

(1952) 09 MAD CK 0013

In the Madras High Court

Case No : Criminal Revision Case No's. 34 and 35 of 1952 and Criminal Revision Petition No's. 34 and 35 of 1952

In Re: E.P. Arumugham Pillai and Another

Date of Decision : 04-09-1952

Acts Referred:

Factories Act, 1948 — Section 2, 85

Citation : AIR 1953 Mad 154 : (1953) 2 LLJ 20 : (1952) 65 LW 1111 : (1952) 2 MLJ 730

Hon'ble Judges : Ramaswami, J

Bench : Single Bench

Advocate : Public Prosecutor, S. Ramachandra Aiyar, for the Appellant;

Final Decision : Dismissed

Judgement

Ramaswami, J.—These are criminal revision cases which have been filed against the convictions and sentences of the Additional First Class

Magistrate, Tiruchirapalli, in S. T. Nos. 1138 and 1141 of 1951 respectively.

2. The facts are: The petitioners before us who were respectively accused in the lower court were running cigar factories in Tiruchirapalli town.

There is no dispute that each of these businesses is employing only less than 20 workers and that the manufacturing process is being carried on

without the aid of Electric power. P. W. 1, the Assistant Inspector of Labour, First Circle, Tiruchirapalli, visited these places and noted certain

contravention of the provisions of the Factories Act which need not detain us here. These petitioners Arumugham Pillai and Sundaram Filial were

prosecuted for infraction of the provisions of the Factories Act. Each of them was fined Rs. 10 or in default to simple imprisonment for ten days.

3. The point taken is that these business premises are not factories within the meaning of the Indian Factories Act and that the lower court should

have held that the G. O. No. 2210 (Development Department) dated 22-4-1948 is illegal and ultra vires.

4. Section 2(m) Factories Act, LXIII of 1948, defines a factory as any premises including the precincts thereof wherein 20 or more workers are

working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on without the

aid of power, or is ordinarily so carried on. But notwithstanding this definition power is given u/s 85(i) to the State Governments by notification in

the Official Gazette to declare that all or any of the provisions of the Act shall apply to any place wherein manufacturing process is carried on

notwithstanding that the number of persons employed is less than 20, if working without the aid of power. In pursuance of this, G. O. No. 2210

(Development Department) dated 22-4-1948 has been issued in the following terms :

In exercise of the powers conferred by Section 85(1) of the Factories Act, 1948 (Central Act LXIII of 1948) His Excellency the Governor of

Madras, declares that all the provisions of the said Act shall apply to any place wherein a manufacturing process is carried on without the aid of

power or is so ordinarily carried on and ten or more but less than 20 persons are employed.

5. There can be no doubt that this G. O. is illegal and ultra vires and beyond the powers conferred u/s 85, Factories Act. The State Government

would have been within its powers if they notified particular named places as factories. But instead of doing so this G. O. makes every place from

Ganjam to Rameswaram generally as a factory provided there are more than 10 and less than 20 people employed and engaged in the

manufacturing process without the aid of power. This practically renders nugatory the definition of a factory in Section 2(m) of the Act. The object

of Section 2(m) in restricting the term "factory" to places which employ 20 or more persons engaging in a manufacturing process without the aid of

power, is that small undertakings most often practically family businesses, should not be subjected to the rigorous restrictions imposed by the

Factories Act and that in fact such business would not be requiring the rigorous restrictions under the Factories Act. The Central Legislature has at

the same time contemplated that in particular places and in certain types of businesses run with less than 20 but more than ten persons without the

aid of power conditions may exist calling for the application of the salutary provisions of the Factories Act in ensuring the welfare of the workers.

The Central Legislature has also certainly contemplated that the provisions of the Factories Act might get defeated by scrupulously keeping the

number of workers down to 19. That is why power has been given to the State Governments to prevent the abuse of the limitations imposed in

Section 2(m). This special power conferred on the State Government cannot be exercised in this manner and used as if it were a blank cheque and

issue a G. O. in the aforesaid terms. One instance how this power should be used by the State Government is to be found in Section 3. Section 3

for instance lays down that ""in this Act references to time of day are references to Indian Standard time."" But they recognising that the Indian

Standard Time might not be observed all over India and that local conditions would require modifications, a proviso has been inserted that for any

area in which Indian standard time (?) is not ordinarily observed the Provincial Government may make rules specifying the area, defining the local

meantime observed therein, and permitting such time to be observed in all or any of the factories situated in the area. In a reported Scotch decision

-- " Macbeth v. Ashely", Vol. II, 1870-5 (33-39 Vict) Scotch Appeal cases, 35 2, the term ""any particular locality"" was construed as follows :

Eleven O'clock at night is the hour appointed for closing public houses in Scotland (under 25 and 26 Vict. Ch. 35) although in special cases and

for well considered reasons a deviation is allowed with reference to any particular locality really requiring it. An order by the Magistrate of

Rothsay for closing at ten, instead of eleven, though limited by its words to a "particular locality" embraced every public house in the burgh. Held,

by the House of Lords, agreeing with the court below, that the Magistrate's order was ultra vires.

In these circumstances the lower court ought to have held that G. O. No. 2210 was illegal and ultra vires and erred in holding that the business

premises of the accused was a factory and that there was any contravention of the Indian Factories Act.

6. This does not mean that we are leaving the State without any remedy in regard to bringing these businesses within the meaning of the Factories

Act. All that the State has got to do is to make use of the provisions of Section 85 of the Act in special cases and for well considered reasons, and

notify the particular places as factories.

7. These revision cases are allowed and the convictions and sentences are set aside. The fine amounts, if collected, will be refunded. (The rest of the order is not material for the purposes of this report.)