

functions of the Commission are purely advisory and to the fact that Government is not bound to follow the advice tendered by it, it seems to me that an omission on the part of Government to ascertain the views of the Commission in regard to an order of removal or dismissal does not render the order itself null or void. The order in the present case has been made by the authority competent to make it and it was made after a reasonable opportunity was afforded to the plaintiff of having his say. As all the mandatory provisions of law have been complied with, the order itself cannot be regarded as invalid in the eye of law.

Major U. R.
Bhat
v.
The Union of
India

Bhandari, C.J.

For these reasons, I would uphold the order of the learned District Judge and dismiss the appeal. Having regard to the peculiar circumstances of the case, I would leave the parties to bear their own costs.

FALSHAW, J. I agree.

CIVIL WRIT

Before Kapur and Dulat, JJ.

KAPUR TEXTILE FINISHING MILLS,—Petitioners

versus

THE REGIONAL PROVIDENT FUND COMMISSIONER,
PUNJAB,—Respondent.

Civil Writ No. 54 of 1954

Employees' Provident Funds Act (XIX of 1952) Sections 2(1), 4 and Schedule I—Establishments doing merely processing of textile goods by dyeing, printing, bleaching and finishing—Whether an industry engaged in the manufacture or production of textiles—Later amendment by way of abundant caution—Effect of—Interpretation of Statutes—Rules as to, stated.

Held, that the word "textile" will include to mean anything from yarn to woven material which may be coarse or which may be fine, which may be made of cotton or wool or jute or silk, which may be bleached or unbleached, which may be printed or just plain and for the purpose of its being made available for human wants it may have to undergo several processes, and it is for that reason that the legislature thought it fit to use the expression "Manufacture or production". "Manufacture" would mean making an article which is capable of being used and designed

Falshaw, J.

1954

Nov., 15th

to be used in ordinary life and the word "production" would mean in the context, making goods available for human wants. Thus an industry only engaged in bleaching, dyeing and printing would be an industry engaged in the manufacture or production of textiles.

Held further, that by amending the 1952 Act all that the Legislature seems to have done is to firstly define what manufacture means and secondly to put an explanation to clarify what perhaps it originally thought it to be and now finds to be doubtful. If by way of abundant caution the legislature amends an Act to explain things it cannot be concluded from that that what was in the amended Act did not cover what is given in the explanation.

Held also, that in interpreting statutes the following principles should be kept in view:

- (i) that to a statute enacted in conformity with the directive principles of State policy as contained in part IV of the Constitution of India, a beneficial construction must be given;
- (ii) that to carry out effectively the object of a statute, it must be construed as to defeat all attempts to do, or avoid doing in an indirect or circuitous manner that which it has prohibited or enjoined;
- (iii) that for the sure and true interpretation of all statutes, in general (be they penal or beneficial, restrictive or enlarging of the common law), four things are to be discerned and considered. (1) What was the common law before the making of the Act, (2) What was the mischief and defect for which the common law did not provide, (3) What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth, (4) The true reason of the remedy. And then the office of all the Judges is always to make such construction as shall suppress the mischief and advance the demedy, and to suppress subtle inventions and evasions for the continuance of the mischief and *pro privato commodo* and to add force and life to the cure and remedy according to the true intent of the makers of the Act *pro bono publico*.
- (iv) Where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to regulate.
- (v) That the office of a good expositor of an Act of Parliament is to make construction on all parts together, and not of one part only by itself.

Petition under Article 226 of the Constitution of India, praying that a writ in the nature of mandamus be granted against the respondent directing him not to enforce the Employees' Provident Funds Act prior to the 14th October, 1953, against the petitioner and to withdraw the notice No. PFA-1/27/448/17. And/Or to issue any other appropriate writ as the circumstances of the case may require.

BHAGIRATH DAS, for Petitioners.

S. M. SIKRI, Advocate-General, for Respondent.

ORDER

KAPUR, J. This rule is obtained under Article 226 of the Constitution for the issuing of a writ of mandamus directing the opposite party to forbear from enforcing the provisions of the Employees' Provident Funds Act, XIX of 1952, as subsequently amended against the petitioners.

Kapur, J.

It is submitted that the petitioners' factory is carrying on the work of processing of woollen, silk, cotton and rayon yarn textile goods by dyeing, printing, bleaching and finishing and are employing 150 workmen in the factory and, therefore, this factory does not fall within Schedule I of the Employees' Provident Funds Act read with sections 2(i) and 4 of the Act because the petitioners are neither manufacturers nor producers of textile goods and it is therefore contended that the letter of the opposite party dated the 20th of March 1954 calling upon the petitioners to comply with the provisions of the Act as from the 1st of November 1952 is contrary to law and the petitioners are not liable to make the requisite deposit of money or to comply with the notice of that date.

In order to determine the relative rights of the parties it is necessary to make a reference to the Act. The object of this Act is to provide for

Kapur Textile the institution of provident funds for the em-
 Finishing Mills ployees in factories and other establishments.
 v. The Act came into force on the 4th of March 1952
 The Regional Provident Fund Commis- but was extended to the Punjab on the 1st of
 sioner, Punjab November 1952. It applies to all factories engag-
 ed in any industry specified in Schedule I in
 Kapur, J. which 50 or more persons are employed. Section
 2 deals with definitions and although in the Act
 as passed the word 'manufacture' was not defin-
 ed, by the amending Act XXXVII of 1953 sub-
 section (ia) was added to define the word 'manu-
 facture' as meaning "making, altering, ornament-
 ing, finishing or otherwise treating or adapting
 any article or substance with a view to its use,
 sale, transport, delivery or disposal. Under sec-
 tion 5, the Central Government is empowered to
 frame a scheme to be called the Employees' Provi-
 dent Fund Scheme and by the amending Act
 XXXVII of 1953 a provision can be made for the
 Scheme to be prospective or retrospective as from
 a particular date.

Under section 6 contributions have to be made by the employer to the Fund at a particular figure. Under section 8 of the amended Act recovery of contribution can be made from the employers as if it was an arrear of land revenue. It is necessary for the purposes of this Act to refer to the amendments made by the amending Act. By section 11 the amount due in respect of any contribution under this Act was considered to have priority over other debts, and under section 12 the employer was prohibited from reducing the wages of a worker, whether directly or otherwise, by reason only of his liability to contribute towards the Fund.

By section 14 penalties are provided including imprisonment and fine if any false return is

made for the purpose of avoiding any payment under this Act.

Section 19 empowers the Government to delegate its powers. By the amending Act section 19-A has been added to remove difficulties and it gives to the Central Government the power to give certain decisions. Schedule I may be quoted in extenso as a great deal of argument has been based on the language of this Schedule. —

Kapur Textile
Finishing Mills
v.

The Regional
Provident
Fund Commis-
sioner, Punjab

Kapur, J.

“SCHEDULE I”

(See sections 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 XXXVII of 1953 the Act of 1952 was amended and, as I have said before, the word ‘manufacture’ was defined by section 2 (ia) and the Schedule was also amended by section 18 of the amending Act. The words ‘or production’ were omitted and an Explanation has been added, and the relevant portion of this Schedule now is—

“Any industry engaged in the manufacture of any of the following :—

* * * * *

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

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

* * * * *

Kapur Textile
Finishing Mills
v.
The Regional
Provident
Fund Commis-
sioner, Punjab

(d) the expression 'Textiles' includes the products of carding, spinning, weaving, finishing and dyeing yarn and fabrics, printing, knitting and embroidering."

—
Kapur, J.

The petitioners submit that the very fact that the Legislature thought it necessary to amend the Act shows that their factory was not covered by the wording of the Schedule as it existed in the unamended Act of 1952. Before I deal with this argument I shall try to interpret the various provisions of the Act which are relevant for the purposes of this case.

In keeping with the policy of the State, that is, to establish a welfare State with the directive principles of State policy as contained in Part IV of the Constitution, *inter alia* this statute was enacted by Parliament for the benefit of the workers. To a statute of this kind, therefore, a beneficial construction must be given.

At page 114 of Maxwell on the Interpretation of Statutes the law is stated as follows—

"To carry out effectually the object of a statute, it must be so construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined."

I may refer to *Heydon's Case*. In Craies on Statute Law at page 91, the following four propositions are taken from that case :—

"That for the sure and true interpretation of all statutes, in general (be they penal or beneficial, restrictive or enlarging of the common law), four

things are to be discerned and considered. (1) What was the common law before the making of the Act. (2) What was the mischief and defect for which the common law did not provide. (3) What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth. (4) The true reason of the remedy. And then the office of all the Judges is always to make such construction as shall suppress the mischief and advance the remedy, and to suppress subtle inventions and evasions for the continuance of the mischief and *pro privato commodo*, and to add force and life to the cure and remedy according to the true intent of the makers of the Act *pro bono publico*.”

Kapur Textile
Finishing Mills
v.
The Regional
Provident
Fund Commis-
sioner, Punjab
Kapur. J

See also Fletcher Moulton, L. J., in *MacMillan v. Dent* (1). And at page 93 the law is thus stated by Craies—

“Where alternative constructions are equally open, that alternative is to be chosen which will be consistent with the smooth working of the system which the statute purports to regulate.”

Another principle in the interpretation of statutes is what was stated by Lord Coke in the *Lincoln College Case* (page 93 of Craies on Statute Law)—

“The office of a good expositor of an Act of Parliament is to make construction on all parts together, and not of one part only by itself.”

(1) (1907) 1 Ch. 114, 120

Kapur Textile As I have said, the object of this Act is to
 Finishing Mills provide for a provident fund for workers and it
 v. is the duty of the Court to interpret the Act in
 The Regional such a manner as to give effect to the intention
 Provident of the Legislature and not to put a very narrow
 Fund Commis- construction which may defeat the object of the
 sioner, Punjab Act. It is in this manner that the Act has to be
 ——— interpreted.
 Kapur, J.

In the Schedule of the unamended Act the words are "Any industry engaged in the manufacture or production of * * * * textiles." Three expressions will have to be taken into consideration for the purposes of interpreting the intention of the Legislature—

- (i) "industry" ;
- (ii) "engaged in the manufacture or production of" ;
- (iii) "textiles."

It cannot be said that the factory of the petitioners is not an "industry engaged in." According to Shorter Oxford Dictionary "industry" means "a particular branch of productive labour; a trade or manufacture."

The next question to be decided is whether the petitioners are engaged in the manufacture or production of textiles. The word "manufacture" has been defined in Law Dictionary by Ballentine to mean "the process of converting raw materials into finished parts or products." In *Lawrence v. Allen* (1), the word 'manufacture' has been defined as follows :—

"* * * * and in the more modern idea attached to the word, it is making an article, either by hand or machinery, into a new form, capable of being used, and designed to be used, in ordinary life."

(1) 48 U.S. 785, 794

Several instances of the word 'manufacture' were there given. Thus the juice of the maple or of the cane is in some views manufactured when it is made into molasses or syrup, and in others, when again made into sugar or spirit from molasses. And so the juice of the grape is in one sense manufactured when converted into wine, and in another when made into brandy. And so is lye from ashes, when boiled down to potash or pearlash, manufactured into them. In the same case it is then said :—

Kapur Textile
Finishing Mills
v.
The Regional
Provident
Fund Commis-
sioner, Punjab
Kapur, J.

“Here, the juice or sap of the India rubber tree, while liquid or in its milky state whether then called caoutchouc or some other name, is still a natural substance, and in its natural form ; and, in one sense and to a certain extent, its being hardened and changed in color, no less than consistency and bulk, by fire and evaporation, whatever new form it may then be turned into, is a manufacture. It is so as much as butter or cheese is a manufacture from animal milk, or tar from turpentine, and rosin from tar.”

In *Guildford Corporation v. Brown* (1), the word “manufacture” was given an extended meaning and it was held that “it is manufacturing a mattress if you take flock out of an old and put it in a new cover” per Ridley J. at page 258 but taking the flock out of an old cover and putting it back is not manufacturing.

Thus it has to be seen in the context of every article as to what is the meaning of the word used in regard to it.

Kapur Textile Finishing Mills v. The Regional Provident Fund Commissioner, Punjab

In the present case two words have been used 'manufacture' or 'production', and it is one of the principles of construction that we cannot impute superfluity to Legislatures and should give a meaning to every word used in an Act of Parliament :

See *Dictcher v. Denision* (1). As was said by Lord Brougham in *Auchterarder Presbytery v. Lord Kinnoull*, "a statute is never supposed to use words without a meaning" (page 98 of Craies on Statute Law).

'Textile' according to its dictionary meaning means "woven or capable of being woven ; formed by weaving; as cotton and wool are textile fabrics," and another meaning is "that which is, or may be, woven ; a woven fabric or a material for weaving."

The word 'production' is defined in Webster's Dictionary to mean "that which is produced"; in Economics "the creation of economic value ; the making of goods available for human wants."

When dealing with particular businesses or transactions, words are presumed to be used with the particular meaning in which they are used and understood in the particular business in question : Maxwell on Interpretation of Statutes, page 54, which is based on the observations of Lord Esher, M. R., in *Unwin v. Hanson* (2) where his Lordship observed—

"If the Act is one passed with reference to a particular trade, business, or transaction, and words are used which everybody conversant with that trade, business or transaction, knows and understands to have a particular meaning in

(1) (1891) 2 Q.B. 115, at p. 119

(2) (1858) 11 Moore P.C. 325 at p. 337

it, then the words are to be construed as having that particular meaning, though it may differ from the common or ordinary meaning of the words.”

Kapur Textile
Finishing Mills
v.
The Regional
Provident
Fund Commis-
sioner, Punjab

James, L. J., was of the same opinion in *Boucicault v. Chattertom* (1), where the word to be interpreted was ‘published’. In regard to a book it was held to mean being printed and issued to the public, and in regard to a dramatic piece or a musical composition being publicly performed, and in regard to a piece of sculpture or other work of art being multiplied by casts or other copies. Thus the same word may signify different meanings when applied to different businesses.

Kapur, J.

It is in this context therefore that we have to interpret these words. There is no doubt that the word ‘textile’ will include to mean anything from yarn to woven material which may be coarse or which may be fine, which may be made of cotton or wool or jute or silk, which may be bleached or unbleached, which may be printed or just plain, and for the purpose of its being made available for human wants may have to undergo several processes, and it is for that reason that the Legislature thought it fit to use the expression “manufacture or production.” As was held in *Lawrence v. Allen* (2), ‘manufacture’ would mean making an article which is capable of being used and designed to be used in ordinary life, and unless we can say that the word ‘production’ is a surplusage some meaning has to be given to it, and the meaning that should be given, in my opinion, is that which is used in Economics, that, is making goods available for human wants.

(1) 5 Ch. D. 267 at p. 275

(2) 48 U.S. 785

Kapur Textile Finishing Mills v. The Regional Provident Fund Commissioner, Punjab

There is no expert evidence on the record but it was admitted at the Bar that there are factories where the whole process of converting cotton or other yarn into finished product of the finest quality and colour is gone through, and it was not denied that that would still be textile.

Kapur, J. I cannot see any reason for holding that the word "manufacture" would include only that process which would turn cotton into a woven cloth howsoever coarse it may be, or in whatever colour it may be, without undergoing the process of bleaching, dyeing or printing. The word "textile" would include every kind of cloth, whether made of cotton, wool, jute or silk, natural or artificial, which is a finished product in accordance with the needs of human beings who include all classes, those who want very fine cloth and those who are satisfied with comparatively coarser kind and who include men and women and the latter may require beautiful colours and beautiful prints. If in a factory where, apart from weaving, bleaching, dyeing and printing are also done, would fall within this definition of the expression "any industry engaged in the manufacture or production of textiles", I fail to see why the petitioners would not fall within that expression merely because they have got a separate factory where all that is done is "processing of * * * textile goods by dyeing, printing, bleaching and finishing," which is the kind of factory which the petitioners possess and for which the petitioners are being called upon to make certain statements under the provisions of the Act of 1952.

It was then submitted that the fact that the Legislature has thought it necessary to amend the Act of 1952 shows that the factory of the petitioners was not included in Schedule I of that Act but I am unable to agree with that submission. All

that the Legislature seems to have done is to firstly define what 'manufacture' means, and secondly to put an Explanation to clarify what perhaps it originally thought it to be and now finds to be doubtful. If by way of abundant caution the Legislature amends an Act to explain things we cannot conclude from that that what was in the unamended Act did not cover what is given in the Explanation. No case was cited to support that when the Legislature amends to clarify things it necessarily means that what was in the original Act did not include what is given in the Explanation.

Kapur Textile
Finishing Mills
v.
The Regional
Provident
Fund Commis-
sioner, Punjab
Kapur, J.

I am of the opinion therefore that the petitioners are covered by the Schedule of the unamended Act and the opposite party has rightly called upon them to submit statements under the provisions of that Act. This petition is therefore dismissed and the rule is discharged with costs. Counsel fee Rs. 150.

DULAT, J. I agree.

Dulat, J.

APPELLATE CIVIL

Before Kapur, J.

MANSA RAM AND OTHERS,—Defendants-Appellants

versus

NATHU AND OTHERS,—Plaintiffs-Respondents

Regular Second Appeal No. 720 of 1950

Res judicata—Unregistered compromise successfully pleaded as bar to the maintaining of earlier proceedings—Compromise challenged in later proceedings and sought to be ruled out of evidence as inadmissible for want of registration—Whether objection on the score of want of registration barred by res judicata.

1954

Nov., 15th