

(1957) 03 BOM CK 0032

In the Bombay High Court

Case No : Misc. Petition No. 122 of 1956

Nagpur Glass Works Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner, Bombay

RESPONDENT

Date of Decision : 07-03-1957

Acts Referred:

Constitution of India, 1950 — Article 226

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1, 1(3), 19, 8

Citation : AIR 1957 Bom 152 : (1957) 59 BOMLR 760 : (1958) 1 LLJ 281

Hon'ble Judges : Tambe, J;Mudholkar, J

Bench : Division Bench

Advocate : M.R. Bobde, for the Appellant; M. Adhikari, Special Govt. Pleader, for the Respondent

Judgement

Mudholkar, J.—This is a petition under Article 226 of the Constitution for the issue of a writ of prohibition or any other writ to the respondent prohibiting him from enforcing the provisions of the Employees' Provident Funds Act, 1952, against the petitioner.

2. The relevant facts are as follows : The principal business of the petitioner is the manufacture of glass. It is also engaged in the business of manufacture of burners and metal lamps (consisting of glass oil containers and globes and metal burners and reflectors). In the year 1952, the Employees' Provident Funds Act was passed. Sub-section (3) of Section 1, of the Act applies to all factories engaged in any industry specified in Schedule I of the Act provided that they employ fifty or more workers in that industry. The Schedule to the Act however does not include a "glass industry".

3. By Act 37 of 1953, this Act was amended and an Explanation was added in Schedule I. This Explanation gives a list of industries which are covered by the expression "Electrical, mechanical or general engineering products" used in the Schedule. Neither the "glass industry" nor burners and metal lamps are included

in the aforesaid Explanation. This Explanation also added an entry "hurricane lanterns" as included in the expression "Electrical, mechanical or general engineering products".

4. According to the petitioner, burners and metal lamps produced by it are not parts and accessories of hurricane lanterns. This fact is however denied by the respondent.

5. On 16-3-1955, the petitioner received a letter from the Regional Provident Fund Commissioner, M. P. Nagpur stating that out of the total Strength of 420 workers working in the petitioner's industry only 187 workers were employed in the section, manufacturing metal lamps, burners and hurricane lanterns which are included under the term "Electrical, Mechanical or general engineering products" and that as such the Act was applicable not only to this section of the factory but to the whole factory.

6. The petitioner protested against this interpretation without any avail. It apprehends that the Regional Provident Fund Commissioner will now proceed to recover the amount due from it under the provisions of Section 8 of the Act and has therefore come up to this Court under Article 226 of the Constitution. .

7. The question is whether the expression "Electrical, mechanical or general engineering products" includes metal lamps or burners. We assume for the purposes of this case that they are not fit for being used in hurricane lanterns. Now, the expression "Electrical, mechanical or general engineering products" is a very wide one, and even though metal lamps and burners are not included in the explanation to the Schedule, it would seem that they would fall within the general expression. The only limitation that could be placed on the "product" is that it must be an engineering product, The adjective "electrical" means, according to the Shorter Oxford Dictionary "relating to or connected with electricity"; while the adjective "mechanical" means, in this context, according to that Dictionary, "Acting" worked, or produced by a machine or mechanism". Thus, the expression "Electrical, mechanical or general engineering products" means engineering products relating to or connected with electricity, or engineering products acting or worked or produced by a machine or mechanism, or products produced by a craftsman employing a certain design or invention. Burners and metal lamps will thus fall within the expression inasmuch as they are engineering products and could be produced by a machine or mechanism and could also be produced by a craftsman employing a certain design or invention. In our opinion, therefore, the section of the petitioner's factory which is solely devoted to the production and marketing of these products would fall within the Schedule.

8. Shri Bobde who appeared for the petitioner then argued that the expression "Electrical, mechanical Or general engineering products" has, by virtue of the explanation added thereto by Act 37 of 1953, become limited to the products expressly specified therein and that as metal lamps and burners are not included

within the explanation they did not fall within the expression "Electrical, mechanical or general engineering products"". The "period for which the demand for returns and contribution is made is between 1-11-1952 and 31-3-1955. The explanation was thus in force during a considerable portion of this period. Now, by enacting this explanation the Legislature has "provided that without prejudice to the ordinary meaning of the expressions used in the Schedule, the expression ""Electrical, mechanical or general engineering products"" would include products specified in the 25 items set out in the explanation. Clearly, therefore it could not be the intention of the Legislature to cut down the generality of the expression "Electrical, mechanical or general engineering products". Curiously, however, the Legislature has made a specific mention in the explanation of electric lamps and hurricane lanterns, but not of lamps of any other kind. It is because of this that Shri Bobde argued that lamps of other kinds or parts and accessories of such lamps were intended to be excluded. But for the fact that the Legislature has clearly said that the specification of the items in the explanation was without prejudice to the ordinary meaning of the expression "Electrical, mechanical or general engineering products" and the further fact that the items cover a wide range of products, from "ships" to bolts, nuts and rivets", we would have accepted the contention of the learned counsel. The fact that the products cover a very wide range shows that their specification in the explanation is by way of illustration. Thus, though "electric lamps" and hurricane lanterns" are specified in the explanation, it would not be right to say that lamps of other kinds were intended to be excluded. On the other hand, the proper interpretation would be to say that by specifying two kinds of lamps the Legislature intended to include every kind of lamp. Any other interpretation would render the opening words of the explanation nugatory and defeat the clearly expressed intention of the Legislature.

An apparent difficulty - is no doubt created by the exclusion of certain products in certain items such as glass bulbs from item (3) "Electric lamps", and electric machinery and machine tools, from item (7) "Machinery used in industry". But this difficulty is not real. It is evident that despite the wide scope of the expression "Electrical, mechanical or general engineering products" the Legislature deliberately intended to exclude from its compass these particular articles. That is all.

9. it was however contended on behalf of the petitioner on the strength of the decision of Mehrotra J. in Great Eastern Electroplaters, Ltd. Vs. Regional Provident Fund Commr., U.P., that the expression "Electrical, mechanical & general engineering products" has to be interpreted in a different way. In that case the learned Judge observed :

"From the nature of the articles mentioned in the amended Schedule, it will be clear that the scope of the words "electrical and mechanical products" is not to cover all products which are made by means of mechanical or electrical process but it means products which are utilised for purposes of producing electricity or

implements and other apparatus and machinery or goods like fans, radio and battery cells".

In that case, it may be mentioned, the learned Judge observed that a torch case is only an article for purposes of keeping batteries and not for purposes of generating electricity and the unit which produced this article did not fall within the schedule. The learned Judge has not stated why in his opinion the products which are made by means of electrical and mechanical process are excluded from the expression "Electrical, mechanical or general engineering products". With utmost respect to the learned Judge we find it difficult to agree with the interpretation placed by him on the expression. In our opinion, as already stated, the words "electrical, mechanical and general" have reference to the process of manufacture and not to the use to which the articles produced could be put.

10. We are however of the opinion that the Act cannot apply to the whole factory inasmuch as at the relevant date, "glass" was not included in the Schedule. It applies only to the section producing "burners and metal lamps". These products are final products manufactured for sale and their production is an industry in itself. Therefore, while provident fund contribution cannot be demanded in respect of all the 420 workers it can be demanded in respect of 187 workers engaged in the particular section manufacturing burners and metal lamps.

11. It was finally argued on behalf of the petitioner that no steps could be taken against it by the respondent without resorting to the provisions of Section 19-A of the Act. Section 19-A reads as follows :

"Power to remove difficulties : if any difficulty arises in giving effect to the provisions of this Act, and in particular if any doubt arises as to

(i) whether a factory is engaged in any industry Specified in Schedule I, or

(ii) whether fifty or more persons are employed in a factory; or

(iii) whether three years have elapsed from the establishment of a factory; or

(iv) whether the total quantum of benefits to which an employee is entitled has been reduced by the employer;

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."

It is argued that since there is a dispute regarding the question as to whether the petitioner's section was engaged in an industry prescribed in Section 1, it was incumbent upon the respondent to refer the matter to the Central Government for its decision and that he had no right to make any demand from the petitioner without complying with this provision. As we read the provision, it was not obligatory upon the respondent to do so though it may have been desirable for him to refer a matter of this kind to the Central Government for its

decision. Again, this provision does not apply to every case where an interpretation put upon any entry in the Schedule is disputed, but applies only where the Central Government or the Regional Provident Fund Commissioner finds that there is a "difficulty in regard to the interpretation to be placed upon the Schedule. The omission of the Regional Commissioner to move the Central Government in this regard does not, in any way, affect his powers under the Act to realise the amount.

12. However, in respect of one matter the petition is well founded. The respondent wants the petitioner to submit returns and make contribution in respect of the employees engaged in the entire glass industry, that is, including the employees who are engaged in the manufacture of articles other than burners and metal lamps. That is clearly wrong. As already pointed out. the Act does not apply to the glass industry. Upon the view we have taken it does apply to that section which is engaged in the manufacture of burners and metal lamps inasmuch as these articles are manufactured for sale. No doubt, this section is a part of the Nagpur Glass Works. But merely because that is so, it cannot be said that all the employees of the Glass Works are employed in the "factory" (i.e. the section) engaged in the manufacture of burners and metal lamps. We are therefore clear that the liability of the petitioner to comply with the demands made upon it by the respondent must be confined to the section engaged in the manufacture of burners and metal lamps.

13. in this view, we allow the petition in part and direct that a writ be issued to the respondent restraining him from enforcing compliance by the petitioner with the provisions of the Act except with respect to 187 workers engaged in the section manufacturing burners and metal lamps.

14. Costs shall be borne as incurred. The amount of security deposited by the petitioner will be refunded to it.

15. Petition partly allowed.