



W.P.No.14723 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved On	04.11.2023
Orders Pronounced On	30.04.2024

CORAM:

THE HON'BLE DR JUSTICE D.NAGARJUN

W.P.No.14723 of 2014

DHL Express (I) Pvt. Ltd.
12 B South Phase,
Guindy Industrial Estate,
Guindy, Chennai – 600 032.
rep by its Manager

...Petitioner.

Versus

1. Director,
Industrial Safety and Health.
Chennai – 600 014.

2. The Assistant Inspector of Factories – III,
O/o Inspector of Factories, IV Circle,
Bharathkumar Bhavan Building,
1st Floor, 614, Anna Salai,
Chennai – 600 006.

3. The Genereal Secretary,
DHL World Wide Express (I) Pvt. Ltd.,
Employees Union,
34, Second Line Beach,
Chennai – 600 001.

...Respondents.



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Prayer: This Writ Petition has been filed under Article 226 of the Constitution of India to issue a writ of Certiorari calling for the records of the 1st respondent and quash its order dated 10.01.2014 confirming the order of the second respondent dated 19.09.2011, holding the petitioner premises as a factory.

For Petitioner : Mr.Anand Gopalan
for M/s.T.S.Gopalan

For Respondents : M/s.C.Sangamithirai
Spl.GP – R1 & R2
: Mr.K.M.Ramesh,
Sr.Advocate for Mr.K.Bharath -R3

ORDER

This Writ Petition has been filed under Article 226 of the Constitution of India to issue a writ of Certiorari calling for the records of the 1st respondent and to quash its order dated 10.01.2014 confirming the order of the second respondent dated 19.09.2011, holding the petitioner premises as a factory.

2. The facts as per the affidavit enclosed in the petition are in brief

:-

i) The petitioner company is engaged in providing international courier services to its customers across the globe. It is been in operation in India since long time at various centres in cities like Delhi, Mumbai, Kolkata, Bangalore and Chennai. The Chennai centre gateway is located in



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Guindy Industrial Estate, shipments coming from abroad will be subjected to customs clearance and will be received on the gateway office. The shipments were normally placed in a bag determining the shipment. The bags will have an electronic ID for easy tracking. Once the bag arrives in the gateway it would be broken, and the shipment would be placed in a bag and sent to the respective delivery centres, and will be delivered to the customers by the couriers. Similarly the shipments originating from India will be delivered to various international locations. In order to book any consignment for courier, customers would call the company's toll free number and book any consignment then the couriers will go to the place from where the shipment has to be taken and they will book the shipment.

ii) Customers can also walk in the booking centers of the petitioner company located across India along with their shipment. The customers who wants their shipments to be booked, the company would provide packing materials to the customers to pack their shipments and articles and hand it over to the company. In case if any customer wants it to ship documents they are normally placed in plastic fliers/bags, in order to protect them from water and moisture during shipping.

iii) Client seeks to send any chemical substance he would need to



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carry out additional documentation including safety material safety data sheets, lab reports and has to hand over the material in appropriate packing.

3. On 01.09.2008, the second respondent inspected the petitioner premises alleging that it is carrying out 'manufacturing process' of adapting the articles (letters, parcels with materials and goods of the customers) for transporting from one destination to another. On 24.09.2008, a reply was sent stating that receiving, transporting the letters, documents and consignments will not amount to manufacturing process. However without giving an opportunity of personal hearing, the second respondent has passed orders No.C/1833/2008 dated 29.09.2008 and issued another show cause notice dated 20.10.2008 as to why prosecution should not be initiated against the petitioner company.

4. The petitioner has filed W.P.No.26258 of 2008 seeking quashment of the orders dated 29.09.2008 of the Show Cause Notice dated 20.10.2008, the writ petition was allowed by setting aside the orders and the second respondent was directed to dispose the matter afresh after considering the objections of the petitioner. The second respondent has given notice to the petitioner company and after hearing the petitioner passed an order on 19.09.2011 directing the petitioner company to



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register the petitioner courier services under the “Factories Act, 1948”

(herein after referred as “Act”) holding that the petitioner company is a factory. The petitioner company aggrieved by the orders passed by the second respondent dated 19.09.2011 has preferred appeal before the first respondent and the first respondent has passed the impugned orders dated 10.01.2014 confirming the orders of the second respondent holding that the petitioner company is carrying out manufacturing process and as directed to register under the Act. Aggrieved by the same the present petition is filed by the petitioner.

5. The 1st and 2nd respondents have filed counter affidavit through Additional Government Pleader stating that the petitioner company is involved in handling of letters, parcels, materials, goods and that they will be brought to the premises and are separated by taking them on rolling conveyors and that articles are collected for each destination. This process, will come under the definition of manufacturing process as defined under Section 2(k) of the Factories Act, and that the petitioner cannot compare its activities with the postal department and any other courier services, as the activities of the petitioner involve in various processes that may not be adapted in the postal department or private couriers and that the postal department is a service oriented department,



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none of the activities of the postal department involve activities that fall within the meaning of manufacturing process and any private courier which involved in manufacturing process like that the petitioner would fall within the definition of 2 (k) of the Act.

6. Heard both sides and perused all the available materials on record.

7. The sum and substance of the notice issued by the second respondent after inspection dated 01.09.2008 is that the petitioner is a factory as is carrying on 'manufacturing process' of adapting the articles (letters, parcels with materials and goods of the customers). According to the petitioner, the articles are being brought to the petitioner premises, they are separated by way of a conveyor belt, in respect of each of the destinations and then they are taken for delivery. It is mentioned in the counter affidavit that the petitioner is involved in the activity of packing/re-packing/finishing and adapting the articles with a view to use transport and delivery, which is nothing but manufacturing activity under Section 2 (k) of the Act.

8. According to the respondent Nos.1 and 2, since the petitioners were involved in adapting the articles for transport from one destination to other destination, the petitioner is a factory under Section 2 (k) of the



said Act, the definition under Section 2 (k) is extracted hereinunder for ready reference:

“Section 2. Interpretation-

(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;

9. The above definition of Factory under Section 2 (k) is very wide and comprehensive. If this definition is accepted as it is without interpreting, any activity which an institution performs in their day to day activities will also fall within the definition of “Factory”. The phrases found in sub-clause (i) to (vi) of Section 2 (k) of the Act have to be



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interpreted keeping in view the purpose for which the Act has come into force.

10. The impugned order of the respondent No.1/Directorate of Industrial Safety and Health dated 10.01.2014, go to show that in the light of the decision of this Court in W.P.No.4717 of 1979 (*The Nilgiris Co-Operative Marketing Society Limited Vs. Chief Inspector of Factories, Madras – 5 and Anr.* and the full bench of Punjab and Haryana High Court in *Employees State Insurance Corporation Vs. Bhag Singh 1989-II-LLJ-126 (P&H)* the manufacturing process is carried on in the premises of petitioner falls under the definition of Section 2 (k) of the Act, and there by the petitioner company has to be registered as Factory, under the Factories Act.

11. The learned counsel for the petitioner submitted that, the petitioner company and the companies similarly placed are covered under the Tamil Nadu Shops and Establishments Act, 1947 thereby the Factories Act, 1948 does not apply as the activities being carried out by the petitioner company will not fall under the definition of Section 2 (k) of the Act. According to the petitioner activity of the petitioner company will fall under the first limb of the definition of Section 2 (k) that is “goods are packed for the purpose of transport and delivery” and that the



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petitioners are not making any alteration or modification of any shipment given by the customers.

12. Main activity of the courier service is to receive a consignment from a customer and deliver the same to the other customer. Once consignment is booked, the consignment if properly packaged by the customer, it will be delivered even further packing or repacking, to the customers. For commercial customers the petitioner company will leave the packing material with the customers and they themselves will pack the goods and articles and handover to the petitioner who will deliver it to the person to whom it is required to be delivered. The service centers will do the (which is not the premises inspected by the respondent No.2) packing ensuring the safety of the articles inside the package for smooth delivery. In the process, the petitioner company is not changing, modifying, altering the consignment given by the customers until it is delivered to the destination. If at all the packing is for sale, then the activity may be defined as manufacturing process. The petitioner company is not either making or altering or repiaring or ornamenting or finishing or oiling or washing or cleaning or breaking or demolishing etc., the articles booked. However according to the respondent the petitioner company is adapting the consignment and transporting for delivery.



However this adaption, transport and delivering, if it is for the purpose of sale, only then it can be interpreted as manufacturing process. Since the packing is for delivery, transport to other customers, it cannot be at any stretch of imagination be defined as manufacturing process.

13. Learned counsel for the petitioner has relied on the judgment of ***Shree Gopal Paper Mills Ltd. Vs. Inspector of Factories*** (1968) 16 FLR 415 of High Court of Allahabad of which relevant paragraphs are extracted hereinunder:

“5. At first sight, it is true, the process carried out at the petitioner's Nepalganj Road Depot would seem, to come within the above-quoted definition of "manufacturing process" given in Section 2(k)(i) of the Act, since it is the packing of an article or substance with a view to its use or transport. But a closer examination of the wording of this section leads us to conclude that the word "packing" used therein is not meant to cover a case like the present.

6. Packing, in the widest sense, means any kind of wrapping up or tying up of goods. But we are satisfied that the packing referred to in Section 2(k)(i) is not meant to be interpreted so widely. In E. Hare v. State, ILR (1955) 2 All 683 for example, it has been held not to cover the re-packing in large packing cases of cigarettes that have already been packed in cartons or tins; the argument being that for packing to constitute the kind of packing referred to in Section 2(k)(i), the article packed must be an article that is the subject of a manufacturing process, not a finished article that has already been packed and has already reached the stage of being saleable to customers without any further addition.



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7. It seems to us that the packing that is aimed at in [Section 2\(k\)\(i\)](#) is the packing of the finished manufactured article, which is done to facilitate or make possible its sale or transport for sale to customers. This form of packing is in effect the last operation in the series of operations that taken together constitute the manufacture of the article for sale. In the present case, however, the packing is not of a finished article but of the raw material, and this packing i.e., the baling of the grass, has nothing to do with making the article fit or convenient for sale. Many kinds of raw material have to be packed for delivery to the factory by being placed in sacks, baskets or packing cases or by being tied into bundles: but we do not think it was the Legislature's intention that such preliminary packing of the raw material should be treated as a 'manufacturing process'. It is significant that in the list of processes set forth in [Section 2\(k\)\(i\)](#), 'packing' comes immediately after 'finishing': a circumstance which lends support to the contention that the packing referred to is the process undertaken after the article has been manufactured and finished.

8. It is important to note, moreover, that the mere transport of the raw material to the factory is not in itself a 'manufacturing process', as defined in the section, for it finds no place in the list of processes set forth therein. And it is difficult to believe that the packing that is only incidental to such transport of raw material was meant to be covered by the definition. In the present case the baling of the grass has nothing whatsoever to do with the processes whereby the grass is converted into paper, but is resorted to in order to reduce the volume purely for the purposes of rail transport, for if the grass were to be placed in the wagons loose and uncompressed, it would take up much more room and the freight charges would be enhanced. We are satisfied that baling or packing of this kind, which is carried out in respect of the raw materials before they reach the factory and which does



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not in any way facilitate the actual manufacturing process for which the raw materials are intended, is not 'packing' in the sense that this word is used in [Section 2\(k\)\(i\)](#) of the Factories Act and does not constitute a 'manufacturing process' as defined therein."

14. In respect of the petitioner courier services is concerned, the consignment will be packed by the customers and it will not be given to the petitioner in raw form. The said consignment sometimes will be shipped to the receiver with the same packing. However, most of the times, the said consignment will be put in a plastic cover or box or any other packaging material so that the consignment is not damaged. Therefore, the activity of the petitioner is not packing but it is repacking to deliver it to customers. The repacking of any material will not fall under Section 2 (k) of the Act, which speaks of only packing but does not speak about repacking. Once it is a process of repacking it is not a manufacturing process as per the definition.

15. The respondent Nos.1 and 2 have been harping upon that the petitioner company is a factory as the petitioner company is adapting the packing of the consignments. The respondent No.2 has inspected the premises at DHL Express (I) Pvt. Ltd., 12 B South Phase, Guindy Industrial Estate. According to the petitioner, packing will not be done in the said premises. Packing will not be done at DHL Express (I) Pvt. Ltd.,



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12 B South Phase, Guindy Industrial Estate. The consignments which were already packed will reach, the above referred place for distribution to other destinations. Therefore, activity of packing will not be done at the said premises, thereby it cannot be said, that the petitioner is undertaking the packing the consignments at Guindy Industrial Estate.

16. In the counter affidavit of respondent Nos.1 and 2 it mentioned that the petitioner company is using conveyor belt to separate the consignments basing on its destinations. On careful perusal of the affidavit filed by the petitioner company, it is clear that the conveyor belt is being used for loading and unloading of the consignments from the transport vehicles. The petitioner never admitted that the conveyor belt is being used to separate the consignments to various destinations. It is mentioned that the separation will be done manually. Therefore, on that count it cannot be said that the petitioner premises is a factory.

17. Above all in the counter affidavit it is mentioned by the respondent Nos.1 and 2 that the petitioner company cannot compare itself with postal department of Government of India and other courier services to argue that they were not treated as factory and hereby the petitioner is isolated and discriminated. In the counter affidavit it is mentioned that the process that is being adapted by the petitioner company may not be



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adapted by the postal department. This statement of the respondent Nos.1 and 2 is without any basis. The respondent No.2 has not inspected the postal department premises and has not concluded about courier services of the postal department in respect of handling the consignment of a customer until it is delivered to the person to whom it has to be delivered within India or Abroad. Unless that exercise is done, the respondent Nos.1 and 2 carry out say that the courier services of postal department may not be the same. Respondent Nos.1 and 2 are not proceeding against the postal department because it is the Central Government Department. They did not even venture to issue notice for inspection to examine as to whether their activities come under the definition of the factory or manufacturing process under Section 2 (k).

18. Similarly, it is also mentioned in the counter affidavit that the activities of the postal department is a service oriented. It is surprising to note that how the respondent No.2 is reminded of the services that are being carried out, by Postal Department. The postal services of handling the consignments is not free of cost. Certainly every customer has to pay for shifting the consignment. There is no difference between the activities of the petitioner company to that of the activities of the postal department. The petitioner takes a consignment of the customer and



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delivers without any damages by taking any measure to whom it has to be delivered, similar activities are done by the postal department. May be the petitioner company charges more whereas the postal department charges less. It does not mean that there is an element of service in the postal department. Even if there is any element of service activity in the postal department still if it can be classified as manufacturing activity under Section 2 (k) of the Act, and if the postal department is doing same service activity it cannot be exempted under Section 2 (k) of the Factories Act. Whether a premises can be defined as manufacturing process or not will depend on the activity that undertakes but not on the basis of the purpose for which activities are undertaken.

19. In addition to that in the counter affidavit, the respondent Nos.1 and 2 have mentioned that the petitioner cannot question the respondent Nos.1 and 2 as to why the other courier service were not brought under the umbrella of the Factories Act. The said statement in the counter affidavit cannot be accepted. Respondent Authorities have not visited any other courier companies to know that are the activities, being order taken by them, the respondent No.2 has inspected the petitioner premises on 01.09.2008, there is no record that from 2008 whether Authorities of the Respondents have visited other courier services and if so its outcome.



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20. On doing research on the internet it is found that there are many other courier companies like the petitioner company which have been handling more voluminous consignments and are having better turnover than the petitioner company. But for the best reasons, known to the respondent Nos.1 and 2, other courier companies were not inspected at all.

21. Therefore, issuing of the above notices only to the petitioner company by excluding some other players, including postal department is clearly a discrimination and violative of Article 14.

22. In view of the above, the impugned orders passed by the 1st respondent dated 10.01.2014 confirming the order of the second respondent dated 19.09.2011, holding the petitioner premises as a factory is hereby set aside and stands quashed. Accordingly, this writ petition stands allowed. There shall be no order as to costs.

30.04.2024

Index : Yes/No
Speaking : Yes/No
Neutral Citation Case : Yes/No
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To:

1. Director,
Industrial Safety and Health.
Chennai – 600 014.
2. The Assistant Inspector of Factories – III,
O/o Inspector of Factories, IV Circle,
Bharathkumar Bhavan Building,
1st Floor, 614, Anna Salai,
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3. The Genereal Secretary,
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Pre-Delivery Order in

W.P.No.14723 of 2014

Order Pronounced On



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