

(1958) 06 BOM CK 0008

In the Bombay High Court

Case No : Special Civil Application No. 333 of 1957

Madhya Pradesh Mineral Industries Association, Nagpur

APPELLANT

Vs

Regional Provident Fund Commissioner, Bombay

RESPONDENT

Date of Decision : 19-06-1958

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1959 Bom 60 : (1959) 1 LLJ 368

Hon'ble Judges : S.P. Kotval, J; J.R. Mudholkar, J

Bench : Division Bench

Judgement

Mudholkar, J.—This is an application under Art. 226 of the Constitution for the issue of a writ restraining respondent 1 the Regional Provident Fund Commissioner, from enforcing against the petitioner any of the provisions of the Employees' Provident Funds Act, 1952.

2. The petitioner is the Madhya Pradesh Mineral Industries Association and represents all the mine-owners of Vidarbha. By notification No. SRO. 2705, dated 17 August, 1957, the Central Government has applied the Act to manganese mines. According to the petitioner, manganese mines are not included in Sch. I of the Act and that industry is, therefore, not a scheduled industry and consequently the Act or any provision thereof cannot be applied. Under Sub-section (3) S. 1 of the Act as it originally stood, the provisions of the Act applied in the first instance to all factories engaged in any scheduled industry in which fifty or more persons are employed. By Act XCIV of 1956, which received the assent of the President on 28 December, 1956, this provision has been amended and in its place we have the following provision :

"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 fifty or more persons are employed, and (b) to any other establishment employing fifty or more persons or class of such establishments

which the Central Government may, by notification in the official gazette, specify in this behalf."

3. It is thus clear that the object of the amendment was to empower the Central Government to apply the provisions of the Act to industries other than those specified in Sch. I. This is also made clear in the statement of objects and reasons printed in the Gazette of India, Extraordinary, Part II, Sep. 2, No. 55 dated 23 November 1956. The objects and reasons are as follows :- "The Employees' Provident Funds Act, 1952, applied originally to factories engaged in the six industries specified in Sch. I, namely, cement, cigarettes, electrical, mechanical, or general engineering products, iron and steel, paper and textiles. Section 4 of the Act provides for the extension of the Act to other factories by a notification in the official gazette. Of late, there has been a persistent demand for the extension of provident fund benefits to all industrial workers, and the Act has recently been extended to seventeen additional factory industries by notification. Section 4, however, provides for application of the Act to factory industries only. There is no provision in the Act enabling its extension to other establishments like plantations, mines, commercial establishments, etc. It is, therefore, proposed to include an enabling, provision in the Act to the effect that, subject to the exemptions provided in S. 16, the Act shall apply to any establishment or class of establishments as may be specified by the Central Government by notification in the official gazette."

4. It is quite true that a Court cannot go into the statement of objects and reasons, for the purpose of limiting the scope of any law or for the purpose of interpreting the law, but where, as here, the Court has to find out what was the object of making the particular law, it is entitled to look into the statement of objects and reasons. We are not going to construe the provisions of Sub-section (3) of S. 1 of the Act in the light of the "objecta and reasons," and the only purpose for which we have quoted the objects and reasons is to indicate the reasons which necessitated the amendment of Sub-section (3) of S. 1.

5. When one looks to Cls. (a) and (b) of Sub-section (3) of S. 1, it is abundantly clear that the legislators had kept in mind the distinction between an industry specified in Sch. I and an industry not so specified. In the case of an industry specified in Sch. I, Clause (a) provides for the applicability of the Act to the factory engaged therein straightway, provided fifty or more persons are engaged in that factory. If, however, an establishment of any other kind employs fifty persons or more, even though that was an establishment or an industry which was not included in the schedule, the Central Government can, by virtue of the amendment, apply the provisions of the Act thereto by exercising the power under Clause (b). That being the state of the law, we cannot accede to the argument of the learned counsel for the petitioner to the effect that it was not competent to the Central Government to apply the provisions of the Act to manganese mines. The next point taken is that the Act is discriminatory in that S. 16 thereof makes the provision inapplicable to the factories belonging to

Government or local authority. It is contended that when the State or local authority engages itself in business, It is "a person," and as such Art. 14, of the Constitution would apply where a special treatment is given to the Government or local authority. In support of the contention reliance is placed upon the observations of Malik, C.J., in *Moti Lal and Others Vs. The Government of the State of Uttar Pradesh and Others*, . In that case the learned Chief Justice has observed (p. 271) : "Where a business is carried on by the Government as incidental to its ordinary functions as such, there can be no doubt that Art. 14 cannot be relied on in support of the argument that the State should be put on the same footing qua that business as any private citizen. It cannot be seriously urged that a citizen can claim that he must be given the same rights as the State has to be given for carrying on its functions as such.

6. Where, however, a State carries on a commercial undertaking on a competitive basis and where such an undertaking is not incidental to its ordinary functions of Government, the question, whether the State can claim to be treated differently . . . would depend upon the answer to the question whether the State can or cannot be separately classified."

7. We would, however, refer to the further observations of the learned Chief Justice in Para. 75 of the report (p. 272) : "If the word "person" in Art. 14 is interpreted to include the State then the provisions of Art. 14 would appear to be in conflict with the provisions of Art. 289. Reading the Constitution as a whole I am inclined to the view that it was not intended that the Government of a State should be placed on the same footing as any person carrying on a business."

8. These latter observations negative the contention of the learned counsel. It is true that another Judge constituting the Bench (Agarwala, J.) has observed that the principles of Art. 14 not only apply between individual and individual but also between one individual and a corporation or the State itself, and that

"when the State itself descends into the arena of competition with private persons, it must compete with them on equal terms, and not claim preferential treatment."

9. This opinion of the learned Judge, however, does not seem to have been accepted by the other Judges constituting the Bench. Moreover, the Supreme Court has not countenanced the view taken by the learned Judge. That will be clear from the following observations of their lordships in *Saghir Ahmad Vs. The State of U.P. and Others*, . (p. 741) :

". . . In our opinion, the argument of Mr. Pathak that the State ceases to function as a State as soon as it engages itself in a trade like ordinary trader cannot be accepted as a sound proposition of law under the Constitution of India . . ."

10. We are, therefore, of opinion that Art. 14 of the Constitution cannot at all be invoked by the petitioner in this case.

11. Upon this view, we dismiss the petition with costs.