1963

April 9

THE ASSOCIATED INDUSTRIES (P) LTD.

v.

THE REGIONAL PROVIDENT FUND COMMISSIONER, KERALA TRIVANDRUM

(P. B. GAJENDRAGADKAR, K. N. WANCHOO, K. C. DAS GUPTA, J. C. SHAH and N. RAJAGOPALA AYYANGAR JJ.)

Provident Fund—Composite factory—Two independent industries—One as falling under the schedule—Whether Establishment—The Employees' Provident Funds Act, 1952 (19 of 1952), ss. 1 (3) (a) 2,(g) & (i), Schedule I.

The appellant runs a tile factory and an engineering works at Quilon. These two industries are indepedent of each other, but they are carried on by the same company and on the same premises. The tile factory was started in 1943 and the engineering works in 1950. The engineering industry was included in Schedule I of the Act and it employed only 24 workers, whereas the tile industry employed more than 50. The license issued to the appellant under the Factories Act, 1948, was for the entire premises. The appellant moved a writ petition in the High Court in which he alleged that its factory did not attract the provisions of s. 1 (3) (a) of the Employees' Provident Funds Act 1952. The writ petition was dismissed with costs. It is against this order that the appellant has come to this Court.

Held (i) that a factory is an "establishment" within the meaning of s. 1 (3) (a) of the Act if it satisfies the requirements of the section, namely, (1) that its one or all industries fall under Schedule I of the Act, (2) that it satisfies the numerical strength as prescribed under the section.

(ii) that the character of the dominant or primary industry will determine the question of the application of s. 1 (3) (a) if a factory carries on both the dominant and subsidiary industries.

(iii) That if the factory runs more industries than one all of which are independent of each other, s. I (3) (a) will

1963

Associated Industries (P) Ltd. v. Regional Provident Fund Commissioner, Kerala Trivandrum

apply to the factory even if one or more, but not all, of the industries run by it fall under Shedule 1.

(iv) that neither the tile industry was dominant nor the engineering industry was subsidiary; rather both the industries were independent of each other.

(v) that the factory of the appellant will be deemed to be a composite factory and the provisions of s. 1 (3) (a) will be attracted as one of its industries *i. e.* engineering industry, falls under Schedule 1.

The Regional Provident Fund Commissioner, Bombay v. *Shree Krishna Metal Manufacturing Co. Bhandara* [1962] Supp.3 S. C. R. 815, *approved.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 324 of 1962.

Appeal from the judgment and decree dated August 8, 1960 of the Kerala High Court, in O. P. No. 97 of 1953.

G. B. Pai, J. B. Dadachanji, O. C. Mathur and *Ravinder Narain,* for the appellant.

S. V. Gupte, Additional Solicitor-General of India, R. Ganapathy Iyer, P. D. Menon and *R. H. Dhebar,* for the respondent.

1963. April 9. The Judgment of the Court was delivered by

Gajendragadkar J.

GAJENDRAGADKAR J.—The short question which arises in this appeal is whether the factory run by the appellant, the Associated Industries (P) Ltd., Qulion, falls within s. 1 (3) of the employees' Provident Funds Act, 1952 (No. 19 of 1952) (hereinafter called 'the Act'). The appellant is a Company which runs a tile factory and an engineering works at Quilon. The tile factory began its career in July, 1943, and the engineering works in

September, 1950. It is common ground that these two industries are separate and distinct and that they are carried on by the same Company and on the same premises. It is also common ground that a licence issued under the Factories Act, 1948, has been issued to the appellant for the entire premises and it is under this licence that the said premises are allowed to be used as one factory under the said Act and the rules framed thereunder.

It appears that the respondent, the Regional Provident Fund Commissioner, Vanchiyoor, Trivandrum, intimated to the appellant on March 10, 1953, that the Act as well as the scheme framed under it were applicable to the appellant's factory, and so, the appellant was called upon to deposit in the Sub-Office of the Imperial Bank of India the contributions and administrative charges as required by s. 6 of the Act. The same requisition was repeated on March 25, 1953 and April 24, 1953. The appellant disputed the correctness of the view taken by the respondent that the appellant's factory fell under the purview of the Act, and so, it refused to comply with the respondent's requisition. Thereupon, the respondent wrote to the appellant on June 16, 1953 informing it that appropriate action would be taken to compel the appellant to make the necessary deposit and submit returns as required by the Act in case it failed to comply with the notices issued in that behalf. At this stage, the appellant moved the High Court of Kerala by a writ petition (O. P. No. 97/1953) in which it claimed a writ of *certiorari* quashing the notices issued by the respondent against it, and restraining the respondent from proceeding further in the matter and for other incidental reliefs.

The main contention raised by the appellant before the High Court was that the appellant's factory was not an establishment to which s. 1 (3) of the Act applied. The High Court

1963

Associated Industries (P) Ltd.
v.
Regional Provident Fund Commissioner, Kerala Trivandrum

Gajendragadkar J.

has rejected this contention. Then it was urged before the High Court on behalf of the appellant that the effect of the notices served on the appellant by the respondent was retrospective in character and it was urged that the said notices were illegal. This argument was also rejected by the High Court. The appellant further contended before the High Court that since for the relevant period the employees had not made their contributions, it would be inequitable to enforce the notices against the appellant. The High Court noticed the fact that it had been conceded by the respondent that he did not propose to collect the employees' share of the contribution to the fund for the relevant period from the appellant, and it held that the concession so made was proper and fair and so, there was no substance in the grievance made by the appellant that giving effect to the notices served on it by the respondent would be inequitable and unjust. On these findings, the writ petition filed by the appellant was dismissed with costs. It is against this order that the appellant has come to this Court with a certificate granted by the High Court.

The principal point which is sought to be raised by Mr. Pai on behalf of the appellant in this appeal is concluded by a recent decision of this Court in *The Regional Provident Fund Commissioner, Bombay* v. (1) *Shree Krishna Metal Manufacturing Co., Bhandara, and* (2) *Oudh Sugar Mills Ltd.* (1). It would be noticed that the relevant sections which fell to be construed in dealing with the appellant's contention are s. 1 (3), s. 2 (g) and (i) and s. 6 of the Act. Section 1 (3) (a) provides, *inter alia*, that subject to the provisions contained in s. 16, the Act applies to every establishment which is a factory engaged in any industry specified in Schedule I and in which 50 or more persons are employed; the numerical requirement of 50 has been reduced to 20 by an Amending Act of 1960. Section (2) (g)

(1) A.I.R. (1962) S.C. 1536.

defines a 'factory' as meaning 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; and s. 2 (i) defines an 'industry' as meaning any industry specified in Schedule I, and includes any other industry added to the Schedule by notification under section 4. Section 6 prescribes for the levy of contributions and deals with other matters which may be provided for in Schemes; and in accordance with the provisions of this section, the Employees' Provident Fund Scheme of 1952 has been framed.

In the case of *the Regional Provident Fund Commissioner, Bombay*, (1) this Court has held that s. 1 (3) (a) does not lend itself to the construction that it is confined to factories exclusively engaged in any industry specified in Schedule 1. It was observed in that connection that when the legislature has described factories as factories engaged in any industry, it did not intend that the said factories should be exclusively engaged in the industry specified in Sch. I. Consistently with this view, this Court further observed that the word 'factory' used in s. 1 (3) (a) has a comprehensive meaning and it includes premises in which any manufacturing process is being carried on as described in the definition, and so the factory engaged in any industry specified in Sch. I does not necessarily mean a factory exclusively engaged in the particular industry specified in the said Schedule. In construing the scope of s. 1 (3) (a) this Court held that composite factories came within its purview and that the fact that a factory is engaged in industrial activities some of which fall under the Schedule and some do not, will take the factory out of the purview of s. 1 (3) (a).

Having dealt with this aspect of the matter, this Court proceeded to consider the question as to

(1) A I. R. 1962 S. C. 1536.

1963

Associated Industries (P), Ltd.
v.
Regional Provident Fund Commissioner, Kerala Trivandrum

Gajendragadkar J.

whether numerical requirement of the employment of 50 persons, as the section then stood, applied to the factory or to the industry, and it held that the said test applied not to the industry but to the factory. Thus, the conclusion was that in order that a factory should fall under s. 1 (3) (a), it must be shown that it is engaged in any such industry as is specified in Sch. I, and the number of its employees should not be less than 50.

This decision makes it clear that s. 1 (3) (a) is not confined only to factories which are exclusively engaged in industrial work to which Sch. I applies, but it also takes in composite factories which run industries some of which fall under Sch. I and some do not. In order to make the position clear let us state the true legal position in respect of the scope of the application of s. 1 (3) (a) in categorical terms. If the factory carries on one industry which falls under Sch. I and satisfies the requirement as to the number of employees prescribed by the section, it clearly falls under s. 1 (3) (a). If the factory carries on more than one industry all of which fell under Sch. I and its numerical strengh satisfies the test prescribed in that behalf, it is an establishment under s. 1 (3) (a). If a factory runs more industries than one, one of which is the primary and the dominant industry and the others are its feeders and can be regarded as subsidiary, minor, or incidental industries in that sense, then the character of the dominant and primary industry will determine the question as to whether the factory is an establishment under s. 1 (3) (a) or not. If the dominant and primary industry falls under Sch. I, the fact that the subsidiary industries do not fall under Sch. I will not help to exclude the application of s. 1 (3) (a). If the dominant and primary industry does not fall under Sch. I, but one or more subsidiary, incidental, minor and feeding industries fall under Sch. I, then s. 1 (3) (a) will not apply. If the factory runs more

industries than one all of which are independent of each other and constitute separate and distinct industries, s. 1 (3) (a) will apply to the factory even if one or more, but not all, of the industries run by the factory fall under Sch. 1. The question about the subsidiary, minor, or feeding industries can legitimately arise only where it is shown that the factory is really started for the purpose of running one primary industry and has undertaken other subsidiary industries only for the purpose of subserving and feeding the purposes and objects of the primary industry ; in such a case, these minor industries merely serve as departments of the primary industry; otherwise if the industries run by a factory are independent, or are not so integrated as to be treated as part of the same industry, the question about the principal and the dominant character of one industry as against the minor or subsidiary character of another industry does not fall to be considered.

It is in the light of this position that we may revert to the actual decision in *The Regional Provident Fund Commissioner, Bombay* (1). In that case, this Court was dealing with the cases of Shree Krishna Metal Manufacturing Co., and Oudh Sugar Mills Ltd. The Metal Company carried on four different kinds of activities and it was held that its industrial activity which fell under Sch. I was neither minor, nor subsidiary, nor incidental to the other activities. In other words, the industry which the company ran and which fell under Sch. I was independent of the other industries conducted by the Company, and so, it was held that the question about one industry being subsidiary, minor, or incidental did not arise. In the result, the Company's factory was found to fall under s. 1 (3) (a).

On the other hand, the case of the Oudh Sugar Mills stood on a different basis. The primary activity

(1) A. I. R. 1962 S C. 1536.

1963

Associated Industries (P) Ltd.
v.
Regional Provident Fund Commissioner, Kerala Trivandrum

Gajendragadkar J.

of the mills was the manufacture of hydrogenated vegetable oil named 'Vanasada' and its by-products, such as soap, oil-cakes, etc. It appeared that a department of the Mills manufactured containers and this part of the industrial activity of the Mills fell under Sch. I. Evidence, however, showed that the fabrication of the containers had been undertaken by the Mills only as a feeder activity which was integrally connected whith its primary business of producing and marketing vegetable oil, and since the primary business was outside Sch. I, the factory as a whole was held to be outside s. 1 (3) (a).

It is true that since this Court dealt with the two respective cases of the Company and the Mills in one judgment, the test as to the principal character of the industrial activity of one industry in relation to the character of the minor industry came to be considered; but the application of the said test became necessary essentially because of the case of the Oudh Sugar Mills. In the case of the Company, however, the several activities were not minor or subsidiary, but were independent, and it was held that the factory of the company fell under s. 1 (3) (a). Therefore, in our opinion, there is no scope for the argument in the present case that the engineering industry which the appellant runs is not the primary or dominant industry but the manufacture of tiles is. Mr. Pai attempted to argue that though engineering industry run by the appellant's factory falls under Sch. I, it employs only 24 workers whereas the tiles industry employs more than 50. He also relied on that fact that the tiles factory was started in 1943 and the engineering works in 1950, and his argument was that judged in the light of the fact that the tiles industry was started first, as well as considered by the application of the test of the strength of the employees working in the two industries, tiles industry should be treated to be the main, dominant and primary industry of the factory, and so, the factory, as a

whole, should be held to be outside s. 1 (3) (a). In our opinion, this argument is plainly untenable. If the tiles industry and the engineering industry are independent of each other, then no question arises as to which is principal and which is subsidiary. As soon as it is shown that the factory is carrying on two industries independent of each other one of which falls under Sch. I, it becomes a composite factory to which s. 1 (3) (a) applies. When s. 1 (3) (a) requires that the factory should be engaged in any industry specified in Sch. I, considerations as to whether the industrial activity is major or minor can arise only where some activities are dominant and others are of the nature of feeding activities, but not otherwise. Where the industrial activities are independent and the factory is running separate industries within the same premises and as part of the same establishment and under same licence, it is difficult to accept the argument that in dealing with such a factory, enquiry would be relevant as to which of the industries is dominant and primary, and which is not. Therefore, in our opinion, the High Court was plainly right in rejecting the appellant's case that its factory did not attract the provisions of s. 1 (3) (a) of the Act.

Mr. Pai wanted to contend that if the appellant's factory is treated as falling under s. 1 (3) (a), complications may arise by reason of the fact that the rate of contribution initially prescribed by s. 6 has been amended in 1962 by the Amending Act No. 48 of 1962. Section 6 of the unamended Act provides, *inter alia*, that the contribution to be paid by the employer to the fund shall be 6-1/4% of the basic wages, dearness allowance and retaining allowance, if any, for the time being payable to each of the employees, and the employees' contribution shall be equal to the contribution payable by the employer in respect of him. This section further provided that the employee was competent to

1963

Associated Industries (P) Ltd. v. Regional Provident Fund Commissioner, Kerala Trivandrum

Gajendragadkar J.

make a higher contribution not exceeding 8 and one-third per cent of his emoluments specified in the said section. By the amendment made in 1962, this rate has been enhanced to 8% in respect of any establishment or class of establishments which the Central Government, after making such enquiry as it deems fit, may by notification in the Official Gazette specify. We were told that in regard to the engineering industry, this amended sub-section has been extended by a notification, and Mr. Pai's apprehension is that if the factory of the appellant is held to be an establishment to which s. 1 (3) (a) applies on the ground that it is a composite factory which runs several industries one of which falls under Sch. I, it is likely that the increased rate may be made applicable to the factory as a whole. We ought to add that Mr. Pai conceded that subsequent to the decision of the appellant's writ petition in the High Court, the tiles industry has also been included in Sch. I, but the revised rate has been made applicable to it. Mr. Pai contends that if the factory is treated as falling under s. 1 (3) (1), a distinction should be made in the different industries run by the factory for the purpose of calculating the contribution of the employer to the Provident Fund. We do not propose to deal with this contention in the present appeal. That is a matter which may well have to be decided by the respondent, and it is not open to Mr. Pai to request this Court to decide such a hypothetical question in the present proceedings.

The result is, the appeal fails and is dismissed with costs.

Appeal dismissed.