(1965) 12 BOM CK 0005

In the Bombay High Court

Case No : Misc. Petition No. 397 of 1964

Kamalkar Shankar Warde and Another APPELLANT

Vs

Central Board of Trustees and Others RESPONDENT

Date of Decision : 21-12-1965

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 2

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

Hon'ble Judges : Tulzapurkar, J

Bench : Single Bench

Advocate : S.J. Soranjee, for the Appellant; R.J. Joshi, for the Respondent

Judgement

1. This is petition under Article 226 of the Constitution of India praying for issue of a Writ of Mandamus against the 3 respondents, being 1) The Central Board of Trustees under the Employees Provident Funds Act, 1952 and the Scheme framed thereunder, 2) Shri E. V. Ramreddy, the Central Provident Fund Commissioner and 3) Shri D. T. Ghatpande, Regional Provident Fund Commissioner, Maharashtra State, 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.

(2) 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 Ms. Eastern Paper Tube Factory at Ashok Nagar, Kandivali, Bombay. Their factory at Kandivali admittedly employees more than 20 persons and the work of manufacturing paper cones and paper tubes is done there. The 3rd respondent as the Regional Provident Fund Commissioner of Maharashtra State addressed a letter dated 15th 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 1st May 1963, inasmuch as during the said month and

the subsequent months the said establishment had employed more than 19 persons and was engaged in an industry specified in Schedule 1 to the said, Act, the industry being paper industry enlisted at Item No. 5 in the Schedule. The 3rd respondent further informed the petitioners by his said letter the 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 employers'' and the employees'' contributions to the provident fund from 1st May 1963 and to comply with other requirements therein mentioned. The petitioners by their letter dated 22nd July 1963 informed the 3rd respondent that they were not manufacturing "paper" and as such their establishment or factory was not covered by any specified industry in Schedule 1 to the Act. Correspondence ensured between the petitioners on the one hand and the 3rd respondent 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 appers, the petitioners made payments of diverse amounts to the 3rd respondent under protest. On 14th October 1963 the petitioners addressed letter to the 2nd respondent and after referring to the correspondence which they had with the 3rd respondent they stated that they did not manufacture a 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 Schedule industry indicated by the expression "paper". On 10th January 1964 the 2nd respondent 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 Section 2(i)(a) of the Act and the petitioners were, therefore requested to comply with the statutory provisions as per the directions of the 3rd respondent. 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 the 3rd respondent as also the threatened action of recovering damages or penalty and further to forebear from enforcing the provisions of the said Act and the scheme framed thereunder in respect of their 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 the 3rd respondent to refund to the petitioners the diverse amounts deposited by them under protest.

(3) 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 Schedule I to the Act within the meaning of Sub-clause (a) of Sub-section 3 of Section 1 of the Act. It is not disputed that the petitioners'' establishment or factory has more than twenty-two persons in its employment and therefore the answer to the question raised in the petition will

depend upon whether he petitioners'' establishment is an industry "engaged in the manufacture of paper" as per item 5 in Schedule 1 to the Act. On behalf of the petitioners, reliance was placed upon Section 1(3)(a) of the Act and upon the relevant entry to be found in Schedule I to the Act and it was contended by Mr. 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 Scheme may be set out. Section 1(3)(a) of the Act runs as follows:

" 1 (3) Subject to the provisions contained in section 16, it applies-

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

The relevant entry in Schedule I to the Act is as under:

Schedule I

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

* * * * *

* * * * *

paper."

By Act XXXVII 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 he expressions used therein,-

. . . .

. . . .

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

(4) It will be noticed that neither the entry in the Schedule nor the Explanation includes "paper-products". In paragraph 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 or straw-board, 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 manpower, 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, paperboard and star-board 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 the 3rd respondent herein. The only substantial answer given by the 3rd respondent 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 the 3rd respondent, if the enlisted industry of paper in Schedule I is read along with the definition of the expression "manufacture" given in Section 2(i)(a) 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 emphasising at this stage is that it is not disputed before me that the manufacturing processes required for manufacturing paper, pulp or paper board or straw-board 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, Mr. 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 an 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 Mr. 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 Legislature has done so and he specifically invited my attention to industries such as rubber and plastics. By Notification No. SRO 1566 dated 4th July 1956 the Government included rubber industry in Schedule I and by another Notification No. GSR 591 dated 27th March 1963 the Government included plastic industry in this Schedule and while so amending the Schedule these industries have been enlisted in the Schedule I as follows: "Rubber and rubber products and "Plastic and plastic products". He also referred me to another item that had been enlisted by the Notification NO GSR 591 dated 27th March 1963 and the item that has been added is described as "Stationery products" Mr. 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 Schedule 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 Schedule 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 Mr. 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 Schedule I to the Act. Besides on a grammatical reading of the expression ''paper'' occurring in Schedule 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 Schedule I to the Act as required by Section 1(3)(a) of the Act.

(5) Mr. Joshi, appearing on behalf of the respondents has however, urged that along with the enlisted industry of paper included in Schedule I to the Act, regarded should be had to the wide definition that has been given of the expression "manufacture or manufacturing process" in Section 2(i-A) of the Act and he urged that if the enlistment of paper industry in Schedule 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 Section 2 of the Act. The expression "factory" has been defined in Section 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:"

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

"(i) "industry" means any industry specified in Schedule I, and includes any other industry added to the Schedule by notification u/s 4;"

Expression "manufacture" or manufacturing process" has been defined in Section 2(i-A) as follows:

"2 (i-A) ''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:"

Relying upon the aforesaid definition of the expression ''manufacture'' or ''manufacturing process'' it was urged by Mr. Joshi that the expression has been defined in 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 the 3rd respondent in his affidavit in reply has sought to bring the petitioners'' establishment or factory within the provisions of the Act. On the other hand, Mr. 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 reasons of the aforesaid wide definition of the expression "manufacture" or "manufacturing process" as given in Section 2(i-a) 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 of 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 articles 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 process 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 view to its use, sale, transport, delivery or disposal" 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 Schedule I to the Act. The manner in which I am interpreting the definition of expression "manufacture" given in Section 2(i-a) 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 Mr. 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.

(6) Mr. Joshi referred me to two decisions, one of the Madras High Court and the other of the Punjab High Court. where similar question arose for consideration . The Madras decision reported in East India Industries (Madras) Private Limited Vs. Regional Provident Fund Commissioner, dealt with an establishment which was manufacturing "water-proof paper" and also "tarpulin" and it was held that the establishment which manufactured these items was a factory which came under Schedule I to the Act under the items of paper industry and textile industry and Mr. Joshi pointed out that the relevant entries in Schedule I to the Act were read by applying the definition of the expression manufacture or manufacturing process as given in Section 2(i-a) 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 Mr. Joshi appear at page

372 of the report. After referring to the two relevant items in Schedule No. 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 Section 2(i-a) of the Act. Chief Justice Ramchandra Iyer has observed as follows:

"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."

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 Schedule 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 super-imposing 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 kind 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 Mr. 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 Schedule I to the Act. The other decision which was relied upon by Mr. Joshi was an unreported judgment of the Punjab High Court delivered on 17th April 1956 in Civil Writ No, 368 of 1955 (Punj) in the case of Surgical Dressing Manufacturing Co., Ltd. v. Regional Provident Fund Commissioner, Ambala Cantt. 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(i-a), the petitioner''s 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, lint''s 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(i-a) of the Act cannot be interpreted to enlarge the scope of the entry pertaining to paper industry in Schedule No. 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, it has specifically done so.

(7) Mr. Joshi then invited my attention to a judgment of the Supreme Court in the case of the Regional Provident Fund Commissioner Vs. Shibu Metal Works, for the purpose of contending that the Employees'' Provident Funds Act was intended to serve a beneficent purpose and that therefore, in construing the material provisions of such an Act a broad construction which would help the furtherance of the object of the Act 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 construction, 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 schedule 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.

(8) 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 the 3rd respondent would be under protest and that in case the petitioners succeeded in their petitions those amounts so paid under protest would be refunded back to them by the 3rd respondent. 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 p. which had already been paid under protest before the filling of the petition. In view of the agreement that was arrived at between the parties and the Court''s order passed on 20th October 1964, I direct that whatever payments have been made by the petitioners to the 3rd respondent under protest after the filing of the petition, will be refunded back to them by the 3rd respondent.

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

(10) Since Mr. 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 24th January 1966.

(11) Petition allowed.

