

(1958) 04 P&H CK 0013
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1 of 1957

Metro Motors Private Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner, Punjab Ambala Cantt.
and Others

RESPONDENT

Date of Decision : 11-04-1958

Acts Referred:

Constitution of India, 1950 — Article 226

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 19A, 2

Citation : AIR 1959 P&H 89 : (1959) 1 LLJ 56

Hon'ble Judges : A.N. Bhandari, C.J;S.S. Dulat, J

Bench : Division Bench

Advocate : B.R. Tuli, for the Appellant; L.D. Kaushal, Dy. A.G., for the Respondent

Final Decision : Allowed

Judgement

S.S. Dulat, J.—The Regional Provident Fund Commissioner, Punjab sent a notice to the petitioner-company, Metro Motors Private Limited, demanding contribution to the Employees' provident Fund Scheme, and the petitioner thereupon obtained a rule from this Court for the quashing of that notice and for prohibiting the Regional Provident Fund Commissioner from recovering the amount, the ground taken being that the petitioner-company was not running any factory covered by the provisions of the Employees' Provident Funds Act, 1952.

2. The relevant facts are these : The Metro Motors Private Limited have a shop for the sale of motor-cars and attached to that shop is a service-station where motor-cars are serviced as well as repaired. About half a mile from these premises is a workshop owned by this company and in that workshop bodies for trucks and buses are made by carpenters and other persons employed by the company.

The petitioners case is that neither their shop, where cars are sold, nor the attached service-station, where cars are serviced and repaired, nor the other

premises, where bodies for trucks and buses are made, IS really a factory as no manufacturing process is carried on at any of these places and further that, in any case, at none of these places is the number of persons employed fifty or more than fifty.

3. It is admitted before us that before the Employees' Provident Funds Act, 1952, can apply, it has to be shown that there is in existence a factory engaged in an industry specified in Schedule I to the Act in which factory fifty or more persons are employed. The solo question, therefore, is whether any such factory is in existence in the present case, and this depends on the interpretation of the provisions of the Act already referred to.

4. Before entering on this matter it is convenient to dispose of one preliminary question raised on behalf of the respondents. It was said that Section 19A of the Employees' Provident Funds Act, 1952, contemplates that in case of difficulty or doubt in connection with the existence of a factor;" employing fifty or more persons, the Central Government is authorised to decide the matter and that decision is final, and since in this case the Central Government has not had opportunity of considering the matter the present writ petition is, premature.

It was however, conceded that this does not debar the petitioners from seeking a remedy under Article 226 of the Constitution. It is also clear that the dispute between the parties now is not as to facts but only as to the interpretation of the statute governing the entire matter and the ends of justice would not be furthered by postponing the decision in the hope of seeking a direction by the Central Government.

It is of course admitted that even if the view of the Central Government were against the petitioners' contentions and in accordance with the view taken by the respondents, the petitioners would still be entitled to have that decision examined in this Court if, as is the case here, the decision is to turn on the interpretation of the Act itself. The present, therefore, is clearly not a case in which we should refuse relief to the petitioners merely because they might conceivably have gone to the Central Government in the first instance.

5. Regarding the merits of the dispute, it is contended on behalf of the petitioners that as far as the main shop is concerned only cars are sold and serviced and repaired there and no manufacturing process is at all carried on and those premises, therefore, cannot be called a factory, much less a factory engaged in any scheduled industry. This is largely conceded, and it is otherwise too clear that at the petitioners' shop no manufacturing process is carried on.

There remains the second premises half a mile away from the shop where it is admitted that bodies for buses and trucks are made. Mr. Tuli contends that the making of these bodies with the help of carpenters Is not really a manufacturing process. The contention is, however, untenable, for the carpenters and other workmen employed are quite clearly making bodies from out of appropriate material and it is difficult to describe the process except as the manufacture of

such bodies.

The expression "manufacture" is defined in the Act itself in Section 2 as "making, altering, ornamenting, finishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal", and the process of making bodies for trucks and buses is clearly such a process.

6. "Factory" in Section 2 is defined as "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." In view of this definition it is clear that these particular premises form a factory. On these premises, however, no more than 15 persons have ever been employed, and this fact is admitted.

The respondents' contention is that not only the persons employed there are to be counted, but along with them the persons employed by the petitioners at their shop and service-station must be counted, and the argument is that the shop and the service-station, although admittedly half a mile away, should be deemed to be in the precincts of the same premises in which the manufacturing of bodies for buses etc., goes on.

It is not suggested that there is any connection between the two premises except that of ownership, and in view of the definition of a "factory" mentioned in Section 2 of the Act, it seems to me impossible to agree that the petitioners' shop, where cars are sold should be held to form one premises along with the factory half a mile away. The only case bearing on a similar question cited before us, being *Oudh Sugar Mills Ltd. Vs. Regional Provident Fund Commissioner, Bombay*, is against the respondents' contention.

To me, therefore it appears that the only factory in existence is the premises and the precincts of it where bodies for buses and trucks are made, and since it is clear that in that factory and on those premises fifty or more persons have never been employed, the Employees' Provident Funds Act can have no application.

7. On the above view it is unnecessary to consider whether the manufacturing of bodies for buses and trucks is at all an industry mentioned in Schedule I to the Act, although such is the petitioners' contention. I feel satisfied that the petitioner company is not running any factory employing fifty or more persons and the Employees' Provident Funds Act of 1952, therefore, does not apply. This petition must, therefore, be allowed and the rule issued in this case made absolute. In the circumstances of the case, however the parties should be left to their own costs.

A.N. Bhandari, C.J.

8. I agree.