ALLAHABAD HIGH COURT

Regional Provident Fund Commissioner, U.P

Vs.

Great Eastern Electroplator Ltd

Special Appeal No. 197 of 1956

(O.H. Mootham, C.J. and Raghubar Dayal, J.)

28.08.1958

JUDGMENT

O.H. Mootham, C.J.

1. This is an appeal from an order of Mr. Justice Mehrotra dated 23-4-1956.

2. The respondent is a Company incorporated under the Indian Companies Act which carries on business in Allahabad. The Employees Provident Funds Act (hereinafter called 'the Act') came into force on 4-8-1952, and later in that year the Central Government framed a Provident Fund Scheme under Section 5 thereof. Thereafter the appellant, who is the Regional Provident Fund Commissioner, Uttar Pradesh, called upon the respondent Company to make payment of the contributions and administrative charges for which provision is made if the Act, with effect from November of that year. The respondent Company contended that the provisions of the Act did not apply to its factory and filed a writ petition in this Court, No. 478 of 1853. Thereafter negotiations took place between the appellant and the respondent Company as a result of which the writ petition was not pressed and was dismissed in December, 1954. The tentative arrangement arrived at between the parties however fell through, and it appears that the appellant renewed his original demand. The respondent Company thereupon filed a second petition in which it contended that the Act had no application to its factory and sought an order from this Court restraining the appellant from taking any steps against it under the provisions of the Act.
The learned Judge was of opinion that the respondent Company's contentions were well founded, and he accordingly allowed the petition and granted the relief sought. From that order the appellant now appeals.

3. Now Sub-Section (3) of Section 1 of the Act, as amended by the Employees Provident Funds (Amendment) Act, 1953 enacts that, subject to the provisions contained in Section 16, the Act shall apply

> "in the first instance to all factories engaged in any industry specified in Schedule I and 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."

The term 'industry' is defined in Section 2, Clause (i) as meaning inter alia, any industry specified in Schedule I to the Act; and Section 16 provides that the Act shall not apply to what is described as an infant factory, that is to say to a factory "established whether before or after the commencement of this Act, unless three years have elapsed from its establishment." It is not in dispute that the respondent Company's premises constitute a factory within the meaning of the Act. The learned Judge was of opinion that the Act had no application to that factory for three reasons : firstly, that the factory was not engaged in any industry specified in Sch. I to the Act; secondly, that if it were engaged in such industry less than fifty persons were employed in such industry; and thirdly, that the factory was an infant establishment within the meaning of Section 16. The correctness of each of these findings is assailed by the appellant.

4. It appears that the Company was established for the purpose of "metal galvanizing, turning, lacquer painting, plating and enameling", that the installation of the requisite machinery and plant was not completed until September 1950 and that in October 1950 it commenced the business of electroplating goods brought to it on a job basis.
Subsequently in January 1951 it began to produce metal, thals, katoris, trays, tumblers, tea-sets and the like. It is said that the production of these articles proved a failure and was accordingly stopped in July 1952, and that from August 1952 the Company started to produce metal cases for electric torches, a business which it has subsequently carried on with some success. The learned Judge was of opinion that by manufacturing such torch cases the respondent Company's factory was not engaged in the manufacture of Electrical, mechanical or general engineering products' within the meaning of Schedule I. The learned Judge observed :

> "From the nature of the articles mentioned in the amended Schedule, it will be clear that the scope of the words "electrical and mechanical products" to not to cover all products which are made by means of mechanical or electrical process but it means products which are utilized for purposes of producing electricity or implements and other apparatus and machinery or goods like fans, radio and battery shells."

We think it unnecessary for our present purpose to consider the meaning which should be attached to the phrase 'Electrical, mechanical or general engineering products', for there is appended to the Schedule an Explanation which provides that without prejudice to the ordinary meaning of the expressions used in that Schedule, the "Electrical, mechanical or general

engineering products" include a large number of articles among which are (item 24) "drums and containers". An electric torch case is however (as the learned Judge has pointed out) a receptacle in which the torch batteries are kept; and it is, therefore, in our opinion a container within the meaning of item 24 and is or must be deemed to be an electrical, mechanical or general engineering product. This aspect of the matter does not appear to have been brought to the learned Judge's attention. We hold that the respondent Company's factory was engaged in an industry specified in Schedule I.

5. The second question involves the construction of Sub-Section (3) of Section 1. That Sub-Section we have already quoted. It provides that (subject to the provisions of Section 16) the Act applies to all factories "engaged in any industry specified in Schedule I in which fifty or more persons are employed". The learned Judge has found - and the finding has not been seriously disputed - that although some 76 persons are employed in the factory less than fifty are engaged in the manufacture of cases for electric torches. In our opinion, with great respect to the learned Judge, this fact is not material. In our opinion the Act, subject to the provisions of Section 16 applies to every factory in which fifty or more persons are employed and which is engaged in any industry specified in Schedule I. It has been argued before us that the phrase "in which fifty or more persons are employed" qualifies the word 'industry' and not the word 'factory' in this Sub-Section. This is the view which appears to have been taken in *Oudh Sugar Mills Ltd., v. Regional Provident Fund Commr. Bombay*[1], With due respect, we are unable to share this view. We think that any ambiguity in the first part of Sub-Section (3) of Section 1 is resolved if the Sub-Section is read as a whole. The latter part of the sub-section empowers the Central Government to "apply the provisions of this Act to all factories employing such number of persons less than fifty as may be specified. ..... and engaged in such industry." This provision makes it sufficiently clear, in our opinion, that the relevant consideration is the number of persons employed in the factory. That this is the proper way of interpreting this Sub-Section is consistent with Section 19-A which empowers the Central Government by order to make such provision or give such direction (not inconsistent with the Act) as appears to it to be necessary for the removal of any difficulty or doubt with regard to the provisions of the Act, and in particular with regard to certain specified matters, the second of which is "whether fifty or more persons are employed in a factory". The word 'industry' means a particular branch of productive labor; a trade or manufacture, (Oxford Shorter Dictionary) and it is in this sense that the word is used in Schedule 1. and, in our view, in Section 1(3). It the respondent Company's argument be correct it would follow that if two factories engaged exclusively in the industry of manufacturing cigarettes and each employes thirty persons then each factory comes within the ambit of the Act as the number of persons employed in the industry of cigarette-making exceeds fifty. Such is not in our opinion the intention of the legislature. In our view the Act applied (subject to the provisions of Section 16) to every factory, employing fifty or more persons, which was engaged in any of the industries mentioned in Schedule I. This is the view taken by Jagdish Sahai, J., in *Messrs. N.K. Industries (Private) Ltd., Kanpur v. Regional Provident Fund Commissioner, U.P*[2]*.,* will which we respectfully agree.

6. On the third question there has been some argument before us as to the date upon which the respondent Company's factory was established. 'Factory' is defined in Section 2 of the Act as

> "any premises ..... in any part of which a manufacturing process is being

[1] AIR 1957 Bom 149
[2] AIR 1958 All 474

> carried on or is ordinarily so carried on ....."
> and "manufacturing" as meaning

"making, altering, ornamenting, finishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal."
There is no satisfactory evidence that the respondent Company's factory was established prior to October 1950. It was then, according to the Company, that it started, on a trial basis, electroplating articles brought to it for that purpose, "real production" starting in January 1951. We are clearly of opinion that the work of electroplating articles for tins subsequent use or disposal is a manufacturing process, and we can see no sufficient reason, in the absence of any particulars why the trial period should be excluded in determining the date upon which the factory was established. We accordingly hold that the factory was established in October 1950 and that it remained an infant factory until October 1953.

7. In the result, therefore, the appeal is allowed in part, the order of the learned Judge being modified to this extent, that the appellant will not treat the Employees Provident Funds Act as applying to the respondent Company's factory prior to October 1953. Both parties having been partially successful there will be no order as to costs.
Appeal allowed partly.