LETTERS PATENT APPEAL

Before S. S. Dulat and Prem Chand Pandit, JJ.

THE REGIONAL PROVIDENT FUND COMMISSIONER, PUNJAB AND ANOTHER,—*Appellants*

versus

M/s. FREE INDIA INDUSTRIES AND ANOTHER,—*Respondents.*

Letters Patent Appeal No. 323 of 1962.

1963

August, 14th.

Employees Provident Fund Act (XIX of 1952)—Schedule 1—Business of body-building on the chassis of buses and trucks—Whether covered by the Act—Buses and trucks—Whether "automobiles"—Bodies built on the chassis of buses and trucks—Whether accessories of the automobiles.

Held, that the business of body-building on chassis of buses and trucks is covered by the expression "electrical, mechanical or general engineering products" mentioned in Schedule I of the Employees Provident Fund Act, 1952. Like a car, a bus or a truck is also a self-propelled vehicle and hence it is also included in the term "automobile". It is inconceivable that there should be a bus or a truck without a body thereon. A bus or a truck would be useless without a body and hence bodies built on the chassis are parts of accessories of the automobiles.

Letters Patent Appeal, under Clause X of the Letters Patent, against the Judgment of the Hon'ble Mr. Justice Harbans Singh, dated 31st July, 1962 made in Criminal Misc. No. 874 of 1959 (treated as Civil Writ Petition, under Articles 226 and 227 of the Constitution) whereby the demand made by appellant No. 1 in respect of the provident fund was quashed.

C. D. DEWAN, DEPUTY ADVOCATE-GENERAL, for the Appellants.

KARTAR SINGH CHAWLA, ADVOCATE, for the Respondents.

JUDGMENT

Pandit, J.

PANDIT, J.—This is an appeal under Clause 10 of the Letters Patent against the judgment of a learned Single Judge of this Court.

Messrs. Free India Industries, respondent No. 1 were carrying on the business of body-building on the Chassis of buses and trucks in Jullundur City. The Regional Provident Fund Commissioner, Punjab, appellant No. 1, made demands from them for the payment of the provident fund under the provisions of the Employees Provident Fund Act, 1952 (Act 19 of 1952) (hereinafter referred to as the Act). Since the firm denied its liability to pay this amount despite repeated reminders, appellant No. 1 started prosecution proceedings against them under section 14 of the Act in the Court of Shri Onkar Singh, Magistrate, 1st Class, Jullundur. Thereupon, the firm filed a writ petition in this Court under Articles 226 and 227 of the Constitution and section 561-A of the Criminal Procedure Code, praying that a writ of *mandamus* be issued directing appellant No. 1 and the State of Punjab appellant No. 2 not to enforce the provisions of this Act against respondent No. 1 and Rattan Singh, Manager of this firm, respondent No. 2, and not to prosecute them. It was also prayed that the proceedings pending in the Court of Shri Onkar Singh, Magistrate, 1st Class, be quashed. The firm alleged that the business, which was carried on by them, was merely in the nature of of carpentry work and was not covered by the provisions of this Act. It was also alleged that section 5 of the Act was *ultra vires* of the Constitution inasmuch as the power of deciding which industry would be covered by the provisions of the Act was left entirely in the hands of the Executive. This section was repugnant to Articles 14, 19 and 31 of the Constitution.

In the return filed by appellant No. 1, it was denied that the process of building of bodies on the chassis merely involved carpentry work. It was asserted that the business carried on by the respondents was covered by the provisions of the Act. It was stated that the provisions of section 5 of the Act were intended to promote social welfare and were not *ultra vires* of the Constitution.

Two points were argued before the learned Single Judge—(1) that section 5 of the Act was *ultra vires* of the Constitution and (2) that the business of the firm did not fall within the industries covered by the Act. As regards the first point, the learned Judge held that since this Court had in a number of cases decided that the provisions of section 5 of the Act were *intra vires* of the Constitution, it was not open for him to go into this question afresh. With regard to the second point, it was held that since the business carried on by the respondents involved merely carpentry work, it could not be categorised as 'manufacture of engineering products.' Consequently, it was not possible to say that it was an "industry which was engaged in the manufacture of electrical, mechanical or general engineering products" and the provisions of the Act applied to the same. On these findings, the learned Judge accepted the petition and quashed the orders of Appellant No. 1 calling upon the firm to make contributions under the Act.

It may be mentioned that the counsel for the State argued before the learned Judge that since the question whether the industry in which the respondents were engaged was one producing engineering products could be raised before the criminal court, where the respondents were being prosecuted, this Court should not give any relief to them in this writ petition. The contention was repelled by the learned Judge on the

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ground that such a complicated question was hardly one which could be properly settled by a Magistrate on an objection being raised in a prosecution under section 14 of the Act. It may also be mentioned that the learned counsel for the firm made a statement at the Bar before the learned Single Judge that he did not press his prayer for quashing the prosecution proceedings, because if he got a decision from this Court in his favour that the industry was not covered by the Act, the prosecution would automatically drop.

Learned counsel for the appellants contended that the finding of the learned Single Judge that the business of body-building on chassis merely involved carpentry work and was not an industry as contemplated by the provisions of the Act was wrong. This industry, according to the learned counsel, was covered by the expression "electrical, mechanical or general engineering products" occurring in Schedule I of the Act.

Section 1(3) (a) of the Act lays down that subject to the provisions contained in section 16, the Act will apply to every establishment which is a factory engaged in any industry specified in Schedule I and in which 20 or more persons are employed. It is common ground that section 6 does not apply to the present case. It is also conceded that the establishment in dispute is a factory in which more than 20 persons are employed. The question for decision then is whether this factory is engaged in any industry which is specified in Scehdule 1. The relevant portion of the Schedule, on which reliance has been placed by both the parties during the course of arguments, is as follows:—

"Any industry engaged in the manufacture of any of the following, namely:—

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* * * * * * * * *

Electrical, mechanical or general engineering products.

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Explanation.—In this Schedule, without prejudice to the ordinary meaning of the expressions used therein,—

"(a) the expression 'electrical, mechanical or general engineering products' includes—

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(12) automobiles and tractors.

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(25) parts and accessories of the products specified in items 1 to 24.

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Learned counsel for the appellants submitted that the industry in dispute was covered by item No. 12 read with item No. 25 and consequently came within the purview of the expression "electrical, mechanical or general engineering products". This industry was, therefore, specified in Schedule 1 and the provisions of the Act would apply to the same.

For determining this point, it is necessary to find whether the trucks and buses are included in the terms "automobiles" and whether the bodies which are being built by this firm on the chassis are parts or accessories of the automobiles. The word "automobile" is not defined in the Act. Therefore, we have to see its ordinary dictionary meaning. In the Oxford Dictionary, this word is defined as under—

"That moves by means of mechanism and power within itself especially of a vehicle—

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self-propelling as distinguished from horse-driven; an automatic or self-propelled vehicle; a motor vehicle."

Learned counsel for the respondents submitted that a motor-car was an 'automobile', but a bus or a truck was not. In case all automatic or self-propelled vehicles were included in the word "automobile", there was no necessity for the Legislature to add "tractors" in item No. 12. In my opinion, there is no force in this submission of the respondents. It is undisputed that like a motor-car, a bus or a truck is also a self-propelled vehicle and I see no reason that if a motor-car, as has been conceded by the learned counsel for the respondents, is an automobile, why a bus or a truck cannot be termed as such. With regard to the 'tractors', sometimes a doubt might arise as to whether it is a vehicle, because purpose for which it is meant is quite different from that of a vehicle. It was for this reason that the Legislature might have deemed it proper to add it in item No. 12.

Now, it is to be seen whether the bodies built by the firm on the chassis are parts or accessories of the automobiles.

I have already held above, that the word "automobile" includes a bus and a truck. It is inconceivable that there should be a bus or a truck without a body thereon. In my view, it is a necessary part of the same and a bus or a truck would be useless without it. Learned counsel for the respondents could not advance any reason as to why a body of a bus or a truck should not be considered its part or accessory.

In view of what I have said above, it is clear that respondent No. 1 is running an industry, which is engaged in the manufacture of "electrical, mechanical or general engineering products" mentioned in Schedule

I of the Act. The provisions of the Act would, therefore, apply to the same and the demands made by appellant No. 1 on respondent No. 1 for the payment of provident fund were in accordance with law.

It appears that the attention of the learned Single Judge was not invited to items 12 and 25 in Schedule 1 mentioned above. The Letters Patent decision in *Shibu Metal Works, Jagadhri* v. *Regional Provident Fund Commissioner* (1), relied upon by the learned Single Judge, has no application to the facts of the present case.

In this view of the matter, no other question arises for decision.

It may be mentioned that the learned counsel for the respondents submitted that section 5 of this Act was *ultra vires* of the Constitution. But it has been held by a Bench decision of this Court in the *Regional Provident Fund Commissioner, Punjab* v. *Lakshmi Rattan Engineering Works, Limited* (2), that this provision was valid.

The result is that this appeal is accepted, the judgment of the learned Single Judge is reversed and the writ petition filed by the respondents in this Court is dismissed. In the circumstances of this case, however, there will be no order as to costs.

S. S. DULAT, J.—I agree.

K.S.K.

(1) LL.R. (1962) 2 Punjab 716=A.I.R. 1963 Punj. 19.
(2) I.L.R. (1962) 2 Punjab 456=1962 P.L.R. 524.