(1965) 12 BOM CK 0001

In the Bombay High Court

Case No : Miscellaneous Petition No. 397 of 1964

Kamalakar Shankar Warde and Another APPELLANT

Vs

Central Board of Trustees and Others RESPONDENT

Date of Decision : 21-12-1965

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : AIR 1967 Bom 259 : (1966) 68 BOMLR 682

Hon'ble Judges : V.D. Tulzapurkar, J

Bench : Single Bench

Judgement

1. This is a petition under Art. 226 of the Constitution of India praying for issue of a writ of mandamus against the three respondents, being

(1) the Central Board of Trustees under the Employees'' Provident Funds Act, 1952, and the scheme framed thereunder,

(2) Sri E. V. Ramreddi, the Central Provident Fund Commissioner, and

(3) Sri D. T. Ghatpande, Regional Provident Fund Commissioner, Maharashtra State,

2. directing them not to enforce the provisions of the Employees Provident Funds Act, 1952, and of the scheme framed thereunder against the petitioners, who are carrying on business of manufacturing paper cones and paper tubes and for incidental reliefs.

3. The short facts giving rise to the petition may be stated : The two petitioners carry on business in partnership in the name and style of Eastern Paper Tube Factory at Ashok Nagar, Kandivali, Bombay. Their factory at Kandivali admittedly employs more than twenty persons and the work of manufacturing paper cones and paper tubes is done there. Respondent 3 as the Regional Provident Fund Commissioner of Maharashtra State addressed a letter dated 15 July, 1963 to the petitioners to the effect that the Employees'' Provident Funds Act, 1952, as

amended from time to time and the provident fund scheme framed thereunder were applicable to the petitioners'' said factory or establishment at Kandivali with effect from 1 May, 1963, inasmuch as during the said month and the subsequent months the said establishment had employed more than nineteen persons and was engaged in an industry, specified in Sch. I to the said Act the industry being paper industry enlisted at item 5 in the schedule. Respondent 3 further informed the petitioners by his said letter that their said establishment had been allotted "MH-5094" as its code number for the purposes of Employees'' Provident Funds Act, and the scheme framed thereunder and called upon the petitioners to pay the employer''s and the employee''s contributions to the provident fund from 1 May, 1963 and to comply with other requirement therein mentioned. The petitioners by their letter dated 22 July, 1963 informed respondent 3 that they were not manufacturing "paper" and as such their establishment or factory was not covered by any specified industry in Sch. I to the Act. Correspondence ensued between the petitioners on the one hand and respondent 3 on the other during the course of which the petitioners were threatened with penal action being taken against them if they did not comply with the demand made on them and it appears the petitioners made payments of diverse amounts to respondent 3 under protest. On 14 October, 1963 the petitioners addressed a letter to respondent 2 and after referring to the correspondence which they had with respondent 3 they stated that they did not manufacture paper but that they purchased paper and paper-board out of which cones and tubes were prepared or manufactured by them and that paper products could not be included in the scheduled industry indicated by the expression "paper." On 10 January, 1964 respondent 2 informed the petitioners that the question regarding applicability of Employees'' Provident Funds Act of 1952 and the scheme framed thereunder to their establishment had been examined and that it was found that the petitioners had been rightly covered under the scheduled head "paper" read with the definition of the expression "manufacture" as given in S. 2(ia) of the Act and the petitioners were, therefore, requested to comply with the statutory provisions as per the directions of respondent 3. The petitioners have, therefore, filed the present petition for the issue of a writ of mandamus directing the respondents to withdraw and cancel the said notices issued to the petitioners by respondent 3, as also the threatened action of recovering damages or penalty and further to forbear from enforcing the provisions of the said Act and the scheme framed thereunder in respect of the factory and from taking any steps or proceedings in pursuance of the Act or the scheme framed thereunder. The petitioners have further prayed for an order directing respondent 3 to refund to the petitioners the diverse amounts deposited by them under protest.

4. The principal question raised in this petition is whether the petitioners'' establishment or factory which manufactures paper-products such as paper cones and paper tubes could be said to be an establishment or factory engaged in any industry specified in Sch. I to the Act within the meaning of Sub-clause (a) of Sub-section (3) of S. 1 of the Act. It is not disputed that the petitioners''

establishment or factory has more than twenty persons in its employment ant therefore the answer to the question raised in the petition will depend upon whether the petitioners'' establishment is an industry "engaged in the manufacture of paper" as per item 5 in Sch. I to the Act. On behalf of the petitioners, reliance was placed upon S. 1(3)(a) of the Act and upon the relevant entry to be found in Sch. I to the Act and it was contended by Sri Sorabjee that since the petitioners'' establishment was engaged not in the manufacture of paper as such but in the manufacture of paper-products, such as paper cones and paper tubes, the petitioners'' establishment could not come within the purview of the Act. The relevant provisions of the Act and the schedule may be set out. Section 1(3)(a) of the Act runs as follows :

"(3) Subject to the provisions contained in S. 16 it applies -

(a) to every establishment which is a factory engaged in any industry specified in Sch. I and in which twenty or more persons are employed."

5. The relevant entry in Sch. I to the Act is as under :

"SCHEDULE I

Any industry engaged in the manufacture or production of any of the following, namely :

* * * * * * Paper."

6. By Act 37 of 1953 an explanation was added to this schedule and the said explanation so far as is relevant to the present case runs as follows :

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

* * * * * *

(c) the expression ''paper'' includes pulp, paper-board and strawboard; "

7. It will be noticed that neither the entry in the schedule nor the explanation includes "paper-products." In Para. 2 of their petition the petitioners have categorically averred that they do not manufacture and had at no time manufactured paper or pulp or paper-board or strawboard, but they buy from the open market fully manufactured paper and paper-board and out of such paper and paper-board they prepare with the help of requisite machinery and man-power, two articles, viz., paper cones and paper tubes, which are required in textile mills for winding yarn. They have further averred that the processes of manufacturing paper, pulp, paper-board and strawboard are essentially different from the manufacturing process involved in the manufacture of paper cones and tubes and that in fact the aforesaid industries are also basically distinct and different. These averments, it must be noted, have not been controverted or challenged in the affidavit in reply filed by respondent 3 herein. The only substantial answer given by respondent 3 in his affidavit is that the difference in

the manufacturing processes that has been pointed out by the petitioners in their petition is not relevant to the issue in the case, for according to respondent 3 if the enlisted industry of paper in Sch. I is read along with the definition of the expression "manufacture" given in S. 2(ia) of the Act, it would be clear that the petitioners could be said to have an establishment which engages itself in the manufacture of paper. The point that I am emphasizing at this stage is that it is not disputed before me that the manufacturing processes required for manufacturing paper, pulp or paper-board or strawboard are entirely different from the manufacturing processes involved in the manufacture of paper cones and paper tubes. Relying upon the aforesaid provisions of the Act, which I have quoted, Sri Sorabjee on behalf of the petitioners, contended that the petitioners'' factory or establishment could by no stretch of imagination be said to be a factory or establishment engaged in the manufacture of paper but it is establishment or factory which has engaged itself in the manufacture of paper-products such as paper cones and paper tubes and therefore, strictly speaking, the petitioners'' establishment or factory would not be covered by the provisions of the Act. In this behalf Sri Sorabjee pointed out that wherever the legislature wanted to include not only an industry engaged in the manufacture of a basic substance but also an industry engaged in the manufacture of its products, the legislatures has done so and he specifically invited my attention to industries such as rubber and plastics. By a notification No. SRO 1566 dated 4 July, 1956, the Government included rubber industry in Sch. I and by another notification No. GSR 591, dated 27 March, 1963, the Government included plastic industry in this schedule and while so amending the schedule these industries have been enlisted in Sch. I as follows :

"Rubber and rubber products" and "plastic and plastic products."

8. He also referred me to another item that had been enlisted by the notification No. GSR 591, dated 27 March, 1963, and the item that has been added is described as "stationery products." Sri Sorabjee therefore urged that this would indicate that wherever the legislature wanted to include not only the manufacture of some basic substance but the manufacture of products thereof also in Sch. I to the Act, the legislature has specifically done so, whereas in the case of paper industry, it has not done likewise. He fairly conceded that it would have been open to the legislature and it is even now open to the legislature to include the industry engaged in the manufacture of paper products in Sch. I to the Act, but since this has not been done the petitioners are entitled to say that their establishment or factory, which merely manufactures paper products such as paper cones and paper tubes, is not an industry to which the Act is applicable. I find considerable force in this contention of Sri Sorabjee. The manner in which other industries have been specified such as rubber and rubber products and plastic and plastic products clearly indicates that as far as paper industry was concerned, neither the legislature nor the Government intended to include the industry engaged in manufacturing paper-products in Sch. I to the Act. Besides, on a grammatical reading of the expression "paper" occurring in Sch. I, it is

difficult to hold that it includes an industry engaged in the manufacture of paper-products also. The petitioners factory or establishment, in my view, therefore, is not one of the specified industries in Sch. I to the Act as required by S. 1(3)(a) of the Act.

9. Sri Joshi, appearing on behalf of the respondents, has, however, urged that along with the enlisted industry of paper included in Sch. I to the Act, regard should be had to the wide definition that has been given of the expression "manufacture or manufacturing process" in S. 2(ia) of the Act and he urged that if the enlistment of paper industry in Sch. I to the Act is so read along with the said definition, it will be clear that the petitioners'' factory or establishment would be covered by the provisions of the Employees'' Provident Funds Act. In this behalf, it would be desirable to refer to the definitions of the expressions "factory," "industry," as "also manufacture" or "manufacturing process" as given in S. 2 of the Act. The expression "factory" has been defined in S. 2(g) which runs as follows :

"(g) ''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; "

10. Expression "industry" is defined is S. 2(i), which runs as follows :

"(i) ''industry'' means any industry specified in Sch. I, and includes any other industry added to the schedule by notification under S. 4; "

11. Expression "manufacture" or "manufacturing process" has been defined in S. 2(ia) as follows :

"2(ia) ''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; "

12. Relying upon the aforesaid definition of the expression "manufacture" or "manufacturing process," it was urged by Sri Joshi that the expression has been defined in a very wide terms and it includes processes such as altering or treating or adapting any article or substance and since in the present case the petitioners'' establishment or factory is engaged in the process of altering, treating and adapting paper and thereby converting it into paper cones and paper tubes, it could be said that the petitioners'' factory or establishment was engaged in the manufacture of paper. I have already said above that it is only on this basis that respondent 3 in his affidavit in reply has sought to bring the petitioners'' establishment or factory within the provisions of the Act. On the other hand, Sri Sorabjee contended that, however wide the definition of the expression "manufacture" might be, it cannot have the effect of enlarging an industry engaged in manufacture of paper so as to include an industry engaged in manufacturing products of paper. The short point that arises for determination, therefore, is whether by reason of the aforesaid wide definition of the expression

"manufacture" or "manufacturing process" as given is S. 2(ia) of the Act the petitioners'' establishment or factory could be said to be an industry covered by the Act. There is no doubt that the definition of the expression "manufacture" or "manufacturing process" is in very wide terms, but in my view, if that definition is properly understood, all that it seeks to do is to include the various types of processes within the expression of manufacture or manufacturing process, but it cannot be forgotten that by employing any one or the other of processes so included what must result is the manufacture or production of the basic article or substance mentioned in the schedule; it cannot include any process whereby the basic article or substance gets itself converted into an altogether different article or substance. In the present case, the petitioners purchase in open market fully manufactured paper or paper-board and after subjecting the same to some manufacturing processes they convert the said basic substance or article into an altogether different article like paper cone or paper tube and after the manufacturing processes are undergone what results is not paper. In my view, the important words in the aforesaid definition are :

"with a views to its use, sale, transport, delivery or disposal"

13. and these words clearly indicate that the several types of processes that are included in the expression "manufacture" should be applied to the basic article or substance so that the use, sale, transport, delivery or disposal of the article as such could be achieved. The said definition, however wide, cannot, in my view, have the effect of adding the words "paper-products" to the entry of "paper" occurring in Sch. I to the Act. The manner in which I am interpreting the definition of expression "manufacture" given in S. 2(ia) receives support from the way in which certain industries have been enlisted in the schedule. If the said definition were to be interpreted in the manner suggested by Sri Joshi, then it would have been unnecessary for Government to specify expressly "rubber products" or "plastic products" and mere inclusion of "rubber" industry or "plastic" industry in the schedule would have sufficed.

14. Sri Joshi referred me to two decisions, one of the Madras High Court and the other of the Punjab High Court, where a similar question arose for consideration. The Madras decision in East India Industries, Madras (Private), Ltd. v. Regional Provident Fund Commissioner, Madras 1964 I L.L.J. 706, dealt with an establishment which was manufacturing "water-proof paper" and also "tarpaulin" and it was held that the establishment which manufactured these items was a factory which came under Sch. I to the Act under the items of paper industry and textile industry and Sri Joshi pointed out that the relevant entries in Sch. I to the Act were read by applying the definition of the expression "manufacture" or "manufacturing process" as given in S. 2(ia) of the Act and after so reading the said provisions of the Act the Madras High Court took the view that the establishment was one to which the provisions of the Act were applicable. The relevant observations on which reliance was placed by Sri Joshi appear at p. 708 of the report. After referring to the two relevant items in Sch. I as also the

explanation of the expression "paper" given in that schedule and after referring to the definition of the expression "manufacture" or "manufacturing process" as given in S. 2(ia) of the Act, Chief Justice Ramachandra Ayyar has observed as follows :

"Now, if Sch. I is read by applying this definition, it would mean that any treating or adapting of paper or textiles for its use or disposal will be one of the heads contained under Sch. 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 Sch. 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."

15. Now, it does not appear that specific attention of their lordships of the Madras High Court was drawn to the manner in which the legislature had included in Sch. I not only the industries engaged in manufacture of basic articles, but also its products whenever the legislature wanted to do, but apart from that, the Madras decision could be distinguished from the present case on facts. From the facts mentioned in the judgment, it will appear clear that the establishment in question was manufacturing water-proof packing paper by smearing with tar a sheet of paper and then superimposing another like sheet and pressing them together and the tarpaulin was manufactured by treating jute cuttings with tar. In other words, even the article that was produced after applying the manufacturing process was "water-proof packing paper," that is to say, a king of paper, and therefore, it could be said that any treating or adapting of the basic article paper was for its use or disposal as such paper. Even in the observations which I have quoted above and on which reliance was placed by Sri Joshi, it appears that the Court took the view that the factory in question manufactured "such paper," that is to say, a special kind of paper, viz., water-proof packing paper, and therefore, the factory in question was properly held as coming within Sch. I to the Act. The other decision which was relied upon by Sri Joshi, was an unreported judgment of the Punjab High Court delivered on 17 April, 1956 in Civil Writ No. 368 of 1955 in the case of Surgical Dressing Manufacturing Company, Ltd. v. Regional Provident Fund Commissioner, Ambala Cantonment, and others. I may mention that in that case, the point was not even seriously argued and the Court proceeded on the assumption that in view of the wide definition of the expression "manufacture" given in S. 2(ia), the petitioners'' case came within the purview of the Act. It may also be stated that even in that case after treating and adapting cloth, the petitioning company converted such cloth into bandages, gauzes, lints, etc., which latter articles could even properly be regarded as a special type of cloth and obviously textiles. As I have said above the definition of the expression "manufacture" and "manufacturing process" as given in S. 2(ia) of the Act cannot be interpreted to enlarge the scope of the entry pertaining to paper industry in Sch. I to the Act and the definition will have to be interpreted in the manner in which I have indicated, especially having regard to the fact that in the schedule itself the legislature,

whenever it wanted to include not only an industry manufacturing a basic article but also its products, has specifically done so.

16. Sri Joshi then invited my attention to a judgment of the Supreme Court in the case of Regional Provident Fund Commissioner Vs. Shibu Metal Works, for the purpose of contending that Employees'' Provident Funds Act was intended to serve a beneficent purpose and that therefore, in construing the material provisions of such an Act a board construction which would help the furtherance of the object should be adopted; but the Supreme Court in the very case has indicated that this rule postulated that two constructions were reasonably possible and when there was a competition between the two such reasonable constructions, that construction which would help the furtherance of the object of the Act should be adopted. I do not think that in the present case there is any scope for applying the rule enunciated by the Supreme Court. In the result, I accept the petitioners'' contention that their establishment or factory is not one of the scheduled industries under the Employees'' Provident Funds Act, 1952, and therefore, neither the Act nor the scheme framed thereunder would apply to their establishment or factory. I, therefore, make the rule in terms of prayer (b) of the petition absolute.

17. I am informed at the bar that at the hearing of the notice of motion for interim relief, it was agreed between the parties that whatever payments would be made by the petitioners to respondent 3 would be under protest and that in case the petitioners succeeded in their petition those amounts so paid under protest would be refunded back to them by respondent 3. An order in that behalf is necessary because the second part of prayer (b) of the petition only relates to the amount of Rs. 7,097.05 which had already been paid under protest before the filing of the petition. In view of the agreement that was arrived at between the parties and the Court''s order passed on 20 October, 1964, I direct that whatever payments have been made by the petitioners to respondent 3 under protest after the filing of the petition, will be refunded back to them by respondent 3.

18. The respondents shall pay to the petitioners costs of the petition including the cost of the application for interim relief fixed at Rs. 325.

19. Since Sri Joshi states that the respondents may carry the matter in appeal Court, the order pertaining to the refund may be stayed. I direct that the order pertaining to the refund of the amounts deposited by the petitioners under protest will not operate till 24 January, 1966.

