

Thankamma Baby Vs. The Regional Provident Fund Commissioner, Kochi, Kerala

Civil Appeal No. 4619 of 2010
2023-11-07 | Abhay S. Oka, J.
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Full judgment text

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[Civil Appeal No. 4619 of 2010]

[Civil Appeal No. 4620 of 2010]

Abhay S. Oka, J.

Factual Aspect

1) The issue involved in these appeals is of interpretation of clause (b) of sub-Section (3) of Section 1 of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 (for short, 'the 1952 Act'). In order to understand the controversy, the facts must be briefly stated.

2) The appellant is engaged in manufacturing, assembling, and selling umbrellas. The respondent (the Regional Provident Fund Commissioner) issued a notice dated 30th December 1997 to the appellant, alleging that the 1952 Act was applicable to the appellant.

It was alleged in the notice that the business of the appellant fell in the category of 'trading and commercial establishments' notified under the notification dated 7th March 1962, issued by the Central Government in the exercise of powers under clause (b) of sub-Section (3) of Section 1 of the 1952 Act. The respondent made an Inquiry under Section 7A of the 1952 Act. The respondent held that the case of the appellant was covered by the notification dated 7th March 1962. A Review Petition was filed by the appellant, which was rejected by the respondent.

An appeal preferred by the appellant to the Appellate Authority against the decision of the respondent was dismissed. Being aggrieved by the said orders, a Writ Petition was filed by the appellant. The learned Single Judge dismissed the Writ Petition, and the order of the learned Single Judge has been confirmed by the impugned judgment by a Division Bench of the Kerala High Court in a Writ Appeal filed by the respondent.

Submissions

3) The learned counsel appearing for the appellant submitted that establishments covered by clause (a) of sub-Section (3) of Section 1 are factories engaged in industries specified in Schedule I of the 1952 Act. His submission is that clause (a) is applicable to the factories engaged in the industries specified in Schedule I. Therefore, those factories not specified in Schedule I cannot be covered by clause (b) of sub-Section (3) of Section 1 of the 1952 Act.

He submits that clause (b) of sub-Section (3) does not refer to the factories. Thus, from the intention of the legislature, it is very clear that 'any other establishment' mentioned in clause (b) of sub-Section (3) will not include any factory. His submission is that, in fact, the counter filed by the respondent before the learned Single Judge contains an admission that the umbrella-making unit of the appellant is not an industry included in Schedule I.

He relied upon a decision of the Apex Court in the case of Regional Provident Fund Commissioner V. Shibn Metal Works¹. He submitted that by no stretch of the imagination, the appellant's establishment can be called a trading and commercial establishment covered by the notification dated 7th March 1962.

4) Learned counsel appearing for the respondent urged that the respondent, the appellate authority, the learned Single Judge and the learned Division Bench have concurrently held against the appellant. His submission is that the business of the appellant is admittedly not only of assembling or manufacturing the umbrellas but also of selling the same. He would, therefore, submit that the appellant will be covered by the category of trading and commercial establishments incorporated in the aforesaid notification.

Consideration of Submissions

5) Section 1 of the 1952 Act reads thus:

"1. Short title, extent and application.-

[(1) This Act may be called the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.]

(2) It extends to the whole of India.

[(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 [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 Provident Fund Commissioner, whether on an application made to him 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, he may, by notification in the Official Gazette, apply the provisions of this Act to that establishment on and from the date of such agreement or from any subsequent date specified in such agreement.]

[(5) An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty.]"

Clause (a) of sub-Section (3) as well as clause (b) of sub- Section (3) are applicable to establishments.

Clause (a) covers those establishments which are factories engaged in any industry specified in Schedule I to the 1952 Act where twenty or more than twenty persons are employed. Clause (a) of sub- Section (3) proceeds on the footing that factories are establishments. There is no dispute that the appellant's establishment is not covered by clause (a) as it is not a factory engaged in any industry specified in Schedule I.

6) Before we deal with the contentions raised by the appellant, we must note here that the Constitution Bench of this Court, in the case of *Mohmedalli and others V. Union of India* and another,² has dealt with the issue of interpretation of the provisions of the 1952 Act and in particular sub-Section (3) of Section 1 of the 1952 Act. The Constitution Bench held that:

a) The 1952 Act was made to institute provident funds for the benefit of the employees in factories and other establishments;

b) The provisions of the 1952 Act constitute social justice measures; and

c) The underlying idea behind the provisions of the 1952 Act is to bring all kinds of employees within its fold as and when the Central Government might think it fit after reviewing each class of establishments.

After considering clause (a) of sub-Section (3) of Section 1, the Constitution Bench held that, in so far as establishments which do not come within the description of the factories engaged in industries enumerated in schedule I are concerned, the Central Government has been vested with the power of specifying such establishments or class of establishments as it might determine to be brought within the purview of the 1952 Act.

7) Clause (a) of sub-Section (3) is applicable only to those factories engaged in any industry specified in Schedule I. Clause (b) of sub-Section (3) is applicable to all other establishments which are not covered by clause (a) of sub- Section (3) provided such establishments are notified by a notification issued by the Central Government which is published in the official Gazette. Clause (b) of sub-Section (3) takes within its fold all establishments which are not covered by clause (a). Therefore, a notification under clause (b) can be issued in respect of factories engaged in any industry which is not specified in Schedule I.

Hence, the argument that a notification cannot be issued under clause (b) of sub-Section (3) regarding a factory engaged in an industry not covered by Schedule I cannot be accepted. We are dealing with a social welfare legislation described by the Constitution Bench as a measure of social justice. Therefore, to give effect to the legislature's intention, the Court will have to adopt a purposive interpretation. We, therefore, reject the contention that all factories which are not covered by industries in Schedule I are out of the coverage of clause (b).

8) We may note here that it is not the case of the appellant that her establishment has been exempted under Section 16 of the 1952 Act. Under the notification dated 7th March 1962, there is a category of 'trading and commercial establishments'. Admittedly, the appellant is carrying on the business of assembling/manufacturing umbrellas and selling the same.

The respondent has recorded a finding of fact that the business of establishment of the appellant was of assembling umbrellas and selling the same in her own outlet. Thus, the establishment of the appellant is a commercial establishment. It is an establishment predominantly carrying on commercial activity. Therefore, it cannot be denied that the business of the appellant will fall in the category of 'trading and commercial establishments'.

In the circumstances, the case of the appellant will be governed by the said notification issued under clause (b) of sub-Section (3) of Section 1. The decision of this Court in the case of Regional Provident Funds Commissioner. Vs. Shibn Metal Works (Supra) does not deal with clause (b) of sub-Section (3) of Section 1.

9) We, therefore, find absolutely no error in the view taken by the learned Single Judge and Division Bench of Kerala High Court. Accordingly, we dismiss the appeals with no order as to costs.

10) If there is any monetary liability incurred by the appellant pursuant to the orders of the respondent confirmed by the High Court, considering the fact that the present appeals are of the year 2010, we grant time of three months to the appellant to pay the necessary amount.

1 1965 (2) SCR 72

2 1963 Supp (1) SCR 993

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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