

South Gujarat Roofing Tiles ... vs State Of Gujarat And Another on 20 October, 1976

Equivalent citations: 1977 AIR 90, 1977 SCR (1) 878, AIR 1977 SUPREME COURT 90, 1976 4 SCC 601, 1976 LAB. I. C. 1778, 1977 (1) SCJ 397, 1977 (1) SCR 878, 50 FJR 51, 18 GUJLR 688, 5 F J R 51, 33 FACLR 394, 1977 (1) LABLN 1, 1976 U J (SC) 912

Author: A.C. Gupta

Bench: A.C. Gupta, Y.V. Chandrachud, P.K. Goswami

PETITIONER:

SOUTH GUJARAT ROOFING TILES MANUFACTURERS ASSOCIATION AND ANR

Vs.

RESPONDENT:

STATE OF GUJARAT AND ANOTHER

DATE OF JUDGMENT 20/10/1976

BENCH:

GUPTA, A.C.

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GUPTA, A.C.

CHANDRACHUD, Y.V.

GOSWAMI, P.K.

CITATION:

1977 AIR 90 1977 SCR (1) 878

1976 SCC (4) 601

CITATOR INFO :

E&F 1978 SC 22 (7)

R 1980 SC 150 (12)

ACT:

Minimum Wages Act, 1948, Entry 22 Explanation Part I of
Schedule, construction of word includes--Whether potteries
Industry includes manufacture of Mangalore pattern roofing
tiles.

HEADNOTE:

By a Notification issued under the Minimum Wages Act,
1948, the Government fixed the minimum rates of wages in
respect of potteries industry, on the basis of a committee's

report. Later, proceedings were started against the second appellant, a partnership firm manufacturing Mangalore type roofing tiles, on the complaint of an inspector alleging that the partners of the firm had failed to produce their muster roll and the wages register for his examination. The Magistrate acquitted the appellant holding that Entry 22 did not cover roofing tiles. The High Court affirmed the acquittal on merits, but opined that manufacture of roofing tiles was included in the potteries industry.

The appellants contended that the Articles mentioned in the explanation were exhaustive of the objects covered by entry 22, and did not cover roofing tiles, while the respondent State contended that the Explanation "includes" not only the objects mentioned therein, but other articles like roofing tiles.

Allowing the appeal, the Court,

HELD: (1) The word "includes" is generally used as a word of extension, but has been used here 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 extension, but limitation; it is exhaustive of the meaning which must be given to potteries industry for the purpose of Entry 22. [882 G-H]

Dilworth v. Commissioner of Stamps (1899 A.C. 105--106) applied.

(2) The manufacture of Mangalore pattern roofing tiles is outside the purview of Entry 22. The explanation could not possibly have been introduced to extend the meaning of potteries industry or the articles listed therein added ex abundanti cautela. [882 D-F; 883 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1947 of 1975. Appeal by Special Leave from the Judgment and Order dated 9-10-1975 of the Gujarat High Court in Special Civil Application No. 1339/75.

V.M. Tarkunde, P.H. Parekh, Miss Manju Jatley and (Miss) Mardk Tarkunde, for the Appellants. D.V. Patel and M.N. Shroff, for Respondent No. 1. K.L. Hathi and P.C. Kapur, for Respondent No. 2.

The Judgment of the Court was delivered by GUPTA, J.--The first appellant is an association of the manufacturers of Mangalore pattern roofing tiles in south Gujarat area, the other appellant, a partnership firm, is a member of the association. The question that falls to be determined in this appeal by special leave is whether entry 22 added by the Gujarat Government by notification dated March 27, 1967 to Part 1 of the Schedule to the Minimum Wages Act, 1948 covers Mangalore pattern roofing tiles. 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"

We may also refer to certain other provisions of the Minimum wages Act which provide the context to the question arising for decision. Section 2(g) defines "scheduled employment" as meaning "any employment specified in the Schedule or any process or branch of work forming part of such employment". The schedule is in two parts. Part I which relates to employment in agriculture only As not relevant for the purpose of this appeal. Section 3 authorises the appropriate Government to fix or revise the minimum rates of wages payable to employees in scheduled employments. Section 5 prescribes the procedure for fixing and revising minimum wages. In fixing minimum rates of wages in respect of any scheduled Section 5 prescribes the procedure for fixing and revising minimum wages. In fixing minimum rates of wages in respect of any scheduled. employment for the first time or in revising the rates so fixed, the appropriate Government must either appoint committees to hold, necessary enquiries and advise it in this regard, or publish its proposals in the matter for the information of persons likely to be affected thereby. The Government will fix or revise the minimum rates of wages after considering the advice of the committees or the representations received in regard to the proposals published, as the case may be. Section 7 empowers the appropriate Government also to appoint an advisory board for coordinating the work of the committees appointed under section 5, and advising the Government generally in the matter of fixing and revising minimum rates of wages. Section 19 authorises the Government to appoint Inspectors for the purposes of the Act, Sections 22 and 22-A lay down the penalties for paying to an employee any amount less than what is due to him under the Act, or contravening any provision of the Act or any rule or order made thereunder; the punishment may extend to imprisonment for six months with a fine of Rs. 500/-. Under section 27 the appropriate Government after giving by notification in the official gazette not less than three months' notice of its intention to add to either Part of the Schedule any employment in respect of which it is of opinion that minimum rates of wages should

be fixed, add such employment to the schedule by another notification and the schedule in its application to the State concerned shall be deemed to be amended accordingly. Before proceeding to consider the rival contentions, we may briefly state the facts in the background. On November 13, 1966 the Gujarat Government issued a notification under section 27 declaring its intention to add "employment in potteries industry" with an 'Explanation' to Part I of the Schedule to the Minimum wages Act, and by notification dated March 27, 1967 the entry was added as entry No. 22. Later a committee was appointed under section 5 (1) to fix minimum rates of wages in potteries industry. The committee submitted its recommendations some time in 1968. It appears from the letter dated July 10, 1968 addressed to the Government by the advisory committee forwarding its report that the Committee had not taken into consideration roofing tiles in the recommendations made. By a notification dated January 8, 1969 the Government fixed the minimum rates of wages in respect of potteries industry on the basis of the committee's report. On March 25, 1970 a proceeding was started against the second appellant on the complaint of an Inspector alleging that the partners of the firm had failed to produce for his examination the muster roll and the wages Register. The appellant was acquitted by the magistrate who held that entry 22 did not cover roofing tiles and as such the Act was not applicable to the industry of the accused. The State preferred an appeal to, the High Court against the order of acquittal. The High Court affirmed the acquittal on merits but observed that the manufacture of roofing tiles was included in entry 22. In 1974 the Gujarat Government appointed another committee under section 5' of the Act to revise the minimum wages in potteries industry. This time the committee treated the manufacture of roofing tiles as included in item 22 and sent its report to the Government. On May 12, 1975 the State Government issued a notification accepting the recommendations of the committee and gave effect to the revised rates from the next day, i.e. May 13, 1975. The appellants filed a writ petition in the Gujarat High Court challenging the validity of the notification dated May 12, 1975. By its order dated October 9, 1975 the High Court dismissed the writ petition on the view that "Mangalore pattern roofing tiles manufactories would be covered' within the entry". This is how the scope of entry 22 arises for consideration in this appeal.

The question turns on a true construction of the Explanation to entry 22 which says that for the purpose of this entry potteries industry "includes" the manufacture of the nine "articles of pottery"

specified therein. Pottery in a wide sense will take in all objects that are made from clay and hardened by fire, from crude earthen pots to delicate porcelain. Mr. Patel appearing for the respondent, State of Gujarat, contends that the Explanation indicates that potteries industry in entry 22 is intended to cover all possible articles of pottery including Mangalore pattern roofing tiles. Referring to the well-known use of the word 'include' in interpretation clauses to extend the meaning of words and phrases occurring in the body of the statute, Mr. Patel submits that the Explanation, when it says that potteries industry 'includes' the nine named objects, what is meant is that it includes not only these objects but other articles of pottery as well. It is true that 'includes' is generally used as a word of extension, but the meaning of a word or phrase is extended when it is said to include things that would not properly fall within its ordinary connotation. We may refer to the often-quoted observation of Lord Watson in *Dilworth v. Commissioner of Stamps*, (1) that when the word

'include' is used in interpretation clauses to enlarge the meaning of words or phrases in the statute "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". Thus where 'includes' has an extending force, it adds to the word or phrase a meaning which does not naturally belong to it. It is difficult to agree that 'includes' as used in the Explanation to entry 22 has that extending force. The Explanation says that for the purpose of entry 22, potteries industry includes the manufacture of the nine "articles of pottery" specified in the Explanation. If the objects specified are also "articles of pottery", then these objects are already comprised in the expression "potteries industry". It hardly makes any sense to say that potteries industry includes the manufacture of articles of pottery, if the intention was to enlarge the meaning of potteries industry in any way.

We are also unable to. agree with Mr. Patel that the articles specified in the Explanation may have been men- tioned out of abundant caution to emphasize the comprehen- sive character of the entry, to indicate that all rarities of pottery are included therein. This. argument, though more plausible, does not also seem acceptable'. It is possible that one might have doubts. whether things like refractories or electrical or textile accessories would pass under the description pottery as that word is used in common parlance, but the Explanation also mentions crockery and toys regarding which there could be hardly any doubt. The inclusion in the list of objects which are well recognised' articles of pottery makes it plain that the Explanation was added to the entry not by way of abundant caution.

The contention of Mr. Tarkunde for the appellants is that the articles mentioned in the Explanation were intend- ed to be exhaustive of the objects covered by entry 22. According to Mr. Tarkunde if the legislature wanted to bring within the entry all possible articles of pottery then there was hardly any point in mentioning only a few them by way of Explanation. To this Mr. Patel's reply is that it (1) (1899) A.C. '105-106.

is well-known that where the legislature wants to exhaust the significance of the term defined, it uses the word 'means' or the expression 'means and includes', and that if the intention was to make the list exhaustive, the legisla- ture would not have used the word 'includes' only. We-do not think there could be any inflexible rule that the word 'include' should be read always as a word of extension without reference to the context. Take for instance entry 19 in the schedule which also has an Explanation .containing the .word 'includes'. Entry 19 is as follows:

"Employment in any tobacco processing establishment, not covered under entry No. 3. Explanation.--For the purpose of this entry, the expression "processing" includes packing or unpacking, breaking up,. sieving, thrishing, mixing, grading, drying, curing or otherwise treating the tobacco (including tobacco leaves and stems) in any manner."

Entry 3 to which entry 19 refers reads:

"Employment in any tobacco (including bidi making) manufactory."

It is clear from the Explanation to entry 19 that there could be no other way or manner of "processing" besides what is stated as included in that expression. 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 every thing 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 extension, 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 Lord Watson in *Dilworth v. Commissioner of Stamps*,⁽¹⁾ which is usually referred to on the use of 'include' as a word of extension, is followed by these lines: "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 that case it may afford an (1899)A.C. 105--106 exhaustive explanation of the meaning which, for the purposes 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.

The appeal is allowed with costs against respondent no. 1, dated May 12, 1975 in so far as it applies to the Mangalore pattern roofing tiles is quashed. The members of the first appellant are permitted to withdraw any sum they had deposited in the Gujarat High Court pursuant to the order of this Court made on April 2, 1976.

M.R,

Appeal allowed.