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KITCHEN IN A CLUB IS A FACTORY UNDER ESI ACT

In the case of Delhi Gymkhana Club Ltd. v. Employees State Insurance Corporation, the Hon'ble Supreme Court has held that the preparation of food items in the kitchen of a club amounts to a 'manufacturing process' and that the club is a 'factory' under the provisions of the Employees State Insurance Act, 1948 ("**ESI Act**").

The ESI Act applies to all factories (excluding seasonal factories) and other notified establishments such as hotels, restaurants, dot-com companies (providing e-services), IT/ITES companies. It provides for certain benefits to employees earning less than Rs. 15,000/- in case of sickness, maternity and injury, and requires employers to pay contributions to the Employees State Insurance Corporation ("**ESIC**") in this regard.

Brief facts of the Case

The Delhi Gymkhana ("**Club**") is a club which has a kitchen on its premises to provide food and refreshments to its members. The ESIC issued a show cause notice directing the Club to pay Rs. 6,82,655.40 as a contribution of insurance in respect of employees along with interest at 6% p.a. The Club filed a petition in the ESI Court which held that the preparation of food does not fall under the definition of 'manufacturing process' and that therefore the ESI Act is not applicable.

The ESIC preferred an appeal to the Delhi High Court which held that the kitchen is an integral part of the club and that cooking of foodstuff amounts to 'manufacturing process' and thereby falling within the meaning of 'factory' as defined under the ESI Act. It is from this order of the High Court that the appeal to the Supreme Court was preferred.

Important Definitions

The term '**factory**' has been defined under section 2(12) of the ESI Act to mean 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.

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The term '**manufacturing process**' has been defined under section 14AA of the ESI Act to have the same meaning assigned to it under the Factories Act, 1948 ("**Factories Act**"). Section 2(k) of the Factories Act defines 'manufacturing process' to include any process formaking, 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.

Important Observations

- The Hon'ble Supreme Court observed that even though the term 'kitchen' or 'catering' of a club may not be considered a factory in common parlance, having regard to the definition of 'manufacturing process' and that the ESI Act is a beneficial legislation, a liberal interpretation has to be adopted.
- It was further observed that the 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 Club fall within the definition of 'factory' under the ESI Act.
- Reliance was placed on the decision of the Hon'ble Supreme Court in *G.L. Hotels Limited and Ors. v. T.C. Sarin and Anr.*¹ where it was held 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'.
- Reliance was also placed on the judgement of the Hon'ble Bombay High Court in *Cricket Club of India, Bombay v. Employees State Insurance Corporation*² where it was held that there was no distinction between a hotel and a club.

Conclusion

The Hon'ble Supreme Court dismissed the appeal of the Club and held that the preparation of food items in the kitchen of the Club amounts to 'manufacturing process' and that the employees are covered under the purview of the ESI Act.

The decision of the Hon'ble Supreme Court is binding on all judicial and quasi judicial authorities in India.

¹ (1993) 4 SCC 363

² (1998) LLR 729 (Bombay HC)

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