

(1963) 11 MAD CK 0059
In the Madras High Court

East India Industries (Madras) Private Ltd.	APPELLANT
Vs	
The Regional Provident Fund Commissioner	RESPONDENT

Date of Decision : 07-11-1963

Acts Referred:

Citation : (1964) 1 MLJ 441

Hon'ble Judges : S. Ramachandra Iyer, C.J

Bench : Single Bench

Judgement

S. Ramachandra Iyer, C.J.—This is an appeal from the judgment of Veeraswami, J., upholding in part the demand made by the Regional Provident Fund Commissioner upon the appellant for payment of the employer's contribution for the period from 1st March, 1954 to 31st March, 1958, in accordance with the scheme framed under the Employees' Provident Funds Act, 1952.

2. The appellant is a private limited company running a factory for the manufacture of waterproof packing paper and tarpaulin. The process adopted in manufacturing the first article is described to be to smear with tar a sheet of paper and then superimpose another like sheet and press them together. The product, it is claimed, has the qualities of a waterproof paper with the advantage of flexibility. The other product, tarpaulin, is manufactured by treating jute gunnies with tar. According to the appellant the number of workers in the factory did not exceed fifty except on one day in each year during the relevant period. The Regional Provident Fund Commissioner called upon the company by his notice dated nth April, 1958, to pay the contribution payable by the employer and also the administration Charges and damages.

3. So far as the latter two claims are concerned, the learned Judge has held that the Regional Provident Fund Commissioner would not be entitled to recover them from the appellant. We are told that that forms the subject-matter of another appeal and it is unnecessary to deal with it now.

4. It regard to the claim for the employer's share of the provident fund, the

contention of Mr. Swaminathan for the appellant is two-fold. Firstly, he said that the place where the manufacture is done cannot be held to be a factory coming within the scope of the Employees' Provident Funds Act, and, secondly, that the Provident Fund Commissioner would have no power to claim contribution for a period anterior to 1st April, 1958, when he issued the notice. So far as the latter portion of the argument is concerned, we need only refer to what is contained in the learned Judges' judgment where he said that the appellant through counsel expressed willingness, to abide by the direction of the Regional Provident Fund Commissioner to remit arrears of the employer's contribution for the period in question. On that admission we do not see how it will be competent for the learned Counsel here to agitate the matter over again.

5. There still remains the other question which relates to the liability of the appellant to pay the provident fund. Such liability is disputed on two grounds. First, that the premises will not be a factory within the meaning of the Act and secondly, that the factory did not have fifty employees throughout the year. The contention under the first head is like this that the article manufactured by the appellant is not one of those that are mentioned in Schedule I of the Act and therefore the provisions of the Act will not apply to it. To appreciate the contention it is necessary to refer to certain provisions of the Act as they existed during the material period. Section I, Clause (3), which speaks of the application of the Act, provides in Sub-clause (a) that it would apply to every establishment which is a factory engaged in any industry specified in Schedule I and in which fifty or more persons are employed. Item 5 in Schedule I is paper, and item 6, is textiles. An Explanation has been provided to the Schedule which states under Clause (c) thereof thus:

The expression "paper" includes pulp paperboard and strawboard.

Clause (d) states,

the expression "textiles" includes the products of carding, spinning, weaving, finishing and dyeing yarn and fabrics, printing, knitting and embroidering.

It is argued by Mr. Swaminathan that the products manufactured by the appellant can neither be paper nor textiles even within the terms of the Explanation. Superficially considered that undoubtedly appears so, for the waterproof paper manufactured in the appellants factory cannot be regarded as paperboard or strawboard. Nor can the jute gunnies treated with tar be regarded as coming under any one of the heads specified in Clause (d) to the Explanation. But the argument ignores the very opening sentence of Schedule I which, while referring to the various heads of articles, says thus:

Any industry engaged in the manufacture of any of the following...

It is thereunder that we find paper and textiles. Therefore, if the factory can be said to be engaged in the manufacture of either paper or textiles, it will obviously come under that Schedule and thereby within the scope of Section 1(3). The

word "manufacture" has been defined u/s 2(i-a) thus:

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

Now, if Schedule I is read by applying this definition, it would mean that any treating or adapting paper or textiles for its use or disposal will be one of the heads contained under Schedule I. There can be little doubt therefore that paper and gunny bags treated with tar for the purpose of their use in the market will come within. Schedule I. The factory which manufactures such paper would come under the Act. We cannot accept the contention of the learned Counsel for the appellant that the factory in the instant case is outside the purview of the Act.

6. The second question depends on a question of fact. According to the appellant the factory at all times employed less than fifty workers except on one day in the year. The contention of the learned Counsel for the appellant is that if the Provident Fund Commissioner did not accept his case that the factory is not one to which the provisions of the Act would apply his duty would be to apply to the Central Government under the provisions of Section 19-A and, till the sanction of the Central Government is received, he would not be competent to call upon the appellant to pay the employer's contribution. In support of his Contention reliance was placed on the decision in *Annamalai Mudaliar & Brothkers v. Regional Provident Fund Commissioner* (1955) 2 M.L.J. 271. With respect we are unable to share the view expressed by the learned Judge in that case. Section 19-A, in our view, gives right to the parties concerned to refer in case of difficulty for the opinion of the Central Government. For example, the appellant could have applied to the Central Government for a finding as to the total number of workers in his factory during the relevant period. The Provident Fund Commissioner too could have applied for it. But where the Provident Fund-Commissioner did not find any difficulty in the matter of ascertainment of numbers it cannot be said that it was obligatory upon him to refer the matter to the Central Government.

7. It is next argued that even otherwise it would be competent for this Court to decide a preliminary question of fact as to whether the conditions necessary for imposing the pecuniary liability on the appellant has been satisfied in the present case. We are prepared to accept that contention. The question then is whether there were fifty people in the factory during the relevant period. It is admitted on behalf of the appellant that fifty people worked at least for one day in each year. This, in our opinion, will be sufficient to bring the case within the purview of Section 1(3) of the Act. The Act is an ameliorative measure intended to benefit the permanent workers of an establishment. What is necessary for these permanent workers to get the benefit is that there should be fifty workers in that factory. In our view it would be sufficient if that condition is satisfied at least for one day.

8. It is however argued that as Section 1(3) (a) used the words "in which fifty or

more persons are employed" a continuity of employment of all the fifty persons is envisaged under the Act. We are, however, unable to agree with that contention. The appellant in the present case has been systematically employing more than that number, at least according to him, on one day. There is, therefore, no substance; that the Act will not apply to the factory in question. The appeal therefore fails and is dismissed with costs.