

(1973) 05 DEL CK 0002
In the Delhi High Court
Case No : C.W. No. 377-D/65

National Works

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 24-05-1973

Acts Referred:

Citation : (1973) 05 DEL CK 0002

Hon'ble Judges : B.C. Misra, J

Bench : Single Bench

Advocate : R.H. Dhebar and D.N. Bhasin and Rishi Kes, for the Appellant; C.K. Mahajan, for the Respondent

Final Decision : Allowed

Judgement

B.C. Misra, J.—The Petitioner firm has filed this writ petition seeking a writ of mandamus against the respondents directing them not to enforce the demand of contribution to the Employees' Provident Fund made by the Regional Provident Fund Commissioner by notice dated 14th April, 1965 issued in pursuance of the directions of the Central Government dated 26th February, 1965 u/s 19-A of the Employees Provident Fund Act of 1952 (hereinafter referred to as the Act). The said directions of the Central Government have been challenged in this petition on the ground that the petitioner factory is not covered under the Act.

2. The petitioner has stated that it is carrying on the business of manufacturing lamps and burners. The demand for returns from the petitioner under the Act was initially made by the Regional Provident Fund Commissioner by notice dated 10th April, 1963 (Annexure "A"). This was resisted by the petitioner and the Regional Provident Fund Commissioner by a letter dated 31st October, 1963 held that the factory of the petitioner was rightly covered under the Act with effect from January, 1961 and the Regional Provident Fund Commissioner thereupon called upon the pensioners to comply with the provisions of the Act. The petitioner made further representations to the Commissioner as well as to the Central Government. In response to the representations, the Central

Government on 15th July, 1964 (copy Annexure "H") stated that the petitioner had an establishment engaged in the manufacture of wall lamps and burners by using tin and glass with mechanical aid and since machinery was employed, it was prima facie covered under the scheduled head "Electrical, Mechanical or General Engineering products", and the Government asked the petitioner for any further representation in writing. The petitioner did make detailed representation and finally the Government passed the impugned order on 26th February, 1965 which has been challenged and will be referred to in detail hereafter. The Regional Provident Fund Commissioner thereupon sought to enforce the demand.

3. The writ petition has been contested and a counter-affidavit has been filed by Shri K. S. Sethi, Regional Provident Fund Commissioner. It is stated in the counter-affidavit that the petitioner-firm, is engaged in the manufacture of wall lamps, burners and their components and that burners are made out of tin-sheets Along with wall fixing arrangements similarly made of tin-sheets by fabrication of tin-sheets and with the help of machinery required for the job and the components of burners are made or produced by machines and that burners and wall lamps fell within the expression" electrical ,mechanical or general engineering products."

4. Mr. Dhebar in support of the writ petition has contended that the petitioner-factory is not covered by the Act and the Central Government has committed an error of law in giving, the impugned directions. The order of the Central Government, dated 26th February, 1965 is to the following effect :--

5. After referring to a decision of the Supreme Court in M/s. Shibu Metal Works, it has extracted a passage, namely :--

"It is the character of the products that helps, to determine the content of the entry. The industrial activity which manufactures the three categories of products already enumerated by, us, brings the industry within the scope of Schedule, I, and, Therefore, attracts the application of the Act."

The order then refers to a decision of the High Court of Bihar delivered on 11th February, 1958 in Bunkim Chandra Chakrivarty v. Regional Provident Fund Commissioner, where incandescent lamps were held to fall within hurricane lanterns". The direction of the Central Government then refers to the Explanation (a) and states that it uses the word "includes" and does not restrict its meaning and finally ends up by observing that considering the position as above, the Central Government directed that the establishment of the petitioner fell within the scope of the industry "electrical, mechanical or general engineering products" specified in Schedule I of the said Act.

6. In my opinion, the direction of the Central Government is not satisfactory and it does not state the necessary facts on the basis of which it has arrived at the conclusion and does not state how it has applied the dictum of the Supreme Court to the facts of the case. The Supreme Court in Regional Provident Fund Commissioner v. Shibu Metal Works AIR 1965 SC 1070, rejected the contention

of the State that the entry should have reference to the process of the production as the crux. It also rejected the contention of the party that the entry had reference only to the products which were useful and meant for electrical engineering, mechanical engineering or general engineering. The Court observed that it was not the process which was important in construing the entry but what was important was the activity with which the industry was concerned. In paragraph 22 it observed as follows :--

" The proper way to determine the content of this entry appears to us to be to hold that all products which are generally known as electrical engineering products, or mechanical engineering products, or general engineering products, are intended to be covered by the entry, and the object of Schedule I is to include within the scope of the Act every industry which is engaged in the manufacture of electrical engineering products, mechanical engineering products, or general engineering products. It is the character of the products that helps to determine the content of the entry ; can the product in question be reasonably described as an electrical engineering product, or a mechanical engineering product, or a general engineering product. That is the question to ask in every case, and as we have already indicated, in considering the question as to whether the product falls under the category of general engineering products, general engineering should be construed in the limited sense which we, have already shown. It may be that in a large majority of cases, the products included within the entry may be produced by electrical or mechanical or general engineering process ; but that is not the essence of the matter. The industrial activity which manufactures the three categories of products already enumerated by us, brings the industry within the scope of Schedule I and, Therefore, attracts the application of the Act."

The learned counsel for the parties state that they have not come across any decision of the High Court or of the Supreme Court after the aforesaid pronouncement. However, I find that in *Union of India v. Ogale Glass Works* (1971) 2 LLJ 513 , the Supreme Court noticed that a decision of the High Court of Bombay in *Nagpur Glass Works Ltd. Vs. Regional Provident Fund Commissioner, Bombay* , had not been approved by the Supreme Court in *Regional Provident Fund Commissioner, Bombay v. Shree Krishna Metal Manufacturing Company* 1962 1 LLJ 427, and it held that the Act applied to all sections of the industry where some of the scheduled products were manufactured. 7. In *Shri Krishna Metal Manufacturing Company's* case (supra), the Supreme Court observed that the clause "engaged in any industry specified in the Schedule" should be interpreted to mean "mainly engaged in any industry" and if a factory was engaged in two industrial activities, one of which is its primary, principal or dominant and the other was purely subsidiary, incidental, minor or feeding activity, then it was the primary or dominant activity which should determine the character of the factory under the Act. The Court further observed that one of the tests which, although not conclusive, could sometime be applied, was whether the product of incidental activity was intended for the

market or exclusively for use by the factory in its other departments.

8. In the Instant case, the petitioners cut and fabricate burners. They will fall within the products resulting from an engineering activity and also as parts and accessories of hurricane lanterns mentioned in items Nos. 16 and 25 of the Schedule. The question for determination will then be whether the burners constitute a primary or a dominant industry of the petitioner in terms of the dictum laid down by the Supreme Court and whether they were put in the market or merely constituted feeders or the other industries of the petitioner. The order of the Central Government under challenge, however, does not make any reference to the burners at all.

9. So far as wall lamps are concerned, it would be difficult to call them engineering products .A specimen was shown in the Court which appeared to consists of a small glass inkpot, a burner, a small chimney and a tin bricket and the whole thing appeared to be so tiny and cheap that by itself it would in the market be not known as an engineering product. However, I do not wish to express any opinion on the merits of the case as to whether the wall lamps in question are or are not engineering products.

10. The legal infirmity from which the impugned order of the Central Government suffers is that after giving an extract from a judgment of the Supreme Court and making a reference to an old decision of the High Court of Patna and to the definition clause, it has not appreciated the application of the law to the facts of the case and does not record any findings with regard to the nature of the activity which the petitioner was carrying on and whether the burners or the wall lamps in question were, in the opinion of the Government, products of such activity. It was really the function of Central Government whose orders have been accorded a finality by Section 19-A of the Act to record a reasoned finding on the acts of that case so that the petitioner would be knowing the facts found and the grounds weighing with the Central Government in deciding the case and giving the impugned directions and the same could be reviewed by the Court in exercise of writ jurisdiction. In the show cause notice dated 15th July, 1964. the Central Government stated that the petitioner factory had an establishment which was covered by the Act, since in the manufacture of its articles. It was using mechanical aid. This precisely is the test that had been advanced on behalf of the State in Shibu Metal Works" case (supra) and was rejected by (he Supreme Court. The impugned order does not state as to whether the Central Government has erred in applying the said test or it has correctly arrived at the finding. In the counter-affidavit filed in this Court, it has been mentioned that the wall lamps and burners are both manufactured by the petitioners by fabrication of tin-sheets with the help of machinery, but as mentioned above, there is no reference to the burners and no finding with regard to the wall lamps is recorded in the impugned order of the Central Government and it is needless to state that the counter-affidavit in this Court is no substitute for the findings of the Central Government on the facts.

11. As a result, I act aside the impugned order of the Central Government dated 26th February 1965 along with the consequent demand dated 14th April, 1965 and direct the Central Government to decide the matter afresh according to law. The writ petition is accordingly allowed leaving the parties to bear their respective costs.