

## APPELLATE CIVIL.

Before D. K. Mahajan and S. S. Sandhawalia, JJ.

SIR SAHABJI MILLS, LTD.—Appellant.

versus

UNION OF INDIA,—Respondent.

**Regular First Appeal No. 312 of 1959.**

February 26, 1970.

*Employees Provident Funds Act (XIX of 1952)—Section 16(b)—Factory employing more than fifty persons closing and restarting after some interval—Such factory—Whether a new venture with effect from its restart—Benefit of section 16(b)—Whether available.*

*Held*, that language of clause (b) of section 16 of Employees Provident Funds Act denotes that it is the origin of the factory from which the period of three years is to be reckoned. The words “factory established” in the context mean a new factory and not a running factory which had stopped business, unless of course it has changed hands and has been restarted by a new owner or a management. It is the initial venture which is contemplated for which an exemption has been granted under clause (b). The intention of the framers of the Act, so far as section 16 is concerned, is clear, namely, that benefit of this provision is only made available to those factories which are new ventures and not to factories which continued under the same management and for the same purpose or worked with breaks.

(Para 6)

*Regular First Appeal from the decree of the Court of Shri Aftab Singh Bakhshi, Sub-Judge, 1st Class, Amritsar, dated the 29th August, 1959, dismissing the plaintiff's suit with costs.*

D. N. AWASTHY AND A. C. JAIN, ADVOCATES, for the appellant.

C. D. DEWAN, ADVOCATE, for the respondent.

**JUDGMENT.**

MAHAJAN, J.—This appeal is by the plaintiff against the dismissal of its suit claiming a sum of Rs. 10,640.46 Paise along with Rs. 359.54 nP. as interest. This amount was recovered by the Union of India from the plaintiff under the Employees' Provident Funds Act (Act 19 of 1952) (hereinafter referred to as the Act).

(2) On facts, there is no dispute at all. The Mill, known as Dayal Bagh Spinning and Weaving Mills belonging to the company,

Sir Sahibji Maharaj Mills Ltd., was carrying on business of manufacture of cloth at Putlighar, Amritsar. This mill was closed in March, 1954, because it was running at a loss. At the time when the mill was closed the intention of the company was to dispose of the same. However, they could not get any purchasers with the result that the mill was re-started in October, 1954. When it was re-started it employed less than 50 workers and this state of affairs continued right up to the 1st of January, 1957. It is common ground that from 1st of January, 1957, the number of workers is above 50. Two contentions were raised in the plaint, namely :—

- (1) that the number of workers being less than 50, the mill was not liable to contribute the employees' provident fund under the Act, and
- (2) that in any case, from October, 1954 when the mill re-started its work it was a new concern and therefore, was exempt from the provisions of the Act, for a period of three years.

So far as the first contention is concerned, it was admitted, whereas the second contention was denied.

(3) It will be proper at this stage to set out the relevant paragraphs of the plaint and the written statement so far as the first contention is concerned :—

- “(5) That the plaintiff did not succeed in selling of the said concern because of its closure and workers litigation and hence it was opined by its Advisers that a running concern may invite purchasers. It was on this advice that the plaintiff opened a new branch in October, 1954, with a small number of employees which is less than 50. This factory newly-started was in fact born in October, 1954, with less than 50 employees. It was only in December, 1956, that the number of employees exceeded 50. This factory, therefore, remained and became infant establishment within the meaning of section 16(b) of the Employee's Provident Funds Act No. 19 of 1952, since December, 1956.

- (6) That in spite of the fact that the plaintiff establishment was new establishment and had less than 50 employees, the Employees Fund Department, demanded contribution from the plaintiff from October, 1954, although at that time the number of employees was less than 50 and the Act was not applicable at all under any circumstances. Criminal prosecution was also threatened in case of non-payment. Forced by these coercive methods and fear of criminal prosecution, the plaintiff was forced to pay to the Employees Provident Fund Department the following sums amounting to Rs. 10,640.46 nP.—

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- (9) That the plaintiff is now entitled to recover from the defendant the above-said sum of Rs. 10,640.46 nP. plus Rs. 359.54 nP., as interest at the rate of 6 per cent per annum from the dates of payment till the date of suit in all Rs. 11,000 being the illegal realisation from the plaintiff beyond the jurisdiction of the said Department to recover from the plaintiff. The factory was infant and exempt from the provisions of the said act for the period of three years, it being infant factory since December, 1956. Previous to December, 1956, the Factory had less than 50 employees and, therefore, all contributions recovered from it relating to the period prior to this date were also illegal and also beyond jurisdiction.”

The replies to these paragraphs in the written statement are as under :—

- “(5) That para 5 is denied. This is not correct that a new branch was opened in October, 1954. In fact the old factory resumed working. This is admitted that the number of workers in the beginning was less than 50 and the number of workers exceeded 50 in December, 1956. This is denied that the factory remained closed and became infant establishment within the meaning of section 16(b) of the Employees Provident Fund Act since December, 1956. Even if the factory remains closed temporarily for trade reasons or for reasons peculiar to the

owners of the mill, it cannot be said to die. Temporary cessation of the manufacturing process for whatever reasons cannot lead to result of the factory ceasing to be established. Mere closure for some months cannot be called the permanent closure of the mill. The stoppage for some time was only temporary. The factory already established and temporarily closed re-started functioning after sometime. This cannot be called an infant concern then.

(6) That para 6 denied. Any payment made for the period when the number of workers was less than 50 can be refunded to the plaintiff. The amount of Rs. 1,236 deposited on 2nd July, 1957, relates to that period and the Government is prepared to refund them whenever the plaintiff pleased to take it. Excluding the amount of Rs. 1,236 as mentioned above the other sums have been rightly collected according to law for which the plaintiff was legally liable.

(9) That para 9 is denied. The plaintiff is not entitled to recover any money from the defendant except Rs. 1,236 deposited on 2nd July, 1957. The question of any interest does not arise the realisation was legal and within jurisdiction. This is denied that the factory is infant and exempt from the provisions of the Act since December, 1956. No money is demanded prior to December, 1956, when the number of workers was less than 50."

(4) It appears that so far as the first submission is concerned the attention of the trial Court was not drawn to the pleadings and consequently there is no finding on it in the judgment under appeal. The only contention on which the attention was focussed was the second contention. So far as the second contention is concerned the trial Court gives a clear finding that the factory was not established in October, 1954. In other words, the contention of the plaintiff that after October, 1954, the plaintiff's concern was a new factory was negated. Hence the present appeal.

(5) It will be proper in the first instance to deal with the second contention and for that purpose one must keep in view the

provisions of sub-section (3) of section 1 and section 16 of the Act. These provisions are quoted for facility of reference :—

“1(3). Subject to the provisions contained in section 16, it (the Act) applies in the first instance to all factories engaged in any industry specified in Schedule I in which fifty or more persons are employed, but 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 all factories employing such number of persons less than fifty as may be specified in the notification and engaged in any such industry.

16. This Act shall not apply to—

(a) any factory belonging to the Government or a local authority, and

(b) any other factory, established whether before or after the commencement of this Act, unless three years have elapsed from its establishment.”

(6) Considering the fact that the factory was closed in March, 1954, and was restarted in October, 1954, we do not find any substance in the contention that when the factory re-started its work in October, 1954, it was a new factory. The language of clause (b) of section 16 denotes that it is the origin of the factory from which the period of three years is to be reckoned. The words “factory established” in the context mean a new factory and not a running factory which had stopped business, unless of course it has changed hands and has been re-started by a new owner or a management. It is the initial venture which is contemplated for which an exemption has been granted under clause (b). A lot of stress was laid by Mr. Awasthy, learned counsel for the plaintiff, on the fact that the intention of the management in March, 1954 was to close the factory permanently and, therefore, there being no evidence to the contrary, we must hold that when the factory started working in October, 1954, it was a new factory. We are unable to agree with this contention. The intention of the framers of the Act, so far as section 16 is concerned, is clear, namely, that benefit of this provision was only made available to those factories which were new ventures and not to factories which continued under the same management and for the same purpose or worked with breaks. In the instant

case, the only fact that stands out in favour of the plaintiff is that the factory remained closed from March, 1954, to October, 1954, and that possibly the intention was to dispose of the factory, but having failed to carry out that intention and having decided to restart the factory in October, 1954, it cannot be concluded that the factory is a new factory within the meaning of section 16 of the Act. No decision has been brought to our notice which is in any way near the facts of the present case. Mr. Awasthy did rely on the decision of the Allahabad High Court in *J. K. Hosiery Factory v. Labour Appellate Tribunal of India and another* (1), but that was a decision under the Industrial Disputes Act and has no relevance so far as the present case is concerned. We must, therefore, negative the first contention.

(7) So far as the second contention is concerned, it has substance and must prevail. The matter is really concluded by the decision of this Court in *Golden Silk Mills v. Central Provident Fund Commissioner*, (2), wherein Mr. Justice Dulat, who spoke for the Court, observed as follows :—

“I am unable to agree that such was Parliament's intention. Reliance was placed for the respondents on a decision of the Bombay High Court in *The State v. Hathiwala Textile Mills*, (3), where the view taken was that once the Employees' Provident Funds Act, 1952, applies to a particular factory it continues to apply even if the number of persons employed in the factory falls below fifty, the main argument employed being that there is in the Act itself no specific provision for the discontinuance of the Act.

It is not my impression, however, that statutes contain such specific provisions, and the ordinary rule is that as soon as conditions for the application of a statute cease to exist the statute itself ceases to apply. There are obvious difficulties in adopting the view that the number of persons employed is with reference to the date of the Act for, if that be so, then the Act would not apply to

(1) A.I.R. 1956 All. 498.

(2) A.I.R. 1958 Pb. 386.

(3) A.I.R. 1957 Bom. 209.

factories employing less than fifty persons on the 1st November, 1952, which might later become prosperous enough to employ many more persons and also perhaps the Act would not apply at all to factories coming into existence after the 1st November, 1952. With great respect to the learned Judges, who decided *The State v. Hathiwala Textile Mills*, (3) it seems to me that the purpose behind the distinction made by Parliament between factories employing fifty or more persons and those employing a smaller number has more significance than has been attached to it, and as I read the Act the intention is not to burden small factories employing less than fifty persons with liabilities imposed by the Act.

It follows that the liability would cease as soon as a factory falls out of the category of factories employing fifty or more persons. It is admitted, of course, that the petitioner's factory is engaged in a scheduled industry, but since it is admittedly not employing anything like fifty persons it is, in my opinion, not within the mischief of the Act."

These observations fully apply to this case so far as the period from October, 1954 to 1st of January, 1957, is concerned. In fact, it is conceded in the written statement that some part of the realisation amounting to Rs. 1,236 is for this period. In order to safeguard any undue hardship to the plaintiff, we have thought it fit to indicate very clearly that the plaintiff is not liable for any contribution under the Act from October, 1954 to 1st January, 1957 and any amount that has been paid by the plaintiff for this period should be refunded to the plaintiff. Of course, the plaintiff would not be entitled to refund of any amount paid for the period after 1st of January, 1957.

(8) For the reasons recorded above, this appeal is partly allowed and the case is remitted to the trial Court for determination of the question as to what amount out of the suit amount represents the period from October, 1954, to 1st of January, 1957. In the circumstances of the case, there would be no order as to costs.

S. S. SANDHAWALIA, J.—I agree.

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