REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2415 OF 2003

DELHI GYMKHANA CLUB LTD. ..Appellant

VERSUS

EMPLOYEES STATE INSURANCE CORPN. ..Respondent

J U D G M E N T

R. BANUMATHI, J.

Short point falling for consideration in this appeal is whether kitchen of the appellant-club and catering section thereon come within the meaning of "factory" and "manufacturing process" as defined in Employees' State Insurance Act, 1948 (for short 'ESI Act').

2. The appellant-Delhi Gymkhana Club is a member club, duly registered under the Companies Act. Appellant-

club has a kitchen to cook food items to provide food and refreshment to its members. On 20.03.1975, a notification was issued by the Delhi Administration, in exercise of the powers conferred under Section 1(5) of the ESI Act, stating that the provisions contemplated under the Act shall be extended to the establishments specified in the Schedule thereon. In furtherance of the said notification, the respondent-ESI Corporation sought to apply the provisions of the Act on the appellant-club, on the ground that the preparation of food items amounts to "manufacturing process" and that the appellant–club is a factory/establishment covered under the provisions of the ESI Act. After issuing the show cause notice, ESI Corporation passed the order on 4.8.1986 under Section 45-A of the ESI Act, holding that M/s. Delhi Gymkhana Club Limited is covered under the provisions of Employees State Insurance Act, directing the appellant to pay Rs.6,82,655.40 as a contribution of insurance in respect of employees for the period from 1.02.1980 to 31.08.1985, along with interest @ 6% per annum.

3. Aggrieved, the appellant filed a petition in the ESI Court which, by a judgment dated 25.11.1986, while allowing the petition of the appellant-club, held that preparation of eatables does not fall under "manufacturing process" and hence, ESI Act is not applicable to the appellant-club and the appellant was not liable to pay contribution. Aggrieved by the same, respondent-corporation preferred appeal before the High Court. The High Court allowed the appeal and held that the kitchen is an integral part of the club and that cooking of foodstuffs amounts to 'manufacturing process' falling within the meaning of sub-section (14AA) of Section 2 of the ESI Act, thereby falling within the meaning of 'factory' as defined under Section 2(12) of ESI Act. Being aggrieved, the appellant-club is in appeal before us.

4. Contention of the appellant is that the Club is a non-profit organization, exclusively rendering facilities to its members and that the ESI Act is not applicable to them. It is contended that social security perks, better than the ones contemplated under the ESI Act, are already put in place for the benefit of employees. Contending that preparation of food

items does not amount to 'manufacturing process' and that provisions of ESI Act are not applicable to the club, the appellant placed reliance on the decision of this Court in *Indian Hotels Co. Ltd.* Vs. *I.T.O.* (2000) 7 SCC 39, wherein it was held that preparation of foodstuffs in hotel kitchen is merely processing of food to make it edible and that there is no manufacturing process.

5. Per contra, learned counsel for the respondent submitted that the purpose is to extend the benefit of the scheme to the employees working in the appellant-club and while doing so, the object of welfare legislations, like the ESI Act, ought to be kept in mind. Refuting the appellant's contention that preparation of foodstuffs in the kitchen does not amount to 'manufacturing process', the respondent placed reliance on the decision of this Court in *G.L. Hotels* vs. *T.C. Sarin* (1993) 4 SCC 363, wherein it was held that cooking forms part of manufacturing process, as it alters and treats or otherwise adapts an article of food or substance with a view to its use, sale, delivery or disposal in the club. It was submitted that the High Court rightly held that the kitchen of the

appellant falls within the meaning of 'factory' as defined under Section 2(12) of the ESI Act.

6. We have carefully considered the submissions and perused the materials on record.

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

8. The provisions of Section 1(5) of the ESI Act enable the appropriate government to issue notification in respect of any other establishment or class of establishments, industrial, commercial, agricultural or otherwise. In exercise of its powers under Section 1(5) of the Act, the Delhi Administration issued the notification dated 20.03.1975 extending the provisions of the Act to certain establishments.

Relevant portion of the said notification reads as under:

"1. Any premises including the precincts thereof whereon ten or more persons but in any case less than twenty 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; but excluding a mine subject to the operation of the Mines Act 1952 (35 of 1952) or railway running shed or an establishment which is exclusively engaged in any of the manufacturing process specified in clause (12) of Section 2 of the Employees State Insurance Act, 1948 (34 of 1948).	In the Union Territory of Delhi.
2. Any premises including the precincts thereof 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 excluding a mine subject to the operation of the Mine Act, 1952 (35 of 1952) to a railway running shed or an establishment which is exclusively engaged in any of the manufacturing process specified in clause (12) of Section 2 of the Employees' State Insurance Act, 1948 (34 of 1948). 3……."	In the Union Territory of Delhi.

In furtherance of the above notification, the ESI Corporation sought to apply the provisions of the Act to the appellant-club.

9. The word "factory" has been defined in Section 2(12) of ESI Act as under:-

> "2(12) "factory" means any premises including the precincts thereof 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 if being carried on with 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 above definition is prior to the amendment Act 29/1989. In this appeal, we are concerned with the definition of "factory" as it existed prior to October 20, 1989.

10. Prior to Act 29/1989, in Section 2(12) of the ESI Act, the expressions "manufacturing process", "power" shall have the meaning respectively assigned to them in the Factories Act, 1948. After Act 29 of 1989, a separate definition for "manufacturing process" has been incorporated in sub-section (14AA) of Section 2 which practically has the same effect. It is seen from the definition of "factory" that the following conditions are to be satisfied in order to make any premises including the precincts thereof a factory:

> (1) in the premises including the precincts thereof twenty or more persons are employed or were

employed for wages on any day of the preceding twelve months;

(2) in any part of these premises or precincts, a manufacturing process is being carried on, and

(3) such manufacturing process must be carried on with the aid of power, or is ordinarily so carried on.

11. "Manufacturing process" has been defined in Section 2(k) of the Factories Act, 1948 as under:-

> "2. (k) 'manufacturing process' means process for –
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> (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."

For the purpose of this appeal, we are concerned only with Section 2(k) (i) of the Factories Act.

12. We need not go into the details of the number of employees working in the kitchen of the appellant-club, as

admittedly more than 20 persons are employed in preparation of foodstuffs and serving in the kitchen-catering division and those employees are paid salary, wages, gratuity etc. Admittedly, the club maintains a kitchen, refrigerator, geyser and other equipments are used in making and preparation of foodstuffs wherein power is used. That food items are being prepared in the kitchen and being served in the kitchen of the appellant-club to appellant-club's members and their guests for payment is not disputed.

13. The object of the appellant-club is to promote polo, hunting, racing, tennis and other games, athletic sports and recreations amongst its members. Huge contribution is collected for becoming members of the club and only the privileged can become the members of the appellant-club. There are wide range of sports activities, recreations and big budget is involved. The kitchen of the club has a direct connection with the activities carried on in the rest of the club precincts. The members and the guests of the members share the services of the kitchen. The ESI Act is enacted to provide certain benefits to employees in case of sickness, maternity in

case of female employees, employment injury and to make provision in certain other matters in relation thereto. We find no reason as to why the employees of the appellant-club should be kept out of the welfare coverage of the beneficial legislation like ESI Act.

14. Let us now examine whether preparation of food items in the kitchen of the appellant-club amounts to "manufacturing process" bringing the club within the purview of the definition of 'factory'. It has been consistently held by this Court that preparation of foodstuffs in hotels and restaurants amounts to manufacturing process, thereby invoking the applicability of the provisions of the ESI Act. This Court in *G.L. Hotels Limited and Ors.* vs. *T.C. Sarin and Anr.*, (1993) 4 SCC 363 has affirmed the views of the High Court that "since the manufacturing process in the form of cooking and preparing food is carried on in the kitchen and the kitchen is a part of the hotel or a part of the precinct of the hotel, the entire hotel falls within the purview of the definition of "Factory"."

15. In *Bombay Anand Bhavan Restaurant* vs. *Deputy Director, Employees State Insurance Corporation And Anr.*, (2009) 9 SCC 61, the question for consideration was whether the appellant-restaurant, which was using LPG gas for preparation of coffee, tea and other beverages, is covered under the ESI Act. Observing that it is a settled position of law that cooking, preparing of food items qualifies as manufacturing process and that the use of LPG satisfies the definition of power, this Court in paragraphs (27) and (39) held as under:-

> 27. Both the appellants prepare sweets, savouries and other beverages in their establishments. It is a settled position of law that cooking and preparing food items qualifies as manufacturing process. In *ESI* v. *Spencer & Co. Ltd.* (1978 Lab IC 1759 Mad) the Madras High Court held, while dealing with the case of a hotel run by Spencer and Co., 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 Ltd.* v. *I.C. Sarin (*1980 Lab IC 100 Bom), held that the kitchen attached to Hotel Blue Diamond run by the petitioners therein, should be considered as a "factory" for the purpose of the ESI Act. Hence, it is beyond doubt that there is manufacturing process involved in the establishment of the appellants.
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> 39. 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. Since the establishments of the appellants involve a manufacturing process with the aid of LPG, which can

> now be termed as power, the establishments of the appellants can be termed as factories, and therefore, the ESI Act will apply to these establishments."

16. On behalf of the appellant, it is contended that the above decisions are in respect of hotels and the appellant is only a club which has been running a kitchen and catering division only for the benefit of its members and the same is not for the purpose of making any profit and it should be held that the appellant-club does not fall within the definition of "factory" under Section 2(12) of the ESI Act. We find no merit in the above submission.

17. The appellant-club is catering to the elite people of Delhi. Appellant-club provides various services to its members and organizes several sports activities. Wide range of activities of the club are associated with the large number of staff. Kitchen is an integral part of the club which caters to the needs of its members and their guests, on payment of money either in cash or by card, where the food items are put for sale, thereby making the appellant-club fall within the definition of 'factory' under Section 2(12) of the ESI Act. All the persons employed for the purpose of supply and

distribution of food prepared in the kitchen and for doing other incidental duties in connection with the kitchen and catering are to be regarded as employees of the factory. It hardly matters for the employee whether the appellant's kitchen is run with any profit making motive or not.

18. The object of ESI Act is to provide certain benefits to the employees in case of sickness, maternity and employment injury and also to make provision for certain other matters in relation thereto. ESI Act is a beneficial piece of social welfare legislation aimed at securing the well-being of the employees and the court will not adopt a narrow interpretation which will have the effect of defeating the objects of the Act.

19. In the case of *Bombay Anand Bhavan Restaurant vs. Dy. Director ESI Corporation & Anr. (2009) 9 SCC 61* in paragraph 20 it has been held as under :-

> "20. 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. The Employees' State Insurance Act is a social security legislation and the canons of interpreting a social

> legislation are 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."

The same principle was reiterated in *Transport Corporation of India* vs. *Employees' State Insurance Corporation & Anr.*, (2000) 1 SCC 332 and *Cochin Shipping Co.* vs. *ESI Corporation* (1992) 4 SCC 245.

20. Even though the term "kitchen", "catering" of a club may not be called a factory in common parlance, having regard to the definition of "manufacturing process" and that ESI Act is a beneficial legislation, a liberal interpretation has to be adopted. Therefore, so long as manufacturing process is carried on with or without the aid of power by employing more than twenty persons for wages, it would come within the meaning of "factory" as defined under Section 2(12) of the ESI Act. The contention that the appellant-club is a non-profit making organization would not take away the same from the purview of the Act.

21. In *The Bangalore Turf Club Ltd.* vs. *Regional Director, Employees State Insurance Corporation* reported in (2014) Vol.9 Scale 177, the question which was referred to a larger Bench was "whether the Bangalore Turf Club Ltd. being engaged in organizing sports activities which involves providing of service to the members of the Club and outsiders can be construed as a "shop" for the purpose of extending the benefits under the ESI Act." Referring to *Cochin Shipping Co.* vs. *ESI Corporation* (supra) and *Bombay Anand Bhavan Restaurant* vs. *Deputy Director ESI Corporation & Anr. (supra),* in paragraphs (71) and (72), it was held as under:

> "71. It has consistently been the stand of the Appellants- herein that the term 'shop' must be understood in its 'traditional sense'. However, as has been observed by this Court in the case of *Bombay Anand Bhavan Restaurant* (supra), the language of the ESI Act may also be strained by this Court, if necessary. The scheme and context of the ESI Act must be given due consideration by this Court. A narrow meaning should not be attached to the words used in the ESI Act. This Court should bear in mind that the ESI Act seeks to insure the employees of covered establishments against various risks to their life, health and well-being and places the said charge upon the employer.
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> 72. We find that the term 'shop' as urged to be understood and interpreted in its traditional sense would not serve the purpose of the ESI Act. Further in light of the judgments discussed above and in particular the *Cochin Shipping Case* (supra) and the

> *Bombay Anand Bhavan Case* (supra), this Court is of the opinion that an expansive meaning may be assigned to the word 'shop' for the purposes of the ESI Act. As has been found above, the activities of the Appellant-Turf Clubs is in the nature of organized and systematic transactions, and further that the said Turf Clubs provide services to members as well as public in lieu of consideration. Therefore, the Appellant-Turf Clubs are a 'shop' for the purpose of extending the benefits under the ESI Act."

22. In *Employees State Insurance Corporation* vs. *Hyderabad Race Club*, (2004) LLR 769 (SC)=(2004) 6 SCC 191, this Court has clarified that a club will be coverable under the ESI Act.

23. In *Cricket Club of India, Bombay* vs. *Employees' State Insurance Corporation* (1998) LLR 729 (Bombay HC), the Bombay High Court has held that ESI Act will apply to a club since there was no distinction between a hotel and a club. In *Employees' State Insurance Corporation* vs. *Jalandhar Gymkhana Club*, (1992) LLR 733 (P & H HC), the Punjab and Haryana High Court considered the question whether manufacturing process is being carried on in the kitchen of the club, rendering catering services to its members. It was held that a perusal of sub-clauses (i) to (vi) of Section 2(k) of

the Factories Act would make it clear that preparation of the items which are prepared in the kitchen and the preservation and storing of any articles in the cold storage would amount to a manufacturing process.

24. The counsel for the appellant claimed exemption under Section 1(4) of the ESI Act, contending that the club is already providing medical facilities and that they have staff welfare fund out of which employees are paid in cases of death, funeral expenses and in case of illness and hence ESI Act is not applicable to them. The provisions of ESI Act must be construed along the lines of the objects of the Act so that the benefits of welfare legislation are not curtailed. ESI Act provides a kind of social security and employees are one of the most vulnerable and deprived section of the society, who are in the constant need of protection, security and assistance. The social security system needs to be effective and constructive and should have more coverage areas. Government has the obligation to protect working class from uncertain contingencies so that they can happily contribute towards social security schemes. ESI Act and all the provisions of the

Act are significant and are meant to realize State's obligation in safeguarding the rights provided under Part IV of the Constitution. The appellant's contention regarding adequate social security benefits being already in place is not tenable.

25. In the light of the various decisions and the view taken by this Court in *G.L. Hotels* case, the High Court has rightly held that the preparation of food items in the kitchen of the appellant-club amounts to "manufacturing process" and that the employees are covered under the purview of the ESI Act. Considering the activities of the appellant-club and that the kitchen catering forms an integral part of the appellant-club, the High Court rightly held that the appellant-club falls within the purview of the ESI Act and we do not find any infirmity in the order passed by the High Court.

26. Learned counsel for the appellant-club then submitted that the order under Section 45-A was passed in 1986 and by this time the contribution amount payable would have accumulated and, therefore submitted that in case if the Court holds that the employees of the appellant-club are covered under the ESI Act, the contribution should be made

prospective from the date of the order passed by this Court. The Act being a beneficial legislation, the above contention cannot be countenanced. ESI contribution ought to have been paid when the demand was made in 1986. It is very unfortunate that the appellant-club has not paid the ESI contribution of its employees for more than three decades and is not justified in seeking for prospective operation of the order.

27. The impugned order of the High Court does not suffer from any infirmity warranting interference. We find no merit in the appeal and the same is dismissed.

.....J.
(T.S. Thakur)

..... J.
(R. Banumathi)

New Delhi;
October 28, 2014