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(1989) 12 MP CK 0010

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 1379 of 1981

Central India Excise Traders APPELLANT

Vs

Regional P.F. Commissioner and Another RESPONDENT

Date of Decision : 22-12-1989

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3)
Madhya Pradesh Excise Act, 1950 — Section 14

Citation : (1990) ILR (MP) 70 : (1992) 1 LLJ 498 : (1990) MPLJ 611

Hon'ble Judges : D.M. Dharmadhikari, J;B.C. Varma, J

Bench : Division Bench

Advocate : L.P. Bhargava, for the Appellant; U. Tankha, Advocate, for the Respondent

Final Decision : Allowed

Judgement

M. Dharmadhikari, J.

The petitioner is a registered firm and holds licences for the wholesale supply of country spirit in sealed bottles and loose in areas under the contract supply system, under the terms of the licences granted in accordance with the provisions of M.P. Excise Act, 1950(in short The State Act'').

The petitioner calls in question the order dated April 22, 1981 (Annexure P-13), passed by the Regional Provident Fund Commissioner, M.P. Indore, while deciding the dispute u/s 7A of Employees Provident Fund and M.P. Act, 1952 (in short ''the Act''), whereby he held that the provisions of the Act are applicable to the petitioner as an employer making it obligatory to comply with the provisions of the Provident Funds Scheme framed under the Act in respect of its employees.

Dealing in country liquor is monopolised by the State of Madhya Pradesh by provisions of the State Act. The relevant facts, not in dispute, are that the petitioner under terms of the excise licences granted by the State has taken on rent at the rate of Rs. 280/- per month the warehouses owned and controlled by

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the Excise Department of the State. It is an admitted fact that the petitioner is engaged in fulfilling the terms of the contract with the State of M.P. in the matter of supply of country liquor. Its commercial activities essentially include transportation of country liquor from the Government distillery to the Government warehouses, diluting the same with water to bring it to the required strength, flavouring it with colour, filling the same in bottles, corking and labelling them and thus stocking the same for issuance to the retailers or wholesalers for sale on their part. It is also not in dispute that the entire activities of the petitioner as an Excise Contractor are undertaken under the strict supervision and directions of the Excise Officers in charge of the warehouses. The warehouses made available to the petitioner for the above activities had been established by the State in accordance with Section 14(d) of the M.P. Excise Act, which reads as under:-

"14. Establishment or licensing of distilleries and warehouses: The Excise Commissioner may -

(a) .....

(b) .....

(c) .....

(d) "establish or licence a warehouse, wherein any intoxicant may be deposited and kept without payment of duty, subject to payment of such fees as the State Government may direct."

The Provident Fund Inspector working under the Regional Provident Fund Commissioner, on an inspection of the Government warehouses where the petitioner was engaged in the aforesaid activities, found 48 employees working and submitted a report to the above effect on May 10, 1974. Accordingly, the Commissioner directed the petitioner to report compliance of the provisions of the Act concerning its employees. The petitioner denied that it was engaged in any scheduled industry of ''distilling'' or rectifying of ''spirit'' and that it could not be held liable to comply with the provisions of the Act under the said head. The Regional Provident Fund Commissioner, on the objection raised by the petitioner, sent another communication dated May 22, 1976 (Annexure P-7) informing that the Act is applicable to the petitioner not under the scheduled head ''Distilling & Rectifying of the Spirit'', as was informed earlier, but the petitioner was covered under the head ''Trading and Commercial Establishments'', with effect from May 31, 1974. The petitioner again objected to its alleged coverage under the aforesaid head ''Trading and Commercial Establishment* and took up the matter in writ petition in M.P. No. 749/76 to the High Court in which the Court by order dated December 15, 1979 (Annexure P.11) sent back the matter to the Regional Provident Fund Commissioner to determine the dispute judicially in accordance with the provisions of Section 7A of the Act. The Commissioner thereafter fully heard the parties, took relevant evidence on record and determined the dispute judicially u/s 7A of the Act by order impugned (Annexure P.13), whereby he held

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that the petitioner was liable to comply with the provisions of the Act being covered under the head ''Trading and Commercial Establishments'', under the Notification No. 346 dated March 7, 1962, issued u/s 1(3) of the Act.

In order to examine the correctness or otherwise of the order of the Regional Provident Fund Commissioner, holding the Act applicable in respect of the employees of the petitioner, the relevant provisions of the Act and the Notification will have to be examined. From the preamble of the Act, it is evident that the Act is essentially a social welfare legislation for the benefit of the employees in industrial fields. It makes provisions for the future of the industrial workers after they retire or for their dependents in case of their early death. With the above purpose it provides for compulsory contribution to the provident fund in which, both the worker and the employer would contribute. Section 1 of the Act provides for extent of applicability of the Act to various industries and establishments. Section 1(3) reads as under: -

" 1. Short title, extent and application -

(1) .....

(2) .....

(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 1 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."

In the definition clause contained in Section 2, words ''Employer'', ''Employee'' ''Factory'', ''Industry'' and ''Manufacturer'' have been defined, but the expression ''Establishment'' has nowhere been defined.

In exercise of powers u/s 1(3)(b) of the Act, Notification GSR 346 dated March 7, 1962 has been issued, making applicable the provisions of the Act to all ''Trading and Commercial Establishments'' engaged in the activities mentioned in the said Notification. The relevant contents of the Notification are as under: -

"Every trading and commercial establishment engaged in the purchase, sale or storage of any goods, including establishments of exporters, importers, advertisers, commission agents and brokers and commodity stock exchange, "but not including banks or warehouses established under any Central or State Act."

The main contention of Shri L.P. Bhargava, learned counsel for the petitioner, is that the petitioner had undertaken the work of transportation, diluting, bottling, sealing and labelling of country liquor in the warehouses established under the State Act by the State of M.P. and, therefore, it falls in the exempted category

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under the Notification quoted above. His second submission on behalf of the petitioner is that considering the activities carried on by the petitioner in the Government warehouse, it cannot be described as a ''trading or commercial establishment'' engaged in purchase or sale or storage of any goods which are activities of the State under the Monopoly Act concerning liquor i.e. M.P. Excise Act. According to the learned counsel for the petitioner, for the aforesaid reasons, the Regional Provident Fund Commissioner was wrong in holding the petitioner liable to comply with the provisions of the Act in respect of its employees. On the other hand Shri V.K. Tankha, learned counsel appearing for the Regional Provident Fund Commissioner, submits that on proper construction of the Notification, the petitioner was rightly held as covered by the same for applicability of the Act.

The Notification is in two parts - Establishments engaged in purchase, sale or storage of goods are covered in the first part and in the second part, opening with expression ''including'' are covered establishments of exporters, importers, advertisers, commission agents and brokers. The counsel for the Regional Provident Fund Commissioner submits that the activities undertaken by the petitioner as an excise contractor by employing more than twenty persons in the Government warehouses are activities covered in the inclusive definition of ''Trading and Commercial Establishments''. The activities of the petitioner are activities in the nature of works contract undertaken on remuneration for the Excise Department. The petitioner is paid by the Excise Department for the jobs of transportation, diluting, bottling, sealing and labelling. It is contended that it may be true that the warehouses are owned by the State of M.P. through its Excise Department and the purchase, sale and storage of excisable articles is the exclusive right of the State under the Excise Act, nontheless the petitioner falls within the inclusive definition of an establishment engaged in undertaking work of transportation, diluting, bottling, sealing and labelling of country liquor for supply and sale from the warehouses. According to the learned counsel for the Regional Provident Commissioner, the activities of the petitioner in the Government warehouse clearly make it ''Trading and Commercial Establishment'' in the wider meaning of that expression and its activities are covered by the Notification rendering it liable to comply with the provisions of the Act.

The question, therefore, that falls for decision before this Court is whether on the correct and proper interpretation of the contents of the Notification quoted above, the petitioner is covered or not for the purpose of making the Act applicable to it and its employees. Some cardinal principles of interpretation will have to be kept in mind. The expression ''establishment'' has nowhere been defined in the Act. Therefore, to construe the same if ''internal aids'' are not available, ''external aids'' can be taken to understand its meaning and those may be in the nature of popular understanding of the said word in the industrial field, dictionary and historical background of the Act. We may usefully quote the observations of Krishna Iyer J. in the case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, , where the word ''industries'' not

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defined in the Act came up for construction:-

"The cannons of construction are trite that we must read the statute as a whole to get a hang of it and a holistic perspective of it. We must have regard to the historical background, objects and reasons, international thoughtways, popular understanding, contextual connotations and suggestive subject matter. Equally important, dictionaries, while not absolutely binding, are aids to ascertain meaning."

Applying the above guidelines for construction of the word ''establishment'' external aid can be taken from other enactments where the said word has been used and understood including in the dictionary. In Webster''s Inter national Dictionary the word ''establishment'' is defined as under:- Establishment - The place where one is permanently fixed for residence or business; residence including grounds, furniture, equipments etc., with which one is filled out; an institution or place of business with its fixtures and organized staff as a large establishment; manufacturing establishment If we take aid of other enactments, to define the said word, reference may be made first to Section 2(e) of the Employment Exchange (Compulsory Notification of Vacancies) Act, 1959. Section 2(e) of the said Act defined ''establishment'' as under:- :

Establishment means (a) any office (b) any place where any industry, trade, business or occupation is carried on.

Somewhat similar definition may be found in the provisions of Section 2(e)of the Contract Labour (Regulation and Abolition of Contract) Act, 1970. Taking aid of the above meaning of the word ''establishment'' including its popular dictionary meaning, the activities of the petitioner as an excise contractor in the Government warehouses are definitely business activities or trading activities. Those activities may have been undertaken under the strict control and supervision of the State, but the same are undoubtedly trade, business or occupation carried on by the petitioner as an excise contractor. The Regional Provident Fund Commissioner in his order as also the counsel appearing for him rightly placed reliance, in the above respect, on the decision of the Madras High Court in the case of V. Transport (Pvt.) Ltd v. Regional Provident Fund Commissioner, Madras and Anr. (1966-I-LLJ-699), and we agree with the said view. In the above case (supra) the word ''establishment'' for the purpose of the present Act has been understood to mean as under (p.700):

"The word ''establishment'' has not been defined in the Act, though that word has been used in several provisions of the Act, as also in other terms which have been defined in the definition section. An ''establishment'' therefore must be given its ordinary meaning and it means an organisation which employs persons between whom and the establishment the relationship of employee and employer comes to exist."

Reference may also be made to the decision of this Court in the case of Christian Association for Radio and Audio-Visual Service (CARAVS), Jabalpur v. Regional

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Commissioner, Employees Provident Fund M.P. Indore 1979 MPLJ 101.

In our considered view, therefore, the petitioner as Excise Contractor undertaking job Work in Government warehouses is undoubtedly an ''establishment'' within the meaning of the word used under the provisions of the Act.

Having held that the petitioner''s activities in the Government warehouses bring it within the meaning of the word ''establishment'' used in Section 1(3) of the Act and the Notification issued thereunder, the decision on the main question remains to be rendered as to whether the petitioners'' establishment is covered by the Notification under consideration. For deciding the above question, the nature of the activities of the petitioner concerned has to be examined to find out whether it is covered in one of the activities mentioned in the said Notification. For the above purpose the scheme of the M.P. Excise Act will have also to be examined and to understand the nature of excise licence or contract under which the petitioner is engaged in a business or occupation in Government warehouses. The licences granted to the petitioner by the Excise Department of the State has been exhibited as Annexure P.1 and P.2 which are for two different periods between April 1, 1973 to March 31, 1979. The contract is stated to be a licence for the wholesale supply of country spirit in sealed bottles and loose in the areas under the contract supply system for the Jabalpur supply area. The licence is purported to have been issued as per the opening words of the licence under Sections 13, 14, 15 and 28 of the M.P. Excise Act. It cannot be disputed that the State Excise Act and the various provisions contained therein create complete monopoly of trade in liquor and intoxicant in the State of M.P. and a citizen can derive power to trade in those commodities only as a result of lease or licence granted by the State. Section 13(a)(d) and (e) provides that no ''intoxicant shall be manufactured or collected'' and ''no liquor shall be bottled for sale'' and ''no distillery or brewery shall be constructed or worked'' except under the authority and subject to the terms of a licence granted in that behalf. Section 14 empowers the Excise Commissioner to establish a licence for warehouses where intoxicant may be deposited and kept without payment of duty and subject to payment of such fees as the State Government may direct. Section 15 provides that no intoxicant shall be removed from any distillery, brewery or warehouse or other place of storage established or licensed unless duty is paid for the same under Act, Section 17 requires a separate licence for sale of intoxicant by an individual. Admittedly, the petitioner had not been granted any licence for sale of intoxicant as contemplated by Section 17 of the Act. It is also admitted that the petitioner did not possess any lease or licence contemplated by Section 18 of the Act, for manufacture or supply of any intoxicant in wholesale or in retail.

Various terms and conditions of the licence which are in statutory form D-1 with little variations, are those prescribed by Rule III of the Distellery and Warehouse Rules framed under Sections 16(2)(g)(h) and 18(1) of the State Act. A few relevant terms and conditions of the licence may also be examined to determine

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the nature of the trading and commercial activities of the petitioner as an establishment. Clause 4 of the licence states "Subject to the provisions of condition 22, this licence confers on the licensee exclusive right to make wholesale supply of country spirit at the warehouses mentioned in the schedule."

The above clause, read with the rules, does not confer any right on the licensee either to sell or purchase country liquor, but merely confers right on the licensee to supply country liquor from the warehouses mentioned in the schedule of the licence. Clauses 9 and 10 require the licensee to procure bottles; fill, cork, seal and label the same for stocking and issuing under supervision and direction of the Excise Department. The clause 11 in material parts may be quoted as under:

"11. Bottle cleaning, filling, corking, sealing, labelling and issuing shall be done to the satisfaction of the Excise Commissioner by the licensee under the supervision and direction of Excise Officers in charge of the warehouses in the following manner or in such manner as the Excise Commissioner may direct from time to time."

Under clause 13, the licensee is entitled to recover bottling charges for various sizes of bottles issued from the warehouses through the retail vendors. The ''retail vendors'' are such vendors who hold distinct licences under the excise law for retail sale of country liquor from the shops allotted to them by auction or otherwise. Clause 12 providing for rates of bottling charges starts with the expression - The licensee shall be entitled to recover from the retail vendors ... (a) Bottle charges for bottle cleaning, filling, sealing by new crown cork. This issue price at which the liquor will be supplied from the warehouses to the licensed vendors is to be fixed by the State Government in accordance with clause 24 of the licence and such issue price is required to be deposited in the Government Treasury. Clause 24 reads as under:-

"24.(1) The issue price to be recovered from the licensed vendors for the spirit supplied to them from any of the warehouses of the licensee shall be such as the State Government may from time to time determine and it shall be lawful for the State Government to alter the rates so determined at any time and from time to time during the currency of this licence.

(2) No spirit shall be issued to any licensed vendor from any of the warehouses of the licensee except upon proof of payment into treasury of the issue price recoverable for it."

Under clause 25, it is only on payment of issue price in the Government treasury and on production of the challan, that the petitioner as the licensee is duty bound to issue liquor duly bottled to the licensed vendors. Under Clause 6, the licensee has to use the warehouse building made available by the State Government and to pay the necessary rent of the building or procure a suitable building as a warehouse with the approval of the Excise Department,

The above terms and conditions of the licence which confer statutory right on the

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licensee under the provision of the Act and Rules unmistakably show that the petitioner as an excise licensee held in the present case, only a licence ''for bottling liquor for sale'' by the Excise Department from the Government warehouse. The main activity in which the petitioner establishment is engaged is of bottling the liquor from a prescribed raw material base, to cork, seal and label it and to store it in the department''s warehouse till such time it is supplied to the retail vendor on payment of duty for the liquor. It is also clear from the above terms of the licence that the petitioner has no licence either to sell or purchase liquor. It holds a licence for the aforesaid activities so as to bottle liquor in various sizes fit for sale, coupled with the licence to store it in the warehouse established by the State.

Having thus examined the nature of activities undertaken by the petitioner as an Excise licensee in the Government warehouse established by the Government, it will now be necessary to examine whether the petitioner would be covered by the Notification issued u/s 1(3)of the Act which has been reproduced above. The intention of the Notification is to make applicable the provisions of the Act to specified establishments stated therein. The opening part of the Notification specifies certain establishments as trading and commercial establishments which are engaged in the purchase or sale of any goods. As has been examined above the petitioner''s establishment being not engaged in the ''purchase and sale of any goods'', is not covered by the above expression. So far as the storing of the goods is concerned, undoubtedly the petitioner in the course of bottling the liquor for sale and before supply of it to the retail vendors, stores the bottled liquor, but the said storage of the goods is in a warehouse which is established u/ s 14 of the State Act. The question is whether the activity of the petitioner in so far as it stores liquor in the warehouses, is exempted because of the exclusion in the last part of the entry in the Notification in favour of warehouses established under any Central or State Act. Section 14 of the State Act empowers the State Government to establish a warehouse. Clause 6, read with clause 16 of the licence requires the licensee that he shall use the warehouse building supplied by the department. The fact that the warehouse in which petitioner is engaged in the aforesaid activities of bottling liquor for sale, is taken by him on payment of rent, would not make it nonetheless ''warehouse established under any Central or State Act'' for claiming exclusion from the relevant entry in the Notification issued u/s 1(3) of the Act. In our opinion, the petitioner''s establishment, in so far as its activities of storage of liquor are concerned, is exempted in the Notification as the storage of liquor by it is in a warehouse established u/s 14 of the State Act.

The aforesaid Notification also includes trading and commercial establishments of exporters, importers, commission agents and brokers and commodity and stock exchange. The expression used in the Notification under consideration ''trading and commercial establishment'' is defined to mean some specified establishment and to include others and as such the definition is prima facie extensive, but in a given case the definition may be in the form of ''means and includes''. Then the

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definition becomes exhaustive. The word ''includes'' is normally used to enlarge the meaning of words or phrases occurring in the body of statute or Notification and when so used, those words or phrases may be construed as comprehending not only such things as they signify according to natural import, but also those things which the interpretation clause declares that they shall include; but the word ''includes'' is susceptible to another construction which may become imperative if the context of the Act is sufficient to show that it was not merely implied for the purpose of adding to the natural significance of the words or expressions used. It may be equivalent to ''mean and include'' and in that case it may afford an exhaustive extension of the meaning which for the purpose of the Act must invariably be attached to those words and expressions. See Reserve Bank of India v. Peerless G.F. & I. Co. Ltd. (A.I.R.) 1987 SC. 1023 at paras 32 and 33.

It, therefore, follows that the word ''means'' is restrictive and the expression ''includes'' is expansive. Both the words may however, be used simultaneously and in such a case, it is the restricted meaning which should primarily be assigned. It is not an inflexible rule that the word ''includes'' should always be read as a word expansion without reference to the context. It may be that in some instances, the word may be used in restrictive sense by way of illustrating what has been said before, see South Gujarat Roofing Tiles Manufacturing Association v. State of Gujarat and Anr. (A.I.R.) 1977 SC. 90 para 5. If we critically read the Notification, the said Notification is in two parts in which it can be said that both expressions ''means'' and ''includes'' have been used. The establishments defined are ''trading and commercial establishments''. The first part amounts to mean the establishments engaged in purchase, sale or storage of any goods and in the second part are included the establishments of exporters, importers and commission agents and commodity and stock exchange.

Applying the settled rule of interpretation to the present Notification and the entries contained therein, there is use of expression both ''means'' and ''includes'' and therefore, the definition is exhaustive and not illustrative or extensive. The said construction is also in keeping with the scheme of Section 1(3) of the Act which envisages that industries or establishments have to be clearly specified for the purpose of application of the Act. The Notification which requires an establishment to comply with certain provision of an enactment and non-compliance thereof resulting into penal consequences must be given strict and literal construction. It is true that the Act is a piece of social welfare legislation conferring provident fund benefits on employees, but in the matter of construing its provisions regarding applicability of the said Act to specified establishments, the Notification must be strictly construed because the Act confers some benefits to the employees but adversely affects rights of the employers and exposes them to penal consequences in the case of non-compliance. See Lalappa Lingappa and Others Vs. Laxmi Vishnu Textile Mills Ltd., and Madhya Pradesh Mineral Industry Association Vs. The Regional Labour Commissioner Jabalpur and Others, .

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Having thus examined the contents of the Notification and construing the same on the settled rule of construction, the necessary consequence is that the petitioner''s establishment is not covered by any of the specified activities mentioned in the Notification. As has been held above, it is not covered by the first opening part of the Notification as it is not engaged in purchase or sale of country liquor or any other goods. So far as the storage of the goods is concerned it being in the warehouse established u/s 14 of the State Act, the said activity or establishment is expressly excluded in the last part of the Notification. In so far as the second part of the Notification mentioning the activities following the word ''including'' is concerned, the petitioner''s establishment is not an establishment of exporters, importers, advertisers or commission agents and brokers and commodity and stock exchange.

As has been mentioned above, on the basis of the statutory licences granted to the petitioner''s establishment and the provisions of the State Act, the petitioner''s activities are restricted to bottling liquor so as to make it fit for supply and sale from the Government warehouse. This activity of the petitioner is not covered by any part of the Notification.

The Regional Provident Fund Commissioner in holding the petitioner''s establishment as covered under the Notification has taken into consideration non-existent circumstances in his impugned order (Annexure P. 13). The Commissioner wrongly held that the establishment is engaged in an activity wherein it purchases alcohol from Ratlam Plants, dilutes it with water and flavouring agents and bottles it for supply to the retail vendors in the contract area. To quote his words in the order it is stated thus:-

"It is not disputed on behalf of the establishment that it is engaged in an activity wherein it purchases Alcohol from Ratlam Plant, dilutes it with water and flavouring agents and bottles it for supplying to retail vendors in its contract area."

The Regional Provident Fund Commissioner has thus proceeded on wrong premises in holding that the petitioner amongst other activities is engaged in sale and purchase of alcohol which, as has been demonstrated above, is neither borne out from the terms of the licences nor from the provisions of the State Act. The reasoning and basis adopted by the Regional Provident Fund Commissioner are, therefore, not sound to support his conclusion that the petitioner''s establishment is covered by the Notification. The Commissioner has also gone wrong in holding that warehousing is only an incidental activity of the petitioner. We have examined the relevant scheme of the State Act and the terms of the licence held by the petitioner to hold that the licence is basically for bottling of liquor and to warehouse it in the approved premises of the State Government for supply to the retail vendors. Warehousing of liquor, therefore, cannot be said to be only an incidental activity. It is one of the essential activities and which, as we have stated above, is clearly excluded from the Notification. The other activities concerning bottling liquor fit for supply is according to us not an activity covered

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by the Notification.

For the reasons stated above, the petition succeeds and is allowed. The order of the Regional Provident Fund Commissioner, Indore, passed u/s 7A of the Act (Annexure P.13) is hereby quashed and it is declared that the establishment is not covered by the Notification in question. In view of the intricacy of the legal question involved, we leave the parties to bear their own costs. The security amount, if deposited, be refunded to the petitioner.

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