
(1956) 04 AHC CK 0034

In the Allahabad High Court

Case No : Civil Miscellaneous Writ. No. 1004 of 1955

Great Eastern Electroplaters, Ltd.

APPELLANT

Vs

Regional Provident Fund Commr., U.P.

RESPONDENT

Date of Decision : 23-04-1956

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 16

Citation : AIR 1956 All 495 : (1956) 26 AWR 466 : (1957) 2 LLJ 225

Hon'ble Judges : Mehrotra, J

Bench : Single Bench

Advocate : Man Singh and J. Swarup, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Mehrotra, J.—This is an application under Article 226 of the Constitution praying that a writ of mandamus be issued directing the Regional Provident Fund Commissioner, U. P., Kanpur, not to take action under the provisions of the Employees Provident Funds Act of 1952 and the Employees Provident Funds Amendment Act of 1953 against the applicant.

2. The petitioner was registered as a public limited company in the year 1948 to work on an electro plating pattern, colour and chrome plating plant in India. The electroplating plant was imported and installed in Allahabad and the factory was started in October, 1950 on a trial basis. The real production, according to the petitioner, started from January, 1951. In the affidavit filed in support of the petition it is alleged that since the date of its establishment, the factory has been experimenting with one kind of thing or the other to find out as to what they could produce profitably and the work continued on an experimental basis.

After some time of the starting of the factory, they took to the production of metal cases of torches along with the electroplating work and consequently the number of workers had been increased. In 1952 the Employees Provident Funds

Act was enacted and the petitioner company was asked to bring the industry under the provisions of the above Act. The petitioner challenged the application of the aforesaid Act to the Company. A writ petition was filed in this Court which was numbered as writ petition No. 578 of 1953. It was admitted on 1953.

Subsequently certain negotiations for compromise between the petitioner and the opposite party were started. They came to some arrangement and in view of that arrangement, the writ petition was not pressed and was dismissed on 2-12-1954. Subsequently, however, the arrangement fell through. There was certain condition imposed by the opposite party which was regarded by the petitioner as unreasonable.

If the Act is made applicable to the petitioner, they have to pay a large sum of administration charges to the opposite-party and that is likely to result into a great burden on the industry. The petitioner informed the opposite party that they did not come under the provisions of the Employees Provident Funds Act of 1952 as well as the Employees Provident Funds Amendment Act of 1953 but the opposite-party still insisted and, according to their contention, the petitioner is covered by the provisions of the Act.

The opposite-party has threatened to take action against the petitioner factory if they did not comply with the demand of the opposite-party for payment of all accumulations since November, 1952 together with administration charges of 3 per cent. The Geep Worker's Union, which represented the workers of the petitioner industry, also filed a writ petition (No. 369 of 1955) on 15-4-1955 which has since been disposed of. On these facts the present petition has been filed.

3. Notice was issued to the opposite party. A counter-affidavit has been filed. In the counter-affidavit it is stated that the factory was registered under the Factories Act for metal galvanising, turning, lacquer painting, plating and enamelling and they started manufacturing in the year 1949. In November, 1952, they were employing more than 60 persons when the Employees' Provident Funds Act was applied to the factory.

The employees are engaged in cutting, shaping, grounding and soldering brass and iron sheets to prepare torches and its various parts for which purpose machineries, viz. hand pressing machines, power press machines, shaping machines grinding stone, rolling machine, spinning lathes, soldering machines, polishing machines and sheet cutting machines are installed in the factory.

It is stated in para 4 of the counter affidavit that the factory has been manufacturing electrical, mechanical and general engineering products, e.g. electroplated cutlery, electroplating cycle parts, torches & electroplated E.P.N.S. goods on commercial basis since it started in 1949. The number of workers employed by them in 1952 was more than 50, which fact the petitioner had disclosed in form 4 submitted to Chief Inspector of Factories, U. P., Kanpur.

Subsequently, they started manufacturing and electroplating torch shells, torch parts and torches. It is disputed by the opposite-party that the petitioner factory is not covered by the Employees Provident Funds Act of 1952 as well as the Employees Provident Funds (Amendment) Act, 1953 and the scheme framed thereunder. The petitioner proposed to make suitable amendments in their own Employees' Provident Fund Scheme with the object of seeking exemption u/s 17(1)(a) of the Employees' Provident Funds Act, 1952. Since the proposed amendments did not bring their own scheme in line with the provisions of the said Act and the scheme framed thereunder by the Government, their request for exemption u/s 17(1)(a) of the said Act was rejected.

4. A rejoinder affidavit has been filed in which the position is reiterated that in 1949 the factory did not work. In August, 1952 the Company started experiment on production of torch cases and the total production per day was of 50 torch cases. The factory, according to the petitioner's rejoinder affidavit, never manufactured any goods which may be called as electrical, mechanical and general engineering products. The number of workers engaged in production of thals, katories etc. & also torches was only 24 in 1951 and was increased to 30 in 1952.

In the month of August, 1952, the production of thals and katories was stopped. The total quantity of metal cases of torches produced in 1952 was of the value of Rs. 30,670/-. The average number of workers employed in the production of the metal cases was 32 in 1953 and in 1954 it was raised to 47. The main contention raised by the petitioner is that the factory did not manufacture electrical, mechanical and general engineering products and consequently it was not affected by the provisions of the Employees Provident Funds Act and it is also contended that the number of workers employed by the factory were less than 50 and consequently it was not a factory within the meaning of that Act.

5. Lastly, it was contended that the applicant factory is an infant factory and under the provisions of Section 16, Employees Provident Funds Act, 1952, that is exempt from the operation of the Act.

6. Section 1(3) of the Employees Provident Funds, 1952 provides that the Act applies, in the first instance, to all factories engaged in any industry specified in Schedule I in which 50 or more persons are employed. This clause is subject to the provisions contained in Section 16. Section 16 of the Act provides that the Act will not apply to factories belonging to the Government or a local authority and also to infant factories.

Any factory established whether before or after the commencement of the Act, unless three years have elapsed from its establishment, has to be regarded as an infant factory within the meaning of Section 16. Before the provisions of the Act, therefore, could be applied to the present factory, it is necessary (a) that the factory should be engaged in any industry specified in the Schedule, (b) that it should employ 50 or more persons and (c) that it is not an infant factory within

the meaning of Section 16 of the Act; in other words, three years must have elapsed from its establishment.

A factory has been defined in Section 2(g) of the Act as meaning 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. The present concern is no doubt covered by the definition of the word "factory". The main question, however, urged by the petitioner is that it is not engaged in any industry specified in Schedule I. Schedule I of the Act of 1952 specifies the following industries:--

"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)."

The contention of the counsel for the opposite-party is that the applicant factory is engaged in the manufacture or production of electrical or mechanical products. By the Amending Act of 1953, certain provisions of the Employees Provident Funds Act, 1952 were amended and the words "or production" have been omitted from the opening words of the Schedule and the following explanation added to the Schedule :--

"Explanation: In this Schedule, without prejudice to the ordinary meaning of the expressions used therein--

(a) the expression "Electrical, mechanical or general engineering products" includes (certain items numbering 1 to 25 specified therein)".

The result of this amendment is that the Schedule covers the factory engaged in the manufacture of any of the items 1 to 25 specified in the Schedule. Item No. 15 of the items specified in the amended Schedule is "bicycles" and the contention of the opposite-party is that the word "bicycle" includes any of the bicycle parts. According to the opposite-party's contention, the factory is engaged in electroplating cycle parts which is included in item No. 15. The petitioner has denied that the factory is at present engaged in electroplating cycle parts. The main work done by the factory is the preparation of torch cases.

In my opinion, the contention of the petitioner, in view of the materials on the record, is to be accepted that at present the factory is engaged in manufacturing torch cases. It has not been pointed out by the opposite-party under which other specific item enumerated in the Schedule the manufacture of torch cases could come. The argument of the opposite party, however, is that the list of items given in the amended Schedule is not exhaustive.

The words used in the explanation are "electrical, mechanical or general engineering products" includes items specified in the list. This necessarily means that the meaning of the words "electrical, mechanical or general engineering produces is wider than the specified items. It is also contended that the preparation of torch cases is covered by the words "mechanical and electrical

products". The petitioner contends that it is neither an electrical nor mechanical or general engineering product. The opposite-party contends that the "electrical product" means any thing produced through electrical process.

In my opinion, such a wide meaning cannot be given to the words "electrical, mechanical or general engineering products". If such a wide meaning is to be given, then it will include even chemical products and textile goods. There may be many textile goods and chemical products which are being produced by means of electrical process or mechanical process. The words "electrical and mechanical" have not, in my opinion, been used in the Schedule only in contradistinction with the hand-made products but they have to be given a narrower meaning.

From the nature of the articles mentioned in the amended Schedule, it will be clear that the scope of the words "electrical and mechanical products" is not to cover all products which are made by means of mechanical or electrical process but it means products which are utilised for purposes of producing electricity or implements and other apparatus and machinery or goods like fans, radio and battery shells. A torch case is only an article for purposes of keeping batteries and not for purposes of generating electricity. The fact that torch cases are produced by cutting, shaping and soldering brass and iron sheets by means of machineries does not make them mechanical or electrical products.

7. The next question raised by the applicant is that the factory did not employ 50 or more than 50 persons and consequently the Act is not applicable to the said factory. Section 1(3) of the Act provides that subject to the provisions contained in Section 16, it applies in the first instance" to all factories engaged in any industry specified in Schedule I in which fifty or more persons are employed. The question, therefore, to be determined is whether the factory was engaged in producing torch cases and employed 50 or more than 50 people.

It has been asserted by the applicant in the affidavit filed by him that from the documents it would appear that the average number of workers employed in the production of metal cases was 32 in 1953 and it was raised to 47 in 1954. Reference was made by the opposite party to the renewal application of the Company filed by Sri Prabhakar Tewari. The number of workers shown is 70. As has been explained by the petitioner, the total number of workers are employed by the Great Eastern Electroplaters Ltd. and not by the factory.

This figure of 70 includes the workers who were engaged in production work and more than 50 per cent of the aforesaid workers were engaged in the office, in sales department and in electroplating of goods manufactured by others. The limited concern, according to the applicant, may have employed more than 70 people but the factory, which was engaged in the alleged industry covered by the Schedule to the Act, did not employ more than 50 persons. From the materials on the record, in my opinion, it cannot be said that the factory, which was engaged in the production of torch cases, employed 50 or more than 50 persons.

8. The last point urged by the applicant was that the factory was an infant factory within the meaning of Section 16 of the Act. The question to be determined in this connection is as to when the factory started functioning. Section 16 provides that the Act shall not apply to any factory established whether before or after the commencement of this Act unless three years have elapsed from its establishment. The applicant has asserted in the affidavit that although the factory was registered in 1949, no work started in 1949.

The machinery and plant were not completely installed in 1949. The installation was completed in September, 1950 and in the same year electroplating of goods was undertaken but no production work was started. In August, 1952, the Company started the production of torch cases. Before that the Company had for some time done the work of producing "thal", "katories" and other articles but that experiment failed and it was stopped in July, 1952 and thereafter the production of torch cases started.

The contention of the opposite party is that the production may have started in 1952 but the factory was actually registered in 1949 and consequently the factory was established in the year 1949. Emphasis was laid on the word "established" in Section 16 of the Act as at least three years must have elapsed from the establishment of the factory.

Factory has been defined in the Act to mean any premises including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on.

So, unless a manufacturing process was carried on in any part of the factory, it cannot be said that the factory had been established even if the factory may have been registered in the year 1949. On the finding that the actual production started in 1952, it cannot be said that the factory was established before that period. There is, therefore, considerable substance in the contention of the applicant that in view of Section 16 of the Act, the Act did not apply to the applicant.

9. In the result, I allow this petition and direct the opposite party not to take steps under the Employees Provident Funds Act so far as the applicant factory manufacturing torch cases is concerned.

10. In the circumstances of the case, I make no order as to costs.