Supreme Court of India
G.L. Hotels Limited And Ors. vs T.C. Sarin And Anr. on 25 August, 1993
Equivalent citations: JT 1993 (2) SC 119, (1994) IILLJ 883 SC, 1993 (3) SCALE 641, (1993) 4 SCC 363, 1993 Supp 1 SCR 808, 1994 (1) SLJ 113 SC
Bench: P Sawant, Y Dayal
ORDER

1. The point involved in all these appeals is whether the hotels run by the appellants are factories within the meaning of the provisions of Section 2(12) of the Employees' State Insurance Act, 1948 [hereinafter referred to as the 'Act'] and, therefore, covered by Section 1(4) of the Act.

2. The State Insurance Corporation had raised a demand for contribution from the appellant-hotels for different periods between 1970 till 11.11.1978 treating them as factories within the meaning of the Act. It may be noted here that there is no dispute with regard to the contribution payable on and from 12.11.1978 since a notification has been issued treating the hotels as "establishments" from the date and, therefore, they are since covered by Section 1(5) of the Act.

3. The main contention of the appellants before us was that the entire premises of a hotel cannot be treated as a "factory" within the meaning of the said section merely because the process of cooking food is carried on in its kitchen which forms only a part of the said premises. It was not disputed before us, though it appears it was vehemently argued 'before the High Court, that kitchen is a factory since a manufacturing process within the meaning of Section 2(k) of the Factories Act is carried on there. The argument was that the activities which are carried on in the rest of the premises of the hotel must have a connection with the activity carried on in the kitchen, and since there is no connection, the definition of "factory" should not be extended to the other premises of the hotel. The definition of "factory" given in Section 2(12) of the Act reads as follows:

2. Definitions.- In this Act, unless there is anything repugnant in the subject of context ...

[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 person 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 or a railway running shed;

4.The "manufacturing process" as defined in Section 2[14AA] of the Act read with Section 2[k] of the Factories Act, 1948 is as follows:

2. Interpretation.- In this Act, unless there is anything repugnant in the subject or context,-

....

[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 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;

5.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 High Court has held that the entire hotel falls within the purview of the said definition. We do not see any infirmity in the conclusion arrived at by the High Court although we agree with Shri Sorabjee that the reasons given by the Court in support of the conclusions are not all valid. The unity of ownership which is adverted to by the High Court in this connection does not appear to be relevant to the point in issue.

6.Shri Sorabjee further contended that if such wide interpretation is given to the definition pf "factory", students' hostels, gymkhanas and clubs would all be covered by the definition. Hence it is necessary to read down the definition and apply it only to those premises where the activities carried on have a connection with the activity in the kitchen. In this connection, he invited our attention to certain observations in Nagpur Electric Light & Power Co. Ltd. v. Regional Director Employees State Insurance Corporation etc. . At page 96 of the said judgment, the Court has observed as follows:-

In view of Section 2(k)(iii), the process of transforming electrical energy from a high to a low potential and the process of transmitting the energy through supply lines are both manufacturing processes. In a part of the premises occupied by the company, the two processes are carried on with the aid of power by means of electrical gadgets and other devices. On the premises more than twenty persons were and are working. No part of the premises is used for purposes unconnected with the manufacturing processes. The premises therefore constitute a factory within the meaning of Section 2(12) of the Employees' State Insurance Act, 1948.

7.The observation in the aforesaid paragraph namely "no part of the premises is used for purposes unconnected with the manufacturing processes" has been strongly relied upon by Shri Sorabjee to contend that according to this Court the rest of the premises of the hotel must be shown to be connected with the kitchen activities and unless it is so shown, the rest of the hotel-premises cannot be covered by the said Act. There is no doubt that in the course of explaining the activity which was under consideration in the said judgment the Court has made the observation in question to show how in fact, even the activities carried on in the rest of the premises were also connected with the manufacturing process. The observation is, however, not the basis of the conclusion arrived at there. The observation has to be understood in the context in which it was made and cannot be interpreted to mean that in every case, such a connection has necessarily to be established in all respects. It is enough according to us, that the manufacturing activity has a broad connection with the activities carried on in the rest of the premises. For example, in the present case, it cannot be denied that

kitchen is an integral part of the hotel-business. Those who occupy hotel do depend upon the food and the beverages which are prepared in its kitchen. It is not possible to conceive of a hotel without a kitchen. The lodging and boarding are both essential components of the services rendered by a hotel. Hence, it cannot be denied that the activity in the kitchen has a connection with activities carried on in the rest of the hotel premises. It should not further be forgotten that the definition of certain premises as a factory or of certain activities as an industry etc. given in social welfare legislations like the present, are necessarily artificial. The object is to extend the welfare coverage to as large a section of the individuals as possible. Such definitions cannot be tested on the anvil of the common usage of the terms defined. The present is an illustration of the kind. At the same time, the contention advanced by Shri Sorabjee cannot be dismissed lightly and may have to seriously considered in appropriate cases. We are not accepting it in the present case because as pointed out above, it cannot be said that the kitchen activity has no relation at all with the activities in the other premises of the hotel. In the circumstances, we dismiss all the appeals with costs.

W.P. Nos. 9728-29/1983

8.In addition to the challenge which we have dealt with in the above appeals, in the present writ petitions, a contention is raised by Shri R.F. Nariman appearing for the petitioner that as far as the petitioner in the present petitions is Concerned, it is not liable to pay interest on the amount due till 20.10.1983. The argument is that the first notice which was served on the petitioner on 29.8.83 confined its demand only to the amount of Rs. 1,65,000/- which was found due in respect of the employees in the kitchen who were no more than 171 in number. It is only for the first time on 20.10.d3 that demand was made for contribution in respect of the employees in the rest of the premises of the hotel. The contention, therefore, is that even according to the Corporation, employees other than those engaged in kitchen were not covered by the Act till 20.10.83 and hence the interest can start running only from the date of demand which is 20.10.1983 and not before that.

9. It is interesting to note that the present petitioner had filed a writ petition in the High Court challenging the original notice of demand dated 29.8.1983 on the only ground that petitioner's hotel was not covered by the Act. That petition was dismissed. Nearly two years after the said decision, the petitioner filed a special leave petition which is pending in this Court. However, along with the petition, the petitioner also filed the present writ petitions. Learned Counsel for the petitioner was unable to explain as to how the present writ petitions under Article 32 were maintainable against the very same decision of the High Court. It is in these writ petitions that by an amendment, the petitioner has challenged for the first time the second notice dated 20.10.1983 demanding the contribution on behalf of the employees other than those engaged in the kitchen. This demand of course was with interest from 12.2.1976. Since we are of the view that the writ petitions themselves are not maintainable, the plea cannot be entertained. We, therefore, dismiss the writ petitions as being non-maintainable and decline to go into the question raised as to whether the demand for interest on the additional contribution from 12.2.1976 is valid or not. The writ petitions are accordingly dismissed with costs.

C.A. No. 1149/1982

10. Civil appeal is permitted to be withdrawn with no order as to costs