(2000) 08 MP CK 0045

In the Madhya Pradesh High Court

Case No : Writ Petition No''s. 1252 and 1279 of 2000

Brijbasi Lime Works APPELLANT

Vs

Assistant Provident Fund Commissioner and Another RESPONDENT

Date of Decision : 01-08-2000

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3)

Citation : (2001) 2 LLJ 1665 : (2001) 1 MPLJ 576

Hon'ble Judges : C.K. Prasad, J

Bench : Single Bench

Advocate : R.N. Singh, Arpan Pawar and P.C. Chandak, for the Appellant; S.C. Sharma, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Prasad, J.

In both the writ petitions, common questions of facts and law arise and as such they are being disposed of by this common order. :

Facts which are necessary for decision of the present writ petition and which are not in controversy are that the petitioners manufacture lime and the Regional Provident Fund Commissioner has held that petitioners'' establishments are covered under the provisions of the Employees'' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter referred to as the ''Act''). Consequently, the Regional Provident Fund Commissioner has directed the petitioners to deposit Provident Fund dues. Aggrieved by the same, petitioners had preferred appeal before the Employees'' Provident Fund Appellate Tribunal and the Appellate Tribunal by separate orders held that petitioners'' establishments are covered under the provisions of the Act In case ofBrijbasi Lime Work (W.P. No. 1252 of 2000), after holding that the establishment is covered under the provisions of the Act, the Appellate Tribunal remitted the matter back to the Regional Provident Fund Commissioner for determination of the dues. In case of Mathura Prasad-Sharma (W.P. No. 1279/2000), only controversy was as to whether the petitioners'' establishments are covered under the Act and answering the aforesaid question against the petitioner, the Appellate Tribunal dismissed the appeal.

Aggrieved by the aforesaid orders, petitioners have preferred this writ petition under Article 227 of the Constitution of India and prays for quashing of these orders.

It is the contention of the petitioners that they being engaged in the business of manufacture of lime, they are not covered under the provisions of the Act. The Regional Provident Fund Commissioner as also the Appellate Tribunal have concurrently held that the establishments engaged in lime industry are covered under the head ''heavy and fine chemicals'' and it further held that the factory engaged in non-specified industries is coverable u/s 1(3)(b) of the Act as they are employing 20 or more persons.

Sri R.N. Singh appears on behalf of the petitioner in W.P. No. 1252/2000 whereas Sri P.C. Chandak appears for the petitioner in W.P. No. 1279/2000. Respondents are represented by Sri S.C. Sharma in both the cases.

Sri R.N. Singh as also Sri P.C. Chandak submit that for application of the provisions of the Act, what is sine-qua-non is that the establishment has to be a factory engaged in any industry specified in Schedule I of the Act and in which 20 or more persons are employed. Their further contention is that the provisions of the Act shall be applicable to those establishments which employ 20 or more persons or class of such establishments which the Central Government may by notification in the official Gazette specify. Their contention is that lime industry having not been specified in Schedule I of the Act and no notification having been issued by the Central Government u/s 1(3)(b) of the Act, bringing the lime industry under the provisions of the Act, the impugned decisions that the petitioners'' establishments are covered under the Act are erroneous in law and deserve to be set aside.

Sri S.C. Sharma, however, appearing on behalf of the respondents submits that the ''lime industry'' is covered under the head "heavy and fine chemicals" which has been shown to be an industry in Schedule I of the Act. Alternatively, he contends that in case it is held that ''lime industry'' is not covered under "heavy and fine chemicals", it is covered under the Act as 20 or more persons are employed therein and for that notification of the Central Government is not required.

In order to determine the rival contentions, it is apt to reproduce Section 1(3) of the Act, which reads as follows:-

Short title, extent and application

(1) xx xx xx

(2) xx xx xx

(3) Subject to the provisions contained in Section 16, it applies:-

(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which (twenty) or more persons are employed, and

(b) to any other establishment employing (twenty) or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf:

Provided that 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 any establishment employing such number of persons less than twenty as may be specified in the notification.

From plain reading of Section 1(3)(a) of the Act, it is evident that the Act shall apply to every: establishment which is a factory engaged in any industry specified in Schedule-I and in which 20 or more persons are employed. Therefore, in my opinion, to bring the establishment in the net u/s 1(3)(a) of the Act, every ingredient of Section 1(3)(a) of the Act has to be fulfilled namely, (i) the establishment is a factory, (ii) engaged in any industry, and (iii) specified in Schedule-I, and (iv) employs 20 or more persons. To put it differently to apply the provisions of the Act, in the light of Section 1(3)(a) of the Act, the first question which one is required to see is as to whether it is an establishment and if the aforesaid question is in the affirmative, then the second question which requires to be answered is as to whether it is a factory. If this is also answered in the affirmative, then what further is to be seen is as to whether such factory is engaged in any industry specified in Schedule-I. If this question also evokes affirmative response, what further has to be seen is as to whether it employs 20 or more persons. In my opinion, only on satisfaction of these conditions, an establishment shall be covered under the Act and in case, any of the ingredients is missing, the establishment gets out of the net of the Act.

Having cleared the legal position, now I proceed to examine the only controversy as to whether the ''lime industry'' is specified in Schedule I of the Act. As stated earlier, contention of the petitioners is that it is not specified in Schedule-I whereas according to the respondents, it comes within the heading ''heavy and fine chemical'' industry which is specified in Schedule-I. It is relevant here to state that in Schedule-I of the Act, ''lime industry'' per se has not been stated, but what has been stated is the heavy and fine chemicals''.

One may attempt to describe the chemical industry simply as the industry that uses chemistry and manufactures chemicals. This leaves open the question what is chemical. Characteristics of the chemical industry are so complicated that notwithstanding the fact that metals are produced by chemical means, yet it is known as the steel industry and is not part of the chemical industry. The boundaries of chemical industry are somewhat confused. The scope of the chemical industry is in the part shaped by custom rather than by logic. As such this expression has to be given the ordinary meaning and one has to see how this industry is treated in India as definitions adopted for statistical/economic purposes vary from country to country. For manufacture of lime, what is required is to heat the limestone to temperature of 1650?-1800? which dissociate calcium carbonate and yield carbon dioxide and lime for commercial use. In India, this industry has been treated as part of chemical industry since long. This being the position, I am of the opinion mat lime industry comes within the expression "heavy and fine chemicals". That being so, petitioners'' establishment is covered under Schedule-I of the Act and hence the authorities did not err in holding that the provisions of the Act apply in case of the petitioners'' establishments.

Although, I have accepted the submission of Shri Sharma on the first question that the petitioners'' establishments being an industry specified in Schedule-I of the Act, but his further plea is that even if it is not so, it comes within the provisions of the Act in view of Section 1(3)(b) of the Act itself and for bringing any establishment under the provisions of the Act u/s 1(3)(b), no notification of the Central Government is required. In support of his submission, Mr. Sharma has placed a strong reliance on a Division Bench judgment of this Court in case of Radhakrishan Narayandas, a firm Vs. Regional Provident Fund Commissioner and Another, From the scheme of the Act, I am of the opinion that the provisions of the Act shall apply to an establishment which satisfies the requirement of Section 1(3)(a) of the Act, as explained above. The legislature, however, has further conferred discretion on the Central Government to apply the provisions of the Act to any other establishment employing 20 or more persons or class of such establishments by notification in the official gazette. Therefore, to bring any establishment within the provisions of Section 1(3)(b) of the Act, it may not necessarily be a factory engaged in any industry specified in Schedule-I as in case of an establishment mentioned in Section 1(3)(a) of the Act, but for bringing the establishment within the provisions of Section 1(3)(b) of the Act, decision and specification by the Central-Government in the official gazette is necessary. Not only that under the proviso to Section 1(3)(b) of the Act, the Central Government may bring also such an establishment employing less than 20 persons under the provisions of the Act by issuance of a notification. However, before doing so, it is required to give not less than 2 months notice of its intention in the official gazette. Here, in the present case, it is not the respondents'' case that any notification has been issued bringing the ''lime industry'' within the operation of the Act in exercise of power conferred u/s 1(3)(b) of the Act, hence the provisions of the Act shall not be applicable in the absence of any notification u/s 1(3)(b) of the Act.

Now, reverting to the authority relied on by Shri Sharma, I am of the opinion that the same, instead of supporting his case, clearly goes against him on this question. In the said case, it has been held as follows:-

"There is no substance in any one of these contentions. The plain language of

Clauses (a) and (b) of Section 1(3) of the Act shows that whereas by Clause (a), the Act has been made applicable to every establishment which is a factory engaged in any industry specified in Schedule-I and in which the prescribed minimum of persons are employed, Clause (b) makes a provision for the applicability of the Act to "any other establishment" employing twenty or more persons or class of such establishments which the Central Government may by notification specify in that behalf. The expression "any other establishment" occurring in Section 1(3)(b) is in contra-distinction to the word "factory" used in Clause (a) and means any establishment which is a "non-factory establishment". There are no words in Clause (b) indicating that a non-factory establishment to which the Act may be made applicable by the issue of a notification in exercise of the power under that clause, must be also of an industry specified in Schedule-I. Clause (b) dearly gives to the Central Government the power to apply the Act to "any other establishment''", that is to say an establishment which is not a factory-establishment, no matter whether the "any other establishment" belongs to an industry specified or not specified in Schedule-1."

(Italicisation mine)

The aforesaid passage of judgment clearly shows that the Central Government may apply the provisions of the Act by issuance of a notification in exercise of power u/s 1(3)(b) of the Act with the only rider that it is a "non-factory establishment".

In the result I do not find any merit in both the writ petitions and they are dismissed accordingly. In the facts and circumstances of the case, there shall be no order as to cost.

