
(1993) 11 OHC CK 0023
In the Orissa High Court
Case No : O.J.C. No. 76 of 1991

Orissa Wool Industries and Another	Vs	APPELLANT
R.P.F.C. Orissa and Another		RESPONDENT

Date of Decision : 12-11-1993

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1

Citation : (1994) 2 LLJ 1022

Hon'ble Judges : B.L. Hansaria, C.J.; B.N. Dash, J

Bench : Division Bench

Advocate : D.P. Mohanty and P.M. Das, for the Appellant; A.B. Misra, S.C. Central Govt., for the Respondent

Final Decision : Dismissed

Judgement

B.L. Hansaria, C.J.—The point for determination is whether the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (hereinafter "the Act") has application to the establishment of petitioner No. 1, named M/s. Orissa Wool Industries (hereinafter "the industry")- According to the petitioners, (the second of which is a partner of the industry), the Act does not apply for two reasons: (1) their establishment is not a Scheduled industry; and (2) the number of employees had never been 20 or more.

2. To decide the first point, we have to note what is the activities in which the industry is engaged. As stated in paragraph 4 of the petition, the industry manufactures woollen-knitwears like socks, hostops and sweaters from woollen yarn, brought from Ludhiana. Though it seems that the industry is engaged in manufacturing some other products, for our purpose we shall confine ourselves to the aforesaid products only.

Relying on the nature of the products and the nature of manufacturing undertaken, it is submitted by Shri Mohanty for the petitioners that it is not a Scheduled industry, first because it is not a garments making factory and

secondly because the notification, by which the Central Government specified garments making factories to come within the purview of the Act, has no application to the establishment of the petitioners.

3. We may dispose of the second submission first. For this purpose the notification shall have to be noted in its entirety. It reads:

"In exercise of the powers conferred by Clause (b) of Sub-section (3) of Section 1 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (19 of 1952), the Central Government hereby specifies every garments making factory employing twenty or more persons as an establishment to which the said Act shall apply with effect from November 30, 1974."

4. The aforesaid being the language of the notification, it is brought to our notice by Shri Mohanty that it has been issued in exercise of the power conferred by Clause (b) of Sub-section (3) of Section 1 of the Act which deals with "any other establishment", whereas Clause (a) of this Sub-section deals with "every establishment which is a factory ". Shri Mohanty states that the industry is a "factory" as defined in Section 2(g) of the Act because a manufacturing process is being carried on. Though Shri Misra, learned Standing Counsel, submits in this connection that the manufacturing process in the industry is without the aid of power, that is not important because once manufacturing process is there, the definition of "factory" would be satisfied even if the process be carried on without the aid of the power. That manufacturing process is carried on is not to be doubted inasmuch as it is settled law that if a new product is brought into existence, the process would have to be accepted as manufacturing; and in the present case new products are, in fact, brought into existence because yarn is knitted to bring into existence products like sweaters. We would, therefore, state that the industry at hand is a factory. If that be so, Shri Mohanty's submission is that the aforesaid notification having been issued in exercise of the powers conferred by Section 1(3)(b) of the Act would not apply to the industry inasmuch as in case of the factory only those industries specified in Schedule I of the Act would come within the purview of the Act, because of what is stated in Clause (a) of Sub-section (3) of Section 1 of the Act. The learned counsel's next leg of argument is that by invoking the power u/s 4 of the Act the Central Government could have brought garments making factory also within the purview of the Act which has, however, not been done as there is no mention of that power in the notification in question.

5. Shri Misra in this connection submits that when Section 4 has mentioned about "any other industry", that would not apply to a factory but an industry. A reference to the aforesaid Clause (a), however, shows that the Act applies to a factory engaged in any industry. Therefore, the provision of the Act would not permit us to distinguish between a factory and an industry. But then, it is well settled that if a provision of law can be shown under which an action could have been taken or order could have been passed, non-mention of the same or mentioning of a wrong provision would not make the action or order invalid. This

would appear from what has been stated by Bhagwati, J. (as he then was) in paragraph 38 in Indian Aluminium Company Vs. Kerala State Electricity Board, which is as below:-

"... But, if there is one principle more well settled than any other, it is that, when an authority takes action which is within its competence, it cannot be held to be invalid, merely because it purports to be made under a wrong provision, if it can be shown to be within its power under any other provision. A mere wrong description of the source of power - a mere wrong label - cannot invalidate the action of an authority, if it is otherwise within its power...."

This is not all. Reference to the notification shows that it has mentioned about "every garments making factory"". So, the intention was to bring such a factory within the purview of the Act.

6. For the aforesaid reasons, we should hold that the Act does apply by virtue of the aforesaid notification to garments making factory.

7. This takes us to the next submission of Shri Mohanty that the products manufactured by the petitioner-factory are not "garments" but are "hosiery goods". To bring home the distinction between these two words, Shri Mohanty has first referred us to a Division Bench decision of Madhya Pradesh High Court in Commissioner of Sales Tax v. Maharajan Brothers (1963) 14 S.T.C. 808 ORI in paragraph 5 of which the distinctions between these two aforesaid words have been dealt with. Learned Chief Justice (who delivered the judgment) first notes the definition of "garment" as given in the Webster's New Twentieth Century Dictionary and then in Oxford Dictionary. It is then stated that in common language "garment" means "an article of dress or clothes, that is to say, clothes or articles of dress which attire or array or adorn a person. It is, therefore, an outer vestment for dressing up a person." Coming to "hosiery goods", the learned Chief Justice states that they are knitted goods. Then the following observations find place which is strongly pressed into service by Shri Mohanty:-

"Again, a garment is made of cloth, whereas hosiery goods are made not of cloth but are knitted out of woollen or silken or cotton or linen threads."

8. The present being a case of goods being brought into existence by knitting woollen threads, Shri Mohanty would submit that the products are hosiery goods and not garments. To buttress his submission, we are referred to the definition of "knitwear" as given in Reader's Digest Universal Dictionary at page 351 as "knitted clothing especially sweaters". Some strength is also sought to be derived from the Ministry of Commerce's Public Notice No.48 LTC (PN)/81 dated June 24, 1981, which is on the subject of exports under OGL (Open General License) which makes a distinction between garments and knitwears. The final contention in this regard is that it is not the dictionary meaning which should prevail but common parlance meaning.

9. As to the last contention, we would say that though the law is well settled that

it is common parlance meaning which should be accepted, Shri Mohanty himself has relied on the dictionary meaning, as noted above. So, this does not lead us anywhere. As to the aforesaid public notice for exports OGL, we would say that it is for a different purpose and is not relevant to decide the point at hand.

10. The real important material to support Shri Mohanty is the Madhya Pradesh decision and it does support him to a great extent because it has been stated that hosiery goods are those which are knitted out of threads; and present goods are such. Therefore, a view is possible to take if we confine to the aforesaid aspect to hold that the present goods are not garments but hosiery goods. But then, if another test given in the Madhya Pradesh judgment is also borne in mind, namely, that an outer vestment is garment, sweaters would come within the ambit.

11. The aforesaid shows that two views may be taken. Question is which should be taken in the case at hand. The Act is a beneficial piece of legislation, as was pointed out in *Organo Chemical Industries and Another Vs. Union of India (UOI) and Others*, , to which our attention is invited by Shri Misra. We would, therefore, refer to *Vatticherukuru Village Panchayat Vs. Nori Venkatarama Deekshithulu and Others*, , in which, while dealing with a social legislation, purposive approach was commended. In paragraph 19 of this judgment, it has been emphasised that for such an approach one has to ascertain the social ends envisaged in the Act and an integrated approach should be adopted which would effectuate the object of the Act. The further pertinent observation is:-

"Meticulous lexicographic analysis of words and phrases and sentences should be subordinate to this purposive approach. The dynamics of the interpretative functioning of the Court is to reflect the contemporary needs and the prevailing values consistent with the constitutional and legislative declaration of the policy envisaged in the statute under consideration."

The statute under consideration is definitely a piece of social legislation aimed at improving the conditions of service of employees in factories and other establishments.

12. Before giving our conclusion on this aspect of the matter, it would be apposite, indeed necessary, to refer to Annexure C, which is a communication from the Manager of the industry dated February 16, 1989 to the Regional Provident Fund Commissioner stating in its first paragraph that "we have deducted Provident Fund from the salary of our workers from November, 1988 onwards". It clearly shows that the petitioners accepted application of the Act to their industry and went to the extent of deducting provident fund from the salary of the employees. In such a situation, it would be doing great injustice to the employees of the industry to hold that the Act does not apply, as that would deprive them of the benefit made available by the Act, to confer which even deductions from their wages, as required by the Act, have been made.

13. In view of the above, we hold that the petitioner industry has to be taken to

be a Scheduled industry and we, therefore, reject the first contention of Shri Mohanty.

14. The second contention need not detail us because the statement given by the petitioners themselves for the month of January, 1980 which has been referred in the impugned order (Annexure-6), clearly shows that 37 persons were in employment. Not only this, from a xerox copy of the same, which has been made available to us, gives the names and wages of the employees. Shri Mohanty being faced with this statement, urges that was a case of fleeting employment and the industry had really engaged less than 20 employees. To substantiate this submission, we are referred to Annexure - F in the second para of which it has been stated by the enquiring officer that on verification of the records it was observed that at the initial stage though there were 37 workers who were found eligible but in the passing of time there had been a considerable reduction and only 16 employees were found eligible during February 1988. This would show that at one point of time there were 37 workers and this was not for any casual purpose.

15. In so far as fleeting nature of employment is concerned, Shri Mohanty refers to The Regional Provident Fund Commissioner, Andhra Pradesh Vs. Sri. T.S. Hariharan, , and in this connection the learned counsel draws our attention to page 420 in which it was stated that when the Act speaks of the establishment employing 20 or more persons, the word has to be construed in the light of the legislative scheme, the object and purpose of enactment. We may then refer to what finds place in page 421 wherein the construction to be given to the word "employment" was dealt with by stating as below :

"... The word "employment" must therefore, be construed as employment in the regular course of business of the establishment; such employment obviously would not include employment of a few persons for a short period on account of some passing necessity or some temporary emergency beyond the control of the company."

There is nothing before us to show that employment of 37 persons in January, 1980 was of the aforesaid nature.

16. We, therefore, hold that the industry did employ 20 or more persons and it was a Scheduled industry and the Act does apply to the industry. So, we uphold Annexure-6 by dismissing the petition. Though we have rejected the contentions advanced by Shri Mohanty, we would place on record our appreciation for the legal submissions advanced by him and the labour undertaken by him in preparing the case

B.N. Dash, J.

17. I agree.