmaceutical Distributors) V/S Employees State Insurance Corporation Sub-Regional Office*⁴

Submissions of the Respondent-Corporation :

5. Per contra, Mr. Pathak, submits that on a conjoint reading of Section 2-A, Section 2(12) and Section 2(14-AA) of the ESI Act with Section 2 (k)(vi) of the Factories Act, 1948, the activity of storing and preserving medicines in cold storage is liable to be included in the definition of “manufacturing process” and therefore the impugned order has correctly held the Appellant liable under the ESI Act. Mr. Pathak states that the act of preservation itself would amount to manufacturing process and more particularly considering the welfare legislation with which we are concerned with. The manufacturing process need not result into creation of any new product but it can be also maintenance of the existing product. Therefore, he submits that the reasoning given by the ESI Court is justified. He further submitted that if two views are possible, then the view in favour of the social welfare legislation is to be considered.

1 1994 Supreme (Bom) 411

2 2009 (1) LLN 496

3 2009-IV-LLJ-21 (SC)

4 2011 (2) CWC 802

Analysis & Conclusions :

6. I have heard learned counsel for the Appellant and the Respondents.

7. Section 2-A of the ESI Act provides that, every factory or establishment to which this Act applies shall be registered within such time and in the manner specified in the regulation. Once registered, the said factory or establishment is liable to make contribution under Section 39 of the said Act.

8. The phrase “factory” as defined by Section 2(12) of the ESI Act reads as under:-

*Section 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;”*

(emphasis supplied)

9. The phrase “manufacturing process” is defined by Section 2(14-AA) of the ESI Act and same reads as under:-

“manufacturing process” shall have the meaning assigned to it in the Factories Act, 1948 (63 of 1948);

10. The phrase “manufacturing process” is defined by Section 2 (k) of the Factories Act, 1948 which reads as under:-

(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;*

11. In the instant case, no question is framed on the issue of number of persons employed and therefore I am proceeding on the basis that the number of persons employed by the Appellant is equal to or more than what is required under the ESI Act.

12. Section 2(12), defining “factory” consist of two parts joined conjunctively by the phrase “and”. The first part deals with the number of persons with which we are not concerned in the present appeal and the second part deals with premises in which a manufacturing process is carried on. The phrase “manufacturing process” is defined by Section 2(14-AA) of the ESI Act which in turn refers to the definition under the Factories Act.

13. Section 2(k)(vi) of the Factories Act, 1948 defines manufacturing process to mean **any process for** preserving or storing any article in **cold storage**.

14. Definition of “manufacturing process” means any process **for** preserving or storing any article in cold storage. In my view, the mere act of preserving or storing any article in cold storage would not amount to manufacturing process. The act of preserving or storing any articles in cold storage is preceded by “process for” preserving or storing any articles in cold storage. It is the process for preserving or storing which amounts to manufacturing process and not the mere act of

preserving or storing.

15. The word “process” is not defined by the Factories Act or by the ESI Act but the word “process” would mean some activity should be carried out on the product and that activity should be for preserving or storing any article in cold storage.

16. If the legislature intended act of preserving or storing *per se* as a “manufacturing process” then the phrase used in Section 2(k)(vi) of the Factories Act would have been manufacturing process means any process “of” and not process “for”. There is a distinction between “of” and “for” which I have analysed in detail later on. In the instant case, the definition uses the phrase “for” and therefore mere preserving or storing any article in cold storage would not amount to manufacturing process because it is not preceded in the instant case by any process. The Appellant is only a trader. He buys medicines from pharmaceutical companies, stores the same in refrigerator and sells to various druggist or chemist. There is no process involved in the activity of the Appellant prior to preserving or storing in cold storage nor it is the case of the Respondent that any such activity is being carried on. Therefore, in my view the mere act of preserving or storing medicines in cold storage in the facts of the present case of the Appellant who is merely a trader would not fall within the meaning of the term “manufacturing process” and therefore the Appellant would not be liable to be registered and to make contribution under the ESI Act.

17. The phrase “process” connotes some continuous and regular action taking place or carried on in a different manner. The phrase “process” is part of manufacturing. It is settled position that in a process, new product may not come into existence but in manufacturing a new product should come into existence. Processing is a part of

manufacturing. All processes need not amount to manufacture, but all manufacturing is a result of various processes.

18. In the context of Section 2(k) of the Factories Act, 1948, the phrase “any” precedes “process” and is followed by “for.” The word “for” means “for the purpose of.” Section 2(k)(vi) of the Factories Act, 1948 if read in its entirety, then the word “for” would create a condition precedent. The phrase “any process for” read with “preserving or storing any article in cold storage,” would contemplate that the factory or establishment should carry out some activities, even though it may be miniscule, on certain articles for the purpose of preserving or storing in cold storage. The phrase “process” cannot be read in isolation for the purpose of Section 2(k) but has to be read along with the words “any” and “for”.

19. In the instant case, the appellant is only a trader. Admittedly, he does not carry out any activity of any nature on the medicines which is already manufactured by pharma companies. He merely stores medicines in refrigerator till he sells the same to a Chemist. In my view, merely storing of a medicines by a trader in refrigerator would not make act of storing a “manufacturing process” as per Section 2(k) of the Factories Act, 1948.

20. The Hon’ble Supreme Court in the case of *Delhi Cold Storage Pvt. Ltd. Vs. Commissioner of Income Tax*,⁵ held that in a cold storage, vegetables, fruits and several other articles which require preservation by refrigeration are stored. As a result of long storage, scientific examination may indicate loss of moisture content, but that is not sufficient for holding that the stored articles have undergone a “process”

5 (1991) 4 SCC 239

for the purpose of Section 2(7)(c) of the Finance Act, 1973. Applying the said observations of the Hon'ble Supreme Court to the facts before me, merely because the medicines are kept in refrigerator, the medicines which are already manufactured do not undergo any process. This decision is relied upon only for laying emphasis on "process" to be carried on and not for the purpose that cold storage is not covered.

21. I make it clear that the present judgment is restricted only to the facts of the present case and the same should not be construed to mean that in all the cases of cold storage, there is no "manufacturing process."

22. The submission of Mr. Pathak that Employees' State Insurance Act, 1948 being a beneficial legislation should be interpreted in favour of the Corporation cannot be accepted. There is no dispute that ESI Act is a welfare legislation. However, for an activity to be brought within the purview of the Act, it must satisfy the applicability of provisions therein. Unless the activity under consideration passes the eligibility test, same cannot be brought within the purview of the ESI Act.

23. In the instant case, I have already opined that in the absence of any process being carried out by a trader on the medicines, mere storing *per se* in refrigerator will not satisfy the definition of "manufacturing process." Therefore, the appellant cannot be governed by the provisions of the ESI Act.

24. The ESI Act has undergone changes from time to time. Upon reading of the Statement of Objects and Reasons of every amendment, and on a perusal of the Scheme of the ESI Act, it is clear that the Act seeks to cover within its fold, the activities which affects the physical well being of the workers-employees in the factory or establishment. Keeping such object in mind and applying them to the definition of

“manufacturing process” as analysed by me above, a trader who merely stores medicines in refrigerator, cannot be covered by the provisions of the ESI Act.

25. It is also important to note that Section 2(k) of the Factories Act refers to preserving or storing any article in **cold storage**. In the instant case, there is no dispute that the appellant is storing the medicines in 365 liters refrigerator. There is a difference between a cold storage and a refrigerator. Cold storage refers to a large, insulated, mechanically cooled facility meant for storing large quantities of perishable goods under scientifically controlled conditions for longer duration. Whereas a refrigerator, of 365 liters is a domestic appliance which is used mainly in residential premises and in offices to keep various items like vegetables, fruits etc. and in the instant case, to keep the medicines. There can be no dispute that cold storage is different from a 365 liters refrigerator and what is covered by Section 2(k) is preserving or storing any article in a cold storage and not refrigerator. Therefore, even on this count, the action of respondents cannot be sustained since undisputedly the appellant is storing medicines in a refrigerator and not in a cold storage.

26. The distinction between a cold storage and refrigerator in connection with Section 2(k) of the Factories Act read with the ESI Act has been explained and accepted by the following decisions :

- (i) *Unity Traders Vs. The Regional Director, ESI Corporation*⁶
- (ii) *Mohd. Arif Vs. Employees State Insurance Corporation*⁷
- (iii) *Employees State Insurance Corporation Vs. Sumangalam Restaurant*⁸
- (iv) *The Managment of Kumar Medical Centre Vs. Employees'*

6 Insurance Appeal No.42 of 2010 decided on 22 February 2011.

7 2010 SCC OnLine Del 3692

8 First Appeal No. 74 of 2002 decided on 7 February 2017

State Insurance Corporation⁹

27. It is also important to note that what should be considered as a “manufacturing process” under Section 2(k) of the ESI Act is the main activity of the factory or establishment and not an incidental activity.

28. In the instant case, the main and dominant activity of the appellant is trading in medicines and storing them in a refrigerator is only an incidental activity. Since it is not the case of the respondents that storing of medicines is a main activity, even on this count, the present appeal needs to succeed.

Decisions Relied upon by Counsel :-

29. Mr. Pathak, learned counsel for the Respondents has relied upon the following two decisions of the Madras High Court.

(a) *Vellipalayam Co-operative Milk Supply Society Vs. Regional Director, Employees, State Insurance Corporation*¹⁰

(b) *Kumbakonam Milk Supply Co-operative Society Vs. Regional Director, Employees State Insurance Corporation, Madras*¹¹

30. In my view, though the decision in case of ***Kumbakonam Milk*** (supra) is in favour of the Respondents but the said decision does not analyse the phrase “any process for” used in Section 2(k) of the Factories Act. It is this phrase which makes all the difference and which compels me to take a view which I have taken above. The said decision proceeds on the premise that mere preserving an article in cold storage will fall within the manufacturing process. The learned counsel for the Appellant is justified in relying upon the decision of the Hon’ble Madras High Court in the case of ***The Management of Kumar Medical Centre***

9 2011 (2) CWC 802

10 2004 (2) CTC 494

11 2003(3) L.L.N. 303

(supra) wherein after considering decision in the case of ***Kumbakonam Milk*** (supra), on identical facts as that of the Appellant herein, the submissions of the Respondent - Corporation were rejected and it was held that definition of manufacturing process is not applicable.

31. The issue before Hon'ble Madras High Court in the case of ***Vellipalayam Co-operative Milk Supply Society*** (supra) was whether subsequent amendment in the definition of manufacturing process in the Factories Act by which storing and preserving was included can be applied to the ESI Act. In the present case there is no dispute that amended definition applies. Therefore this judgment is not applicable to the facts and issue raised in present appeal.

32. Mr. Vaidya, learned counsel for the Respondents has relied upon various decisions which are referred to above and which has taken a view in favour of the Appellant but even though those decisions are in favour of the Appellant, they have not analyzed the phrase “ any process for”. The view which I have taken is independent of the view taken by the decisions which have been relied upon by both the parties. In any case, I am bound by the decisions of this Court upon which Mr. Vaidya has relied upon and which support the case of the Appellant.

33. For all the above reasons, the appeal is allowed and the question of law is answered in favour of the Appellant and against the Respondents. However, the operation of this order is stayed for a period of 8 weeks to enable the Respondents to take appropriate steps in accordance with law.

(JITENDRA JAIN, J.)