The Regional Provident Fund Commissioner, Bombay

Vs

Shree Krishna Metal Manufacturing Co., Bhandara

Civil Appeals Nos. 361 and 387 of 1959

(P. B. Gajendragadkar, K. N. Wanchoo JJ)

14.03.1962

JUDGMENT

GAJENDRAGADKAR, J. –

These two appeals have been heard together because they raise a common question of construction of section 1(3)(a) of the Employee's Provident Funds Act, 1952 (No. 19 of 1952) (hereinafter called the Act). The Regional Provident Fund Commissioner, Bombay, is the appellant in both the appeals, whereas Shree Krishna Metal Manufacturing Co., and Oudh Sugar Mills Ltd. are the respondents respectively. Shree Krishna Metal Mfg. Co. is a partnership firm which is registered under the Indian Partnership Act. Its business consists of (1) manufacturing brass, copper and 'kasa' circular sheets and the preparation of utensils therefrom; (2) milling paddy, (3) a flour mill and (4) a saw mill. The aforesaid four works are situated in the same compound. For the manufacture of metal circular sheets, the company has a rolling machine. In order to carry on other works, a separate rice mill, flour mill and saw mill have been installed by the Co. The Company's case is that it employs different workers in each section of its activities and these workmen are engaged either on a permanent or on a temporary basis. Some workers, such as clerks and watchmen are common to the four sections of the Co.'s works. After the Act came into force, the Co. was required to comply with its provisions. The Co. protested and urged that it was not a factory under s. 1(3)(a) of the Act and so, it could not be called upon to comply with its provisions. The Regional Provident Fund Commr., however, took a contrary view. He held that the Co. fell within the meaning of the word "factory" as defined under s. 1(3)(a) and so, be threatened to use coercive processes to compel the Co. to comply with its requisitions issued under the relevant provisions of the act. At that stage, the Co. moved the High Court of Bombay at Nagpur by a writ petition under Art. 226 of the Constitution and it prayed that an appropriate writ should be issued restraining the Commissioner from enforcing the relevant provisions of the Act against it. This writ petition has been allowed and an appropriate writ has been issued as prayed for by the Co. It is against this order that the Regional Commissioner has come to this Court with a certificate granted by the High Court. For convenience, the Regional Provident Fund Commissioner would hereafter be referred as the appellant and the Shree Krishna Metal Manufacturing Co. would be called the Company.

The Oudh Sugar Mills Ltd. which is respondent in C.A. No. 387 of 1959, is a public limited company registered under the Indian Companies Act. It carries on the business of manufacturing hydrogenated vegetable oil named "Vanasada" and its by-products, such as soap, oil-cakes, etc. This business is carried on at Akola under the name and style of 'Berar Oil Industries'. The Mills commenced manufacturing its products on the 11th October, 1948. It also manufactures and Markets

vegetable oil after completing all the processes at Akola. The oil is then tinned in tin containers of certain sizes. The said tin containers are fabricated by the mills in its own precincts of the oil factory. These tin containers are used only for the purpose of packing vegetable oil and for no other. They are not sold in the market nor are the customers of oil charged separate price for the tins. The work of fabricating these tins began on the 13th October, 1948. In this section of the Works only 31 workmen are engaged, while in the Mills proper 211 workers were working on the manufacture of oil and its by products on the 1st of November, 1952.

The Central Government framed a scheme under 5 of the Act and this scheme came into force partly on 2.9.1952 and partly on 6.10.1952. Under this scheme, an employer is required to contribute 6-1/4% of the total wage bill every year as his contribution towards the Fund and 3% as the administrative charges on the total contribution of the employer and his employees.

On the 8th of August, 1955, the Regional Commissioner called upon the Mills to deposit its contribution and incidental charges as required by the scheme. The amount thus required to be deposited was of the order of Rs. 34,000/-. This deposit is required on the basis that the whole of the factory run by the Mills is a factory under s. 1(3)(a). The Mills declined to make the deposit on the ground that it was not a factory to which the Act applied. The Regional Commr. then threatened to take proceedings against the Mills for the recovery of the said amount under section 8 of the Act. At that stage, the Mill moved the High Court of Bombay at Nagpur by a writ petition and its writ petition has been allowed by the High Court. In the result, a direction has been issued restraining the Regional Commissioner from enforcing the provisions of the Act against the Mills. It is against this order that the Regional Commr. has come to this Court with a certificate granted by the High Court. For the sake of convenience, the Regional Commissioner will hereafter be called the appellant, whereas the Oudh Sugar Mills Ltd. will be described as the Mills.

The appellant contends that the High Court was in error in coming to the conclusions that the company and the Mills did not constitute a factory as defined by s. 1(3)(a) of the Act. Section 1(3) at the relevant period read thus :

> "Subject to the provisions contained in section 16, it (i.e., the Act) applies in the first instance to all factories engaged in any industry specified in Schedule I in which fifty or more persons are employed, but the Central Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to all factories employing such number of persons less than fifty as may be specified in the notification and engaged in any such industry."

As a result of the amendment made in 1956, section 1(3) has become 1(3)(a) and so, it is referred to as such.

Before construing this clause, it may be relevant to remember that the Act was passed to provide for the institution of provident funds for employees in factories and other establishments. The object of the Act, broadly staged, is to bring into existence a scheme to be called "The Employees' Provident Funds Scheme" for the establishment of provident funds under the Act for employees to whom its provisions apply. This object is specified by s. 5 of the Act. Section 6 provides for the contributions to be made by the employers and s. 9 recognises the Fund constituted under the Act for the purpose of income-tax. Section 10 affords protection against attachment in respect of the amount standing to the credit of any member in the Fund and s. 11 prescribes for priority of payment of contributions

over other debts. In other words, the provisions of the Act constitute a welfare measure intended for the benefit of the workmen to whom the Act applies, and this beneficent purpose of the Act has to be borne in mind in construing the relevant clause with which we are concerned in the present appeals.

The first question which calls for our decision is whether s. 1(3)(a) excludes composite factories from its scope. It has been urged before us on behalf of the respondents that composite factories are not intended to be covered by s. 1(3)(a). It is only factories which are exclusively engaged in any industry specified in Schedule I to which the Act applies, provided, of course, they satisfy the other test that there are 50 or more persons employed in them. This argument is based on the fact that when the Act was originally passed in March, 1952, the Legislature had provided for only six industries in Schedule I. The intention of the Legislature was to extend the benefits of the Act to the workmen industry-wise step by step. The Legislature was conscious that the relevant provisions of the Act imposed a burden on the employer and so, it took the precaution of confining the operation of the Act only to six important industries specified in Schedule I. Section 1(3)(a) no doubt confers power on the Central Government to extend the provisions of the Act to other factories by issuing a notifications, as contemplated by it; and so, whenever the Central Government comes to the conclusion that the benefits of the Act should be extended to workmen engaged in additional categories of factories, it could exercise its power in that behalf and by issuing a notification, bring within the scope of the Act such factories. But this has to be done factory-wise in the sense that it has to be done by reference to the factories engaged in industries included in Schedule I and that shows that it is only factories exclusively engaged in the said industries that are included within the purview of s. 1(3)(a).

In our opinion, this argument is not well-founded. The expression "all factories engaged in any industry specified in Schedule I" does not lend itself to the construction that it is confined to factories exclusively engaged in any industry specified in Schedule I. What exactly is meant by the clause, we will have occasion to deal with later on. For the present, it would be enough to say that when the Legislature has described factories as factories engaged in any industry, it did not intend that the said factories should be exclusively engaged in the industry specified in Schedule I. The construction for which the respondents contend requires that we should add the word "exclusively" in the clause and that clearly would not be permissible.

The definition of the word "factory" prescribed by s. 2(g) of the Act shows that a "factory" means any premises including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid of power. Thus, the word "factory" used in s. 1(3)(a) has a comprehensive meaning and it includes premises in which any manufacturing process is bring carried on as described in the definition. This definition of the word "factory" shows that the factory engaged in any industry specified in Schedule I cannot necessarily mean a factory exclusively engaged in the particular industry specified in the said Schedule.

Besides, s. 1(3)(a), as it has been amended is 1956, now refers to every establishment which is a factory engaged in any industry specified in Schedule I and the introduction of the word "establishment" clearly shows that it may consist of different factories dealing with different industries and yet considered as one establishment, it may fall under section 1(3)(a), provided the other requirements of the said section are satisfied. Section 2A which has been added in the Act by the Amending Act 46 of 1960 makes it clear that an establishment may consist of different departments or may have different branches, whether situate in the same place or in different places,

and yet all such departments or branches shall be treated as parts of the same establishment. Therefore, the concept of establishment being of such a comprehensive character, the insertion of the word "establishment" in s. 1(3)(a) by the Amending Act of 1956 helps to negative the argument that the factory therein contemplated cannot be a composite factory.

Besides, the explanation to Schedule I which has been added by Act 37 of 1953 clearly shows that one of the industries originally included in Schedule I in 1952 definitely suggests the idea of a composite factory and would, thus, assist the interpretation of the word "factory" as including a composite factory under s. 1(3)(a). The industry in question is electrical, mechanical or general engineering products and the explanation of this industry shows that it includes 25 different items, and so any factory carrying on the work of producing one or more of these items would not be exclusively engaged in producing one or the other of those items and would be in the nature of a composite factory and yet it would definitely fall under s. 1(3)(a). Therefore, in our opinion, the argument that a composite factory carrying on different industrial operations is outside the purview of s. 1(3)(a) cannot be accepted.

The next question which falls to be considered is whether the requirement that the workmen employed should be 50 or more, governs the word "Industry" or the word "factor" is under s. 1(3)(a). The respondents' contention is that this numerical test must be satisfied by the industry and not by the factory. In other words, even if a composite factory is included in s. 1(3)(a), before the provisions of the Act can be applied to it, it must be shown that 50 or more persons are employed in that unit of the factory which is engaged in the industry specified in Schedule I. If this is the true and correct position, neither the Mills nor the Company would fall within the mischief of the Act. The argument in support of this construction is that the pronoun "which" must under the ordinary rules of grammar qualify the noun immediately preceding it and that takes it to the word "Industry" rather than to the word "factories".

We are not inclined to accept this construction. The ordinary rule of grammar on which this construction is based cannot be treated as an invariable rule which must always and in every case be accepted without regard to the context. If the context definitely suggests that the relevant rule of grammar is inapplicable, then the requirement of the context must prevail over the rule of grammar. As the provision stands, the word 'factories' is qualified by two clauses. The first adjectival clause is 'engaged in any industry specified in Schedule I' and the second clause is "in which 50 or more persons are employed". In other words, in order that the factories should fall within the scope of the provision, they must satisfy two tests : they must be engaged in any industry specified in Schedule I and they must have employed 50 or more persons. The first adjectival clause is in the nature of a parenthetical clause and so the clause beginning with the words "in which" must necessarily qualify the word "factories" and not the word "industry". Therefore, in our opinion, the requirement as to the prescribed number qualifies the word "factories" and does not qualify the word "industry"; that means the question to ask is : does the factory employ 50 or more persons ? The question is not : does the industry employ 50 or more persons ?

This conclusion is strengthened by the provision contained in the latter part of s. 1(3)(a). This latter clause empowers the Central Government to bring within the purview of the Act other factories in the manner specified by it. While referring to the factories which may thus be brought within the purview of the Act, the clause provides that these factories must be such as employ such number of persons less than fifty as may be specified in the notification and they must be engaged in any such industry. In other words, this latter clause makes it clear that it is the factories which have to satisfy two tests - (i) that the number of their employees should not be less than 50 and (ii) that they must

be engaged in any such industry as is specified in Schedule I.

This position has been placed beyond all doubt by the amended clause as it now stands as a proviso to s. 1(3)(a) and (b) after the amendment of 1956. This proviso reads that the Central Government, may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of the Act to any establishment employing such number of persons less than fifty as may be specified in the notification. This proviso makes it absolutely clear that the requirement as to the number of the employees applies to the establishment and not to the industry. We may incidentally add that the requirement of fifty has now been reduced to twenty by the Amending Act 46 of 1960.

There is yet another provision in the Act which supports the same conclusion. Section 19A provides, inter alia, that if any difficulty arises in giving effect to the provisions of the Act, and in particular, if any doubt arises as to whether 50 or more persons are employed in a factory, the Central Government may, by order, make such provision or give such direction, not inconsistent with the provisions of the Act, as appears to it to be necessary or expedient for the removal of the doubt or difficulty; and the order of the Central Government, in such cases, shall be final. This clause has been subsequently amended, but for our present purpose those amendments do not matter. The point about the provision is that the Central Government has been given power to resolve a doubt as to whether fifty or more persons are employed in a factory or in an establishment and that shows that the requirement as to the number of employees governs the factory or the establishment but not the industry.

That takes us to the question as to the meaning of the expression "engaged in any industry specified in Schedule I", and this question no doubt, presents some difficulty. We have already rejected the argument that the composite factory is not included in s. 1(3)(a). That means that the clause "engaged in any industry" does not mean "exclusively engaged in any industry". If that is so, what exactly is the meaning and significance of this clause ? Two views are possible. It may be said that even if a factory is only partially engaged in any industry specified in Schedule I, it would satisfy the test however small or insignificant may be the extent of its operation in the said industry. On this construction, it would follow that if a factory is engaged in several industrial operation one of which relates to an industry specified in Schedule I, the factory would fall under s. 1(3)(a) even though its relevant activity in the specified industry may be of a minor, incidental or subsidiary character. The other construction would be that the expression "engaged in any industry" means "primarily or mainly engaged in any industry". On this construction, if a factory is engaged in several industrial activities one of which relates to the industry specified in Schedule I, it would be necessary to enquire whether the said specified activity is subsidiary or minor; if it is subsidiary, incidental or minor, the factory cannot be said to be engaged in that industry. Cases may occur where a factory is primarily or mainly engaged in other industrial activities and it is only for feeding one or more of such activities that the factory may undertake an activity in respect of the specified industry. But such an undertaking is merely for the purpose of feeding its major activity; it is subsidiary, incidental and minor. In that case, the factory cannot be said to be engaged in the industry specified in Schedule I. Both constructions are possible and each one of them presents some anomalies. On the first construction, it would follow that even if half a dozen employees are engaged by the factory in regard to its activity in the industry specified in Schedule I, the provisions of the Act would apply to all the workmen engaged in the whole of the factory because the factory would be deemed to have satisfied the test that it is engaged in the industry specified in Schedule I and that, no doubt, looks anomalous. On the other hand, if the second construction is accepted, though more then 50 persons may be employed in the incidental and subsidiary activity relating to an industry specified

in Schedule I, the provisions of the Act will not apply to such workmen because the factory, as a whole, does not satisfy the test that it is engaged in the said industry and that also is anomalous.

It is true that in dealing with the construction of a clause which is capable of two reasonably possible constructions, it is not easy to make a choice, particularly when both constructions seem to lead to some anomalies. On the whole, however, we are inclined to take the view that the clause "engaged in any industry specified in Schedule I" should be interpreted to mean "mainly engaged in any industry specified in Schedule I". If a factory is engaged in two industrial activities one of which is its primary, principal or dominant activity and the other is a purely subsidiary, incidental, minor or feeding activity, then it is the primary or the dominant activity which should determine the character of the factory under s. 1(3)(a). This view does not purport to add any word to the section; it merely interprets the relevant expression "engaged in any industry specified in Schedule I". When it is said that a person is engaged in any business, it usually means he is engaged mainly or principally in that business; and the same would be the position when the relevant clause refers to an establishment engaged in the specified industry. That is the common-sense view which is consistent with the current and accepted denotation of the words "engaged in".

One of the tests which can sometimes be applied is whether the product of the incidental activity is intended for the market or exclusively for use by the factory in its other department only. If the answer to this question is that the said product is sent out in the market for sale, then the activity in question cannot be treated as incidental. In such a case, it may be said that the factory is engaged in both the activities and as such, it is engaged in the industry specified in Schedule I. But the test of sending the product in the market cannot be treated as decisive or even very significant because the definition of the word "manufacture" given in s. 2(i)(a) shows that a commodity may be produced by the factory as much for sale, transport, delivery or disposal as for its own use. Therefore, the fact that a commodity is produced only for the use of the factory in its other department may not necessarily show that the activity which leads to the production of the said commodity is not the main activity of the factory.

If a factory is engaged simultaneously in different industrial activities and one of these is in relation to an industry specified in Schedule I, then it can be said that the factory is engaged in the industry specified in Schedule I. The fact that the factory is engaged in other industrial activities will not necessarily take it out of the purview of s. 1(3)(a). The broad test which may safely be applied in dealing with this question is : is the factory engaged in the industry specified in Schedule I from a business point of view ?, and the answer to this question would generally give a satisfactory solution to the problem posed by s. 1(3)(a). Whether or not a factory is engaged in any industry specified in Schedule I would, thus, be a question of fact to be determined in the facts and circumstances of each case. That appears to be the view taken by Balakrishna Ayyar J. in the Madras Pencil Factory, by its Proprietors v. Perumal Chetty & Sons, by its partner V. Ananthakrishna Chetty v. The Regional Provident Fund Commissioner, (A.I.R. 1959 Mad. 235.) and with that view we are in general agreement.

What remains now is to consider whether the High Court was right in holding that the company and the Mills are outside the purview of s. 1(3)(a). As we have already seen, company carries on four different kinds of industrial activities, one of which is the manufacturing of brass copper and 'kasa' circular sheets and the preparation of utensils therefrom. For the manufacture of metal circular sheets, the Co. has a rolling machine. It is common ground that this work would fall within Schedule I of the Act and so, if it can be held that the Co. is a factory engaged in the industry represented by this work, the first test is satisfied. As we have already observed this Co. carries on

four different kinds of activities and it is impossible to hold that the activity in relation to the industry which falls in Schedule I is either minor, subsidiary or incidental to the other activities. This activity is as much the work of the Co. as the other activities are and so, the Co. must be hold to be a factory under s. 1(3)(a) so far as the first test is concerned. In regard to the test of the number of employees engaged in the factory it appears to be the Co.'s case that at the relevant time, the number of its total employees in all the four activities did not consistently exceed 50; but that it is a point on which the High Court has expressed no opinion, and rightly, because it is a disputed question of fact which cannot be tried in writ proceedings. The appellant's case is that the total number of employees engaged by the Co. exceeded 50 at the relevant time and it is on that footing that the present writ petition has been tried in the High Court. Therefore, without deciding this dispute question of fact, it may be assumed that for the purpose of the present writ proceedings, the test of the numerical strength can be said to have been satisfied. The result is, the view taken by the High Court that the company is outside s. 1(3)(a) is erroneous in law and must be reversed; and that means that appeal No. 361 of 1959 filed by the regional Commissioner is allowed and the writ petition filed by the Co. is dismissed with costs throughout. In the result, the respondent will have to comply with the requisition issued by the appellant against it under the relevant provisions of the Act. In regard to the date from which the respondent should make its statutory contribution to the Provident Fund the appellant may have to give a direction after consulting the workmen, because from the date so specified by the appellant both the respondent and its workmen will have to make their respective contribution.

The position with regard to the Mills is, however, different. The main industrial activity of the Mills is the manufacture of hydrogenated vegetable oil named 'Vanasada' and its by-products, such as soap, oil-cakes etc. It is true that in the mills tin containers are fabricated and this, no doubt, is an activity covered by Schedule I. But it is obvious that this branch of the activity of the mills forms a very minor portion of its activity. The number of employees engaged in this branch is 31, whereas the total number of employees is 211. Besides; the containers are produced only for the use of the Mills. They are not intended to be sold in the market at all. Price for the containers is not also charged from the customers. Indeed, containers are required even for the purpose of storage of the vegetable oil. It is thus clear that the fabrication of tin containers has been undertaken by the Mills only as a feeder activity; it is integrally connected with its main business of producing and marketing vegetable oil and as such, it is a minor part of the said activity. Having regard to the relevant facts admitted or proved in the present case, we are satisfied that the High Court was right in coming to the conclusion that the Mills was not a factory within the meaning of section 1(3)(a). The result is, the appeal No. 387 of 1959 fails and is dismissed with costs.

C.A. 361 of 1959 allowed.

C.A. 387 of 1959 dismissed.

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