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(1969) 02 GUJ CK 0006

In the Gujarat High Court

Ojas Corporation and Others — APPELLANT

Vs

The Regional Provident Fund Commissioner — RESPONDENT

Date of Decision : 06-02-1969

Acts Referred:
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3), 1(3)(b), 1(3)(b), 2(g), 4

Citation : (1970) 11 GLR 164

Hon'ble Judges : M.U. Shah, J;A.R. Bakshi, J

Bench : Division Bench

Judgement

A.R. Bakshi, J.—This is a petition asking for a writ restraining the respondent, the Regional Provident Fund Commissioner, Gujarat Region, from enforcing and implementing the provisions of the Employees'' Provident Funds Act, 1952, (hereinafter referred to as ''the Act'') and the Scheme framed thereunder against the petitioners. The petition is based on the following facts.

2. The first petitioner is a registered partnership firm of which petitioners Nos. 2, 3 and 4 are partners. The petitioner firm runs two separate establishments which are factories and which have been described in the petition as Factory No. 1 and Factory No. 2. Factory No. 1 is independent of and separate from Factory No. 2 and was started sometime in 1946 and it manufactures soap, white zinc paints, wire nails and textile auxiliaries. That factory was registered as a ''factory'' under the provisions of the Factories Act and being engaged in the manufacture of goods shown in Schedule I to the Act, the provisions of that Act have been applied and implemented. Factory No. 2 is separate and independent from Factory No. 1 and was started sometime in February 1955 and the same has been registered as a ''factory'' under the provisions of the Factories Act. From its inception more than 50 employees were employed in that factory which is an establishment which is a ''factory'' within the meaning of Section 2(g) of the Act. The said Factory No. 2 has two sections, namely, Bobbin and Box sections. In the Bobbin section, textile wooden accessories are manufactured and in the Box section, wooden cases for packing are manufactured and two sections of Factory

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No. 2 are separate from each other and not inter-related. According to the petitioners, Factory No. 2 is not engaged in any such industry as is specified in Schedule I of the Act and the provisions of the Act do not apply to that factory, the goods manufactured by it being not specified in Schedule I. The respondent, however, intimated to the petitioner firm purporting to act under the provisions of the Act that the Act and the Scheme framed thereunder was applicable to the establishment from 30th October 1962 as on that day the establishment had employed more than forty-nine persons and was reported to be an establishment engaged in a scheduled industry. By a letter of intimation the respondent gave direction to implement the Act with effect from 1 st November 1962 and to deduct provident fund contribution of employees eligible to join the Fund and asked the petitioner to deposit the contributions and administrative charges as required by the Act. That letter of intimation is dated 30th January 1964 and has been produced as An-nexure "B" to the petition and has been challenged as illegal and inoperative in law by the petitioners. The petitioners by a letter dated 10th February 1964 drew the attention of the respondent that Factory No. 2 was an establishment which was a factory not engaged in the manufacture of any goods shown in Schedule I to the Act and requested the respondent to withdraw the letter Annexure "B." The respondent by his letter dated 27th February 1964 replied that the contentions in the letter under reply were not correct, that the Act was made applicable by a Notification issued under Clause (b) of Sub-section (3) of Section 1 of the Act which covers any establishment, whether a factory or not, whether engaged in any industry specified in Schedule I or not. A copy of the Government of India, Ministry of Labour Notification No. G.S.R. 1232 dated 7th September 1962 was enclosed with the letter. That Notification reads as under:

G.S.R. 1232: In exercise of the powers conferred by Clause (b) of Sub-section (3) of Section 1 of the Employees'' Provident Funds Act, 1952 (XIX of 1952), the Central Government hereby applies the said Act with effect from the 31st October, 1962, to the following establishments employing twenty or more persons each, namely:

1. Establishments engaged in the processing or treatment of wood including manufacture of,

(i) Hard-board or chip-board;

(ii) Jute or textile wooden accessories;

(iii) Cork products;

(iv) Wooden furniture;

(v) Wooden sports goods;

(vi) Cane or bamboo products;

(vii) Wooden battery separators;

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2. Saw mills;

3. Wood seasoning kilns;

4. Wood preservation plants;

5. Wood workshops.

According to the petitioners, Clause (b) of Sub-section (3) of Section 1 can apply only to "any other establishment", that is other than factories and since the concern No. 2 of the petitioner is a "factory", the provisions of the Act could not be made applicable to Factory No. 2. These were the circumstances under which the petitioner has preferred the present petition. 3. Before we refer to and discuss the contention of Mr. Patel, it would be necessary to refer to some of the provisions of the Act. The preamble describes the Act as an Act to provide for the institution of provident funds for employees in factories and other establishments. Sub-section (3) of Section 1 of the Act makes the Act applicable, subject to the provisions contained in Section 16, to the establishment referred to therein and Sub-section (4) empowers the Central Government, by notification in the Official Gazette, to apply the provision of the Act an establishment referred to in that sub-section. Those two sub-sections are as under:

(3). Subject to the provisions contained in Section 16, it applies--

(a) to every establishment which is a factory engaged in any industry specified Schedule 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:

Provided that the Central Government may, after giving not less than two months'' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment employing such number of persons less than twenty as may be specified in the notification.

(4) Notwithstanding anything contained in Sub-section (3) of this section or Sub-section (1) of Section 16, where it appears to the Central Government, whether on an application made to it in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment have agreed that the provisions of this Act should be made applicable to the establishment, it may, by notification in the Official Gazette, apply the provisions of this Act to that establishment.

By virtue of Section 4 of the Act, the Central Government has been given the power to add to Schedule I any other industry in respect of the employees whereof it is of opinion that a provident fund scheme should be framed under the Act. That section also provides that all notifications issued by the Central Government by virtue of such power shall be laid before Parliament after they are issued. We may here quote Section 4 of the Act which reads as under:

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4. (1) The Central Government may, by notification in the Official Gazette, add to Schedule I any other industry in respect of the employees whereof it is of opinion that a provident fund scheme should be framed under this Act, and thereupon the industry so added shall be deemed to be an industry specified in Schedule I for the purposes of this Act.

(2) All notifications under Sub-section (1) shall be laid before Parliament, as soon as may be, after they are issued.

Section 2 of the Act gives certain definitions and we may refer to the definition of "factory" contained in Clause (g) of Section 2.

(g) ''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.

4. We may not refer to the contentions of Mr. Patel that such notification as has been relied upon by the respondent cannot legally be issued under Clause (b) of Sub-section (3) of Section 1 of the Act. The notification dated 7th September 1962 which has been referred to and quoted above has been issued by virtue of the powers vested in the Central Government under Clause (b) of Sub-section (3) of Section 1. According to Mr. Patel Clause (a) of Sub-section (3) refers to every establishment which is a "factory" and Clause (b) refers to "any other establishment" which must necessarily not include a "factory." If an establishment that is sought to be included within the scope of the Act is a "factory," it was urged that it cannot be so included by resorting to Clause (b) of Sub-section (3). It was contended that Clause (a) of Sub-section (3) of Section 1 applies to every establishment which is a factory and which is engaged in any industry specified in Schedule I and in which 20 or more persons are employed and it is only in a case when the establishment was not a factory that resort could be had to a notification under Clause (b) to make the provisions of the Act applicable. It was also pointed out that if Clause (b) was made applicable to establishments which were factories, the provisions of Section 4 would -have no meaning and would be otiose. It was pointed out that if Clause (b) were made applicable to such cases, it would enable the Central Government to avoid the provisions of Section 4 which provides for laying the notification before Parliament. Mr. Patel''s further contention was that the words "any other establishment" in Clause (b) would mean not the same establishment as is mentioned in Clause (a) because if Clause (b) were made applicable to factories, the word "other" occurring in Clause (b) would be rendered nugatory. According to Mr. Patel the words "any other" in Clause (b) would mean to the exclusion of what is preceded in Clause (a) of Sub-section (3). In substance, Mr. Patel''s argument was, that in order to make Clause (b) applicable the establishment must not be a "factory".

5. The word "establishment" is used not only in Sub-section (3) but also in some of the other sections of the Act, for example, Sections 16 and 17 and Sub-

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sections (4) and (5) of Section 1. It appears that the word "establishment" has been used as a genus of which the factory is a species. Clause (a) of Sub-section (3) makes the Act applicable to every establishment which is a factory and which is engaged in any industry specified in Schedule I. Clause (b) of that subsection makes the Act applicable to "any other establishment" or class of establishments which the Central Government may, by notification in the Official Gazette, specify. There are no restrictive words used in Clause (b) which would indicate that the application of the Act by a notification must be limited to cases which are not factories. On a plain reading of Clauses (a) and (b) it appears that Clause (b) would apply to any other establishment, whether such establishments are or are not factories. It would be seen that Clause (a) of Sub-section (3) of Section 1 relates to establishments which are factories engaged in industries specified in Schedule I and thus it has not been made applicable to all the factories but only to those which have been specified in Schedule 1. The intention of Clause (b) appears to be to make the Act applicable to all other establishments, whether factory or not and which are not included in Schedule I. The Act can be made applicable to industries which are specified in Schedule I and on such inclusion, the factories engaged in the industry so included, would be covered by the Act. But establishments other than those not falling within the scope of Clause (a) cannot be covered unless a notification to that effect was issued. A plain reading of these two Clauses together does not indicate that these two clauses could be read as mutually exclusive of each other. All that the two clauses purport to achieve is that they divide establishments into two parts--one being factories engaged in a scheduled industry and the other, establishments whether factories or non-factories in respect of which a notification has been issued by the Central Government.

6. The next question is whether by such construction, Section 4 of the Act would be rendered nugatory and meaningless. If we look to the provisions of Section 4 it gives power to the Central Government to add to Schedule I any other industry in respect of the employees whereof the Central Government is of opinion that the Provident Fund Scheme should be framed and the effect of a notification issued u/s 4 is that the industry so added shall be deemed to be an industry specified in Schedule I. What Section 4, therefore, contemplates is the addition of an entire industry to Schedule 1. While taking action u/s 4 the Central Government has to decide as to whether an entire industry requires to be included so as to make the Act applicable. Clause (b) of Sub-section (3) of Section 1, however, provides for the application of the Act to any other establishment or class of establishments and the effect, therefore, of Clause (b) is that the Act could be extended to one establishment or to a class of establishments thus permitting classification within an industry. It will be seen that such division or classification is not permissible u/s 4 under which notification could be issued only in case where the entire industry is sought to be included. It is possible, therefore, that while taking action u/s 4, different considerations might prevail from those which would prevail while taking action

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under Clause (b) of Sub-section (3) of Section 1. It is possible that to some extent the provisions of Section 4 may overlap the powers under Sub-clause (b) but it cannot be said that both the provisions cover an identical matter. There might be considerations applicable to a class of establishments and there might be particular circumstances on account of which the Central Government might contemplate to extend the provisions of the Act to a specified establishment or a class of establishments which would be permissible under Clause (b) of Sub-section (3). In such a case it would be necessary to take action under this clause and not u/s 4. This shows that both the provisions, namely, Clause (b) of Sub-section (3) of Section 4 may fulfil a separate and distinct purpose and in this sense it cannot be said that the two provisions would necessarily overlap in each and every case. We are, therefore, unable to accept the argument of Mr. Patel that Clause (b) of Sub-section (3) of Section 1 can be made applicable only to non-factory cases. We are supported in this view of ours by some observations made in decided cases. In the case of Provident Fund Inspector v. Kerala Janatha Printers and Publishers (1966) I L.L.J. 491, it has been observed at page 494:

By Clause (a) of Sub-section (3) of Section 1 only factories employing twenty or more men engaged in specified industries are brought within the Provident Funds Act. To all other establishments, factory or non-factory, whether engaged in industry or otherwise, the Act may be applied by resorting to notification under Clause (b) of Sub-section (3) of Section 1. Factories engaged in industries other than those mentioned in Schedule I may also be brought within the ambit of the Act by a notification u/s 4, thus adding to Schedule I.

These observations have been referred to in Central Hindustan Orange and Cold Storage Co. Ltd. Vs. Prafullachandra Ramachandra Oza, . The relevant observations are at page 165:

It is contended by the learned counsel for the applicant that the two Cls. (a) and (b) of Sub-section (3) of Section 1 of the Act are mutually exclusive and as Clause (a) refers only to factories, therefore, Clause (b) must necessarily refer to non-factories and factories cannot be included in the same. The reading of these two clauses does not show that these two clauses can be read as mutually exclusive of each other. It only divides all establishments into two compartments, not factory and non-factory, but factory engaged in a scheduled industry and other factories and non-factories with respect to which the Central Government may issue a notification. In that sense they could be said to be mutually exclusive of each other but not in the sense in which the learned counsel for the applicant wants that to be. This view is supported by the decision in Provident Fund Inspector, Quilon v. Kerala Janatha Printers and Publishers (Private) Ltd. and Anr. (1966) I L.L.J. 491, wherein Their Lordships of the Kerala High Court said (p. 494):

By Clause (a) of Sub-section (3) of Section 1 of the Act only factories employing twenty or more men engaged in specified industries are brought within the Provident Funds Act. To all other establishments, factory, or non-factory whether

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engaged in industry or otherwise the Act may be applied by resorting to notification under Clause (b) of Sub-section (3) of Section 1. Factories engaged in industries other than those mentioned in Schedule I may also be brought within the ambit of the Act by a notification u/s 4, thus adding to Schedule 1.

On the reading of the two Cls. (a) and (b) of Sub-section (3) of Section 1 of the Act together, it is thus clear that Clause (b) refers to all the factories which are not included in Schedule 1 and other establishments which are non-factory establishments.

This case was decided by a single Judge of the High Court of Bombay and has been referred to with approval by a Division Bench of the same High Court in Varjivandas Hirji and Co. Vs. D.T. Ghatpande and Another, . That was a case in which a similar point came to be considered and the observations to which reference may be made are at page 503 of the report:

it has been argued by Mr. Setalvad for the petitioners that Section 1(3Xa) applies to every establishment., (a) which is a factory, (b) engaged in any industry specified in Schedule i, and (c) in which 20 or more persons are employed. All the three conditions must co-exist in order to bring an establishment within the meaning of Clause (a) of Sub-section 1(3). If any of these conditions is not satisfied, the provisions of Clause (a) will not be attracted. Mr. Setalvad has argued that (a) that an establishment is a factory but the condition (b) is not satisfied because the factory is not engaged in an industry specified in Schedule I, and the Central'' Government want to extend the Act to such establishment, they can by a notification u/s 4 add that industry to the Schedule and lay the notification before Parliament. He pointed out that the Central Government have in fact, time and again, exercised this power and added numerous industries to Schedule I. He further argued that if the first condition (a) is satisfied, viz. that the establishment is a factory, but the condition (c) is not satisfied because the factory does not employ 20 or more persons; and the Central Government want to extend the Act to such establishment, they can by a notification under the proviso to Section 1(3) apply the Act to any establishment employing less than 20 persons. From this, he argued that it is only when the first condition--condition (a)--is not satisfied because the establishment is not a factory that resort must be had to a notification under Clause (b). Clause (b), therefore, would obviously, according to him, apply when an establishment is not a factory. He contended that if Clause (b) applied to establishments which are factories, the existence of Section 4 in the Act will be meaningless and otiose. The Central Government could notify a class of establishments under Clause (b) and apply the Act to industries other than those in Schedule i and avoid laying the notification before Parliament. He also contended that there would be over-lapping between Section 4 and Clause (b) and that neither such result was intended nor should the Court so interpret the sub-section as to lead to that result. He also contended that in the expression ''any other establishment'' in Clause (b) the word ''other'' means not the same as already mentioned in Clause

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(a) and as covered by it, and that ''other'' establishment in Clause (b) must be separate in identity and distinct in kind from it. It must, therefore, be an establishment which is not a factory. We must concede that these arguments are plausible and it is not-impossible to agree with them. But the other interpretation suggested by Mr. Rangnekar on behalf of the respondents is equally plausible and a possible interpretation. We cannot say that on a plain reading of Section 1(3) alone it is not possible to come to the conclusion that the expression ''any other establishment'' in Clause (b) could mean any establishment which did not fall in Clause (a), whether such establishment be an establishment which is a factory, or an establishment which is not a factory. Mr. Setalvad contended that the interpretation suggesced by Mr. Rangnekar will have to leave out of account firstly the scheme of the Act whereby extension of the Act to industries other than those in Schedule I is provided for by Section 4, and extension of the Act to industries employing less than twenty persons is provided for by the proviso in Section 1(3), and only the extension of the Act to establishments other than factories remains to be provided for by Clause (b): and secondly that such interpretation will render Section 4 meaningless, redundant and otiose and in any case superfluous, and thirdly the use of the word ''other'' in Clause (b) would indicate an establishment of a kind different from and not the same as ''an establishment which is a factory''.

Mr. Rangnekar has taken us through the history of changes made in the Act from 1952 and has shown to us how initially the Act was made applicable only to factories employing fifty or more persons and engaged only in six industries, and how to-day the Act has been made applicable to other establishments also, the number of persons employed has been reduced to twenty or more and a number of industries have been added to the Schedule. He has argued that the Act is a bene-ficient piece of legislation and where more than one interpretation of a provision is possible, the provision should be so construed as to benefit the largest number of persons. With this we, in principle, agree. The reply of Mr. Setalvad to this point is that if the Government thinks that Asofoetida industry ought to be covered, they can add it in the Schedule by a notification. Only such notification will have to be laid before Parliament and that there is no reason to be fight shy of laying a notification before Parliament if the scope of a beneficient piece of legislation is to be extended to a larger number of persons.

We are, however, of the opinion that by the interpretation suggested by Mr. Rangnekar Section 4 will not be rendered redundant or meaningless. u/s 4 the Central Government can by a notification add to Schedule I the entire industry, while u/s 1(3)(b) they can extend the Act even to a single establishment or a class of establishments. Clause (b) permits of classification within the industry, which Section 4 does not. u/s 4 either the entire industry has to be included or not included. Section 16 provides that the Act is not to apply to certain establishments. Sub-section (2) of Section 16 provides that if the Central Government is of the opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is neceseary or

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expedient to exempt any class of establish ments from the operation of the Act, it may by a notification do so. This would indicate that there could be several considerations such as financial position of any class of establishments or other circumstances due to which the Central Government may rightly like to extend the provisions of the Act only to a specified establishment or a specified class or establishments. Section 1(3)(b) will enable the Central Govern ment to do this. They could possibly not do this u/s 4. The two provisions fulfil a distinct purpose, and there no is substance in the argument that the interpretation suggested by Mr. Rangnekar will render Section 4 meaningless.

We also find by going through the Act that the word ''establishment'' is used in Sub-sections (4) and (5) of Section 1 and also in Sections 16 and 17 and may be in other parts of the Act, indicating that the word ''establishment'' is used as genus, of which a factory is a species. It may be that to a certain extent the provisions of Section 4 may overlap the powers of the Government u/s 1(3)(b). But this we suppose would be a necessary measure as a matter of abundnnt caution to cover cases which would not fall u/s 1(3)(b). But as we have pointed out that Section 1(3)(b) permits of not only classification but of application of the Act to an individual establishment this provision serves a distinct purpose. There is nothing inconsistent in the scheme of the Act with the view that Section 1(3)(b) applies to all establishments whether such establishments are or are not factories. The expression ''any other establishment'' in Clause (b) is capable of the interpretation that the reference is to any establishment that does not fall under Clause (a), whether such establishment is or is not a factory. We have, therefore, no hesitation in accepting that interpretation, as that interpretation will extend the benefit of this beneficent piece of legislation to a larger number of persons.

At page 505 it has been observed:

The question canvassed before us came up before our learned brother Mr. Justice Padhye sitting as a Single Judge at Nagpur in the case of Central Hindustan Co. v. Prqfullchandra. He also took the view that Clause (b) refers to establishments which are not included in Schedule I of the Act and to other establishments which are non-factory establishments; if there is a proper notification by the Central Government. He was of the view that the reading of the two clauses did not show that they were mutually exclusive of each other. We respectfully agree with the conclusion to which Padhye J. arrived.

Out attention is also drawn to the case of Provident Fund Inspector v. Kerala Janatha Printers. In this case validity of Section 15 of the Working Journalists'' (Conditions of Service) Act, 1955, was impugned. Section 15 of the Act extended the provisions of the Employees, Provident Funds Act to the working journalists at a time when the Act was applicable only to factories and not to non-factory establishments. The Act was applied to the working journalists not by a notification u/s 1(3)(b) but by Section 15 of the Working Journalists'' Act itself. The judgment in this case contains certain observations to the effect

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that by a notification u/s 1(3)(b) the Act could be applied to all establishments, factory or non-factory. Although the question raised in this matter did not directly arise in that case because it turned on the effect of the extension of the Act by virtue of Section 15 of the Working Journalists'' Act and not by virtue of a notification u/s 1(3)(b), we are in agreement with the observations of the learned Judges in that case. A Division Bench of the M.P. High Court has, in the case of M/s. Radhakrishnan V.R.P.F. Commer. AIR (197) .M. P. 157 taken a contrary view and has dissented from the judgment of the Kerala High Court referred to hereinabove. But for reasons hereinabove stated we are unable to agree with the judgment in the M.P. case.

We are in respectful agreement with the views expressed in the above quotations. In the Madhya Pradesh case in Radhakrishan Narayandas, a firm Vs. Regional Provident Fund Commissioner and Another, , a contrary view seems to have been taken by that High Court and with respect we are unable to agree with the view that the expression ''any other establishment'' occurring in Section 1(3)(b) is in contradistinction to the word ''factory'' used in Clause (a) and means any establishment which is a ''non-factory establishment.'' We have already seen that the construction which we are placing on Section 1(3)(b) does not make Section 4 meaningless or superfluous. We are, for the reasons already stated, unable to agree with the view expressed by the High Court of Madhya Pradesh. Reading Section 1(3)(b) in its context and also with the provisions of Section 4, we are unable to accept the contention of Mr. Patel that the former provision can apply only to non-factory cases. If that is so, the notification dated 7th September 1962 that has been issued by the Central Government cannot be held to be invalid on the ground that it has been issued in exercise of the powers conferred by Clause (b) of Sub-section (3) of Section 1 of the Act. Mr. Patel''s contention that the provisions of the Act could not be made applicable to factory No. 2 of the petitioner was based on the argument that the notification issued by the Central Government could not be made applicable to a factory by virtue of Clause (b) of Sub-section (3) of Section 1 and that, therefore, the provisions of the Act and the Scheme could not be enforced or implemented against the petitioner''s factory No. 2. This was the only contention on which the petition was sought to be supported by Mr. Patel and since that contention fails, the petition must also fail.

The result is that the petition is dismissed, the Rule is discharged with costs.

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