

(1956) 03 BOM CK 0003

In the Bombay High Court

Case No : Appeal No. 52 of 1955 in Miscellaneous Petition No. 77 of 1955

Central Provident Fund Commissioner and Another

APPELLANT

Vs

Ganesh Dyeing and Printing Works and Others

RESPONDENT

Date of Decision : 20-03-1956

Acts Referred:

Citation : (1956) 03 BOM CK 0003

Hon'ble Judges : M.C. Chagla, C.J.;Desai, J

Bench : Division Bench

Judgement

Chagla, C.J.—The first respondent are a registered firm carrying on the business of printing, bleaching and dyeing of cloth, and they were called upon by the Collector of Bombay who is the third respondent to pay a sum of Rs. 10,272 alleged to be due by the first respondent on account of provident fund contributions payable by them under the Employees' Provident Funds Act, 1952, for the period from November 1952 to October 1953. The first respondent filed a petition contending that the demand made by the Collector was unwarranted by law and for a direction restraining him from recovering the amount. The petition came up before Mr. Justice Tendolkar and the learned Judge gave a direction against the Collector as sought by the petitioner. The Central Provident Fund Commissioner and the Regional Provident Fund Commissioner have now come in appeal.

2. The question that we have to decide lies in a very narrow compass. The Act in question, the Employees' Provident Funds Act, 1952, was enacted for providing for the institution of provident funds for employees in factories and other establishments. To the extent that this is social legislation and caters for the social good, it must receive a benevolent interpretation at our hands. But in giving a benevolent interpretation to the Act we must not also overlook the fact that it constitutes a levy or a charge upon the employer and to that extent we must be careful in seeing that the liability of the employer is not increased beyond what Parliament clearly intended. Sub-section (3) of S. 1 provides :

"Subject to the provisions contained in S. 16, it applies in the first instance to all factories engaged in any industry specified in Sch. I in which fifty or more persons are employed"

3. Admittedly the first respondent is a factory. It employs more than fifty persons. It is engaged in an industry. The only question is whether the industry is the industry specified in Sch. I, and when we turn to Sch. I the industries mentioned there are :

"Any industry engaged in the manufacture or production of any of the following, namely : cement, cigarettes, electrical, mechanical or general engineering products, iron and steel, paper, and textiles (made wholly or in part of cotton or wool or jute or silk, whether natural or artificial)."

4. We are concerned with the last industry mentioned, viz., textiles. Attention must be drawn to that fact that Sub-section (3) does not provide that the Act applies to factories engaged in the manufacture or production of textiles. If that was the expression used by the legislature, different consideration might come into play. But the expression used by the legislature is that the Act applies to a factory engaged in an industry which is engaged in the manufacture or production of textiles. Clearly, the expression "industry engaged in the manufacture or production of textiles" is wider than the expression "factory engaged in the manufacture or production of textiles." If the expression was "a factory engaged in the manufacture or production of textiles," it may have been contended with some force that the factory of the first respondent does not manufacture or produce textiles in the sense that the factory does not make or produce woven fabric or cloth. All that it does is to give, as it were, a finishing touch to the cloth which has already been produced by other agencies. But when we are confronted with a different expression which must have wider connotations than the expression which we have just considered, we must give to the other expression used by the legislature a different meaning and content. An industry engaged in the manufacture or production of textiles must in our opinion mean an industry not merely engaged in the manufacture of actual woven fabric or cloth, but the industry must embrace every process connected with the manufacture or production of textiles. Again, one must bear in mind that the legislature has not only used the expression "manufacture" but has also used the expression "production", and clearly the intention of the legislature was not to indulge in surplusage. Production, in our opinion, is wider than mere manufacture, and taking the two words together, the clear intention of the legislature was that a factory engaged in any process which is connected with the textile industry should be included within the definition contained in Sch. I.

5. Mr. Laud argues that the first respondent appeared on the scene after the textile has been manufactured. He says that the first respondent gets coarse unbleached cloth and that this cloth is textile, and what the first respondent does is to process it or to finish it or even to bleach and dye it. But the manufacture and production of textile according to him is complete, and therefore it could not

be said of his clients that they have a factory which is engaged in an industry engaged in the manufacture or production of textiles. In our opinion, that is too narrow a view to take of an industry engaged in the manufacture or production of textiles. Bleaching, dyeing, finishing and processing are all clearly part of the textile industry. The textile industry, as it has developed in our country and in other parts of the world, is not confined or restricted merely to producing what is known as grey or coarse unbleached cloth. Perhaps the most important aspect of the textile industry is that side of it which concerns itself with bleaching, dyeing and finishing the raw produce which is turned out by the mills. That this is so can be clearly gathered from the fact that many textile mills obviously engaged in the textile industry, have as a part of their activities, and an important part of their activities, bleaching, dyeing and printing. Therefore, to contend as Mr. Laud has contended that the production of textile stops at the manufacture of the coarse grey cloth is to minimize the importance of the later processes which are connected with the textile industry. The learned Judge has made a distinction between an industry engaged in the manufacture or production of textiles and textile industry. With respect, we do not see what possible distinction can be drawn between these two expressions. What the learned Judge has overlooked, with respect, is that the legislature was not referring to a factory engaged in the manufacture or production of textiles but it was referring to a factory engaged in an industry engaged in the manufacture and production of textiles. The learned Judge has again taken the view that if all these processes were combined and carried on in the same factory, then each process would be a link in the chain which would go to make up textiles, but separately each link could not be considered as a part of the industry engaged in the manufacture or production of textiles, and the learned Judge gives the instance of carding of cotton and he suggests that carded cotton may never find its way into a textile mill at all. But on that analogy let us take into consideration the case of spinning. Yarn is spun and yarn may ultimately not reach a mill which is turning out textiles. Can it possibly be suggested that a spinning mill is not a factory engaged in the industry of manufacturing or producing textiles ? Once it is conceded as the learned Judge has conceded, that dyeing, bleaching and finishing are processes in the manufacture or production of textiles, then in our opinion it makes no difference whether these processes are combined in one factory or each one is carried on separately in a separate factory.

6. Another argument was sought to be advanced by Mr. Joshi, and which was rightly rejected by the learned Judge was based upon a subsequent amendment to which we might now draw attention. An ordinance was issued on 14 October 1953, the provisions of which were subsequently embodied in Act XXXVII of 1953, and this Ordinance introduced a new definition which was the definition of "manufacture" and the definition was :

"manufacture means making, altering, ornamenting, finishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal."

7. And the schedule was amended by deleting the words "or production" after the words "engaged in the manufacture" and an explanation was added to the schedule to the effect that in this schedule, without prejudice to the ordinary meaning of the expressions used therein, inclusive definitions were given of various expressions, and expression "textiles" was defined as including the products of carding, spinning, weaving, finishing and dyeing yarn and fabrics, printing, knitting and embroidering. What was urged by Mr. Joshi before Mr. Justice Tendolkar was that this Ordinance was a declaratory Ordinance and the Ordinance made clear what Parliament always intended by using the expressions it had in the original Act. In our opinion, that contention is obviously untenable. Unless we are prepared to give retrospective operation to the Ordinance, it is clear that the rights of the parties cannot be governed by subsequent legislation. We are concerned with the liability of the employer prior to the promulgation of the Ordinance, and the Ordinance, unless Parliament expressly so intended, cannot retrospectively affect that liability. It is difficult to understand what the expression "declaratory" Ordinance or law as suggested by Mr. Joshi really means. If the intention of the legislature was that the meaning now given to the expression "manufacture of textiles" should always be given to those expressions as used in the original law, then there was nothing to prevent Parliament from saying so. But Parliament not having said so, the Ordinance cannot possibly affect the rights or liabilities of parties, and we therefore must consider the law as it was and not as it was subsequently amended by the Ordinance. But in our opinion, on a true construction of the Act and its provisions to which reference has been made, the first respondent was a factory which was engaged in an industry engaged in the manufacture and production of textiles, and if that is so, then clearly the demand made by the Collector was a proper and justifiable demand.

8. Mr. Joshi has drawn our attention to a decision of the Punjab High Court in Kanpur Textile Finishing Mills Vs. Regional Provident Fund Commissioner, which had to consider the very question that we have been called upon to consider, and in that case Mr. Justice Dulat have given the same interpretation to the expression used in the schedule as we have given.

9. The result is that the appeal must succeed and is allowed. Petition will be dismissed with costs. Costs to be in two sets. With regard to the costs of the appeal, the first respondent to pay the costs of the appellants. The third respondent to bear his own costs.