Mandovi Pellets Ltd. Vs Union of India and others

Court: Bombay High Court

Date of Decision: March 30, 1988

Acts Referred: Employees Provident Funds and Miscellaneous Provisions Act, 1952 â€" Section 1(3), 14B, 16, 2, 4

Citation: (1989) 2 LLJ 364

Hon'ble Judges: N.K. Parekh, J; G.F. Couto, J

Bench: Division Bench

Judgement

Parekh, J.
This is a petition under Art. 226 of the Constitution, inter alia, seeking a declaration that the provisions of the Employees"

Provident Funds and Miscellaneous Provisions Act, 1952 are not applicable to the petitioners and for issue of an appropriate writ quashing the

notices dated 26th Dec. 1985, 17th Feb. 1986 and 8th May, 1986 and the proceedings adopted in pursuance thereof by the Regional Provident

Fund Commissioner, Maharashtra and Goa.

2. The petitioner"s case is that on 19th April, 1985 Chowgule Metal Industries Ltd., came to be incorporated under the Indian Companies Act.

That by a resolution dated 13th Dec. 1975, the name of the Company was changed to Mandovi Pellets Ltd. (hereinafter referred to as "the

petitioner"). That in the year 1976, the petitioners put up an iron ore pelletization plant at Shiroda. That the same came to be duly registered under

the Factories Act, 1948 on the 7th of Aug. 1979. The factory started its trial runs in May, 1979 and commenced commercial production by Sept.

1979. However, due to shortage of electricity supply and high costs, difficulties arose, and the production of the company for the first two years

came to be restricted to 50% of its capacity. In the circumstances the petitioners approached the Central Government to grant them permission to

Close"" down the plant initially for a period of one year which sanction was duly accorded. Later on, this period was extended for a further period

of two years and thereafter for a period of another three years. That in so far as the workmen were concerned, a settlement was reached on the

11th of Aug. 1981 under which 218 workmen agreed not to report for duty for a period of six months ending 15th February and the petitioners

agreed to give them an ad-hoc monthly payment equal to 75% of their normal wages during the period of voluntary unemployment. This settlement

was later extended by mutual consent up to 31st May 1982. In the found hope that the plant would recommence its operation from June, 1982,

the petitioners and the Union of the workmen again commenced negotiations for the revision of payscales but on the strict understanding that

whatever settlements be arrived at, the same would be implemented if and when the factory reopened for commercial purpose. Hence, not

withstanding the decision to keep the plant closed for a period of 3 years i.e. from April, 1982 to March, 1985, the management signed a

settlement with the workmen on 14th July, 1982 whereunder approximately 300 workmen including the 218 workmen referred to earlier accepted

voluntary unemployment with an ad-hoc monthly payment equal to 65% of their revised wages. It was agreed by and between the petitioners and

the said workmen that this ""voluntary unemployment"" was to be blinding on the parties until such time as the plant resumed commercial production.

However, things went from bad to worse and on 26th Feb. 1985 at a meeting of the Board of Directors, it was decided that the pelletization plant

be closed down permanently. Thereafter, another settlement was arrived at between the petitioners and the workers on the 16th of March, 1985

whereunder it was agreed that the employment of the company would voluntary retire as and from 15th June, 1985 and that they would be paid

certain benefits listed in the said settlement. It is the petitioners'' case that whilst all this was going on, somewhere in 1980-81, the Union

representing the workmen agitated with the Provident Funds Authorities that the provisions of the Employees'' Provident Funds and Miscellaneous

Provisions Act, 1952 (for brevity''s sake hereinafter refereed to as ''EPF and MPA 1982'') be implemented and enforce. The Provident Fund

Inspector thereupon visited the petitioners'' plant on several occasions during 1982 and collected information on various points. According to the

petitioners, the said Inspector was satisfied that the provision of the EPF and MPA 1952 could not apply and so was the Union. It is the

petitioners'' case that despite this position, they were surprise to receive a letter dated 2nd Feb. 1985 from the 2nd respondent requiring the

petitioners to fill in the questioners and furnishes information. The petitioners by their letter dated 25th Feb. 1985 furnishes the requisite information

but maintained that the provisions of the EPF and MPA, 1952 were not applicable to the pelletization plant and that the pelletization plant was not

covered by Schedule I of the Act. The Regional Provident Fund Commissioner by his letter dated 26th Dec. 1985 maintained that the petitioners''

factory was engaged in the manufacturing of ""iron and steel"" and that the Act was applicable to the petitioners'' factory as and from 30th of Sept.

1982 and called upon the petitioners to implemented the provisions of the EPF and MPA 1952 with effect from 1st October 1982, the Family

Pension Fund Scheme 1971 with effect from 1st January, 1976 and Employees'' Deposits Linked Insurance Scheme 1976 with effect from 1st

Oct. 1982. The petitioners thereafter addressed a letter dated 22nd Jan. 1986 to the Regional Provident Fund Commissioner setting out what was

according to them a brief history of the case and further pointed out that the chemical composition of iron are pellets on the one hand and iron on

the other hand were wholly different and the pelletization plant could never fall under the entry ""iron and steel"" specified in Schedule I to the said

Act. In the said letter, the petitioners further contended that in any event as the plant had started in 1979 and had close down in 1981, i.e. the

infancy period of 3 years provided in S. 16(b) of the Act, the question of the applicability of the provisions of the said Act to the petitioners''

industry did not arise. The petitioner by their letter dated 5th Feb. 1986 also sought a personal hearing. It is the petitioners'' case that instead of

receiving a reply, they were saddled with a letter dated 17th Feb. 1986 whereby the petitioners were informed that the 2nd respondent after

examined the record was satisfied that the provisions of the Art were wholly applicable to the petitioners'' industry. Further correspondent then

ensued between the petitioners on the one hand and the respondents on the other. In the course of this correspondence, the petitioners received a

letter dated 29th March, 1986 asking the petitioners to see the 2nd respondent on 3rd April, 1986. The petitioners accordingly deputed their

representative to attend before the 2nd respondent. At this hearing the petitioners'' representing reiterated the stand taken by the petitioners. After

the personal hearing was over, the petitioners made further submissions by their letter dated 7th April, 1986 to the same effect. The 2nd

respondent by his letter dated 8th May, 1986 informed the petitioners that 2nd respondent had examined the entire position and was satisfied that

the provisions of the Act were applicable and called upon petitioners to company with the requisitions contained in his earlier letter dated 17th Feb.

1986. The petitioners by their letter dated 19th May, 1986 addressed to the 2nd respondent indicated to him that since there was a different of

opinion between the petitioners on the one hand and the 2nd respondent on the other as to the applicability of the Act, the 2nd respondent should

refer the matter to the Central Government. The petitioners followed up this letter by deputing their representative who called upon the Assistant

Provident Fund Commissioner and enquired as to what steps the office of the Provident Fund Commissioner was going to take on their letter. The

Assistance Provident Fund Commissioner informed the petitioners'' representative that the petitioners would receive a reply in due course. But

nothing was heard on this point. On the other hand, the petitioners received a letter dated 2nd July, 1986 calling upon them to report compliance of

the earlier letters. Being aggrieved by the demands made by the 2nd respondent, the petitioners have filed the present petition.

3. The petition is resist by the respondents, inter alia, on the grounds (a) that the provisions of the Act are clearly applicable to the petitioners''

industry and the petitioners would hence be entitled to no relief, (b) that the petitioners had at best suspected operations and the provisions of S.

16 of the Act did not apply to the facts that case and the petitioners hence cannot escape their liability, and (c) that if the petitioners were aggrieved

by the action of the 2nd respondent, then they must pursue the remedy provided under S. 19-A of the Act which was an efficacious remedy and in

view of this the petitioners would be disentitled to relief on this writ petition.

4. The questions that arise for determination of this petition are (a) whether the petitioners who are manufacturing iron are pellets fall within the

ambit of the entry ""iron and steel"" (read with its explanation) specified in Schedule I of the Act, (b) whether the provisions of the said Act are

applicable to the petitioners'' industry since the petitioners'' industry had closed down its manufacturing activity within three years of

commencement of the production i.e. during the period of infancy specified in S. 16 of the said Act, (c) whether S. 19-A affords the petitions an

alternatives and efficacious remedy which the petitioners are bound to follow, and (d) whether the petitioners would be entitled to any relief.

5. To determine the aforestated questions, it would be relevant to refer briefly to the broad features of the scheme. Section I refer to the short title,

extent and application and Cl. (3) of S. 1 reads as follows :

1. (3) Subject to the provisions contained in S. 16, it applies :

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

and

(b) to any other establishment employed twenty or more persons or class of such establishment which the Central Government may, by notification

in the Official Gazette, specify in this behalf.

Provided that 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 any establishment employing such number of persons less than twenty as may be specified in the

notification.

(4) .....

(5) An establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed

therein at any time falls below twenty.

Hence, what S. 1, Cl. (3)(a) makes clear is that the provisions of the EPF and MPA, 1952 do not apply to all industries but only such as specific

in Schedule I to the said Act. Now, in the year 1952, only 6 industries were included in Schedule I. The relevant portion of the Schedule read as

follows :

SCHEDULE I

(See section 2(i) and 4)

Any industry engaged in the manufacture (or production) of any of the following; namely :-

Cement.

Cigarettes.

Electrical, mechanical or general engineering products.

Iron and Steel.

Paper.

Textiles (made wholly or in part of cotton or wool or jute, or silk, whether natural or artificial"").

By Act 37 of 1953, the words ""or production"" were ommitted from the Schedule. Section 4 of the Act confers a power on Central Government to

add to Schedule I. Pursuant to the provision of S. 4, various notifications came to be issued and other industries were included to the list of the 6

industries initially specified in Sch. I. By Act 37 of 1953, an explanation also came to be added (in the schedule) and the relevant portion reads as

follows :

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

(a)..... (1) to (25).....

(b) the expression ""Iron and Steel"" includes pig iron, ingots, blooms, billets and rolled or re-rolled products into basic forms and cool and alloy

steel.

Section 5 of the Act provides for an Employees'' Provident Fund Scheme. Section 6 is a charging section and provides for contribution and

envisages certain penalties. Section 7A refers to determination of monies due from employers whilst S. 14-B speaks of power to recover damages

where an employer makes a default in payment of the contribution to the fund. Section 16 provides as follows :

16. Act not to apply to certain establishments -

(1) This Act shall not apply -

(a) to any establishment registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in

any State relating to Cooperative Societies, employing less than fifty persons and working without the aid of power, or

(b) to any other establishment employing fifty or more persons or twenty or more, but less than fifty, persons until the expiry of three years in the

case of the former and five years in the case of the latter, from the date on which the establishment is, or has been set up.

Explanation. For the removal of doubts, it is hereby declared that an establishment shall not be deemed to be newly set up merely by reason of

change in its location.

Section 19A provides as follows :

19A. Power to remove difficulties. - If any difficulty arises in giving effect to the provisions of this Act, and in particular, if any doubt arises as to -

(i) whether an establishment which is a factory, is engaged in any industry specified in Schedule I;

(ii) whether any particular establishment is an establishment falling within the class of establishments to which this Act applies by virtue of a

notification under Cl. (b) of subsec. (3) of S. 1;

(iii) the number of persons employed in an establishment; or

(iv) the number of years which have elapsed from the date on which an establishment has been set up; or

(v) whether the total quantum of benefits to which an employee is entitled has been reduced by the employer;

the Central Government may, by order, make such provision or give such direction, not inconsistent with the provisions of this Act, as appear to it

to be necessary or expedient for the removal of the doubt or difficulty; and the order of the Central Government, in such cases, shall be final.

6. Now, it is common ground that iron ore pellets are not physically or chemically identical to iron ore fines and lumps. That iron ore is mainly

constituted of hematite which is found associated with geothite and limonito which are hydroxide ores containing molecular water. That the process

of pelletization consists of upgrading the ore fines and crushing them very fine in order to give the pellets strength to resist degradation in handling

and conveyance to heating equipment. The green strength improves by adding quantities of bestonite or limestone as additives for the pellet mix

and that mixture is made into a ball initially heated at 225 to 25 dgree C. and then treated to temperature of 700 to 1000 dgree C. with the result

that they become hard and durable pellets. The pellets are then roasted or indurated at a temperature of 1325 dgree C. In other words,

pelletization is merely a benefication or preparation or ore dressing which is necessary since run-of-mine ore (referred to as ROM) is not

marketable. These pellets are used for feeding blast furnaces in the production of steel as well as in the production of sponge iron.

7. Iron, on the other hand, is produced in blast furnace where the iron bearing oxide materials are malted at very high temperature (around 1400

dgree C) along with limestone and coke. In the process, carbon-monoxide derived derived from the coke react with the Fe2 O3 in the iron

bearing raw materials causing oxygen to be removed and leaving only Fe. The impurities like Alumina and Silica react with limestone and float out

as slag while only molten iron collects in a pool in the hearth, which is tapped out as ""hot metal"". The liquid iron (hot metal) is subsequently refined

in open hearth furnaces or oxygen converters into steel. Alternatively, the ""hot metal"" may be cooled and cast into suitable form for disposal of iron

to the foundries. The chemistry of the two products would hence be different i.e. the chemistry of iron ore would be Fe2 O3, while the chemistry

of iron would be Fe. If this be the position, then it cannot be said that the industry manufacturing iron pellets is an industry engaged in the

manufacture of iron or steel or an industry which can be included in the generality of the entry ""iron and steel"" appearing in Sch. I.

8. But the question still remains whether the petitioners'' industry of manufacturing iron ore pellets falls within the ambit of the explanation

(reproduced in paragraph 5 above).

9. Mr. Kakodkar submitted that the word ""includes"" appearing in the explanation was a term of limitation and not extension. Mr. Bhobe for

respondents 1 and 2 and Mr. Rebello for the interveners submitted that the items specified in the explanation were only illustrative. In other words,

the word ""includes"" was a term of extension.

10. In support of his contention that the word ""includes"" was a term of limitation and not extension, Mr. Kakodkar relied upon various decisions

and we shall advert to the same.

The first case cited by Mr. Kakodkar, the learned counsel for the petitioners, was the case of the South Gujarat Roofing Tiles manufacturers

Association v. State of Gujarat, 1976 Lab IC 1778. The question in that case that arose was if Entry 22 added by the Gujarat Government by a

notification dated 27th March, 1987 to Part I of the Schedule to the Minimum Wages Act, 1948 covered Mangalore pattern roofing tiles. This

entry 22 reads as follows :

Employment in Potteries Industry, Explanation. - For the purpose of this Entry potteries industry includes the manufacture of the following articles

of pottery, namely :-

(a) Crockery

(b) Sanitary appliances and fittings

(c) Refractories

(d) Jars

(e) Electrical accessories

(f) Hospital ware

(g) Textile accessories

(h) Toys

(i) Glazed Tiles"".

In dealing with the import of the word ""includes"", it was held that though "include" is generally used in interpretation clauses as a word of

enlargement, in some cases the context might suggest a different intention. Pottery is an expression of very wide import, embracing all objects made

of clay and hardened by heat. If it had been the legislature"s intention to bring within the entry all possible articles of pottery, it was quite

unnecessary to add an Explanation. We have found that the Explanation could not possibly have been introduced to extend the meaning of

potteries industry or the articles listed therein added ex abundanti cautela. It seems to us therefore that the legislature did not intend everything that

the potteries industry turns out to be covered by the entry, What then could be the purpose of the Explanation ? The Explanation says that, for the

purpose of Entry 22, potteries industry "includes" manufacture of the nine articles of pottery named therein. It seems to us that the word "includes"

has been used here in the sense of "means"; this is the only construction that the word can bear in the context. In that sense it is not a word of

extention, but limitation; it is exhaustive of the meaning which must be given to potteries industry for the purpose of entry 22. The use of the word

"includes" in the restrictive sense is not unknown. The observation of Land Watson in Dilworth v. Commr. of Stamps (1899) AC 99 which is

usually referred to on the use of "include" as a word of extension, is followed by these lines. ""But the word "includes" is susceptible of another

construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of

adding to the natural significance of the words or expressions defined. It may be equivalent to ''mean and include'' and in that case it may afford an

exhaustive explanation of the meaning which, for the purpose of the Act, must invariably be attached to these words or expressions"". It must

therefore be held that the manufacture of Mangalore pattern roofing tiles is outside the purview of entry 22.

11. Mr. Kakodkar next relied upon the observations in the Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. AIR 1987

SC 1023. That was a case under the Prize Chits and Money Circulation Schemes (Banning) Act, 1978, where again the interpretation of the word

includes"" was considered and in this context, the learned Judge observed as follows :

Much argument was advanced on the significance of the word ''includes'' and what an inclusive definition implies. Both sides relied on Dilworth

case (1899) AC 99. Both sides read out the well known passage in that case where it was stated. 105 AC 06.

The word ""include"" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occuring in the body of the

statue; and when it is so used these words or phrases must be construed as comprehending, not only such things as they signify according to their

natural import, but also those things which the interpretation clause declares that they shall include. But the word ""include"" is susceptible of another

construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of

adding to the natural significance of the words or expressions defined. It may be equivalent to ""mean and include"", and in the case it may afford an

explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expression"".

12. Mr. Kakodkar next relied on the observations in Kamlakar Shankar Warde v. Central Board of Trustees (E.P.F. Act) 1966 I LLJ 553. In

that case the question that arose was if the factory manufacturing paper cones and tubes was covered by the item ""paper"" specified in Schedule I

of the EPF and MPA, 1952 or the explanation contained in the Schedule. The said explanation reads as follows :

Explanation. - In this Schedule, without prejudice to the ordinary meaning of the expression used therein, -

(a) .....

(b) .....

(c) the expression ""paper"" includes pulp, paperboard and strawboard;

In dealing with this aspect, the learned Judge dwelt on the meaning of the words ""manufacture and manufacturing process"" appearing in S. 2(ic) of

the EFP and MPA, 1952 and held that the expression ""manufacture and manufacturing process"" as given in S. 2(ic) of the Act is in very wide

terms but if that definition is properly understood, all that it seeks to do is to include the various types of processes within the expression of

manufacture or manufacturing process, but it could not be forgotten that by employing any one or the other of processes so included, what must

result is the manufacture or production of the basic article or substance mentioned in the schedule; that it cannot include any process whereby the

basic article or substance gets itself converted into an altogether different article or substances.

13. Mr. Kakodkar submitted that these citations must make it clear that the word ""includes"" was a term of limitation and items set out in the

explanation cannot be added too.

14. Mr. Bhobe the learned counsel for respondents 1 and 2 in support of his contention that the word ""includes"" was a term of extension and that

items specified in the explanation were only illustrative, placed reliance upon the observations in Regional Provident Fund Commissioner Vs. Shibu

Metal Works, and the case of Nagpur Glass Works Ltd. Vs. Regional Provident Fund Commissioner, Bombay, .

15. Turning first to the case of the Regional Provident Fund Commr. Punjab v. Shibu Metal Works, (supra) that was a case under the Employees''

Provident Fund Act and the question arose was whether the undertaking manufacturing brass utensils was covered under the electrical, mechanical

or general engineering products appearing in Sch. I, and in dealing with the explanation, the Supreme Court observed as follows :-

A glance at the items included in Cl. (a) of the Explanation, as well as the items included in Cls. (b), (c) and (d) clearly shows that the object of the

legislature in enacting the Explanation was to clarify the content of the respective entries in Sch. I, to illustrate them by adding specific items, and to

enlarge their scope in some material particulars. The fact that an Explanation has been added with this purpose in 1953, must also be taken into

account in construing the entry in question.

However, in so far as the subject matter of the case was concerned, the Supreme Court held that brass utensils came under the heading electrical,

mechanical or general engineering products and its explanation.

16. Coming next to the decision in Nagpur Glass Works Ltd. v. Regional Provident Fund Commr., Bombay, (supra) in that case the question that

arose was as to whether the burners and metal lamps manufactured by the petitioners came under S. 1, sub-cl. (3) Sch. I (Explanation - electrical,

mechanical or engineering products). The arguments canvassed on behalf of the manufacturers were that the expression ""electrical, mechanical or

general engineering products"" added by virtue of the explanation become limited to the products expressly specified therein and that burners and

metal lamps were not included within the explanation and they did not fall within the explanation ""electrical, mechanical or general engineering

products."" In dealing with this contention, the Court observed (p. 283) :

The fact that the products cover a very wide range shows that their specification in the explanation is by way of illustration. Thus, though "electric

lamps" and "hurricane lanterns" are specified in the explanation, it would not be right to say that lamps of other kinds were intended to be

excluded. On the other hand, the proper interpretation would be to say that by specifying two kinds of lamps the Legislature intended to include

every kind of lamp. Any other interpretation would render the opening words of the explanation nugatory and defeat the clearly expressed intention

of the Legislature.

Mr. Bhobe argued that the aforesaid citations must show that the items specified in the explanations were illustrative, and in so far as the present

case is concerned, iron ore cannot be excluded from the heading of ""iron and steel"" read together with its explanation.

17. Mr. Rebello, the learned counsel for the interveners, drew our attention to the case of Kanpur Textile Finishing Mills Vs. Regional Provident

Fund Commissioner, . In that case, the party concerned was carrying on operations only of bleaching textiles and the questions arose was whether

such an industry would fall within Sch. I which includes ""Textiles"". In considering this question, the Court held that bleaching was only a part of a

process of textiles and hence fell within Textiles. Mr. Rebello argued that in the present case, iron ore pellets ultimately found their way in the blast

furnaces and were used for the manufacture of iron, and therefore, must now fall within the entry of ""iron and steel.

18. Mr. Rebello then relied upon the case of Bankim Chandra Chakravarty and Another Vs. Regional Provident Fund Commissioner and Others,

. That was also a case under the Employees" Provident Fund Act, and the question that arose was whether the expression ""electrical, mechanical

or general engineering products"" in item 3 of Sch. I to the Employees" Provident Fund Act was wide enough to include high pressure incandescent

lamps. There the Court held that the same fell within the ambit of ""electrical, mechanical or general engineering products"". It was argued by Mr.

Rebello that the explanations are, therefore, illustrative in character and that if this be so, then in the present case, iron ore pellets must be included

in iron and steel.

19. Now considering the above citations, what is apparent is that explanations have been afforded either to clarify or modify the content of an

entry. Hence, where the legislature felt that certain items must come within the generality of any entry an explanation has been afforded to include

such specified items in the generality of any entry, in other words, the content of an entry is clarified to the said extent. In the present case, the entry

in Schedule I is ""Iron and Steel"". By the explanation other items such as ingots etc. have been added. The content of entry ""iron and steel"" to that

extent hence stands modified in as much as the entry must now be read as comprising the said items specified in the explanation. If the legislature

wants to include any other specific items, it is open to the legislature to issue a notification and do so. The word ""includes"" must be read only as to

clarify the content of an entry to the extent that the explanation spells the same out, and it would not be open to Court to expand the list of items

mentioned in the explanation by treating the explanation as being illustrative. By this, we do not mean that an explanation whittles down the entry.

The proper course would be to look at the entry and see if a particular item, in this case iron ore pellets, can be included in the generality of the

entry ""iron and steel"" and then consider whether the same falls within the ambit of the explanation of the entry. In this view of the matter, we are

unable to persuade ourselves to equate that an industry manufacturing iron ore pellets which is nothing more than dressing of iron ore with an

industry engaged in the manufacture of iron and steel or item specified in the explanation thereto.

20. Now, in so far as Mr. Rebello''s submission based on the case of Kapur Textile Finishing Mills v. Regional Provident Fund Commr., (supra) is

concerned, we may only point out that in that case the Court was considering the words ""manufacture or production"" originally appearing in the

Schedule. It is in view of the word ""or production"" that the Court held that bleaching being a process concerning textiles the said industry must be

deemed to be engaged in textile production and hence held that the Act was applicable. As earlier stated, by Act 37 of 1953, the words ""or

production"" have been deleted and the citation is besides the point. In so far as the cases cited by Mr. Bhobe and Mr. Rebello are concerned, they

seem to fortify us when we say that if an item, as in this case an industry manufacturing iron ore pellets, falls within the generality of an entry, then it

must be held to be so and if not, to see if it comes within the ambit of the explanation, for explanations do not cut down the generality of an entry,

but, as observed earlier, merely clarify its content.

21. Mr. Kakodkar, the learned counsel for the petitioners next contended that the petitioners'' industry of manufacturing iron ore pellets could not

be considered as an industry engaged in the manufacture of iron and steel or such items as were specified in the explanation thereto is also evident

from the terminology used by the legislature in various legislations. That, under the Industries (Development and Regulation) Act, 1951, certain

industries such as specified in the Schedule require a licence. That, S. 3(i) of the said Act reads as follows :

''3(i) ""scheduled industry"" means any of the industries specified in the First Schedule; That, turning to the First Schedule, the relevant portion reads

as follows :

The First Schedule

(See Sections 2 and 3(i)

Any industry engaged in the manufacture or production of any of the articles mentioned under each of the following headings or sub-headings

namely :

1. Metallurgical Industries :

A. Ferrous :

(1) Iron and steel (metal)"".

That, when the petitioners set up this pelletization plant, they had written to the Government of India enquiring whether in view of the Industries

(Development and Regulation) Act, 1951, their plant would require a licence. The Government of India by their letter dated 4/5th November,

1977 (Exh. ''D'' to the petition) informed the petitioners that no industrial licence was required under the said Act for the setting up of an

undertaking/industry for the manufacture of iron ore pellets. Mr. Kakodkar submitted that this must make it amply clear that the industry engaged in

the manufacture of pellets was not an industry engaged in the manufacture of ""iron and steel"".

22. Mr. Kakodkar next argued that there are schedules annexed to the Goa, Daman and Diu Sales Tax Act, 1964 indicating items on which sales

tax is leviable and items on which sales tax is not leviable. That the Third Schedule of the said Act provides for items which are taxable and iron

and steel is one of them. That the relevant portion of the Third Schedule reads as follows :

The Third Schedule

(See Clause (b) of sub-section (1) of Section 7)

(Taxable at 2% from 1-11-1964 to 6-9-1972, 3% from 7-9-1972 to 31-7-1975 and 4% from 1-8-1985 onwards).

6. Iron and Steel.

That the Second Schedule to the said Act sets out the items on which no sales tax is payable and item 67 speaks of mineral ores which albeit

includes iron ore. That the relevant portion of the Second Schedule reads as follows :

The Second Schedule

(See Section 10)

Tax-Free Goods

67. Mineral ores.

That this also make it clear that the legislature at all times has clearly distinguished between an industry engaged in the manufacture of iron and steel

and an industry dealing with iron ore.

23. Mr. Kakodkar next urged that under the Customs Tariff Act, 1975, iron and steel are dealt with under S. 16 and ore is dealt with under S. 5.

That Chap. 73 speaks of iron and steel articles but keeps iron ore outside its purview. That Chap. 26 speaks of mineral ores (which includes iron

ore) and the same is treated differently. That this again must support the position that even the legislature at all times has made a clear distinction

between the industry concerned with iron ore and an industry manufacturing iron and steel.

24. Turning next to the Central Excise Tariff of India 1986-87, Mr. Kakodkar urged that Chap. 72 deals with iron and steel and sets out the

various items of iron and steel. That Chap. 26 deals with ores, slag and ash. That hence, here again, what is evident is that the legislature has

treated an industry concerning the manufacture of iron ore wholly different from an industry manufacturing iron and steel.

25. Mr. Kakodkar submitted that all this must make it evident that the legislature has consistently maintained that these two industries viz. the

industry concerning iron ore or its pellets on the one hand and an industry concerning manufacture of iron and steel on the other are wholly different

and the legislature has consistently understood it as such. That it would not hence be open to the Provident Fund Commissioner, respondent 2

herein, to contend that this industry of pelletization can be equated to an industry manufacturing iron and steel and be included in the entry ""iron and

steel"" appearing in Sch. I.

26. Mr. Bhobe the learned counsel for respondents 1 and 2, contended that whilst Mr. Kakodkar has referred to several Acts. One position is

clear and that is that the Acts are not in pari materia. Hence, a particular item may have been classified in one statue to achieve a certain object and

may have been classified in a different way in a different statue for a wholly different purpose and to achieve a wholly different object. Hence in the

interpretation of a given statue, it is not open to import the meaning given by a statue with regard to an item in interpreting another statue. Such

extrinsic aid invoked by Mr. Kakodkar would hardly be permissible. In support of this contention, Mr. Bhobe relied upon a decision in Jintan

Clinical Thermometer Co. (India) Pvt. Ltd. Vs. Union of India and Another, .

27. The contention of Mr. Bhobe is not without merit, but the exercise of Mr. Kakodkar is not to press into service the classification of iron ore on

the one hand and iron and steel on the other referred to in different statutes, but rather to emphasise that in day-to-day parlance also, manufacture

of iron ore pellets is conceptually different from manufacture of ""iron and steel"" as specified in Sch. I of the EPF & MPA 1952. In other words, an

industry engaged in iron ore pelletization on the one hand, and an industry engaged in the manufacture of iron and steel on the other, is understood

differently even in commercial parlance. The point sought to be made by Mr. Kakodkar is not without merit.

28. To hark back, as stated in paragraph 21 above, at the time when the petitioners set up this plant, they seem to have made an enquiry with the

Government of India, Ministry of Steel and Mines, Department of Steel as to whether their plant requires a licence under the Industries

(Development and Regulation) Act, 1951. The said Ministry by its letter dated 4/5th November, 1977 informed the petitioners that no such licence

was required for a pelletization plant. This is significant because if an industry for iron and steel did require a licence to carry on the said industry,

then surely, if a pelletization plant came within the meaning of iron and steel, the Ministry would have insisted on the petitioner securing a licence.

This must again emphasise the position that a plant engaged in pelletization of iron ore has not been equated even by the Government authorities to

a plant engaged in the manufacture of iron and steel.

29. Mr. Kakodkar has next urged that the petitioners have annexed to the petition an opinion of Experts viz. Italab (Goa) Pvt. Ltd. That a perusal

of the experts'' opinion shows that the experts have briefly discussed the process of manufacture of iron ore pellets and also the process of

manufacture of iron and steel. That from this opinion, it is clear that the two processes are wholly different. That the expert have also stated that the

chemical composition of the two products are different viz. Iron Ore Pellets would be Fe2 O3 while iron ore would be Fe. That the experts''

opinion is hence to the effect that iron ore pellets are not metal but only agglomerated raw material, whilst this is not so in the case of iron and steel.

That this opinion is in no way controverted and/or challenged by the respondents. That on behalf of the respondents, one K. P. Joseph who is an

Enforcement Officer, has filed an affidavit in reply to the petition stating that he has authority to file this affidavit. That the petitioners have

challenged that he has any such authority, and even till this date, the respondents have not been able to produce any document to satisfy the

position that the said Joseph had any authority to make and file an affidavit on the 20th August, 1987 i.e. the date on which the affidavit in reply

was made and filed. That the authority now produced is a letter authorising the said Joseph in September, 1987 to make and file an affidavit. That

Joseph''s affidavit is, therefore, of no consequences whatsoever. But be that as it may, the only averments in Joseph''s affidavit are that he does not

admit the contentions of the petitioners or otherwise denies the same for want of knowledge. That these are no denials at all. That the expert''s

opinion is in no way controverted. That in view of this, the opinion of Italab must stand and must go to satisfy the position that an industry engaged

in the manufacture of iron ore pellets can never be equated to an industry engaged in the manufacture of iron and steel. That this opinion must now

prevail and in view of this, the petitioners would well be entitled to relief. It may here only be added that the respondents have made no attempt to

refute this submission.

30. Mr. Kakodkar has urged that it is settled law that where the authorities contend that a particular matter falls under a particular entry in the

Schedule, the burden of proof is on the authorities and not on the party. That in the present case, the burden of proof that the petitioners'' industry

falls within the entry in the Schedule is on the respondents. That the respondents have made no attempt whatsoever to discharge this burden. That

the affidavit in reply filed by Joseph is wholly evasive in character. Secondly, a reading of the affidavit must show that it is cursorily made inasmuch

as every statement made by the petitioners is denied, not because they are untrue but because he has no knowledge of the same and/or otherwise

he denies the averments made by the petitioners by saying that he does not know anything about the dame or otherwise says he does not admit the

same. The affidavit in reply is no affidavit at all and the averments contained in the petition must how stand. That since the respondents are under an

obligation to discharge this burden, they should have placed material before this Court or brought such data before this Court to substantiate their

contention. The respondents have not in their affidavit in reply breathed a word nor do they even at this stage place any material before this Court

or tell the Court as to how this industry engaged in pelletization can be equated to an industry engaged in the manufacture of ""iron and steel"", and

can come within the entry ""iron and steel"", in Schedule I. We may here add that the respondents have not even touched upon this argument or

attempted to refute the same.

31. What emerges from the above discussion is that iron ore pelletization is merely dressing of the fine powdery iron ore so that the same can be

handled more effectively. That iron ore pellets and iron are two totally different things. The chemistry of the two products is also different, and an

industry manufacturing iron ore pellets cannot come within the generality of the phrase ""iron and steel"" appearing in Sch. 1 nor can the same come

within the ambit of the explanation thereto. Further, the concept of iron ore pellets on the one hand and iron and steel on the other are also different

in work-a-day parlance. Even the Ministry of iron and steel has treated the industry of manufacturing iron ore pellets as not forming part of the

industry of iron and steel. The experts'' opinion viz. the opinion of Italab to the effect that an industry engaged in the manufacture of iron ore pellets

cannot be equated to an industry engaged in the manufacture of iron or steel is in no way dislodged by the respondents, and above all the burden

cast on the respondents to establish that the petitioner'' industry of manufacturing iron ore pellets fell within the entry ""iron and steel"" (and its

explanation) contained in Sch. I is not at all discharged. If this be the position, the respondents'' contention that the petitioners'' industry engaged in

the manufacture of iron ore pellets comes within the ambit of the entry ""iron and steel"" (read together with its explanation) appearing in Sch. I

cannot be accepted. If this be so, then there can be no question of the application of the provisions of the EPF & MPA, 1952 to the industry of the

petitioners, and consquentially, the demands made against the petitioners must also fail. The petitioners would will be entitled to relief now claimed.

32. This takes us to the next argument of Mr. Kakodkar based on Section 16 of the EPF & MPA, 1952. Mr. Kakodkar contended that a reading

of CI. (b) of S. 16 of the EPF & MPA, 1952 makes it clear that even if an industry is included in the Schedule, the Act does not apply for an initial

period of 3 years. That the provisions of the Act can only apply after the said period of three years. But this postulates that at the end of three

years, the industry must be in operation. That in the present case, the pelletization plant was set up in 1976 and the same went into production by

about September, 1979. That in 1981, by reason of a power shortage and other difficulties, the plant could hardly maintain its production level at

50% and that too at great cost. That the plant having become not viable, the petitioners sought the permission of the Central Government to ""close

down"" the plant temporarily. After considering the pros and cons, the Government granted permission to ""close down"" the plant temporarily but

initially for a period of one year and thereafter extended this period by two years and then again granted an extension for a period of three years.

That it is now an admitted position that the plant has never opened thereafter but has totally closed down. That hence at the end of three years

(from its commencement) time, the plant was not in operation. Hence, at no point of time could the provisions of the EPF & MPA, 1952 have

become applicable to the petitioners'' industry. That since this was the position, the question of the provisions of the Act applying to the petitioners''

industry cannot arise and the demands made by the respondents must fail.

33. Mr. Bhobe, the learned counsel for respondents 1 and 2 has contended that it is an admitted position that the plant had commenced in 1979.

That merely because the petitioners ran into difficulty and had suspended their operations, it cannot means that the plant had ""closed down"" totally.

That on the petitioner''s own showing, the plant was closed down temporarily initially for a period of one year, thereafter for two years and

thereafter for three years. In other words, there was merely a temporary suspension of work but this does not amount to ""closure"". That the

suspension of the work cannot affect the computation of the period of three years. That for the purpose of S. 16(b) of the EPF & MPA, the

computation of the period begins from the date on which the plant has commenced and this is exactly what the respondents have done and have

based their demands on the said footing. That this being the position, the demand was proper. In support of his argument, Mr. Bhobe placed

reliance on the ratio in the case of The Provident Fund Inspector, Trivandrum Vs. The Secretary, N.S.S. Co-operative Society, Changanacherry, .

34. Mr. Rebello, the learned counsel who has appeared on behalf of the workers as interveners, has supported Mr. Bhobe in his argument and

further commented upon the case cited by Mr. Bhobe and also pressed into service the decision in the case of Sayaji Mills Ltd. Vs. Regional

Provident Fund Commissioner, .

35. Although we have set out the rival contentions in so far as they touch upon S. 16 of the Act, it may be stated that in view of what we have held

above, it is wholly unnecessary for us to deal with this question.

36. This takes us to the question as to whether S. 19A of the EPF & MPA, 1952 provides an efficacious remedy to the petitioners, and if the

answer is in the affirmative, ought the petitioners to have pursued the remedy or in view of their failure to do so, would they be disentitled to relief.

37. On this aspect of the matter, Mr. Kakodkar submitted that S. 19A contemplates a situation where a doubt or a difficulty arises and which may

be referred to the central Government for removal or clarification thereof. That S. 19A further provides that the Central Government may on such

a reference give such directions if it deems fit. That S. 19A of the Act does not confer any jurisdiction on the Central Government to adjudicate

upon a dispute such as arising in this matter. That assuming that a dispute such as this can fall within the province of S. 19A, the only party which

can invoke and move the the Central Government under S. 19A would be the authorities under the EPF & MPA, 1952 and not a private party. In

support of his contention that it was not open to private parties to move the Central Government under S. 19A, Mr. Kakodkar placed reliance on

following cases : (1) Wadi Stone Marketing Company (Private) Ltd. Vs. Regional Provident Fund Commissioner and Another, , Central

Hindustan Orange and Cold Storage Co. Ltd. Vs. Prafullachandra Ramachandra Oza, and The Regional Provident Fund Commissioner v.

Glamour Proprietor Seth Hassaram and Sons (India) Pvt. Ltd. New Delhi 1982 Lab LC 1787 .

38. Mr. Bhobe, the learned counsel for respondents 1 and 2, on the other hand maintained that S. 19A was designed not only to remove and

clarify difficulties and doubts but also conferred powers on the Central Government to adjudicate upon disputes such as arising in this case. That as

a matter of fact, S. 19A must be read to include revisional and appellate powers. That the submission made on behalf of the petitioners that the

provisions of S. 19A could only be invoked by the authorities and not by private parties i.e. the employers, was wholly untenable because there

was nothing in S. 19A that prevented a private party or the employers from making a reference under the said Section to the Central Government.

On the other hand, it was wholly competent for a private party and/or employers to do so. In support of his argument that it was not only the

authorities under the EPF & MPA, 1952 that could move the Central Government but it was open to a private party and/or employers to do so,

Mr. Bhobe relied upon the decisions in (1). Ess Dee Carpet Enterprises, Jaipur v. Union of India 1985 Lab IC 1116 , (2) Dhanalakshmi Weaving

Works, Kakkat, Cannanore and Others Vs. The Regional Provident Fund Commissioner, Trivandrum, (3) T.R. Raghava Iyengar and Co. Vs. The

Regional Provident Fund Commissioner, , Nagpur Glass Works Ltd. Vs. Regional Provident Fund Commissioner, and (5) The Delhi Cloth and

General Mills Co. Ltd., Delhi Vs. The Regional Provident Fund Commissioner, U.P., .

39. Mr. Rebello, appearing on behalf of the Workers Union, the interveners, adopted the argument of Mr. Bhobe and submitted that the

observations contained in the case of Central Hindustan Orange and Cold Storage Co. Ltd. Motibag v. Prafullachandra Ramachnadra Oza,

(supra) to the effect that only the authorities under the EPF & MPA, 1952 could move under S. 19A and not a private party were obiter.

40. Now, in so far as the submission on the applicability of S. 19A is concerned, in view of the findings in paragraph 7 above, it is unnecessary to

dwell on the same or decide the same. However, in the passing, we may observe that we have considered all the aforestated cases in depth and

what is apparent is that there is a divergence of view as to whether only the authorities under the EPF & MPA, 1952 can move under S. 19A or

whether employers can also do so. There is also a divergence of view points as to what can be considered by the Central Government under the

provisions of S. 19A. But assuming that it was open to a private party i.e. employers to move under S. 19A and assuming that a dispute such as

this can also be referred to the Central Government, a reading of S. 19A shows that on such a reference being made, the Central Government

may by an order make such provisions or give such directions as appear to it as necessary or expedient"". In other words, the Central Government

has a discretion to give or refrain from giving directions. Such a remedy cannot in the facts and circumstances of this case be said to be an

efficacious remedy available to the petitioners.

41. In the result, the petitioners would well be entitled to the relief prayed. Rule is made absolute in terms of prayers (a) and (b) with costs.

42. At this stage, Mr. Bhobe applies that leave be granted to move the Supreme Court. Application rejected.