M/s P.M. Patel and Sons and Others

Vs

Union of India and Others

Writ Petitions Nos. 3605 to 3609, 1593-96, 2207-27, 4286-92, 3775-80, 3790-94, 4286-99, 4309, 4440-42, 4527 of 1978, 891 of 1979 and 54-65 of 1980 and Special Leave Petitions Nos. 1365 and 1391 of 1979

(V. D. Tulzapurkar, Sabyasachi Mukharji JJ)

25.09.1985

JUDGMENT

PATHAK, J. -

1. This and the connected cases raise the important question whether the workers employed at their homes in the manufacture of beedis are entitled to the benefit of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 and the Schemes framed thereunder.

2. The question for consideration is surrounded by a welter of facts, many of which are disputed through affidavits filed on the record, and it has not been an easy task to pick our way through them to arrive at an intelligent and coherent picture for the purpose of deciding these cases. We propose to take Writ Petitions 3605 to 3609 of 1978 filed by Messrs. P.M. Patel & Sons and others as the leading group of cases, because the principal arguments on the several points arising in these cases were argued by learned counsel in those writ petitions.

3. The petitioners are engaged in the manufacture and sale of beedis. The labour employed in the manufacture of beedis consists of different categories. At the factory, which constitutes the formal establishment, there is an administrative and clerical staff, accountants, packers, checkers and bhattimen. The work of rolling the beedis itself is done by one or the other of different categories of workers. The work may be entrusted by the manufacturers directly to workers who prepare the beedis at home after obtaining a supply of the raw material consisting of tobacco, beedi leaves and thread from the manufacturers. Another category consists of workers employed by the manufactures through contractors, and the manufacturers pass on the raw material to such workers for rolling the beedis in their dwelling houses, and there is, in a sense, a direct relationship between the manufacturers and those workers. The third category of home workers are those to whom the work is entrusted by independent contractors who treat the workers as their own employees and get the work done by them either at their own premises or in the dwelling homes of the workers in order to fulfil and complete contracts entered into with the manufacturers for the supply of the finished product from the raw material supplied by the manufacturers to the contractors. According to the manufacturers the home workers attend at the factories within specified hours every day and collect the raw material for taking to their homes for rolling beedis. While that is true of home workers employed directly by the manufacturers or who have been placed in employment through contractors with the manufacturer, in the case of home workers employed by independent contractors that may not be so. In the case of home workers who hold a direct relationship with the manufacturers, the rolled beedis are brought by the home workers to the factory and the beedis

which conform to the standards envisaged by the manufacturers are accepted while those which do not are rejected. The acceptance or rejection is effected in the presence of the home worker to whom the work was entrusted. The staff at the factory maintains registers in which regular entries are made of the raw material supplied to home workers, and of the rolled beedis which are delivered by them at the factory. The payment of wages to such home workers may be made directly or distributed through the contractors engaged by the manufacturers for engaging them. In the case of contracts between the manufacturers and independent contractors, the manufactured product is collected by the contractors from their home workers and delivered to the manufacturer. It is evident that the manufacturer is concerned only with payment under the contract to the contractors, and the payment of wages to the home workers is a matter between the contractors and the home workers.

4. The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the "Employees' Provident Funds Act") provides for the institution of provident funds for employees in factories and other establishments. Originally, it did not extend to the beedi industry. For the first time, by Notification No. GSR 660 dated May 17, 1977 made by the Government of India under sub-section (1) of Section 4 of that Act, the beedi industry was added to Schedule I of the Act with effect from May 31, 1977. This was followed by Notification No. GSR 677 dated May 23, 1977 issued by the Central Government amending clause (b) of sub-paragraph (3) of paragraph 1 of the Employees' Provident Funds Scheme, 1952 (hereinafter referred to as the 'Scheme') so as to bring the beedi industry within the province of that Scheme with effect from May 31, 1977. Closely thereafter, the Central Government Provident Funds Commissioner wrote to all the Regional Provident Funds Commissioners about the extension of the Scheme to the beedi industry with effect from June 1, 1977. By these writ petitions the petitioners challenge the constitutional validity of the notifications dated May 17, 1977 and May 23, 1977 and the proceedings taken by the respondents against the petitioners for the purpose of enforcing the Employees' Provident Funds Act and the Scheme so far as they relate to home workers. The petitioners also seek a corresponding declaration that the Employees' Deposit-Linked Insurance Scheme and the Employees' Family Pension Scheme framed under the Employees' Provident Funds Act are uneforceable in respect of the beedi industry.

5. The principal grounds on which the petitioners challenge the impugned notifications may be shortly enumerated :

> (1) While the Employees' Provident Funds Act and the Scheme may be applicable to the workers employed in the factory itself, they cannot be extended to home workers because there is no relationship of employer and employee between the manufacturers and the home workers. It is submitted that a home worker cannot be described as an 'employee' within the definition set forth in clause (f) of Section 2 of the Employees' Provident Funds Act.
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> (2) The Employees' Provident Funds Act and the Scheme cannot be applied to home workers in the beedi industry inasmuch as they are subject to no retirement age and there is no power in the manufacturer to retire such home workers on the ground of superannuation. Having regard to the peculiar features of the arrangements under which home workers manufacture beedis, it is not reasonably possible to apply and implement the provisions of the Employees' Provident Funds Act and the Scheme in relation to them.
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> (3) The extension of the Employees' Provident Funds Act and the Scheme to the beedi industry constitutes an unreasonable restriction on the fundamental rights of the

petitioners guaranteed by sub-clause (g) of clause (1) of Article 19 of the Constitution and also violates Articles 14 and 31 of the Constitution inasmuch as the financial burden occasioned thereby is so excessive that it is obvious that the Central Government did not apply its mind to the paying capacity of the industry. Moreover, the burden imposed on the industry bears no nexus to the object of the statute, namely, to provide post-retirement benefits.

6. Having considered the material on the record before us in this leading group of writ petitions if appears that some of the home workers have been working regularly for several years exclusively for a single manufacturer, and depend for their livelihood on this work, that they attend the factory during specified hours to secure raw material for making beedis at home and for delivering the manufactured beedis to the staff at the factory, that the quantity of leaves and tobacco supplied is fixed by the manufacturer, and that registers of the raw material and of payment of wages are maintained at the factory, that a record is maintained of the manufactured beedis received from the home workers and the quantity rejected, and that a log-book or a wage card is issued to the home workers.

7. In order to organise the conditions in which the beedi workers worked and to give them greater security of employment Parliament enacted the Beedi and Cigar Workers (Conditions of Employment) Act, 1966 and the State Governments framed rules under that statute. The said Act applied to home workers, as is clear from the definition of 'employee' in clause (f) of Section 2 of that Act and provides for the application of certain labour laws.

8. There is no dispute that pursuant to the impugned notification dated May 17, 1977 the beedi industry has been brought within the scope of the Employees' Provident Funds Act and that the impugned notification dated May 23, 1977 has made the Scheme applicable to the beedi industry. Clause (a) of sub-section (3) of Section 1 of the Employees' Provident Funds Act applies that Act to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed. Admittedly, the factory belonging to the manufacturer is, therefore, drawn within the compass of the Employees' Provident Funds Act and the Scheme. It is also admitted by the petitioners that the workers employed within the factory premises would be covered by the Act and the Scheme. The real question is whether the home workers are entitled to that benefit. Clause (f) of Section 2 of that Act defines an 'employee' to mean "any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, and includes any person employed by or through a contractor in or in connection with the work of the establishment". It will be noticed that the terms of the definition are wide. They include not only persons employed directly by the employer but also persons employed through a contractor. Moreover, they include not only persons employed in the factory but also persons employed in connection with the work of the factory. It seems to us that a home worker, by virtue of the fact that he rolls beedis, is involved in an activity connected with the work of the factory. We are unable to accept the narrow construction sought by the petitioners that the words "in connection with" in the definition of 'employee' must be confined to work performed in the factory itself as a part of the total process of the manufacture.

9. Now to be an employee it is necessary that the relationship of master and servant should exist with the employer. The principal question is whether such a relationship exists between the manufacturer and a home worker. Several cases were placed before us by the parties in this connection, and reference may be made to them. In Chintaman Rao v. State of M.P. (1958 SCR

1340 : AIR 1958 SC 388 : (1958) 2 LLJ 252) this Court held that independent contractors, known as Sattedars, with whom a manufacturer contracted for the supply of beedis could not be described as workers within the definition of sub-section (1) of Section 2 of the Factories Act, nor could their coolies, because the Sattedars undertook to supply the beedis by manufacturing them in their own factories or by entrusting the work to third parties. The Sattedars were not subject to a right of control by the manufacturer in respect of the manner in which the work was to be done. The Court applied the principle that the test for determining the relationship of master and servant lay in the existence of the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant was to do but also the manner in which he should do it. In passing, the Court referred to home workers employed by the Sattedars for making beedis in their respective home, and the Court observed that they could not be regarded as persons employed by the manufacturer directly or through any agency. Thereafter, in Birdhichand Sharma v. First Civil Judge, Nagpur ((1961) 3 SCR 161 : AIR 1961 SC 644 : (1961) 2 LLJ 86) this Court considered a case where the manufacturer had employed workmen in his beedi factory and who were at liberty to work at their homes, and the Court held that the conditions in which they worked made them 'workers' within the meaning of clause (1) of Section 2 of the Factories Act. The significant feature of the judgment lies in the observation of the Court that in the case of the beedi industry the right of rejection of the beedis if they did not come up to the proper standard was evidence of the supervision and control exercised by the manufacturer. Noting that the nature and extent of supervision and control varied in different industries, the Court said :

> Taking the nature of the work in the present case it can hardly be said that there must be supervision all the time when biris are being prepared and unless there is such supervision there can be no direction as to the manner of work. In the present case the operation being a simple one, the control of the manner in which the work is done is exercised at the end of the day, when biris are ready, by the method of rejecting those which do not come up to the proper standard. In such a case it is the right to supervise and not so much the mode in which it is exercised which is important.

Reference may be made next to Shankar Balaji Waje v. State of Maharashtra (1962 Supp 1 SCR 249 : AIR 1962 SC 517 : (1962) 1 LLJ 119). The majority view taken on the particular facts of that case was that the workers were not subject to the control and supervision of the manufacturer. The learned Judges constituting the majority appear to have overlooked the observations in Birdhichand Sharma ((1961) 3 SCR 161 : AIR 1961 SC 644 : (1961) 2 LLJ 86) that the right of rejection of the beedis prepared by the workers in itself constituted a sufficient element of supervision and control. Our attention was also invited by the petitioners to Orissa Cement Ltd. v. Union of India (1962 Supp 3 SCR 837 : AIR 1962 SC 1402 : (1962) 1 LLJ 400) but this is a case where the question was whether a notification was valid which made the employer liable to pay into the provident fund, constituted under the Provident Funds Act, 1952, the share of workers who were in fact the employees of independent contractors. The Court drew a careful distinction between labour employed by the manufacturer and that employed by an independent contractor. Most of these cases were considered thereafter by this Court in D.C. Dewan Mohideen Sahib and Sons v. Industrial Tribunal, Madras ((1964) 7 SCR 646 : AIR 1966 SC 370 : (1964) 2 LLJ 633), and while reviewing the law the Court rejected the plea of the manufacturers against the application of the Industrial Disputes Act on the ground that the workers ostensibly employed by the "so-called contractors" were in fact the workmen of the appellants who had employed them through their agents or servants. It may be pointed out, however, that the Court reiterated the view expressed in Birdhichand Sharma case ((1961) 3 SCR 161 : AIR 1961 SC 644 : (1961) 2 LLJ 86) that the rolling

of beedis was work of such a simple nature that supervision was not required all the time and it was sufficient if supervision was exercised at the end of the day through the system of rejecting defective beedis. The law took a major shift in Silver Jubilee Tailoring House v. Chief Inspector of Shops and Establishments ((1974) 1 SCR 747 : (1974) 3 SCC 498 : 1974 SCC (L&S) 31 : AIR 1974 SC 37) as to the criteria which determined the relationship of master and servant. Mathew, J., who spoke for the Court, reviewed the earlier decisions of this Court as well as some of the decisions rendered in England, and pointed out that the test of control as traditionally formulated was no longer treated as an exclusive test. He observed : (SCC pp. 507-08, paras 28 & 29)

It is exceedingly doubtful today whether the search for a formula in the nature of a single test to tell a contract of service from a contract for service will serve any useful purpose. The most that profitably can be done is to examine all the factors that have been referred to in the cases on the topic. Clearly, not all of these factors would be relevant in all these cases or have the same weight in all cases. It is equally clear that no magic formula can be propounded, which factors should in any case be treated as determining ones. The plain fact is that in a large number of cases, the court can only perform a balancing operation weighing up the factors which point in one direction and balancing them against those pointing in the opposite direction.

During the last two decades the emphasis in the field has shifted and no longer rests so strongly upon the question of control. Control is obviously an important factor and in many cases it may still be the decisive factor. But it is wrong to say that in every case it is decisive. It is now no more than a factor, although an important one.

He was dealing with a case where the workers who were tailors went to tailoring shops and were given work as and when work was available, and when cloth was given for stitching to a worker he was told how he should stitch it, and if the instructions were not carried out the work was rejected and he was asked to re-stitch it. Some of the workers were allowed to take the clothes home for stitching. The Court held that there was a relationship of master and servant because of the right in the employer to reject the work done, and it reiterated that "the degree of control and supervision would be different in different types of work". In the present cases, the right of rejection can similarly be said to work". In the present cases, the right of rejection can similarly be said to represent the control and supervision exercised by the manufacturer over the beedis prepared by the home workers. Quite obviously, while in the Silver Jubilee Tailoring House case ((1974) 1 SCR 747 : (1974) 3 SCC 498 : 1974 SCC (L&S) 31 : AIR 1974 SC 37) it was possible for the employer to direct re-stitching of the garment, no such direction can be reasonably envisaged in the case of substandard beedis. A Constitution Bench of this Court had occasion to consider the law in Mangalore Ganesh Beedi Works v. Union of India ((1974) 3 SCR 221 : (1974) 4 SCC 43 : 1974 SCC (L&S) 205 : AIR 1974 SC 1832) which questioned the validity of the Beedi and Cigar Workers (Conditions of Employment) Act, 1966. The Court adopted the test of rejection of defective beedis for determining whether the beedi workers were the employees of the manufacturer or the independent contractors. The Court observed : (SCC p. 62, para 35)

...the manufacturers or trade mark holders have liability in respect of workers who are directly employed by them or who are employed by them though contractors. Workers at the industrial premises do not present any problem. The manufacturer or trade mark holder will observe all the provisions of the Act by reason by employing such labour in the industrial premises. When the manufacturer engages labour through the contractor the labour is engaged on behalf of the manufacturer, and the latter has therefore liability to such contract labour. It is only when the contractor engages labour for or on his own behalf and supplies the finished products to the

manufacturer that he will be the principal employer in relation to such labour and the manufacturer will not be responsible for implementing the provisions of the Act with regard to such labour employed by the contractor. If the right of rejection rests with the manufacturer of trade mark holder, in such a case the contractor who will prepare beedis through the contract labour will find it difficult to establish that he is the independent contractor.

10. In the context of the conditions and the circumstances set out earlier in which the home workers of a single manufacturer go about their work, including the receiving of raw material, rolling the beedis at home and delivering them to the manufacturer subject to the right of rejection there is sufficient evidence of the requisite degree of control and supervision for establishing the relationship of master and servant between the manufacturer and the home worker. It must be remembered that the work of rolling beedis is not of a sophisticated nature, requiring control and supervision at the time when the work is done. It is a simple operation which, as practice has shown, has been performed satisfactorily by thousands of illiterate workers. It is a task which can be performed by young and old, men and women, with equal facility and it does not require a high order of skill. In the circumstances, the right of rejection can constitution in itself an effective degree of supervision and control. We may point out that there is evidence to show that the rejection takes place in the presence of the home worker. That factor, however, plays a merely supportive role in determining the existence of the relationship of the master and servant. The petitioners point out that there is no element of personal service in beedi rolling and that it is open to a home worker to get the work done by one or the other member of his family at home. The element of personal service, it seems to us, is of little significance when the test of control and supervision lies in the right of rejection.

11. In our opinion, the home workers are 'employees' within the definition contained in clause (f) of Section 2 of the Employees' Provident Funds Act.

12. The next question is whether having regard to the peculiar features of the home workers' system of employment the provisions of the Employees' Provident Funds Act and Scheme can be applied on their terms to home workers. The principal contention in this connection is that no retirement age is fixed in the case of home workers and, therefore, the Scheme cannot be implemented in respect of them. Clause (a) of sub-para (1) of para 69 of the Employees' Provident Funds Scheme provides that "a member may withdraw the full amount standing to his credit in the Fund on retirement from service after attaining the age of 55 years". It seems to us that the law does not envisage the fixation of a retirement age before that provision can apply. A worker is entitled to withdraw the amount standing to his credit in the Fund if he retires at any time after attaining the age of 55 years. There is no reference to any predetermined age of superannuation. The expression 'retirement' does not, in the absence of anything more, necessarily imply a fixed age for leaving service. It has a wide connotation. In a context where no age of superannuation has been fixed, the expression must take on its ordinary meaning of the normal cessation of service by an act of the employer or of the worker. That a person may 'retire' even before reaching any specified age is exemplified by clause (b) of sub-para (1) of para 69 which speaks of "retirement on account of permanent and total incapacity for work due to bodily or mental infirmity". We may point out that in Delhi Cloth & General Mills Co. Ltd. v. Workmen ((1969) 2 SCR 307 : AIR 1970 SC 919 : (1969) 2 LLJ 755) this Court has held that a gratuity scheme could be effective even if no age of superannuation was fixed. Learned counsel for the petitioners has referred us to Regional Provident Fund Commissioner, A.P. v. T.S. Hariharan (1971 Supp SCR 305 : (1971) 2 SCC 68 : AIR 1971 SC 1519 : (1971) 1 LLJ 416) where this Court observed in respect of the Employees' Provident Funds Act : (SCC p. 71, para 5)

The Act was brought on the statute book for providing for the institution of a provident fund for the employees in factories and other establishment. The basic purpose of providing for provident funds appears to be to make provision for the future of the industrial worker after his retirement or for his dependants in case of his early death. To achieve this ultimate object the Act is designed to cultivate among the workers a spirit of saving something regularly, and also to encourage stabilisation of a steady labour force in the industrial centres.

and it is pointed out that the Court rejected the plea that the Act could apply to short term employees also. The case, in our opinion, is distinguishable because the workers there were taken in employment on account of an emergency and for a very short period necessitated by an abnormal contingency. That is not the position here. In the present cases, the employment was entered into in the regular course of business. We hold that there is no substance in the contention of the petitioners that the provisions of the Employees' Provident Funds Act and the Scheme cannot be applied at all to home workers. There is no reason why the provisions of the Act and Scheme should not apply where their terms permit such application.

13. We may also point out that the Beedi and Cigars Workers (Conditions of Employment) Act, 1966 and the Rules made thereunder by the Maharashtra Government have been framed specifically on the basis that in certain matters home workers enjoy a status akin to the general category of workers. Not only do these provisions apply to "industrial premises" as defined under clause (i) of Section 2 of that Act but also to an 'establishment' as defined in clause (h) of Section 2 of the Act. There are several provisions which apply to employees in establishments and are not confined to industrial premises. An 'establishment', by the terms of its definition is wide enough to include the dwelling house of a home worker. A home worker would be entitled, therefore, to annual leave with wages and wages during leave period among other things. In the Maharashtra Beedi and Cigar Workers (Conditions of Employment) Rules, 1968 there is specific provision in respect of the payment of wages to home workers. The Rules relating to the issue of raw material by the employer would extend to home workers also.

14. Accordingly, we reject the contention that the provisions of the Employees' Provident Funds Act and the Schemes cannot be implemented at all in respect of the beedi industry.

15. The last contention of learned counsel for the petitioners is that the financial burden which will be suffered by the beedi industry in consequence of the Employees' Provident Funds Act and the Schemes envisaged by it being extended to the industry will be beyond the financial capacity of the beedi industry and will severely handicap it in competing with the cigarette manufacturing industry. There is no nexus, it is said, between the burden imposed on the industry and the object of the statute of providing post-retirement benefits. It is urged that this aspect did not engage the attention of the Central Government when the impugned notifications were promulgated. On the basis of this submission the petitioners contend that their fundamental rights under Article 14, sub-clause (g) of clause (1) of Article 19 and Article 31 of the Constitution have been violated. We have carefully examined the record before us and we are unable to find adequate material in support of this submission. We need say nothing more. The contention is rejected.

16. In the result, we see no force in these writ petitions, the connected writ petitions and the connected special leave petitions, and they are all accordingly dismissed. There is no order as to costs.

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