
(2005) 08 MP CK 0043
In the Madhya Pradesh High Court
Case No : M.P. No. 2341 of 1991

Orient Paper Mills

APPELLANT

Vs

Regional Provident Fund Commissioner and Another

RESPONDENT

Date of Decision : 17-08-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1(3),
16, 2
Madhya Pradesh Industrial Relations Act, 1960 — Section 2(13)

Citation : (2006) 109 FLR 255 : (2005) ILR (MP) 1041 : (2006) 1 LLJ 1136 :
(2006) 2 MPJR 53 : (2006) 1 MPLJ 209

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : A.M. Mathur, R.K. Gupta and Rajneesh Gupta and Ashutosh Upadhyaya, for the Appellant; S.C. Sharma and Akash Mukerjee, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Shrivastava, J.

By this petition filed under Articles 226 and 227 of the Constitution of India, the petitioner has sought for quashment of order dated July 9, 1991 passed by respondent No. 1 (Annexure P/13) whereby the petitioner establishment has been held to be liable under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for brevity the Act) and has been directed to extend its benefit to the eligible employees of transporters engaged by the petitioner for supply of raw material of regular production of establishment. The petitioner by amendment has further prayed to restrain respondent No. 1 from quantifying the liability of the petitioner pursuant to the order Annexure P/13 dated July 9, 1991.

In brief the case of petitioner is Orient Paper Mills (hereinafter referred to as "the Company") is a mill established at a village Amlai in Shahdol District. The

erstwhile Part C State of Madhya Pradesh invited entrepreneurs to establish a paper mill within the State for utilisation of bamboos and other forest produce. The proprietors of the petitioner accepted the offer and entered into agreement. Under the agreement a right was created in favour of the petitioner to exploit bamboos and salai trees for manufacture of paper at a paper mill established at Amlai in district Shahdol. On the formation of new State of Madhya Pradesh with effect from November 1, 1956, the new State of Madhya Pradesh also continued the agreement and in accordance with the stipulations in the agreement, a paper mill was constructed and established at Amlai in Shahdol District.

In order to manufacture paper, the Company need raw material in the shape of bamboos and other forest produce. For procuring the supplies the company established a Forest Organisation and independent establishment of the company at Shahdol. The bamboos in the State belong to the State of Madhya Pradesh. The forest organisation of petitioner company buys the bamboos from the State Madhya Pradesh by paying the requisite price of it in advance according to the terms of agreement between the company and the State of Madhya Pradesh.

The company gets bamboos from the Forest Depot situated in various districts of the State of Madhya Pradesh through its forest organisation. The bamboos and other forest produce in the shape of raw material are transported either by road or by rail. The railway wagons are unloaded at the mill siding in the company. The raw materials are also transported by road in trucks and goods in transport vehicles i.e. public carriers. The railways and goods transport vehicles including trucks are common carriers as defined in the Carriers Act, 1965. The railways as well as motor transport establishment which do the business of transporting raw materials of the petitioner carrying on their independent business of transporting goods and the petitioner is not at all concerned with those establishments. The petitioner is not having any control over either the motor vehicles of the transporters or the workmen engaged by such transporters who carry on the bamboos and raw materials for manufacturing the paper.

The transporting establishments in order to bring bamboos and raw materials, engaged by petitioner is not regular. The transporters are free to hire their labourers in order to carry the bamboos to the mill of the company. According to the petitioner, the company is not obliged to engage any or for any period of any transporter. Any truck passing from the Forest Depot and coming towards the factory can load the bamboo and transport it to the factory side at a fixed rate. The petitioner does not keep any record of the drivers, conductors, cleaners or labourers in the truck. Meaning thereby the transportation of bamboo is done by the available and willing public carriers at the time of requirement at a fixed rate. The transporters are not engaged exclusively for the Company and after unloading the bamboos from the truck, they are free to perform their business of transportation. It is also not fixed that a particular truck of a particular transporter is engaged to bring the bamboos.

According to the petitioner, the Railways are public utility services, provided by

the Union of India and are regulated by the provisions of Indian Railways Act. The employees of the Indian Railways are also Government servants and there are separate rules and regulations governing their terms and conditions of their employment. They are also governed by separate set of rules so far as provident fund and other benefits are concerned. Similarly the workmen employed by the Road Motor Transport Establishments are also governed by the Motor Transport Workers Act, 1961. The Motor Transport Workers Act defines Motor Transport undertaking.

The Road Motor Transport Establishments employ their own workmen, about whom the petitioner had no knowledge, and the petitioner are not at all in any way concerned with their employment or conditions of service. The petitioner only hire the public transport carriers to transport the bamboos. The public transport carriers have their own trucks and other ancillary services and employ their own workmen, such as drivers, conductors, cleaners etc. The petitioner have no connection with the trucks nor with the persons employed in the truck by the transporter as these workers have no connection with manufacturing purpose of the papers. The relationship of the petitioner with the public transport carriers is the same as with the Railways and have no control over or connection with the actual operation of public carrier. Nor is there any master servant relations between the employees of the transporters and the petitioner company.

The Central Government by Notification No. GSR 399 dated March 24, 1995 have include the class of Road Motor Transport Establishment as the class of establishment to which the Act would apply with effect from April 30, 1959.

The contention of Shri Mathur, learned senior counsel for the petitioner is that in view of the notification issued the employees of the Road Motor Transport Establishments are by implication excluded from the ambit and scope of Section 2(f)(i) of the Act, therefore, the provisions of the Act are not applicable to the petitioner so far as the employees of those aforesaid transport establishments are concerned. Learned senior counsel by placing reliance to the decision Workmen of Nilgiri Coop. Mkt. Society Ltd. Vs. State of Tamil Nadu and Others, and P.M. Patel and Sons and Others Vs. Union of India (UOI) and Others, has submitted that since neither the petitioner company is having supervision and control over those workers of the transport company nor they are having any relation with them and since the petitioner company is the master of those worker of the transport company, therefore the provisions of the Act are not at all applicable to the petitioner so far as the workers of the transport company is concerned. The learned senior counsel has placed reliance on the Division Bench decision of this Court in East India Carpet Co. (Pvt.) Ltd. v. Employees of the East India Carpet Co. (Pvt.) Ltd., Gwalior 1970 MPLJ 216.

On these premised arguments, it has been contended by the learned senior counsel for the petitioner that the impugned order Annexure P/13 passed by respondent No. 1 holding that the provisions of the Act are applicable to the petitioner company and thereafter proceeded to determine the amount due from

the company, be quashed.

Shri S.C. Sharma, learned senior counsel appearing for respondents argued in support of impugned order and has submitted that function of the petitioner company are of different nature and one of the function is to get the bamboo and other raw material from transport companies which is required for manufacturing of paper and since the petitioner company is engaging transporters for maintaining regular supply of the material, therefore, any employee engaged by the transporter is required to enrolled as P.F. member from the date of liability and responsibility in this regard rests with the principal employer i.e. petitioner company. The learned senior counsel for the respondents by inviting my attention to the definition of employee as envisaged u/s 2(f) of the Act has submitted that if the definition is read in proper perspective, the workers of the transporters, since they bring the bamboos in the truck, they would be covered under the definition of "employee" and therefore, respondent No. 1 did not commit any error in passing the impugned order holding the petitioner company being a principal employer and directing that the provisions of the Act are applicable to the petitioner company so far as it relates to the workers of the transporters.

After having heard learned Counsel for the parties and after giving my anxious and bestowed consideration to the impugned order Annexure P/13 passed by respondent, I am of the view that this petition deserves to be dismissed.

In order to appreciate the rival contentions of learned senior counsel for the parties, it would be appropriate to rewrite certain provisions of Act Section 1(3) of the Act deals about the applicability of the Act to the establishment which reads thus:

1. Short, title, extent and application. ((1) This Act may be called the Employees' Provident Funds and Miscellaneous Provisions Act.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

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

(a) to every establishment which is a factory engaged in any industry specified in 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 fifty as may be specified in the notification.]

On analysing the abovesaid provision to which the provisions of the Act are applicable, it is revealed that it applies on every establishment which is a factory

engaged in any industry specified in Schedule I in which 20 or more persons are employed and to any other establishment employing 20 or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf. Thereafter under the proviso powers are conferred to Central Government to apply the provisions of this Act to any other establishment employing such number of persons less than 50 specified in the notification, after giving notice less than two months of its intention to do so.

Section 2(f) of the Act defines the term "employee" which reads thus:

"employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of an establishment, and who gets his wages directly or indirectly from the employer, [and includes any person-

(i) employed by or through a contractor in or in connection with the work of the establishment;

(ii) engaged as an apprentice, being an apprentice engaged under the Apprentices Act, 1961, or under the standing orders of the establishment;]

If we dissect and analyse the definition of employee it emerges that a person would be deemed to be an employee if he is:

(i) employed for wages in any kind of work, manual or otherwise;

(ii) in or in connection with the work of an establishment;

(iii) gets his wages directly or indirectly from the employer;

(iv) employed by or through a contractor;

(v) in or in connection with the work of establishment;

(vi) engaged as an apprentice;

(vii) being an apprentice engaged under the Apprentices Act, 1961; or

(viii) under the standing orders of the establishment.

If the workers of the transporters comes under the ambit and sweep of the definition of employee as envisaged u/s 2(f) of the Act then definitely provisions of the Act are applicable to the petitioner company in regard to these workers and if they do not come under the scope of the definition of the employee under the Act then the impugned order Annexure P/13 would be without jurisdiction. It is no doubt true the definition of employee under the Act is comprehensive enough but at the same time it is equally true that unless and until a person is engrafted under the definition, he cannot be said to be an employee. To come within the definition of employee a person must either be working in the establishment or working in some manner in connection with the work of establishment.

The definition of employee under the Act is an independent one and comprehensive enough. The definition of employee or to say workman/worker cannot be borrowed from the other enactment relating to the Labour Laws such as Minimum Wages Act, 1948 Workmen's Compensation Act, 1923, Industrial Disputes Act, 1947, M.P. Industrial Relations Act, 1960, Indian Factories Act. The definition of employee under the present Act is completely different from definitions of "worker" and "workman" or "employee" under these Acts. Thus, the scope of the term used "employee" under the present Act is having altogether different connotation, ambit and scope than that of other enactments and the facts of present case is to be tested on the anvil of the definition of employee and other provisions of the present Act and in order to hold whether the provisions of this Act are applicable to the persons of the present case cannot be tested on the touchstone of the definition of the employee/worker/workman of the other Act. In this view of the matter, the decisions which are cited by Shri Mathur, learned senior counsel for the petitioner are not applicable in the present case. The decision of Court in Apex the case of Workmen of Nilgiri Co-op. Mkt. Society Limited, (supra) is not applicable in the present case because the said decision is in reference to the applicability of the Industrial Disputes Act, 1947 and the Apex Court has decided the scope of definition of, workman under the said Act as there was a reference under the Industrial Disputes Act. The decision of East India Carpet Co. (Pvt) Ltd. (supra) which is a Division Bench decision of this Court is also not applicable in the present case because the Division Bench of this Court while considering the ambit and scope of Section 2(13) of the M.P. Industrial Relations Act, 1960 where the definition of employee has been given, held that Section 2(13) of this Act was not applicable to the employees of East India Carpet Co. (Pvt.) Ltd. (supra). The Supreme Court in the case of P.M. Patel (supra) came to hold that the definition of employee under the present Act is applicable on the persons who takes raw material from the employer directly to manufacture Bidi and they manufacture the Bidi at their dwelling house and in the said case it was held by the Apex Court that the provisions of the present Act are applicable to those persons and they come under the definition "employee".

The unfolded facts are that the bamboos are brought from the Forest Depot situated in various districts of Madhya Pradesh to the factory premises of the petitioner. One of the mode is that they are brought by hiring the trucks by the employer. May be the same transporter or by different transporters at different point of time, but the fact remains as such that without bringing the bamboos in the truck to the place of factors and without unloading them by the persons of the transporters or the employees of the transporters, the paper of the petitioner's factory cannot be manufactured.

The question now comes for consideration is whether the persons who are sitting inside the truck and who have brought the bamboos for the petitioner to manufacture the paper and who unload the bamboos from the truck can be included under the ambit and sweep of the definition of the employee under the Act. If they comes under the sphere of definition of employee in this Act, the

provision of this Act are applicable and if they are not, then the authority under the Act has no jurisdiction to assess liability upon the employer. In order to ascertain this crucial point, I had asked certain question to me and if the answer is in affirmative then it can be said that there is relationship of master and servant under the present Act exists in the case in hand and the persons who are employed in the truck and unload the bamboos in the factory professes of the petitioner can be said to be the employees. Thus certain questions are framed and below it answer is given.

- i) Was that person doing work of monetary payment?;
- ii) Whether the work done by him the work of establishment or had a nexus with such work?;
- iii) Was the payment made wages in the sense of being remuneration for the physical or mental effort with such work?;
- iv) Whether the person was required to do the work personally and liberty to get it done through someone else?;
- v) Whether that person has been asked to discharge any kind of work, manual or otherwise?;
- vi) Whether the work which has been done by that person is in connection with the work of establishment?; and
- vii) Whether that person gets his wages directly or indirectly from the employer?;

The answer of all these questions are in affirmative:

- i) The person who is in loading the bamboos from the truck in the factory premises of the petitioner is doing work for monetary payment;
- ii) the work of unloading the bamboos done by him is for the establishment and having nexus with the factory because unless and until the bamboos are brought in the factory premises, paper cannot be manufactured;
- iii) the payment is made to that person, by the transporter to whom the petitioner makes the payment;
- (iv) the payment was made to that person in terms of money for his physical work and effort;
- (v) the person coming in the truck to unload the bamboos in the factory premises are unloading the bamboos personally and this work is not being discharged through someone else;
- vi) that person since he is unloading the bamboos from the truck, therefore, he is mainly discharging the work for the petitioner's factory and
- vii) unless and until the bamboos are unloaded the petitioner's factory cannot manufacture the paper and, therefore, the work of unloading the bamboos is in

connection with the work of establishment.

Since all the answers are in affirmative, therefore, the view of this Court is that the persons who come in the truck and unload the bamboos in the factory premises can be said to be the employees as defined u/s 2(f) of the Act. In fact, they are employees for all practical purposes (sic) of the Act.

Much has been argued by Shri Mathur, learned senior counsel in order to demonstrate that the relationship of master and servant does not exist between the petitioner and the persons who come in the truck and unload the bamboos in the factory premises. The Act being a social welfare legislation, therefore, its provisions are required a liberal interpretation. The present Act is a beneficent piece of social welfare legislation and its aim is to promote and secure well being of the employees and, therefore, the view of this Court is that a narrow interpretation of the definition "employee" would amount to defeat the real object of the Act. It is well settled in law that if two reasonably possible interpretations of a statute is there, the Court should adopt that view which helps the achievement of the object of that particular Act. In this regard I may profitably rely the decision of Supreme Court in the case of Regional Provident Fund Commissioner Vs. Shibu Metal Works, , which is in respect to the applicability of the present Act in regard to the certain class of persons.

For the reasons stated hereinabove, the view of this Court is that the impugned order passed by Assistant Commissioner Provident Fund does not suffer from any illegality and the said authority did not commit any error in holding that the establishment of petitioner is liable under the Act and Scheme framed therein to extend the benefits to the eligible employees of the transporters engaged by the establishment for supply of raw-material for regular production of establishment.

Resultantly, this petition is hereby dismissed with costs. Counsel fee Rs. 5000/- if pre-certified.