State Vs. Jagraj

State Vs. Jagraj

SooperKanoon Citation : sooperkanoon.com/461322

Court : Allahabad

Decided On : Nov-23-1960

Reported in : AIR1961All556; [1961(2)FLR271]; (1961)ILLJ671All

Judge : V.D. Bhargava and ;J.N. Takru, JJ.

Acts : Employees Provident Funds Act, 1952 - Sections 1(3), 2 and 14(2)

Appeal No. : Govt. Appeal No. 773 of 1959

Appellant : State

Respondent : Jagraj

Advocate for Def. : P.C. Chaturvedi, Adv.

Advocate for Pet/Ap. : Kamla Nandan Srivastava, Asst. Govt. Adv.

Disposition : Appeal dismissed

Judgement :

V.D. Bhargava, J.

1. This is an appeal by the State against an order of acquittal passed by the Sessions Judge, Saharanpur, in a case under Section 14(2) of the Employees' Provident Funds Act, 1952.

2. The respondent Jagraj was the managing director and occupier of the Regmal Mills Straw Board Manufacturing Company, Saharanpur. According to the prosecution the aforesaid company was engaged in manufacturing grinding wheels and had in their employment 50 or more persons with effect from 1-1-54 and they were not making contribution towards provident fund of the employees and paying administrative charges. They were further required to submit monthly returns as prescribed under the Scheme, and as they failed to comply with these provisions they were liable to conviction under Section 14(2) of the Employees' Provident Funds Act, as also under paras 76 (a), (c) and (e) of the Provident Fund Scheme.

The prosecution was launched after obtaining the required sanction of the Labour Commissioner, Uttar Pradesh. The respondent pleaded not guilty and inter alia raised two grounds (1) that the Act and Scheme did not apply to the Regmal Mills as they were not manufacturing any goods, and (2) that the Regmal Mills had not contributed towards the provident fund during this period nor had they paid administrative charges and submitted the monthly return because the Act did not apply to the Mills. The trial court had convicted the respondent, and imposed a fine of Rs. 500/-. An appeal was filed and the appellate court has acquitted the accused.

3. The term 'occupier of a factory' has been defined in Section 2(k) of the Act as the person who has ultimate control over the affairs of the factory, and there cannot be any doubt that Jagraj was the occupier in that sense. There appears to have been a mistake in writing the name; instead of 'Jagraj' 'Tegraj' has been mentioned. But since Jagraj had appeared we do not think that that would make any difference now.

4. So far as the question whether the Regmal Mills comes under the definition of factory is concerned, there cannot be any doubt that it would come under the definition. 'Factory' has been defined as

'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.'

'Manufacture' means

'making, altering, ornamenting, finishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal.'

Therefore when grinding wheels were being prepared and they were being transported for sale, in any event it would be a manufacturing process.

5. We need not discuss this matter further at any great length, because we think that the appeal when it was allowed by the appellate court, was allowed on valid grounds. During the period for which this trial was started, i.e., from March to July 1954 and also October 1954 the number of employees, permanent or temporary, was less than fifty. That was supported by the respondent by his own evidence as well as by producing the various registers.

This part of his statement was accepted by the appellate court and we do not see any reason why it should not be accepted. There is no evidence on behalf of the prosecution that during this period more than fifty persons were employed. It is true that some time before for the purpose of white-washing and repairs some more persons had been employed and this number had exceeded fifty.

6. According to the argument of learned counsel for the State, if once a mill employs more than fifty persons then if after some time the number is reduced, the mill will continue to be under the operation of the Employees' Provident Funds Act, and, therefore, the employment of less than 50 persons during the period for which the respondent has been charged would make no difference It was contended that once the Act was applicable to a factory it would remain applicable to it for ever. By virtue of Section 1 of the Act it applies:

'(a) to every establishment which is a factory engaged in any industry specified in Schedule I and in which fifty or more persons are employed, and

(b) to any other establishment employing fifty or more persons or class of such establishments which the Central Government may, by notification in the official Gazette, specify in this behalf.' Therefore, the sole question that arises is whether the words 'employing fifty or more persons' or the words 'in which fifty or more

persons are employed,' mean 'once upon a time were employed' or would they mean ' at the time for which the accused is charged, there should have been more than fifty persons employed.' A Bench of the Bombay High Court in the State v. Hathiwala Textiles Mills, AIR 1957 Bom 209 has held: 'There is no ambiguity in the words 'are employed' in Section 1(3). The Sub-section read as a whole indicates that it deals with the initial application of the Act only and has nothing to do with the question of continuance of the application of the Act in case there is a fall in the number of workers below fifty after the Act had once applied.'

With great respect, we are unable to agree with the observation of the Bombay Bench. The words 'are employed' mean the present time, i.e., at the time when the offence is alleged to have been committed.

7. In the case of Golden Silk Mills v. Central Provident Fund Commissioner, AIR 1958 Punj 386, a Bench of the Punjab High Court did not agree with the view of the Bombay High Court. it held:

'The liability under the Act is of an employer and is limited to the employer of fifty or more persons in a factory engaged in a scheduled industry. Where a factory which was at one time employing more than fifty persons, has, as a result of partition between the owners been split up into two and the owner of one of them has ceased to employ 50 or more persons after the coming into force of the Act, he would not be liable under the Act.'

In the present case actually temporary labour was employed for the purpose of white-washing and repairs but that labour was not required for 'manufacturing purpose' and this increase of strength in our opinion should not have been taken as an increase in strength of the factory workers. In any event, after those employees had been dismissed and there was no intention on the part of the company to employ more than fifty persons, the Act would not apply to the factory. We are in agreement with the view expressed by the Punjab High Court.

8. Under the circumstances the view taken bythe Court below appears to be correct and we seeno reason to allow the Government appeal. Theappeal is accordingly dismissed.