

Cemindia Co. Ltd

Vs

Bachubhai N. Raval

Civil Appeal No. 3029 of 1986

(E. S. Venkataramiah, K. N. Singh JJ)

04.08.1987

JUDGMENT

VENKATARAMIAH, J. -

1. This appeal by special leave is filed against the judgment dated July 8, 1985 in Miscellaneous Petition No. 488 of 1968 on the file of the High Court of Bombay holding that the appellant was bound to comply with the provisions of the Employees' Provident Funds and Miscellaneous provisions Act, 1952 (hereinafter referred to as 'the Act') and the scheme thereunder and to make contributions in respect of its employees working in its workshop at Antop Hill, Wadala in Bombay.

2. The appellant is a company which is carrying on business as "engineers and engineering contractors" and is engaged in building and construction industry. By the Notification bearing No. GSR 1398 published in the Gazette of India dated September 26, 1964 (Part II), Section 3(i), page 1546] issued under Section 1 (3)(b) of the Act, the Act was extended to establishments of engineers and engineering contractors not being exclusively engaged in building and construction industry. By the notice dated October 11, 1967 the Regional Provident Fund commissioner of Bombay called upon the appellant-company to show cause why it should not be directed to comply with the Act in respect of the workmen employed at its workshop at Antop Hill, Wadala in Bombay. The appellant submitted its representation on October 13, 1967 claiming that the Act was not applicable to it since the appellant was exclusively engaged in building and construction industry and the workshop in question had been set up only for the purpose of carrying out work ancillary to the building and construction industry in which it was engaged and that the appellant was not carrying on any work for other at the said workshop. The Regional Provident Fund Commissioner negatived the contention of the appellant and directed that the appellant should make contributions with effect from December 1, 1963 in accordance with the scheme framed under the Act in respect of the workmen employed at its workshop who were just 70 or 80 in number while the total working force of the appellant in its building and construction industry was in the order of 2000. The appellant had established another workshop for its own purpose at Calcutta. On being served with a similar demand it had filed a writ petition in Writ Petition No. 614 of 1967 in the Calcutta High Court contending that the Act did not apply to such and establishment. In view of the above writ petition which was pending on the file of the Calcutta High Court, the appellant represented to the Regional Provident Fund Commissioner, Bombay to stay further action under the Act till the disposal of the writ petition filed in the Calcutta High Court. The Regional Provident Fund Commissioner rejected the said request of the appellant and directed it to comply with the demand already made in respect of the workshop at Bombay. After some correspondence, the appellant filed Miscellaneous Petition No. 488 of 1968 on the file of the High Court of Bombay, out of which this appeal by special leave

arises, questioning the validity of the notice issued to it calling upon it to comply with the provisions of the Act and the scheme made thereunder in respect of its workshop at Bombay.

3. It should be stated at this stage that the writ petition filed before the Calcutta High Court was allowed and the notice issued to the appellant to comply with the Act and the scheme made thereunder in respect of the workshop at Calcutta was quashed by the judgment of the High Court dated January 6, 1970 and that judgment has become final. When the writ petition, out of which this appeal arises was taken up for hearing by the High Court of Bombay, it was brought to the notice of the High Court of Bombay that a similar notice issued in respect of the workshop at Calcutta had been quashed and a similar order should be passed on the petition before the Bombay High Court also. The High Court of Bombay declined to follow the decision of the Calcutta High Court and proceeded to pass the judgment upholding the demand made by the Regional Provident Fund Commissioner. Aggrieved by the decision of the High Court of Bombay, the appellant had filed this appeal by special leave.

4. The following basic facts are not in dispute in this appeal :

(i) that the appellant is engaged in building and construction industry and the appellant does not carry on any other business or profession;

(ii) that the workshop in Bombay is established only for the purpose of maintaining and repairing the equipment used by the appellant in its building and construction industry; and

(iii) that the workshop in question does not undertake any job other than maintaining and repairing the equipment of the appellant.

5. The High Court in the course of its common judgment delivered in two writ petitions one filed by the appellant out of which this appeal arises and another writ petition filed by a company called Patel Engineering Co. Ltd., has observed thus :

In our view, on their own showing, the petitioner-companies are not only engaged in building and construction industry, but are also engaged in running workshops for maintaining and repairing equipment such as piling machines, drills, air compressor pumps, concrete miners and allied tools. In each of these workshops twenty or more persons are employed. The said workshops by themselves are not ones engaged in building and construction industry. Though it is true that these workshops do not undertake any job other than maintaining and repairing the equipment of the petitioner-companies, still these workshops are not engaged in building and construction industry. They are only aiding and facilitating the petitioner-companies which are carrying on building and construction industry. No doubt they do not undertake any job of maintaining and repairing equipment which does not belong to the petitioner-companies. Nonetheless these workshops themselves constitute establishment which employ more than twenty persons to do jobs which do not constitute building and construction industry. The petitioner-companies are thus engaged not only in building and construction industry but also running either respective workshops. The said workshops themselves thus constitute establishments of engineers and engineering contractors. The workshops are not engaged in building and construction industry at all. That is sufficient to hold that the petitioner-companies are engineers and engineering contractors which are not 'exclusively engaged in building and construction industry'. Once it is shown that they are engineers and engineering contractors not being exclusively engaged in building and construction industry, by

virtue of the notification of the Central Government under clause (b) of sub-section (3) of Section 1 of the Act, the Act applies to them.

6. The notification issued under Section 1 (3)(b) of the Act makes the Act applicable to establishments of "engineers and engineering contractors, not being exclusively engaged in building and construction industry". It follows that any establishment carrying on the business of engineers and engineering contractors which is exclusively engaged in building and construction industry does not fall within the scope of the notification and hence the Act would not be applicable to such an establishment. Any such establishment which carries on an activity which forms part of the building and construction industry should naturally be exempted from the operation of the Act because the expression 'building and construction industry' refers collective to all activities which have to be performed in connection with the building and construction industry. In order to discharge effectively its functions as engineers and engineering contractors engaged in building and construction industry, an establishment has to maintain a workshop or workshops where the work of smithy, welding, cutting, carpentry etc. are carried on. Without these operations it is not possible for any person to carry on satisfactorily the work of building and construction industry. The reason for taking this view is obvious. An establishment exclusively engaged in running a hospital does not cease to be an establishment exclusively carrying on the said business merely because it sets up a pharmacy section for preparing and compounding medicines to be used exclusively for the patients at its hospital. Similarly an establishment which is exclusively engaged in providing shipping transport facilities does not cease to be an establishment exclusively carrying on the said business merely because it sets up an onshore workshop for effecting repairs exclusively to its own ships. Such illustrations may be multiplied. The point which is made out by these illustrations is that where an establishment is engaged exclusively in carrying on a particular type of business by setting up any place of work with a view to carrying on the work of repairs etc. to the tools, equipment, vehicles etc. used in its business or to carry on any other activity which is essential for its business effectively and which is not used to carry on the work for the benefit of any third party but utilized exclusively for the business of the establishment, such establishment does not cease to carry on exclusively the business in which it is engaged. It cannot also be said that the establishment has commenced to carry on another industry by the setting up of such a place of work.

7. In the instant case there is no dispute that the work that is being carried on at the appellant's workshop at Bombay is work of maintaining and repairing of the equipment belonging to the appellant only. The appellant is not earning any income or profit by carrying on the work of any other establishment at the said workshops. In the above situation, we find it difficult to agree with the High Court that the workshop establishment by the appellant at Bombay is an independent establishment of engineers and engineering contractors which is not exclusively engaged in building and construction industry. The High Court was in error in treating the workshop in question as a separate unit of the business of the appellant forming a separate establishment for purposes of determining whether the Act is applicable to the appellant or not. It should have taken all the business operations carried on by the appellant in their totality into consideration in order to ascertain whether the appellant is engaged exclusively in building and construction industry or not. If the High Court had approached the case from the above angle it would not have committed the error of declaring the workshop at Bombay alone as an establishment governed by the Act. By splitting up the several operations carried on by the appellant in connection with the building and construction industry into separate units and thereby treating the workshop alone as a separate establishment, the High Court misled itself into thinking that the workshop of the appellant at Bombay was governed by the Act. We agree with the decision of the Calcutta High Court that such a workshop in which works connected with the business of building and construction industry were

being carried on in connection with such business of the owner cannot be construed as a separate establishment for purposes of the Act. We therefore, set aside the judgment of the High Court and quash the impugned notice issued by the Regional Provident Fund Commissioner, Bombay, calling upon the appellant to comply with the provisions of the Act and the scheme made thereunder in respect of the workmen employed at its workshop at Bombay.

8. The appeal is accordingly allowed. There is no order as to costs.

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