

(1964) 12 AHC CK 0012
In the Allahabad High Court
Case No : Special Appeal No. 126 of 1960

Delhi Cloth and General Mills

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 07-12-1964

Acts Referred:

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

Citation : AIR 1966 All 139 : (1965) 10 FLR 126

Hon'ble Judges : Jagdish Sahai, J; B.D. Gupta, J

Bench : Division Bench

Advocate : Shanti Bhushan, for the Appellant; T.N. Sapru, for the Respondent

Final Decision : Dismissed

Judgement

Jagdish Sahai, J.—This Special Appeal by the Delhi Cloth and General Mills Company Limited (hereinafter referred to as the Mills) is directed against the judgment of D. S. Mathur, dated 22-12-1959, dismissing Writ Petition No. 804 of 1957 filed by the appellant-mills. The Mills in their petition under Article 226 of the Constitution of India had prayed for the issue of a writ of mandamus to direct the respondent the Regional Provident Fund Commissioner, U. P., not to take any steps under the Employees Provident Funds Act, 1952, hereafter referred to as the Act, for enforcing the Employers Provident Fund Scheme (hereafter referred to as the Scheme) in respect of the Mills distillery and confectionary at Daurala, and to withdraw his letter, dated 9-3-1957. The Mills is a company registered under the Indian Companies Act and owns a large number of factories. In village Daurala, in the district of Meerut, the Mills has got a factory known as Daurala Sugar Works. They have also a distillery and a confectionary plant situate in the same compound in which the sugar works is located.

The Commissioner wanted the Mills to pay the provident fund amount in respect of the workers working in the sugar, the confectionary and the distillery plants of the Mills. The Mills objected in respect of the workers employed by them in the distillery and confectionary plants, but not in respect of those employed to work

in the sugar works. The Daurala Sugar Works is specified as an industry in Schedule I of the Act. The question for consideration is whether the three units, the Sugar Works, the distillery and the confectionary works constitute one factory or one establishment within the meaning of Section 1(3)(a) of the Act. The submission on behalf of the Mills was that the three units were three different factories and not three different departments of the Daurala Sugar Works. The learned Single Judge concluded that the Sugar Works, the distillery and the confectionary departments were the branches of the same factory, the Daurala Sugar Works, and for that reason dismissed the writ petition.

2. The only question that has been canvassed before us at the Bar is whether the Sugar Works, the distillery and the confectionary works are separate factories in themselves or the distillery and the confectionary works carry on different industrial operations but in the same factory so as to make the three units one constituent factory. The material on the record discloses the existence of the following factors common to all these three units:

- (1) There is one common licence under which the three units are working;
- (2) The source of power in respect of the three units is also common;
- (3) A common profit and loss account is maintained in respect of three units;
- (4) The establishment for purposes of control of the three units, the disbursement of wages, etc., and maintenance of ward and watch is common; and
- (5) The buildings in which the Sugar Works, the distillery and the confectionary are situate are located in the same compound.

Having given the matter our anxious consideration we are of the opinion that on the basis of these factors it must be held that the Daurala Sugar Works is a composite factory in which the three industrial operations are going on, i.e., (1) that of production of sugar, (2) that of production of confectionary, and (3) that of distillery,

The prominent or dominant industry obviously is sugar. It is also the common case of the parties that molasses produced in the Sugar Works is utilised in the distillery. It is also clear that the sugar cubes, toffees and other confectionary that is produced is made out of the sugar manufactured in the Daurala Sugar Works. Taking all these factors together into consideration we are of the opinion that it can safely be concluded that it is a composite factory in which different industrial operations in the shape of sugar production, distillery and confectionary production is going on and that the three cannot be treated to be separate and distinct units so as to constitute three distinct factories. The conclusions to which we have arrived at finds support from two decisions of the Supreme Court. In *Regional Provident Fund Commissioner v. Sri Krishna Metal Manufacturing Co.* AIR 1902 SC 1536, their Lordships had to consider as to what would constitute a composite factory so as to fall in the definition of "factory" as

given u/s 1(3)(a) of the Act before the word "Factory" was substituted by the word "establishment". The Act was amended on 28-12-1956. In paragraphs 9 and 10 at p. 1540 of the judgment the learned Judges observed as follows:

"The definition of the word "factory" prescribed by Section 2(g) of the Act shows that a "factory" means any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid of power. Thus, the word "factory" used in Section 1(3)(a) has a comprehensive meaning and it includes premises in which any manufacturing process is being carried on as described in the definition. This definition of the word "factory" shows that the factory engaged in any industry specified in Schedule I cannot necessarily mean a factory exclusively engaged in the particular industry specified in the said Schedule.

Besides, Section 1(3)(a) as it has been amended in 1956, now refers to every establishment which is a factory engaged in any industry specified in Schedule I and the introduction of the word "establishment" clearly shows that it may consist of different factories dealing with different industries and yet considered as one establishment, it may fall u/s 1(3)(a), provided the other requirements of the said section are satisfied. Section 2A which has been added in the Act by the Amending Act 46 of 1960 makes it clear that an establishment may consist of different departments or may have different branches, whether situate in the place or in different places, and yet all such departments or branches shall be treated as parts of the same establishment. Therefore, the concept of establishment being of such a comprehensive character, the insertion of the word "establishment" in Section 1(3)(a) by the Amending Act of 1956 helps to negate the argument that the factory therein contemplated cannot be composite factory."

Their Lordships followed their earlier decision in *The Regional Provident Fund Commissioner, Bombay Vs. Shree Krishna Metal Manufacturing Co., Bhandara*, in *The Associated Industries (P) Ltd. Vs. The Regional Provident Fund Commissioner, Kerala Trivandrum*, . In paragraph 5 at p. 316 the learned Judges observed:--

"In the case of *The Regional Provident Fund Commissioner, Bombay Vs. Shree Krishna Metal Manufacturing Co., Bhandara*, , this Court has held that Section 1(3)(a) does not lend itself to the construction that it is confined to factories exclusively engaged in any industry specified in Schedule I. It was observed in that connection that when the legislature has described factories as factories engaged in any industry, it did not intend that the said factories should be exclusively engaged in the industry specified in Schedule I. Consistently with this view, this Court further observed that the word "factory" used in Section 1(3)(a) has a comprehensive meaning and it includes premises in which any manufacturing process is being carried on as described in the definition and so the factory engaged in any industry specified in Schedule I does not necessarily

mean a factory exclusively engaged in the particular industry specified in the said schedule. In construing the scope of Section 1(3)(a) this Court held that composite factories came within its purview and that the fact that a factory is engaged in industrial activities some of which fall under the Schedule and some do not, will not take the factory out of the purview of Section 1(3)(a)."

3. We have seen no reason to distinguish the two Supreme Court cases from the facts before us. In the present case a part of the demand relates to the period anterior to 28th December, 1956 and part of it to the subsequent period. In our judgment, it would make no difference that before 28th December 1956, the word was "factory" and not "establishment", which is the case after that date. The two Supreme Court decisions mentioned above have dealt with the definition as given before the amendment, i.e., when the word was "factory" and not "establishment". In our judgment there is not much difference so far as the Act is concerned between the expressions "factory" and "establishment". Consequently we see no good ground to distinguish between the demand relating to the period prior to 28th December, 1956 and the one relating to the subsequent period,

4. Mr. Shanti Bhushan who appeared for the appellant-mills before us did not place any decision before us in which the provisions of Section 1(3) of the Act were interpreted. He, however, did place reliance upon *Pease v. Simms Sons and Cooke, Ltd.* 1932 (1) KB 723, *Brass v. London County Council* 190 1 (2) KB 336 and *In re, Arbitration between London County Council and Lewis* (1900) 82 LT 195. He also cited before us *In re In Re: K.V.V. Sarma, Manager, Gemini Studios, Madras, and S.M. Sriramulu Naidu Vs. Employees" State Insurance Corporation*, . These cases are clearly distinguishable on the ground that in none of them the provisions which we have to interpret were construed. The English cases deal with the statutes operating in England. In the Madras case the word "factory" as defined in the Indian Factories Act came up for interpretation and in the *S.M. Sriramulu Naidu Vs. Employees" State Insurance Corporation*, case the same Court was also called upon to interpret the provisions of the Employees State Insurance Act. These decisions do not in any way help us to decide the instant case.

5. For the reasons mentioned above we are of the opinion that there are no merits in this special appeal and the decision recorded by the learned Single Judge is correct. The appeal is consequently dismissed with costs.