
(1961) 08 MAD CK 0049
In the Madras High Court

Regional Provident Fund Commissioner	APPELLANT
Vs	
Madras Pencil Factory	RESPONDENT

Date of Decision : 08-08-1961

Acts Referred:

Employees Provident Funds and Miscellaneous Provisions Act, 1952 — Section 1, 2, 7

Citation : (1961) 2 LLJ 783 : (1961) 74 LW 779

Hon'ble Judges : S. Ramachandra Ayyar, O.C.J.; Srinivasan, J

Bench : Division Bench

Judgement

Srinivasan, J.—The respondent is a pencil factory employing 114 persons. It would appear that the factory has attached to it a foundry and workshop in which certain spare parts required for the machinery employed in the manufacture of pencils are fabricated. In this factory and workshop, 23 out of the 114 persons are employed.

2. The appellant, the Regional Provident Fund Commissioner. Madras, informed the respondent factory that as it was engaged in manufacture of general engineering products, it came within the purview of the Employees' Provident Funds Act, 1952, and called upon the respondent to implement the provident fund scheme. The respondent contended that the Act did not apply to it, and under the threat of penal action under the provisions of the Act, moved this Court in Writ Petition No. 249 of 1957. Balakrishna Ayyar, J., held that the factory of the respondent was engaged in manufacture of pencils, an industry not included in the schedule to the Act, and that its fabrication of general engineering goods for the purpose of keeping its machinery in good condition did not bring it within the scope of the requirement that it should be engaged in a scheduled industry. The rule nisi was therefore made absolute and it is against the abovesaid order that the present appeal is filed.

3. Before the learned Judge two contentions were raised. One was that in order to come within the scope of Section 1(3) of the Employees' Provident Funds Act, 1952, the number of persons employed in that part of the factory's activities,

that is, in the making of general engineering products, not less than fifty persons should be employed, (It may be mentioned that subsequently the Act was amended by substituting "twenty" for "fifty" in the relevant provisions.) The other contention was that the expression "engaged in" connotes the principal activity of the factory and not an incidental occupation which had no connexion with the marketable or the marketed output of the factory. The learned Judge found in favour of the latter contention. It is the correctness of this finding that is canvassed in this appeal.

4. Section 1(8), in so far as it is relevant, reads thus:

The Act applies (a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which fifty or more persons are employed.

On a plain reading of the provision, it seems to us to be clear that the requirement of the number of persons employed relates to the factory and not to the industry. This is the view that has been taken by several High Courts. We may refer to N.K. Industries (Private) Ltd., Kanpur Vs. Regional Provident Fund Commissioner, U.P., where Sahai, J., interpreted the above provision in that manner. He observed at p. 22:

It is obvious therefore that it is the strength of the factory and not of that department in which that particular industry is being carried on, which is to be considered. In other words, the Act would apply to factories employing fifty or more persons, though in that department of the factory in which that particular industry is being carried on, less than fifty persons are working. In my opinion, any construction other than the one I am giving would be in conflict with the rules of grammar.

In a Bench decision of the Allahabad High Court in Regional Provident Fund Commissioner v. Great Eastern Electroplater, Ltd. 1958 II L.L.J. 676, the same view was taken. The learned Judges differed from the view taken by the Bombay High Court in Oudh Sugar Mills Ltd. Vs. Regional Provident Fund Commissioner, Bombay, It seems to us unnecessary to traverse this point any further. Balakrishna Ayyar, J., has pointed out that an industry employs thousands of persons and that if the result that the number of persons referred to in Section 1(3) is the number employed in that part of the factory engaged in the scheduled industry, Is to be reached, we have to read more words into the section than are in It. We are in entire agreement with this conclusion of the learned Judge.

5. The more important point is whether the factory in the present case can be said to be "engaged in" an Industry specified in the schedule. We have pointed out that factually the factory is engaged In the production of pencils and that this industry is admittedly not one specified in the schedule to the Act. The factory however fabricates certain spare parts for its machinery, which is used in the production of pencils. It is claimed that this activity is one of the scheduled industries, being the manufacture of general engineering products. The learned Additional Government Pleader, on behalf of the Regional Provident Fund

Commissioner, argues that incorporating the definition of factory appearing In Section 7(g) of the Act, in the relevant provision, Section 1(3) of the Act, we reach the result that where in any part of the premises of the factory, any manufacturing process is carried on and such process is an Industry specified in the schedule, it should follow that the factory is brought within the mischief of Section 1(3). So, incorporating the definition of a factory, in Section 1(3), the provision would read thus:

The Act applies, to every establishment, which is 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 newer or without the aid of power, engaged in any industry specified in Son. I and in which fifty or more persons are employed.

Even so, it would be seen that the vital requirements of the provision is that the factory should be engaged in a scheduled industry. It is this expression "engaged in" that requires to be interpreted.

6. In *Oudh Sugar Mills Ltd. Vs. Regional Provident Fund Commissioner, Bombay*, , Mudholkar, J., took the view that where a factory manufactures articles in which it does not trade but only uses those articles in enabling it to carry on its manufacturing process, the Act would apply only where the final product is within the schedule and not otherwise. The learned Judge of the Bench, Tambe, J., however, thought that this distinction between the principal and Incidental object of the factory would not be relevant. But in that case, however, since the number of persons employed in that unit of the factory producing products falling within the scope of the scheduled indents was less than fifty, both the judges agreed in holding that the Act did not apply to that case. Applying the principle of that decision in a later case, *Nagpur Glass Works Ltd. Vs. Regional Provident Fund Commissioner, Bombay*, , the same two learned Judges held that in the case of a factory which employs 420 workers, of whom only 187 were engaged In the partcular section manufacturing general engineering products, the Act would apply only to the latter unit of the factory. We may also refer to the decision of the Kerala High Court in *Kokkalai Rice and Oil Mills Foundry, etc. Vs. Regional Provident Fund Commissioner*, , which dissented from the view taken by Mudholkar. J., in *Oudh Sugar Mills Ltd. Vs. Regional Provident Fund Commissioner, Bombay*, and of Balakrshna Ayyar, J., in the writ petition in appeal on this particular point.

7. It seems to us that the view taken by Balakrishna Ayyar, J., which finds support in the observations of Mudholkar, J., in the case referred to above, is the correct one. Balakrishna Ayyar, J., If we may say so with respect, gave some telling examples of how a wholly irrational result would follow if the expression "engaged in" used in Section 1(3) of the Act is interpreted to mean to Include any activity of a factory of whatever kind, solely for the reason that such activity is carried on in the precincts of the factory. We may refer to one illustration indicated by Balakrishna Ayyar, J. A dairy farm, which produces milk products, is

a factory within the meaning of Section 2(g) of the Act, but not carrying on an industry listed in the schedule to that Act; it employs certain workmen for the purpose of repairing buckets, drums or other vessels used for the transporting or "storing of milk or other milk products. Such latter activity could be considered to come within the scope of manufacture of engineering products. The learned Judge pointed out that because a few persons are engaged in these processes, it would be unreal to say that the dairy is engaged in the manufacture of engineering products. In the Bombay decision referred to, Mudholkar, J., observed:

The word "industry" should be understood in the sense in which it is understood in the business community. If the industry, as here, is the production of edible oil, then all the intermediate products which are produced for carrying on that industry cannot be regarded as separate industries.

It is this idea that has been expanded by. Balakrishna Ayyar. J., in the judgment under appeal. It seems to us that any other view would be wholly inconsistent with the precision that one would ordinarily attach to the expression "engaged in any industry."

8. It has been urged before us, as It was urged before the learned Judge, that the Act is a benevolent enactment and that its scope should not be limited. We are not prepared to agree with the argument of the learned Additional Government Pleader that because the Act is intended to confer some benefit on the workmen employed in factories, a facile Interpretation can be relied upon to extend the operation of the Act where the plain words of the provision are not in accord with such extended operation.

9. The appeal falls and is dismissed with costs. Advocate's fee Rs. 150.