Regional Provident Fund Commissioner

Vs

Shibu Metal Works

Civil Appeal No. 1059 of 1963

(CJI P. B. Gajendragadkar, K. N. Wanchoo, M. Hidayatullah JJ)

09.11.1964

JUDGMENT

GAJENDRAGADKAR, C.J. –

This appeal raises a short question as the content of the entry "Electrical, Mechanical or general engineering products" used in Schedule 1 to the Employees' Provident Fund Act, 1952 (No. 19 of 1952) (hereinafter called the Act). The respondent firm, Shibu Metal Works, runs a factory which manufactures brass utensils. Under the Act and the scheme framed thereunder, the employer to whose factory the Act applies is required to deposit with the appellant, the Regional Provident Commissioner, his share of the contribution as well as that of the employees coupled with the administrative charges within 15 days of each succeeding month. It appears that the respondent had been making such deposits in the past. If the employer makes a delayed payment, the Government is entitled to impose damages not 25 per cent of the amounts payable by the employer. In respect of the period between June, 1955 to October, 1955, and for the months of June, August, September and November, 1956, delayed payments were made by the respondent. Thereupon, the appellant called upon the respondent to pay the damages. The respondent, in turn, made explanations and contended that there was really no delay in the making of payments in regard to some months, and in respect of the others where delay was admitted, it claimed that the same should be condoned. The appellant did not accept either of the pleas raised by the respondent, and demanded the payment of damages. That led to the present writ proceedings commenced by the respondent in the High Court of Punjab.

In its writ petition filed on the November 3, 1958, the respondent contended that the appellant was not entitled to recover either the contributions alleged to be due under the Act or damages alleged to be due on the ground that there was delay in payment, because the manufacture of brass utensils which was the work carried on in the respondent's factory did not come within the purview of the Act. On this ground, the respondent urged that the demand made by the appellant was illegal, ultra vires and without jurisdiction. The writ petition asked for the issue of a writ of mandamus restraining the appellant from recovering any amount from the respondent under the Act.

The appellant resisted the writ petition and urged that the entry "Electrical, Mechanical or general engineering products" included manufacture of brass utensils, and so, the respondent's factory fell within the purview of the Act. The appellant also urged that if the respondent entertained any doubt as to the applicability of the Act to its factory, it should have approached the Central Government for removal of the doubt and not rushed to the court for a judgment.

The learned Single Judge who heard the writ petition held that the manufacture of brass utensils fell within the provisions of the relevant entry in Sch. I, because, in his opinion, the said utensils were,

in substance, drums and containers. He, therefore, held that the appellant was entitled to demand from the respondent the deposit of the contributions as prescribed by the Act. He, however, took the view that the demand for damages made by the appellant was not justified. On these findings the writ petition was partly allowed in that a writ was issued against the appellant restraining him from making a demand for the payment of damages. In regard to the claim made by the respondent that it was not liable to deposit the contributions under the Act, the learned Judge held that the said claim was not justified.

The respondent then preferred an appeal under the Letters Patent before a Division Bench of the Punjab High Court. The Letters Patent Bench has upheld the respondent's contention that the manufacture of brass utensils does not fell within the entry "Electrical, Mechanical or general engineering products" enumerated in Sch. 1 to the Act. In the result, the respondent's appeal was allowed and a writ was issued against the appellant in terms of the prayer made by the respondent in its writ petition. The appellant then moved the said High Court for a certificate and with the certificate granted to him, he has come to this Court in appeal. That is how the only question which arises for our decision is : what is the true content of the entry "Electrical, Mechanical or general engineering products" included in Sch. 1 of the Act ?

Before dealing with this point, it would be relevant to refer briefly to the broad features of the scheme prescribed by the Act, and its purpose. This Act was passed in order to provide for the institution of provident funds for employees in factories and other establishments. Section 1, sub-section (3), originally provided that subject to the provisions contained in section 16, the Act would apply (a) to every establishment which is a factory engaged in any industry specified in Sch. 1 and in which 50 or more persons are employed, and (b) to any other establishment employing 50 or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in that behalf. There is a proviso to this sub-section which it is unnecessary to set out. Later, in 1960, the requirement that 50 workmen should be employed has been modified and now, the employment of 20 workmen is enough to attract the application of the Act. Section 2(g) defines a "factory" as 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. This shows that if the test prescribed by section 1(3) is satisfied and the undertaking is shown to be engaged in a manufacturing process, the Act applies. It makes no difference to the applicability of the Act that in a given factory, the manufacturing process is carried on without the aid of power. It is the manufacturing process which is the decisive factor. Section 2(i) defines "industry" as meaning any industry specified in Sch. 1, and includes any industry added to the Schedule by notification under section 4. This definition shows how entries in Sch. 1 assume significance. Whenever a question arises as to whether any industry is governed by the Act, the answer is to be found by looking at Sch. 1. It is also clear that additions can be made to Sch. 1 from time to time by notification by the Central Government. Section 4 specifically confers this power on the Central Government. It provides that the Central Government may add any industry to Sch. 1 and it lays down that after the notification is issued by the Central Government in that behalf, the industry so added shall be deemed to be an industry specified in Sch. 1 for the purposes of the Act. Section 4(2) provides a safeguard by requiring that notifications issued under sub-section (1) shall be laid before Parliament, as soon as may be, after they are issued. Section 5 is the key section of the Act and it provides for the institution of Employees' Provident Fund Schemes. It is not necessary for our purpose to refer to the details of these schemes. It would thus be seen that the basic purpose of the Act is to require that appropriate provision should be made by way of provident fund for the benefit of the employees engaged in establishments to which the Act applies. Rules made for the institution of the funds provide for contribution both by the employees and the

employers and there can be little doubt that the purpose intended to be achieved by the Act is a very beneficent purpose in that it assures to the employees concerned the payment of specified amounts of provident fund in due time.

Schedule 1 which plays a decisive role in the determination of the question as to whether an industry falls under the provisions of the Act, originally contained six entries. It provided that any industry engaged in the manufacture or production of the six items mentioned therein shall be an industry for the purpose of the Act. The words "or production" were deleted in 1953 and now, the entry refers to any industry engaged in the manufacture of the items mentioned in Sch. 1. Amongst the items thus inserted was "Electrical, Mechanical or general engineering products." Just as the requirement as to the number of workmen whose employment would bring the establishment within the scope of the Act has been liberalised and 50 has been brought down to 20, so the items listed in Sch. I have also been expanded and several additions have been made in that behalf. The object of the Act clearly was to proceed to make provision for the provident fund for the benefit of industrial employees in a cautious and pragmatic manner, and that explains how and why the Central Government has slowly and gradually but progressively, been expanding the scope of the applicability of the Act to different branches of industry. The process of making additions to Sch. I has been proceeding apace and one has merely to look at the items which have been listed in Sch. 1 by several additions up to the May 15, 1964 to realise how the scope of Sch. I has been considerably expanded.

The question as to what exactly is the content of the entry with which we are concerned has been considered by different High Courts from time to time, and we would very briefly indicate what the effect of these decisions is in order to illustrate how the approach adopted by the Courts in interpreting this entry has not been uniform. In Regional Provident Commissioner, U.P., Kanpur v. M/s. Great Eastern Electroplator Ltd., (A.I.R. 1959 All 133) a Division Bench of the Allahabad High Court held that an electric torch case is receptacle in which the torch batteries are kept, and it is, therefore, a container within the meaning of item (24) of the Explanation to Sch. 1, and is or must be deemed to be an electrical, mechanical or general engineering product. We ought to add that in 1953, an Explanation has been added to Sch. I for the purpose of indicating what items would fall under the entry "Electrical, mechanical or general engineering products". Amongst the items listed under the Explanation, item (24) is 'drums and containers'. The Division Bench of the Allahabad High Court reversed the view taken by the learned single Judge of the said High Court, and came to the conclusion that an electric torch case is a container within the meaning of item (24) in the Explanation to which we have just referred. This decision of the Division Bench was brought to this Court in appeal (No. 580 of 1960, decided on December 18, 1962), and this Court took the view that the conclusion reached by the Division Bench that an electric torch case is a container within the meaning of item (24) of the Explanation to Sch. I was right.

In the Nagpur Glass Works Ltd. v. Regional Provident Fund Commissioner, (I.L.R. [1958] Bom. 444) the Bombay High Court has held that burners or metal lamps were products which fell within the Schedule under the entry 'Electrical, mechanical or general engineering products'.

In Haji Nadir Ali Khan and Others v. The Union of India and Others, (A.I.R. 1958 Pun. 177) Falshaw J., as he then was, took the view that musical instruments, whether made of metal or otherwise, though not mentioned specifically in Sch. I, fell within the scope of the expression "electrical, mechanical or general engineering products". In Hindustan Electric Co., Ltd. v. Regional Provident Fund Commissioner, Punjab, & Anr., (A.I.R. 1959 Pun. 27) Grover J. of the Punjab High Court similarly held that stoves would fall within the expression in question.

In Madras, in T.R. Raghava Iyengar and Co. v. The Regional Provident Fund Commissioner, Madras, (A.I.R. 1963 Mad. 238) Jagadisan J. has taken the view that the conversion of metal sheets and circles into vessels results in products of metal rolling and re-rolling within the meaning of the Schedule to the Act, and so, an industry for the purpose of manufacturing vessels and utensils out of brass and copper sheets and circles is covered by the Act.

In The Regional Provident Fund Commissioner, Bombay v. Shree Krishna Metal Manufacturing Co., Bhandara, and Oudh Sugar Mills Ltd., ([1962] Supp. 3 S.C.R. 815) one of the points which arose for the decision of this Court was whether the manufacture of metal circular sheets fell within Sch. 1, and it appears that it was conceded by both the parties that the said work would fall within Sch. I of the Act; and so, the Co., carrying on the said work was a factory engaged in the industry which attracted the provisions of the Act. We have referred to these decisions only to illustrate how in dealing with different products, the Courts have tried to interpret the entry in question; it appears that in dealing with the products with which they were concerned in each case, they did not adopt a uniform approach, and the reasons given and the tests applied by them are not the same or similar. It is hardly necessary to add that we propose to express no opinion on the merits of the decisions to which we have just referred.

Reverting then to the question of construing the relevant entry in Sch. I, it is necessary to bear in mind that this entry occurs in the Act which is intended to serve a beneficent purpose. The object which the Act purports to achieve is to require that appropriate provision should be made for the employees employed in the establishments to which the Act applies; and that means that in construing the material provisions of such an Act, if two views are reasonably possible, the courts should prefer the view which helps the achievement of the object. If the words used in the entry are capable of a narrow or broad construction, each construction being reasonably possible, and it appears that the broad construction would help the furtherance of the object, then it would be necessary to prefer the said construction. This rule postulates that there is a competition between the two constructions, each one of which is reasonably possible. This rule does not justify the straining of the words or putting an unnatural or unreasonable meaning on them just for the purpose of introducing a broader construction.

The other circumstance which has to be borne in mind in interpreting the entry is that the interpretation should not concentrate on the word "products" used in it. If this word had been used, say for instance in the material provisions of the Sales-tax Act, the decision as to whether a particular product is liable to pay the tax, would depend upon the consideration whether the product in question falls within the scope of the said Act or not, and in that context, interpretation would naturally concentrate on the character and nature of product in question. In the present case, the entry takes us back to the first clause of Sch. I which refers to any industry engaged in the manufacture of any of the products enumerated by the different entries in Sch. I. So, in construing the relevant entry, what we have to ask ourselves is : is the industry of the respondent engaged in the manufacture of any product mentioned in the entry ? It is the character of the industrial activity carried on by the respondent's undertaking that falls to be determined, and the question is not so much as to what is the product produced as what is the nature of the activity of the respondent's undertaking; is the respondent's undertaking engaged in the manufacture of the products in question ? This consideration is relevant for the purpose of determining the content of the entry.

There is no doubt that the establishment of the respondent is a factory within the meaning of section 2(g), and it would be an industry within the meaning of Sch. I if its manufacturing activity is found to be an activity connected with the products enumerated in the entry. The entry refers to

engineering products. It is, therefore, necessary to clear the ground by referring to the word "engineering" which qualifies the word "products". To engineer, according to the dictionary meaning, is to act as an engineer, or to employ the art of the engineer upon; to construct or manage as an engineer. "Engineering", according to the Encyclopaedia Britannica, Vol. 8, in its early uses referred specially to the operations of those who constructed engines of war and executed works intended to serve military purposes. Such military engineers were long the only ones to whom the title was applied. But about the middle of 18th century a new class of engineers arose who concerned themselves with works which, though they might be in some cases of the same character as those undertaken by military engineers, as in the making of roads, were neither exclusively military in purpose nor executed by soldiers, and those men by way of distinction came to be known as civil engineers. Thus, civil engineering came to be known as the "art of directing the great sources of power in nature for the use and convenience of man, as the means of production and of traffic in states, both for external and internal trade, as applied in the construction of roads, bridges, aqueducts, canals, river navigation and docks for internal intercourse and exchange, and in the construction of ports, harbours, moles, breakwaters and lighthouses, and in the art of navigation by artificial power for the purposes of commerce, and in the construction and adaptation of machinery, and in the drainage of cities and towns". (p. 444).

Gradually, however, specialisation set in. The first branch of engineering which received recognition as a separate branch, was mechanical engineering. This branch is concerned with steam engines, machine tools, millwork and moving machinery in general, and it was soon followed by mining engineering, which deals with the location and working of coal, ore and other minerals. Subsequently, numerous other more or less strictly defined groups and sub-divisions came into existence; they are : civil, mining and metallurgical, mechanical, electrical, chemical, aeronautical and industrial. There are other less clearly defined branches of engineering, such as sanitary, structural, drainage, hydraulic, highway, railway, electric power, electrical communications, steam power, internal combustion, marine, welding, production, petroleum production, fire protection, safety, architectural, nuclear, and management or administrative engineering (p. 448).

It would thus appear that the area covered by engineering which was originally occupied only by military engineering, is now split up into several sub-areas which are covered by special branches of engineering known by special names. The entry in question refers to electrical and mechanical engineering, and it is easy enough to determine what the denotation of these two expressions is. In the context, 'general engineering' which is also mentioned in the entry must not be construed in a general comprehensive sense which the words may, prima facie, suggest, because if that was the scope of the said words, there was hardly any point in referring to electrical and mechanical engineering separately. Therefore, we are inclined to hold that the expression "general engineering" does not include electrical or mechanical engineering which are specifically mentioned in the entry, and it also does not include other branches of engineering which are known by specific or special titles. These specific branches of engineering have already been indicated by us by reference to the Encyclopaedia Britannica.

After the first six entries had been included in Sch. I in 1952, an Explanation was added to it in 1953 which purports to indicate what items are intended to be included in the entry "Electrical, mechanical or general engineering product". This Explanation consists of four clauses; cl. (a) enumerates the items falling under the entry with which we are concerned in the present appeal, whereas clauses (b), (c) and (d) afford similar explanation in regard to entries relating to "Iron and Steel", "Paper", and "Textiles" respectively. A glance at the items included in cl. (a) of the Explanation, as well as the items included in clauses (b), (c) & (d) clearly shows that the object of

the legislature in enacting the Explanation was to clarify the content of the respective entries in Sch. I, to illustrate them by adding specific items, and to enlarge their scope in some material particulars. The fact that an Explanation has been added with this purpose in 1953, must also be taken into account in construing the entry in question.

Mr. Agarwala for the respondent has contended that the learned single Judge was in error in holding that the respondent's industry was engaged in the manufacture of drums and containers specified as item (24) introduced in cl. (a) of the Explanation. He argues that the core of entry is engineering products, and while construing the entry, the significance of this core should not be overlooked. According to him, the entry really takes in engineering products like machinery and equipment for generation of electrical energy. He suggests that in determining the content of this entry, we should ask ourselves what would this entry mean to an ordinary citizen in a commercial sense ? It would mean that the products to which the entry refers are products which are useful in, or meant for, electrical engineering, mechanical engineering or general engineering. This entry may also take in machines or their parts which are similarly useful in or meant for electrical, mechanical, or general engineering. If this narrow construction is accepted, then, of course, production of brass utensils would be plainly outside the entry.

There are, however, several considerations which suggest that this narrow construction cannot be accepted. As we have already indicated, a glance at the items mentioned in cl. (a) of the Explanation and the extended meaning attributed to the respective entries covered by clauses (b), (c) and (d) of the Explanation, clearly indicates that none of the said entries can be reasonably read in that restricted manner. If this restricted interpretation is accepted, then several items included in cl. (a) of the Explanation would be so completely foreign to the original content of the entry that their inclusion would appear to be unjustified. Take for instance, item (15) in cl. (a) of the Explanation which is bicycles; item (17) which is sewing and knitting machines; item (22) which is safes, vaults and furniture made of iron or steel or steel alloys; or item (23) which is cutlery and surgical instruments. Clause (a) of the Explanation provides that these items should be included in the entry in question, "without prejudice to the ordinary meaning of the expressions used therein". If the narrow construction for which Mr. Agarwala contends is accepted, it would look unreasonable that the Legislature should have introduced these items under cl. (a) of the Explanation. Besides, this construction lays undue emphasis on the concept of products and erroneously treats engineering products as the core of the expression. What the entry really means is electrical engineering products, mechanical engineering products or general engineering products and in determining the content of the entry, we have to hark back to the relevant consideration that this entry is intended to describe an industry as falling within the scope of the Act if the said industry is engaged in the manufacture of the products in question. Now, if we take the other entries which were initially included in Sch. I, the construction for which Mr. Agarwala contends cannot obviously be applied in respect of them; and so, we think it would not be possible to adopt the narrow construction which Mr. Agarwala has suggested for our acceptance.

On the other hand, Mr. Sen for the appellant suggested that the proper way to construe this entry would be to hold that this entry would take in every industry which is engaged in the manufacture of products which are manufactured by electrical, mechanical or general engineering process. This construction treats the process of production as the crux of the entry; and if this construction were accepted, the scope of the content of the entry would be very wide indeed. If every product whose production can be referred to one or the other of the processes mentioned in the entry in constructed to fall within its content, then several other entries in the Schedule would, prima facie, appear to be redundant, because this entry itself would be comprehensive enough to take them in. In that case,

Explanation (a) which has been added in 1953 would itself appear to be without any purpose, because most, if not all, of the items introduced by the said clause would be included within the original entry itself. In our opinion, such a wide construction would not be justified, because we are inclined to hold that it is not the process which is important in construing the entry as the character of the activity with which the industry in concerned. That is why we are not prepared to accept the very broad construction of the entry suggested by Mr. Sen.

The proper way to determine the content of this entry appears to us to be to hold that all products which are generally known as electrical engineering products, or mechanical engineering products, or general engineering products, are intended to be covered by the entry, and the object of Sch. I is to include within the scope of the Act every industry which is engaged in the manufacture of electrical engineering products, mechanical engineering products, or general engineering products. It is the character of the products that helps to determine the content of the entry; can the product in question be reasonably described as an electrical engineering product, or a mechanical engineering product, or a general engineering product ? That is the question to ask in every case, and as we have already indicted, in considering the question as to whether the product falls under the category of general engineering product, general engineering should be construed in the limited sense which we have already shown. It may be that in a large majority of cases, the products included within the entry may be produced by electrical or mechanical or general engineering process; but that is not the essence of the matter. The industrial activity which manufactures the three categories of products already enumerated by us, brings the industry within the scope of Sch. I, and therefore, attracts the application of the Act.

If we bear in mind the three broad categories of products, the manufacture of which brings the industry within the scope of Sch. I, it would be easy to appreciate the items enumerated in cl. (a) of the Explanation. Broadly stated, items 1 to 6 can be said to be electrical engineering products; 7 to 10 may be said to be mechanical engineering products and the rest general engineering products. We are free to confess that the inclusion of each one of these items in cl. (a) of the Explanation cannot be easily explained : but, on the whole, it appears to us that the object of the Explanation was to clarify, illustrate and expand the content of the entry in question in order that there should be no doubt as to the classes and categories of industry which were intended to be brought within the purview of the Act. Thus considered, we think that the manufacture of brass utensils can easily be regarded as an activity the object of which is the manufacture of general engineering products. This interpretation is not as narrow as that suggested by Mr. Agarwala, nor as broad as that suggested to Mr. Sen, and, on the whole, it seems to fit in with the scheme of Sch. I considered in the light of the object intended to be achieved by the insertion of the Explanation in 1953 and the subsequent additions made to Sch. I itself. We are, therefore, satisfied that the Letters Patent Bench of the Punjab High Court was in error in holding that the respondent's factory did not fall within the scope of the material provisions of the Act. Incidentally, we may add that before the present controversy arose between the respondent and the appellant, it appears that the respondent had been making deposits towards the Provident Fund as required by the Act.

The result is, the appeal is allowed, the order passed by the Letters Patent Bench is set aside and that of the learned single Judge restored with costs throughout.

Appeal allowed.

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