
(1964) 07 CAL CK 0006
In the Calcutta High Court

Metallizing Corporation (Private) Ltd.	APPELLANT
Vs	
Regional Provident Fund Commissioner	RESPONDENT

Date of Decision : 13-07-1964

Acts Referred:

Constitution of India, 1950 — Article 226
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1, 14, 16, 2, 4

Citation : (1966) 2 LLJ 528

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Judgement

B.N. Banerjee, J.—There is an Act known as the Employees' Provident Funds Act, 1952 (hereinafter referred to as the Act), which is an Act to provide for the institution of provident funds for employees in factories and other establishments. Section 1(3) of the Act reads as follows:

2. Subject to the provisions contained In Section 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, and

(b) to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the official gazette, specify in this behalf:

* * *

Section 2(g) of the Act defines " factory " in the following language:

"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.

Section 2(0) of the Act defines " industry " in the language set out below:

"industry" means any industry specified in Sch. I, and included any other industry added to the schedule by notification u/s 4.

Section 2(f-a) defines the " manufacture " as hereinbelow set out:

"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.

Sections 5 and 6 of the Act provide for creation of a provident fund scheme and matters to be provided in the scheme and the material portions of the sections are hereinbelow quoted:

5. (1) The Central Government may, by notification in the official gazette, frame a scheme to be called the Employees' Provident Fund Scheme for the establishment of provident funds under this Act for employees or for any class of employees, and specify the establishments or class of establishments to which the said scheme shall apply and there shall be established, as soon as may be after the framing of the scheme, a fund in accordance with the provisions of this Act and the scheme.

* * * 6. (1) The contribution which shall be paid by the employer to the fund shall be six and a quarter per cent of the basic wages, dearness allowance and retaining allowance, if any, for the time being payable to each of the employees, and the employees' contribution shall be equal to the contribution payable by the employer in respect of him and may, if any employee so desires and if the scheme makes provision therefore, be an amount not exceeding eight and one-third per cent of his basic wages, dearness allowance and retaining allowance, if any.

* * *

Section 14 of the Act provides for penalties for avoidance of payment under the Act. Section 14A deals with cases where the offender under the Act is a company. Section 19A provides for removal of difficulties and is couched in the following language:

If any difficulty arises in giving effect to the provisions of this Act, and in particular, if any doubt arises as to

(i) whether an establishment which is a factory, is engaged in any industry specified in Sch. I.

* * *

the Central Government may, by order, make such provision or give such direction, not inconsistent with the provisions of this Act, as appear to it to be necessary or expedient for the removal of the doubt or difficulty; and the order of the Central Government, in such cases, shall be final.

The material portion of the scheduled, referred to in Sections 1(3) and 2 CO is

Bet out below:

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

* * * Electrical, mechanical or general engineering products

* * * 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 1 to 24 ...

25. Fats and accessories of products specified in items 1 to 24.

3. The petitioner-company has a factory at No. 3/1, Ornate Second Lane, in the town of Calcutta, where it says it does repairing work by moralizing worn-out part B of machinery. This fact is not disputed in the affidavit-in-opposition, where the nature of the work carried on by the petitioner in its factory-is thus described:

The nature of the work done at the factory is reclamation of worn-out machine components by moralizing with a view to its use, sale, transport, delivery or disposal.

4. On 7 January 1960, the respondent, Regional Provident Fund Commissioner, wrote a letter to the manager of the petitioner-company, the material portion of which is set out below:

The Employees' Provident Funds (Amendment) Act, 1960, has come into force with effect from 31 December 1960, under the Government of India, Ministry of Labour and Employment, Notification No. S.C. 3092, dated 21 December 1960, published in the Gazette of India Extraordinary, Part II, Section 3(II), dated 22 December 1960. u/s 1 (2) of the amended Act its provisions apply to an establishment engaged in any industry specified in Son. I to the Act in which twenty or more persons are employed.

2. The code No. WB-2808 is allotted to your establishment. This code number may please be quoted in all future correspondence with this office.

3. I would, therefore, request you to comply with the provisions of the scheme with effect from 1 January 1961.

4. If, however, it is contended that the provisions of the Act and the scheme are not applicable to your establishment, the reasons therefore may kindly be intimated to this office within a month from the date of receipt of this letter.

* * *

It does not appear that the petitioner-company made any representation claiming exemption from the operation of the Act. Thereafter, on 17 February 1962 and 23 March 1962, the Regional Provident Fund Commissioner and, on 27 April 1962, a Deputy Secretary to the Government of West Bengal, wrote letters

to the petitioner-company inviting its attention to the provisions of the Employees' Provident Funds Act and informing the petitioner that in case of its failure to comply with the provisions of the Act, appropriate action would be taken against it. The petitioner-company sent a reply to the letter from the Deputy Secretary, dated 27 April 1962, by its letter, dated 5 May 1962, in the following language:

In reply to your above, we have to state the following in support of our claim of being exempted under the Act:

- (1) That our workshop does not fall under the scheduled workshops.
- (2) That the number of our employees is below the scheduled number of employees.
- (3) That in view of the above no definition was made by the company from Its employees and as such the question of defaulting in the payment of contribution does not arise.
- (4) That we have stated the above fact to the Regional Provident Fund Commissioner but to no effect.
- (5) That our employees on the above ground do not agree to deductions of provident fund.

Under these circumstance no action for sanctioning prosecution be taken and the company be given an opportunity of being heard.

It does not appear that the aforesaid letter was considered by the respondent, Deputy Secretary, Nevertheless, the respondent started recovery proceedings against the petitioner-company, under the Public Demands Recovery Act and also started criminal proceedings for violation of the provisions of the Act.

5. Aggrieved by all that, the petitioner-company moved this Court, under Article 226 of the Constitution, praying for a mandate upon the respondents not to proceed with the certificate proceedings and also the criminal proceedings and for a writ of certiorari for the quashing of the sanction to prosecute the petitioner and obtained this rule.

6. Sri J. C. Moitra, learned advocate for the petitioner-company, argued a single point in support of this rule. He relied upon the language of Sch. I and contended that the petitioner-company was not engaged in the manufacture of electrical, mechanical or general engineering products or parts or accessories of such products. He argued that the petitioner-company merely repaired parts and components of machinery, already produced, by the process of moralizing and did not produce anything itself.

7. The word "product" means a thing produced. The expression "produced"--it is noticed in Stroud's Judicial Dictionary--is a word which has not got any exact legal meaning but which required to have an interpretation placed upon it in the

statute, in which it is used. To manufacture machine or machine parts or components from raw materials is certainly production of machine, machine parts or components. To repair a product means to make good its defects-it includes renewals--that is, patching where patching is reasonable and practicable and where it is not, replacement of the worn-out part by a new piece. The petitioner-company does business in renewing or reconditioning worn-out machine parts by metallization, that is, by reinforcing worn-out metal parts or machine by the grafting of fresh metal on the same. The question for my consideration is whether this is manufacturing of any product, as mentioned in the schedule. The definition of "manufacture," as in Section 2(f-a) already quoted, is somewhat wide. It includes not only making but also altering or otherwise treating or adapting any article with a view to its use, sale, transport, delivery or disposal. Now metallizing of worn-out parts is certainly treatment of an article. That being so, it is difficult to say that the petitioner-company does not fall within the description of business mentioned in the schedule, being, as it is, engaged in the treatment by repair of electrical, mechanical or general engineering products including their parts and accessories. The view I take is also the view taken by the Patna High Court in *Lawly Sen and Co. Vs. Regional Provident Fund Commissioner Bihar and Another*,

8. Sri J. C. Moitra sought to get rid of the wide definition of "manufacture" by contending that the petitioner-company was a mere repairer. What he wanted to say was that other people brought their goods to the petitioner's factory for being metallized and the petitioner-company only charged remuneration for repairing such goods and did not sell the repaired goods itself. In my opinion, even if I agree with Sri Moitra in this respect (although it is difficult for me to do so, in view of what is stated in the affidavit-in-opposition), even then the business of the petitioner-company does not come out of the definition of "manufacture." The petitioner may not sell the goods reconditioned by it but only charge remuneration for repair. But nevertheless, it treats the goods brought by other people for the purpose of repair with a view that the worn-out parts may ultimately be put to use. That brings the petitioner within the operation of the Act.

9. In the view I take, I find no substance in the rule. The rule is discharged but I make no order as to costs.

10. Interim orders, if any, stand vacated.