
(1957) 10 AHC CK 0013

In the Allahabad High Court

Case No : Special Appeal No. 289 of 1957, against judgment of M.L. Chaturvedi, J., in Civil Miscellaneous Writ No. 746 of 1956

K.H. Panjani

APPELLANT

Vs

State of U. P. and another

RESPONDENT

Date of Decision : 18-10-1957

Acts Referred:

Constitution of India, 1950 — Article 245
Factories Act, 1948 — Section 2, 3, 85

Citation : (1957) 10 AHC CK 0013

Hon'ble Judges : O.H.MOOTHAM, CJ and RAGHUBAR DAYAL, J

Final Decision : Dismissed

Judgement

O. H. Mootham, C.J.

1. This is an appeal from an order of Mr. Justice Chaturvedi dated 18101957, dismissing a petition under Art. 226 of the Constitution.

2. The relevant facts are not in dispute. The appellant is the owner of a concern known as the Jai Hind Glass Bangles Cutting Factory at Firozabad in the district of Agra. Firozabad is the centre of the glass bangle industry in this State, and part of the work of making bangles is done on the appellants premises. The number of persons employed by the appellant is less than ten but a large number of other persons averaging about 125 a day, make use of the mechanical power which is made available to them by the appellant in his premises.

These other persons are not his employees. They are persons who are supplied with glass bangles by bangle merchants for the purpose of engraving designs on them. They bring the glass bangles to the appellants premises together with their own grinding wheels; they then attach their grinding wheels to the appellants power plant and with their aid make grooves in the bangles.

This, it seems, is all done on the appellants premises. The bangles are then taken away and the grooves are filled with liquid gold or other colouring material,

and after being further treated they are ready for sale on the market. The engraving work is in no way controlled or directed by the appellant who charges the users hire for the power which he supplies.

3. In view of the fact that less than ten persons employed by the appellant work on these premises, the provisions of the Factories Act, 1948, are not per se attracted. That Act however contains a section, S. 85, which is in these terms :

"(1) The State Government may, by notification in the official Gazette, declare that all or any of the provisions of this Act shall apply to any place wherein a manufacturing process is carried on with or without the aid of power or is so ordinarily carried on, notwithstanding that

(i) the number of persons employed therein is less than ten if working with the aid of power and less than twenty if working without the aid of power, or

(ii) the persons working therein are not employed by the owner thereof but are working with the

permission of, or under agreement, with such owner : Provided that the manufacturing process is not being carried on by the owner only with the aid of his family.

(2) After a place is so declared it shall be deemed to be a factory for the purposes of this Act and the owner shall be deemed to be the occupier and any person working therein a worker.

Explanation : For the purposes of this section, owner shall include a lessee or mortgagee with possession of the premises."

On the 5th March, 1955, the State Government, acting in pursuance of this section issued a Notification declaring that all the provisions of the Factories Act and the rules made thereunder (excepting those specifically mentioned in the Notification) were to apply to certain specified commercial concerns including that of the appellant.

The appellant endeavoured to persuade the State Government to exclude his concern from the Notification but his efforts were unsuccessful and he then filed a petition in this Court in which he challenged the validity of the Notification. It appears that the only point which was urged on behalf of the appellant before the learned Judge was that as no manufacturing process was carried on in his premises, the Notification so far as it purported to apply to those premises was invalid. This argument was rejected by the learned Judge, and the appellant now appeals.

4. In this Court the same argument has been advanced but in addition it has also been contended that S. 85 of the Factories Act amounts to an unconstitutional delegation of legislative powers and involves an unreasonable restriction on the appellants right to carry on his business guaranteed to him by Art. 19(1)(g) of the Constitution.

5. With regard to the first point we think the view taken by the learned Judge was clearly right. "Manufacturing process" is defined in S. 2, Cl. (k) of the Act as meaning inter alia any process for

"making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal."

We think that the evidence in this case shows clearly that the work done on the bangles of cutting grooves in them which later would be filled with colouring material is clearly a stage in the ornamentation of the bangle with a view to its subsequent use or sale, and is therefore a manufacturing process within the meaning of the Act.

6. It was conceded by learned counsel that the argument based on Art. 19(1)(g) of the Constitution could not be sustained if his contention that S. 85 involved an unconstitutional delegation of legislative powers was not well founded. We propose therefore to consider the validity of S. 85. Mr. Pathaks argument is that S. 85 in effect empowers the State Government to enlarge the definition of the word factory and that nowhere is there any indication of any principle or policy by which the State Government is to be guided in issuing a notification under that section.

The matter, he argues, is left entirely to the discretion of the State Government which can apply the provisions of the Act to any concern in which a manufacturing process is carried on. On the other hand, the learned Standing Counsel argues that it was not possible for the legislature to be more precise; it could not envisage all the different types of case which might arise and it has done all that it can reasonably be expected to do.

7. No authority was cited to us by either side, but in our opinion the case is covered by the decision of the Supreme Court in *Edward Mills Co. Ltd. v. State of Ajmer*, 1955 SCA 24 : ((S) AIR 1955 SC 25) (A). In that case the Supreme Court was called upon to consider the validity of S. 27 of the Minimum Wages Act, 1948. The purpose of that Act as stated in the preamble is "to provide for fixing minimum rates of wages in certain employments" and S. 3 empowers the appropriate Government to fix the minimum rates of wages payable to employees employed in the employments enumerated in the Schedule to the Act.

Section 27 then provides that the appropriate Government may, after giving the prescribed notice, issue a Notification adding to the Schedule any employment in respect of which it is of opinion that minimum rates of wages should be fixed under the Act. There is clearly a close similarity between the provisions of that Act and of the Act which we have to consider. The purpose of the Factories Act is to "consolidate and amend the law regulating labour in factories", that is to say to places where things are made.

The provisions of the Act will necessarily apply to a place which is a factory as

defined in S. 2, but then there is the provision to be found in S. 85 empowering the State Government by Notification to extend the provisions of the Act to a place which is not a factory as defined in the Act but wherein a manufacturing process is carried on. The Supreme Court in the *Edward Mills Co. Ltd.*, case (A), quoted with approval what had been said by O'Connor, J., of the High Court of Australia in *Baxter v. Ah Way*, (1909) 8 CLR 626 at p. 637 (B) :

"The aim of all legislatures is to project their minds as far as possible into the future, and to provide in terms as general as possible for all contingencies likely to arise in the application of the law. But it is not possible to provide specifically for all cases and therefore, legislation from the earliest times, and particularly in modern times has taken the form of conditional legislation, leaving it to some specified authority to determine the circumstances in which the law shall be applied, or to what its operation shall be extended, or the particular class of persons or goods to which it shall be applied."

Referring then to the argument of the counsel that no standard or criterion was to be found in the Act to guide the administrative authority in the exercise of its legislative powers, the Court said :

"The legislative policy is apparent on the face of the present enactment. What it aims at is the statutory fixation of minimum wages with a view to obviate the chance of exploitation of labour.....

Conditions of labour vary under different circumstances and from State to State and the expediency of including a particular trade or industry within the schedule depends upon a variety of facts which are by no means uniform and which can best be ascertained by the person who is placed in charge of the administration of a particular State.

It is to carry out effectively the purpose of this enactment that power has been given to the appropriate Government to decide, with reference to local conditions whether it is desirable that minimum wages should be fixed in regard to a particular trade or industry which is not already included in the list. We do not think that in enacting Section 27 the legislature has in any way stripped itself of its essential powers or assigned to the administrative authority anything but an accessory or subordinate power which was deemed necessary to carry out the purpose and the policy of the Act."

The Court accordingly held the section to be valid.

8. The principles enunciated by the Supreme Court in this case appear to us no less applicable to the matter before us. The purpose of the

Factories Act is the regulation of labour, the extent of the application of the Act necessarily depending very largely on local conditions. In such circumstances we do not think that the authority given to the State Government by S. 85 to apply the provisions of the Act to a place which is not technically a factory but in which a manufacturing process is carried on can be held to be an unconstitutional

delegation of legislative powers.

9. In our opinion this appeal fails, and it is accordingly dismissed with costs.

Appeal dismissed. .