

The South Gujarat Roofing Tiles Manufacturers Association and Another

Vs

The State of Gujarat and Another

Civil Appeal No. 1947 of 1975

(Y.V. Chandrachud, P.K. Goswami, A.C. Gupta JJ)

20.10.1976

JUDGMENT

GUPTA, J. -

1. The first appellant is an association of the manufacturers of Mangalore pattern roofing tiles in south Gujarat area, the other appellant, a partnership firm, is a member of the association. The question that falls to be determined in this appeal by special leave is whether entry 22 added by the Gujarat Government by notification dated March 27, 1967 to Part I of the Schedule to the Minimum Wages Act, 1948 covers Mangalore pattern roofing tiles. Entry 22 reads as follows :

Employment in Potteries Industry.

Explanation. - For the purpose of this entry potteries industry includes the manufacture of the following articles of pottery, namely :

#(a) Crockery(b) Sanitary appliances and fittings(c) Refractories(d) Jars(e) Electrical accessories(f) Hospital ware(g) Textile accessories(h) Toys(i) Glazed tiles##

We may also refer to certain other provisions of the Minimum Wages Act which provide the context to the question arising for decision. Section 2(g) defines "scheduled employment" as meaning "any employment specified in the Schedule or any process or branch of work forming part of such employment". The schedule is in two parts. Paper II which relates to employment in agriculture only is not relevant for the purpose of this appeal. Section 3 authorises the appropriate Government to fix or revise the minimum rate of wages payable to employees in scheduled employment. Section 5 prescribes the procedure for fixing and revising minimum wages. In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising the rates so fixed, the appropriate Government must either appoint committees to hold necessary enquiries and advise it in this regard, or publish its proposals in the matter for the information of persons likely to be affected thereby. The Government will fix or revise the minimum rates of wages after considering the advice of the committees or the representations received in regard to the proposals published, as the case may be. Section 7 empowers the appropriate Government also to appoint an advisory board for coordinating the work of the committees appointed under Section 5 and advising the Government generally in the matter of fixing and revising minimum rates of wages. Section 19 authorises the Government to appoint Inspectors for the purposes of the Act. Section 22 and 22-A lay down the penalties for paying to an employee any amount less than what is due to him under the Act, or contravening any provision of the Act or any rule or order made thereunder; the punishment may extend to imprisonment for six months with a fine of Rs. 500. Under Section 27 the appropriate

Government after giving by notification in the official gazette not less than three months' notice of its intention to add to either part of the schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed, add such employment to the schedule by another notification and the schedule in its application to the State concerned shall be deemed to be amended accordingly.

2. Before proceeding to consider the rival contentions, we may briefly state the facts in the background. On November 13, 1966 the Gujarat Government issued a notification under Section 27 declaring its intention to add "employment in potteries industry" with an 'explanation' to Part I of the schedule to the Minimum Wages Act, and by notification dated March 27, 1967 the entry was added as entry 22. Later a committee was appointed under Section 5(1) to fix minimum rates of wages in potteries industry. The committee submitted its recommendations sometime in 1968. It appears from the letter dated 10, 1968 addressed to the Government by the advisory committee forwarding its report that the committee had not taken into consideration roofing tiles in the recommendations made. By a notification dated January 8, 1970 the Government fixed the minimum rates of wages in respect of potteries industry on the basis of the committee's report. On March 2, 1970 a proceeding was started against the second appellant on the complaint of an Inspector alleging that the partners of the firm had failed to produce for his examination the muster roll and the wages register. The appellant was acquitted by the magistrate who held that entry 22 did not cover roofing tiles and as such the Act was not applicable to the industry of the accused. The State preferred an appeal to the High Court against the order of acquittal. The High Court affirmed the acquittal on merits but observed that the manufacture of roofing tiles was included in entry 22. In 1974 the Gujarat Government appointed another committee under Section 5 of the Act to revise the minimum wages in potteries industry. This time the committee treated the manufacture of roofing tiles as included in item 22 and sent its report to the Government. On May 12, 1975 the State Government issued a notification accepting the recommendations of the committee and gave effect to the revised rates from the next day, i.e. May 13, 1975. The appellants filed a writ petition in the Gujarat High Court challenging the validity of the notification dated May 12, 1975. By its order dated October 9, 1975 the High Court dismissed the writ petition on the view that "Mangalore pattern roofing tiles manufactured would be covered within the entry". This is how the scope of entry 22 arises for consideration in this appeal.

3. The question turns on a true construction of the explanation to entry 22 which says that for the purpose of this entry potteries industry "includes" the manufacture of the nine "articles of pottery" specified therein. Pottery in a wide sense will take in all objects that are made from clay and hardened by fire, from crude earthen pots to delicate porcelain. Mr. Patel appearing for the respondent, State of Gujarat, contends that the explanation indicates that potteries industry in entry 22 is intended to cover all possible articles of pottery including Mangalore pattern roofing tiles. Referring the well-know use of the word "include" in interpretation clauses to extend the meaning of words and phrases occurring in the body of the statute, Mr. Patel submits that the explanation, when it says that potteries industry 'includes' the nine named objects, what is ment is that it includes not only these objects but other articles of pottery as well. It is true that 'includes' is generally used as a word of extension, but the meaning of a word or phrase is extended when it is said to indicate things that would not properly fall within its ordinary connotation. We may refer to the oftenquoted observation of Lord Watson in *Dilworth v. Commissioner of Stamps* (1899 AC 99, 105-106 : 79 LT 473 : 15 TLR 61), that when the word 'includes' is used in interpretation clauses to enlarge the meaning of words or phrases in the statute these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import but also those things which the interpretation clause declares that they shall include.

Thus where 'includes' has an extending force, it adds to the word or phrase a meaning which does not naturally belong to it. It is difficult to agree that 'includes' as used in the explanation to entry 22 has that extending force. The explanation says that for the purpose of entry 22, potteries industry includes the manufacture of the nine "articles of pottery" specified in the explanation. If the objects specified are also "articles of pottery", then these objects are already comprised in the expression "potteries industry". It hardly makes any sense to say that potteries industry includes the manufacture of articles of pottery, if the intention was to enlarge the meaning of potteries industry in any way.

4. We are also unable to agree with Mr. Patel that the articles specified in the explanation may have been mentioned out of abundant caution to emphasize the comprehensive character of the entry, to indicate that all varieties of pottery are included therein. This argument, though more plausible, does not also seem acceptable. It is possible that one might have doubts whether things like refractories or electrical or textile accessories would pass under the description pottery as that word is used in common parlance, but the explanation also mentions crockery and toys regarding which there could be hardly any doubt. The inclusion in the list of objects which are well-recognised articles of pottery makes it plain that the explanation was added to the entry not by way of abundant caution.

5. The contention of Mr. Tarkunde for the appellants is that the articles mentioned in the explanation were intended to be exhaustive of the objects covered by entry 22. According to Mr. Tarkunde if the legislature wanted to bring within the entry all possible articles of pottery then there was hardly any point in mentioning only a few of them by way of explanation. To this Mr. Patel's reply is that it is well-known that where the legislature wants to exhaust the significance of the term defined, it uses the word 'means' or the expression 'means and includes', and that if the intention was to make the list exhaustive, the legislature would not have used the word 'includes' only. We do not think there could be any inflexible rule that the word 'include' should be read always as a word of extension without reference to the context. Take for instance entry 19 in the schedule which also has an explanation containing the word 'includes'. Entry 19 is as follows :

Employment in any tobacco processing establishment, not covered under entry 3.

Explanation. - For the purpose of this entry, the expression "processing" includes packing or unpacking, breaking up, sieving, threshing, mixing, grading, drying, curing or otherwise treating the tobacco (including tobacco leaves and stems) in any manner.

Entry 3 to which entry 19 refers reads :

Employment in any tobacco (including bidi making) manufactory.

It is clear from the explanation to entry 19 that there could be no other way or manner of "processing" besides what is stated as included in that expression. Though 'include' is generally used in interpretation clauses as a word of enlargement, in some cases the context might suggest a different intention. Pottery is an expression of very wide import, embracing all objects made of clay and hardened by heat. If it had been the legislature's intention to bring within the entry all possible articles of pottery, it was quite unnecessary to an explanation. We have found that the explanation could not possibly have been introduced to extend the meaning of potteries industry or the articles listed therein added *ex abundantia cautela*. It seems to us therefore that the legislature did not intend everything that the potteries industry turns out to be covered by the entry. What then could be the

purpose of the explanation. The explanation says that, for the purpose of entry 22, potteries industry 'includes' manufacture of the nine articles of pottery named therein. It seems to us that the word 'includes' has been used here in the sense of 'means'; this is the only construction that the word can bear in the context. In that sense it is not a word of extension, but limitation; it is exhaustive of the meaning which must be given to potteries industry for the purpose of entry 22. The use the word 'includes' in the restrictive sense is not unknown. The observation of Lord Watson in *Dilworth v. Commissioner of Stamps*, which is usually referred to on the use of 'include' as a word of extension, is followed by these lines :

But the word 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include', and in that case it may afford an exhaustive explanation of the meaning which, for the purpose of the Act, must invariably be attached to these words or expressions.

It must therefore be held that the manufacture of Mangalore pattern roofing tiles is outside the purview of entry 22.

6. The appeal is allowed with costs against respondent No. 1. The notification dated May 12, 1975 in so far as it applies to the Mangalore pattern roofing tiles is quashed. The members of the first appellant are permitted to withdraw any sum they had deposited in the Gujarat High Court pursuant to the order of this Court made on April 2, 1976.

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