

Joginder Singh  
v.  
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Commissioner,  
Punjab and  
others  
Grover, J.

of land, if the area under the personal cultivation of the tenant does not exceed fifteen standard acres, or from an area of fifteen standard acres, if the area under personal cultivation of the tenant exceeds fifteen standard acres. Then follow the proviso and explanation which need not be referred to. Section 53 of the Act which has also been noticed by the Financial Commissioner does not contain any such language which would justify the application of the provisions contained in sections 7 and 7-A with retrospective effect.

For these reasons I can find no error apparent in the order of the Financial Commissioner with the result that this petition fails and it is dismissed with costs.

*B.R.T.*

CRIMINAL MISCELLANEOUS

*Before Harbans Singh, J.*

MESSRS FREE INDIA INDUSTRIES AND

ANOTHER,—*Petitioners*

*versus*

THE REGIONAL PROVIDENT FUND COMMISSIONER

AND ANOTHER,—*Respondents.*

**Criminal Miscellaneous No. 874 of 1959.**

*Employees' Provident Funds Act (XIX of 1952)—S. 1(3) and Schedule—'Electrical, mechanical or general engineering products'—Factory engaged in body-building on chassis—Whether industry to which the Act applies.*

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*Held,* that in the phrase 'electrical, mechanical or general engineering products' the emphasis is on the word 'engineering products' according to which there must be something more than a manufacturing process. The process must be such which involves some engineering design or invention. Body-building on chassis can in no way be said to be an engineering product and the factory engaged in body-building on chassis is not an industry covered by the phrase 'electrical, mechanical or general engineering products' as used in the Schedule to the Employees' Provident Funds Act, 1952.

*Petition under Articles 226 and 227 of the Constitution of India read with section 561-A, Criminal Procedure Code, praying that a Writ of Mandamus be issued directing the respondents not to enforce the provisions of Employees Provident Funds Act, 1952, against the Petitioners and not to prosecute the petitioners for non-compliance under section 14 of the Act.*

K. S. CHAWLA AND N. N. GOSWAMI, ADVOCATES, for the Petitioners.

CHETAN DASS DEWAN, DEPUTY ADVOCATE-GENERAL, for the Respondents.

#### ORDER

HARBANS SINGH, J.—The petitioner-firm, Messrs Free India Industries, Jullundur City, carries on the business of body-building on chassis at Jullundur City. The Regional Provident Fund Commissioner, Punjab, made demands from time to time on the petitioner-firm for the payment of the provident fund under the provisions of the Employees Provident Fund Act, 1952 (hereinafter referred to as the Act) and threatened to prosecute them under section 14 of the Act for non-compliance. The present petition was brought under Articles 226 and 227 of the Constitution of India read with section 561-A of the Criminal Procedure Code. Two main points were taken in the petition; first, that section 5 of the Act is *ultra vires* of the Constitution inasmuch as the powers of deciding which industry will be governed by the provisions of the Act, is left entirely in the hands of the Executive and, secondly, that the business in which the petitioner-firm is engaged does not fall within the purview of the Act.

In the reply filed by respondent Regional Provident Fund Commissioner, Punjab, it was admitted that the petitioner-firm carries on the business of body-building on chassis. It was, however, denied that the process of body-building on chassis merely involved carpentry work, as was alleged by the petitioner-firm.

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In a number of cases decided by this Court the provisions of section 5 of the Act have been held to be *intra vires* and it is not open to me to go into this question afresh.

The sole point for consideration, therefore, is whether the business of the petitioner-firm falls within the industries covered by the Act. According to sub-section (3) of section 1, as it stands modified, the Act applies to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed. "Industry" means any industry specified in Schedule I and "factory" is defined as premises in any part of which a manufacturing process is being carried on whether with the aid of power or without the aid of power. It is not denied that more than twenty persons are being employed by the petitioner-firm and that the premises where the work is being carried on does fall within the definition of "factory". According to the respondent, this business of body-building on chassis falls within the industries detailed in the Schedule because it falls under the heading "Any industry engaged in the manufacture of 'electrical, mechanical or general engineering products' ". This clause came up for consideration by a Letters Patent Bench in *Shibu Metal Works, Jagadhri v. Regional Provident Fund Commissioner* (1). After considering a number of decided cases and taking into consideration the conflicting views the Bench held as follows:—

"Construing the expression 'electrical, mechanical or general engineering products' in the light of what has just been stated, I am inclined to hold that the legislative emphasis is intended to be

more prominent on the words 'engineering products' which represent the core of the entry and the words 'electrical', 'mechanical' and 'general' have to be construed as qualifying the 'engineering products'. It is true that in the Explanation the expression 'electrical, mechanical or general engineering products' appears to have been given a somewhat wider connotation by including about 25 items but looking at these items individually they seem to bring out with some prominence the engineering aspect of the product. \* \* \* \*

the remaining items do seem to illustrate the general legislative intent as to the meaning, scope and effect of the expression 'electrical, mechanical and general engineering products'."

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As has been stated above, it is not denied that the petitioner-firm is doing the work of body-building on chassis. According to the petitioner, this work is in the nature of carpentry work. The question for consideration is, can this business be categorised as manufacture of an engineering product? In the case before the Letters Patent Bench the question was whether manufacture of brass and other metal utensils could be said to be engineering product and it was held that it could not be so held. Emphasis being on the words 'engineering products' one cannot see how the body-building on chassis can in any way be said to be an engineering product. If body-building could be treated as an engineering product, the manufacture of ordinary household furniture or even doors and windows would be treated as such. Reference was made to the observations of the Bombay High Court in *Nagpur Glass Works Ltd., Nagpur v. Regional*

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*Provident Fund Commissioner, Bombay* (2), which have been reproduced in the judgment of the Letters Patent Appeal noted above, where it was stated as follows:—

“Thus, the expression ‘Electrical, mechanical or general engineering products’ means engineering products relating to or connected with electricity, or engineering products acting or worked or produced by a machine or mechanism, or products produced by a craftsman employing a certain design or invention. \* \*”

It was urged on behalf of the respondent that in building a body on chassis the workers followed a certain design. If this interpretation is to be put then design has to be followed even in the manufacture of utensils. Viewed as a whole, the observations of the Bombay High Court, as interpreted by the Letters Patent Bench, go to indicate that there must be something more than a manufacturing process. The process must be such which involves some engineering design or invention. On the facts of the present case it can hardly be said that the business of the petitioner-firm is covered by the above-mentioned category of industries.

The learned counsel for the State further urged that inasmuch as the question whether the industry in which the petitioner is engaged can be categorised as one producing engineering products, this Court should not give any relief in its writ jurisdiction and that, in any case, admittedly prosecutions have been launched and it would be open to the petitioner-firm to raise this point there. I have not been impressed with this argument. No doubt, if there be available to the petitioner-firm an equally efficacious remedy, this

Court is slow to interfere in its extraordinary jurisdiction under Articles 226 and 227 of the Constitution. The petitioner-firm, however, wants relief from illegal demands that are being made and the only efficacious remedy open to the petitioner-firm is to seek a writ from this Court quashing the orders of the respondent on the ground that the industry is not covered by the Act. Such a complicated question is hardly one which can properly be settled by a Magistrate on an objection being raised in a prosecution under section 14 of the Act. In fact, the learned counsel for the petitioner-firm, finding that a writ can either be a civil writ or a criminal petition under section 561-A of the Criminal Procedure Code, has made a statement at the Bar that he does not press his prayer for quashing of the prosecutions because if he once gets a decision of this Court in his favour that the industry is not covered by the Act, the prosecutions will automatically drop.

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In view of the above, therefore, I make the rule absolute and quash the orders of the respondent calling upon the petitioner-firm to make contributions under the Act, and hold that the industry in which the petitioner is engaged is not covered by the Act. The matter in controversy being far from clear, there will be no order as to costs.

**B.R.T.**

CIVIL MISCELLANEOUS

*Before Mehar Singh and Shamsher Bahadur, JJ.*

**PALA SINGH,—Petitioner**

*versus*

**NATHI SINGH AND OTHERS,—Respondents.**

**Civil Writ No. 131 of 1962.**

*Punjab Panchayat Samitis and Zila Parishads Act (III of 1961)—S. 121(2)(a)—Whether void and unconstitutional—Election of successful candidate set aside by Prescribed*

1962

August, 1st.