
(1952) 08 MAD CK 0020

In the Madras High Court

Case No : Criminal Appeal No. 252 of 1951

In Re: K.V.V. Sarma, Manager, Gemini Studios, Madras

Date of Decision : 18-08-1952

Acts Referred:

Cinematograph Act, 1952 — Section 10, 2
Factories Act, 1948 — Section 2, 2(1)
Payment of Wages Act, 1936 — Section 2
Workmens Compensation Act, 1923 — Section 2(1)

Citation : AIR 1953 Mad 269 : (1953) ILR (Mad) 775 : (1953) 2 LLJ 29 : (1952) 65 LW 1198 : (1952) 2 MLJ 917

Hon'ble Judges : Govinda Menon, J; Basheer Ahmed Sayeed, J

Bench : Division Bench

Advocate : V.C. Gopalaratnam and B.T. Sundararajan, for the Appellant; State Prosecutor, for the Respondent

Judgement

Govinda Menon, J.—This is an appeal against the conviction of the manager of the Gemini Studios. Madras, by the Chief Presidency

Magistrate, for having contravened the provisions of the Factories Act and having thereby committed an offence u/s 92 of the said Act.

2. The appellant has been found guilty of the following three offences: (1) u/s 61 and Section 108(2) read with Rule 79 for having failed to specify,

or enter, in the notice of periods of work exhibited at the main entrance of the studio, the working hours of the workers engaged in the

departments, of directors and artists, cameramen and sound engineers, makeup artists, electricians, editors, laboratorians and still photographers

and their assistants; (2) u/s 62 read with Rule 80 for having failed to enter the particulars of all the workers engaged in the said department in Form

No. 12 register; and (3) u/s 20 read with Rule 51 for having failed to provide spittoons in the factory as per the type prescribed under Rule 51.

3. The main question that has been argued is whether the studio in which the films are produced is a "factory" within the meaning of the term in the

Factories Act and whether the persons employed there are "workers" as defined in the Act. The Factories Act (63 of 1948) is the Act in force

which is said to have been contravened; but the studio in question was in existence before this Act was passed and had been registered when the

earlier Act 25 of 1934 which was replaced by Act 63 of 1948 was in vogue. The appellant contends that except for the three departments, viz.,

those connected with carpenters, moulders and tinkers, the rest of the portions of the studio cannot be called a "factory" and that these three

departments are housed in a separate building where all the requirements of the Factories Act have already been attended to. The learned Chief

Presidency Magistrate did not accept the contentions put forward on behalf of the appellant, but agreeing with the prosecution, convicted the

appellant and sentenced him as stated above.

4. Exhibit P.1 is the notice of occupation and notice of work periods relating to this factory given by the appellant on the 7th June 1949 under the

provisions of the Act whereunder the appellant styles himself as the manager of this factory. It is evidently a notice sent to the Chief Inspector of

Factories u/s 7(1) of Act 63 of 1948 which corresponds to Section 9(1) of the Act of 1934. Ex. P.2 in Form No. 11 prescribed under Rule 79 is

the notice of the periods of work for the adult workers. Reading Exs. P.1 and P.2 together, it is clear that the appellant has restricted those

portions of the studio wherein carpentry, moulding, tinkering, painting etc., are done in connection with the erection and dismantling of sets as a

factory and that the other portions do not come within the provisions of the Act. It is not clear from the evidence that the authorities have ever

questioned the correctness of the two notices, Ex. P.1 being of 7th June 1949.

5. P.W. 1 inspected the Gemini Studio on 2-10-1950. According to him he found the defects mentioned above, which necessitated the filing of the

charge-sheet. The evidence before the lower court lay in a short compass, one witness being examined for the prosecution and one for the

defence. In addition to the notice; of occupation, Ex. P.1, and the Form No. 2 prescribed under Rule 79, Ex. P.2. relating to notice of periods of

work for adult workers, we have Ex. P.3, a notice by the Inspector of Factories,

Second Circle, asking the appellant to show cause why

prosecution should not be launched against him for contravening the provisions of the Factories Act and the rules. Ex. P.4 is the reply sent by the

appellant to Ex. P.3 and Ex. P.5 is the factory inspection report by the Inspector of Factories. Ex. P.6 is the sanction to prosecute the manager

and Ex. P.7 is the notice dated 10-10-1950 issued by the Inspector of Factories.

6. The question that has been elaborately argued at the Bar is whether the departments other than those admitted by the appellant as coming within

the provisions of the Factories Act, are also of the same nature as carpentry, moulding and tinkering, so as to attract the operation of the Act.

According to D.W. 1, whose evidence we have no reason to reject and which we accept, there are a number of departments such as creative,

administrative, technical and directory. (1) The creative department comprises . of story and dialogue writers, song composers and music

composers and musicians; (2) the administrative department consists of the proprietor, secretaries, chief; executive officer, accountants and

programme makers; (3) the technical department consists of cameramen, sound engineers, make-up artists, electricians, editor, laboratorians and

still-photographers; (4) the directorial department consists of picture directors and art directors. His evidence is also to the effect that for the

production of each picture, there should be actors and actresses called artists, some being, permanent and others part-time and temporary. The

gist of the evidence of D.W. 1 is that excepting the labour department consisting of carpenters, tinkers and moulders for which department a labour

officer is in charge and for which a licence had already been taken under the Factories Act, the other departments engaged in producing films in the

Gemini Studio are under no obligation to observe the Factories Act and the rules thereunder.

7. Though there is no evidence let in as regards the production of the films for exhibition, we can take judicial notice of the fact that the completed

production of a film is a highly technical and scientific process which requires the services of persons who are experts in that line. Raw films which

consist of nothing but celluloid sheets are put into the camera and on them are imprinted the actions of the artists. This is done by means of high-

powered electric lights and these films are also made to absorb the sounds and

dialogues by means of the sound engineering process. There are also other processes such as the cutting of the films and editing them before they are made fit for being screened. There is no dispute whatever as to how the above processes are being conducted. But the divergence between the parties is as to whether the action of converting a raw film into a finished product by means of the various scientific and physical processes will come within the meaning of the provisions in the Factories Act.

According to P.W. 1 all these departments are factories and that persons working in those departments are workers. He deposed that in the

laboratory he found persons engaged in developing and printing films with the aid of electric power; in the wardrobe section he found men engaged

in making dresses with the aid of sewing machines; in the property room there were persons engaged in keeping and distributing properties to the

various departments. In the editing department, films were being tested through "Moviala" editing machines; on the shooting floors persons were

engaged in arranging furniture, showing flood-lights, moving cameras and other machines. In the programme department, persons were engaged in

preparing call sheets. In the reception department, men were receiving people and directing them to various other departments. In the

administrative department were persons engaged in maintaining the accounts and other registers relating to the production of cinema films. In the

publicity department workers were found preparing slides and posters for advertisement. The watch and ward department employed men who

watched and cleaned the premises and maintained the garden. In this Court the appellant filed a list of the names of the persons engaged, their

designation, their salary per mensem and other details relating to each of the departments and though these details were not available to the lower

Court, no objection has been taken as regards the correctness of the details contained in this statement. We shall therefore proceed on the basis

that there is no dispute with regard to the nature of the work done or the number of persons employed and other matters.

8. As against this, it is urged on behalf of the appellant that the fundamental and all important business in a film studio is the creation of

entertainment for the public who pay for it & that movies are essentially entertainment though they may be called media of expression. It is,

therefore, urged that in order to bring the work of a cinema studio into the category of a "factory" it will be essential to bring entertainment as an

article or a substance. That movies are generally media of expression cannot be disputed and therefore what is finally distributed to the various

picture houses for exhibition is not what existed at the initial stage, but it is the story, the plot or the idea that are worked up and knit into a

continuous version that constitutes the entertainment that is catered to the public. A correct decision on this topic depends entirely on the proper

interpretation to be put upon the sections of the Factories Act and the rules made thereunder. Section 2 Clause (m) of the Act defines "factory" as

under:

"Factory" means any premises including the precincts thereof--

(i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a

manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

(ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve 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 does not include a mine subject to the

operation of the Indian Mines Act, 1923 (4 of 1923), or a railway running shed.

Worker" is denned in Section 2 Clause (1) as follows:

"Worker" means a person employed, directly or through any agency, whether for wages or not, in any manufacturing process, or in cleaning any

part of the machinery or premises used for a manufacturing process, or in any other kind of work incidental to, or connected with, the

manufacturing process, or the subject of the manufacturing process;

Manufacturing process" is defined in Section 2 Clause (k) as follows.

"Manufacturing process" means any process for--

(i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting

any article or substance with a view to its use, sale, transport, delivery or disposal or

(ii) pumping oil, water or sewage, or

(iii) generating, transforming or transmitting power; or

(iv) printing by letterpress, lithography, photogravure or other similar work or bookbinding, which is carried on by way of trade or for purposes of

gain, or incidentally to another business so carried on; or

(v) constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels;

9. It is not disputed that in the premises in question there are ten or more individuals working or were working on any day in the preceding twelve

months, but what is disputed is that the persons are not workers and that what is being carried on is not manufacturing process. The learned State

Prosecutor has admitted that Sub-clauses (ii), (iii) and (iv) of Section 2 Clause (k) will not be applicable to the facts of the present case; but what

he contends is that the business that is being carried on in the Gemini Studio is a ""manufacturing process"" within the meaning of the term in the first

clause and that the persons employed there directly or indirectly are employed for ""wages"" in manufacturing process and such being the case, the

premises and precincts would be a factory. The necessary implication of this argument is that all the three elements mentioned above are to be

found in this factory. First of all we have to see whether what is being carried on is a manufacturing process. Secondly, if it is a manufacturing

process, whether the persons engaged in it are those who receive wages in such manufacturing process. And thirdly whether the premises and

precincts where these things are carried on is a factory. Before we proceed to discuss the correct interpretation of these sections, it is useful to set

out the provisions of the Indian Factories Act, 1934. as well as those of the English Factories Act of 1937. Section 2, Clause (g), Factories Act,

1934, defines ""manufacturing process"" as follows:

"Manufacturing process" means any process-

(i) for making, altering, repairing, ornamenting, finishing, or packing, or otherwise treating any article or substance with a view to its use, sale,

transport, delivery or disposal, or

(ii) for pumping oil, water or sewage, or (iii) for generating, transforming or transmitting power.

Clause (h) of Section 2 defines ""worker"" in the following terms:

"Worker" means a person employed, whether for wages, or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for a manufacturing process, or in any other kind of work whatsoever incidental to, or connected with the manufacturing process or connected with the subject of the manufacturing process, but does not include any person solely employed in a clerical capacity in any room or place where no manufacturing process is being carried on;

Factory"" is defined in Clause (j) as follows:

"Factory" means any premises including the precincts thereof whereon twenty or more workers are working, or were working on any day of the preceding twelve months and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, but does not include a mine subject to the operation of the Indian Mines Act, 1923.

The English Factories Act, 1937, in Section 151(1) gives an interpretation of the term ""factory"" in the following terms:

Subject to the provisions of this section, the expression "factory" means any premises in which, or within the close or curtilage or precincts of which, persons are employed in manual labour in any process for or incidental to any of the following purposes, namely:

And (whether or not they are factories by reason of the foregoing definition) the expression "factory" also includes the following premises in which

persons are employed in manual labour, that is to say:

(xi) any premises in which the production of cinematograph films is carried on by way of trade or for purposes of gain, so, however, that the

Employment at any such premises of theatrical performers within the meaning of the Theatrical Employers Registration Act, 1925, and of

attendants on such theatrical performers, shall not be deemed to be employment in a factory;

Section 152 of the Act which deals with general interpretation does not contain any definition of the term ""wages"" or of ""worker"". But it is clear that

Clause (xi) of Section 151(1) as extracted above brings a cinema studio within the meaning of the term ""factory"".

10. A comparison of the English statute with the Indian Statute shows that in England the expression ""factory"" can be applied only to a premises in

which, or within the close curtilage or precincts of which, persons are employed in manual labour in any process for, or incidental to, what have been described later on in that section. A general definition of the word "factory" is formulated in the earlier part of the section, and "ex abundanti cautela" various institutions are brought within the definition specifically, whether they can, or cannot be brought within the general terms of the definition. In other words according to the English statute if an establishment satisfies the general words of the definition and if manual labour is employed in such an establishment it becomes a factory. But even if such an establishment cannot be brought within the wide terms of that definition, still as specifically bringing it within the definition are the various defined institutions. The Indian Act of 1934 in defining "manufacturing process" is not as wide as the definition in the present Act. The Select Committee which considered the Bill before it was passed into an Act stated that the definition of "manufacturing process" has been made much wider and more comprehensive than in the 1934 Act. Section 2(k), Sub-clauses (iv) and (v) were added by the Select Committee and it is stated that this addition is intended to amplify the definition so as to include printing and ship-building. The Indian Act did not borrow from the English Act the various amplifications mentioned as items (i) to (x) and (xii) and (xiii) of Section 151(1) of the English Act.

11. For the State it is conceded that in the definition of "manufacturing process" Sub-clauses (ii), (iii), (iv) and (v) of Clause (k) of Section 2 cannot be made applicable to the Studio in question. What is urged is that in converting a raw film into a finished product on which, by the use of power lights, photographic emblems are printed and sounds absorbed, the process involved is "adapting any article or substances with a view to its use".

The other expressions such as making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up and demolition, do not apply to the process that is adapted here. But what is stated is that the raw film which is an article is treated or adapted with a view to its use, the use being the exhibition of the film for entertainment. Therefore the conversion of a raw film into a film fit for exhibition in a cinema is a manufacturing process.

12. The appellant's contention is that no manufacture takes place at all but that

the production of a finalised talkie film is mostly intangible material constituted by individual genius incapable of regimentation or standardisation. It cannot be said that any artificial or mechanical process is primarily the basis which makes the raw film into a finished product. An illustration is put forward on behalf of the defence that the conversion of a raw film into a finished product is exactly like the writing of a book of poems by a poet wherein the paper and the card board on which they are printed from the raw material for an elaborate production which is finally given to the public. It is urged that in the writing of a book there is a conversion of a raw material, viz., the paper, into a finished product, viz., the book, where the ideas are formulated and exhibited. In short the argument is that it is misleading and incorrect to bring in the idea that a raw film upon which songs and photos are recorded and absorbed constitutes a raw material which is converted into a manufactured article.

13. The difficulty in accepting this argument is on account of the very wide words used in the statute in defining ""manufacturing process"". None can dispute that the raw film is an article or a substance and when by the process of treating or adapting, after the sounds are absorbed and the photos imprinted, it is rendered fit to be screened in a cinema theatre, then such a change would come within the meaning of the term ""treating or adapting any article or substance with a view to its use"". When a negative is cut to match the positive, and is kept in reserve it is certainly adapting for use. In Section 2(g), Factories Act, 1934, the word ""adapting"" does not find a place. But the definition, contained some of the words used in the present definition. The words such as oiling, washing, cleaning, breaking up, demolishing, were also absent in the earlier section. But for purposes of the present case, the insertion of those words in the new section is not of any consequence. It is the case for the State that the introduction of the words ""treating or adapting any article or substance with a view to its use"", brings the conversion of raw films into a finished product within the meaning of this definition. Under the English Act it is only if manual labour is employed in any process for, or incidental to, the various matters described in the section that the premises would become a factory.

14. It is strongly urged by Mr. Gopalaratnam for the appellant that film production seeks to purvey an intangible entertainment and not the creation

of some commodity which is marketable and while in ordinary manufacturing process it is possible to standardise "the product by particular designs

or formula whereby success is ensured, film production is incapable of such standardisation. Whatever might be the nature, or the popular

appreciation of the work done, in production of cinema films, and the mental exhilaration or outlook which it gives to the public, one thing cannot

be gainsaid, that the conversion of a raw film into a finished product comes within the definition of manufacturing process in the section. It is

unnecessary for us to expatiate in any detail as to how the process is being worked out for on that part of the case there is no dispute between the

parties.

15. It is next contended that because in the Indian Act, Sub-clauses (i) and (vii) of Section 151 (1) of the English Act relating to ship-building and

printing alone are adopted and Sub-clause (xi) which deals with cinematograph films is left out of account, the intention of the framers of the Statute

who, when drafting the Factories Act, had the English statute before them, was to exclude from the definition of ""manufacturing process"" such

productions as film productions. It is also said that since the Select Committee on the Act has definitely stated that ""manufacturing process"" has

been made much wider and more comprehensive by the addition of these two clauses by implication, the intendment of the statute to be gathered

by such expulsion is that film production cannot be manufacturing process within the definition. It is futile to make comparisons between the English

Act and ours; for one thing the idea underlying the Factories Act in England is the regulation of the employment of manual labour. There is no such

restriction so far as one can see in the Factories Act prevalent in this country. The salient fact that with the English statute before them the framers

of the Indian Act did not restrict the operation of the Act to manual labour, cannot be lost sight of. Conditions in England with regard to the control

of intellectual labour are not the same as in our country. In India the intelligentsia require protection from the exploitation of capitalists probably in a

greater measure than in England. ""Educated unemployed"" cannot be said to be a feature of English life today. But one need not devote much

attention or research to see that in our country with the advancement of higher university education the problem of finding employment to those

who have qualified themselves is becoming an acute one. In such circumstances, it is not surprising that the sponsors of the legislation in India

thought it necessary to include intellectual as well as aesthetic and artistic portions of labour within the purview of the Factories Act.

16. Though every alteration of an article does not confer on it a new character as a manufactured article, still in the present case when a raw film is

moulded and transformed into a finished product, a new and different article emerges out of it which has a positive and specific use in its new state.

In defining the word "manufacture", Abbott C.J. in -- "The King v. Wheeler", (1819) 2 B. & Ald. 345 states that something of a corporeal and

substantial nature, something that can be made by man from matters subjected to his art and skill, or at the least some new mode of employing

practically his art and skill are required to satisfy the word "manufacture". Applying that definition to the present case, we see that by the art and

skill of the various persons as well as by the use of the camera & the sound recording equipment the raw film is transformed into a new substance.

It does not require much knowledge of science to understand that by combining various elements a thoroughly different substance from the

elements can be manufactured. Chemists are able to manufacture common salt with two such dissimilar elements like sodium and chlorine. The

question in such cases will be has there been a transformation"? We have no doubt whatever that the conversion of a raw film into a finished

product is a transformation which would make it a manufacturing process within the meaning of the term.

17. If in the Gemini Studio "manufacturing process" can be said to be going on, still strong objection is taken to the view that it is a factory because

the persons employed in that occupation do not receive "wages" and are therefore not "workers" as defined in Sub-clause (1). A "worker" should

be a person employed directly or through any agency whether for wages or not in the manufacturing process, the other portions of the definition

being immaterial for the purpose of the present case. It cannot be disputed that the antithesis "or not" is not intended to bring within the ambit of the

definition persons who receive emoluments which cannot be termed as wages. The expression "whether for wages or not" means whether the

person receives as remuneration for his services wages, or whether such a person is an apprentice learning work or is an honorary worker. It is not

the case of the State that if a person receives something which is not wages when employed directly or through any agency in any manufacturing process, he can be called a worker. So we proceed on the basis that for the purposes of the present case the phrase "or not" should not cause any difficulty. We have already rejected the contention that the Act is restricted to the employment of manual labour. Therefore even if intellectual or artistic labour is employed, if what is received as remuneration for such labour by the individual concerned can be termed wages in the manufacturing process, then the person so employed is a worker. For this purpose we have to appreciate in the present setting the meaning of the term "wages". That in statutory enactments, the two terms "salary" and "wages" are often employed to describe the same idea or at least different facets of one and the same idea is pressed on us as a consideration for giving a very extended and wide import to the term "wages". What are the legal contents of this word and how it is used in the section have to be correctly determined. In Clauses (h) and (i) of the proviso to Section 60, Sub-section (1), Civil P. C., we have the provision that the wages of labourers and domestic servants, whether payable in money or in kind, and salary to the extent of the first hundred rupees and one half the remainder of such salary, shall not be liable to attachment or sale. These clauses were amended and substituted for the original clause by the CPC (Amendment) Act V of 1943. Therefore, for the purpose of attachment of the emoluments of a person employed, the Code makes a distinction between wages and salary. At page 245 of Mulla's Civil Procedure Code, there is a definition of the term "wages of labourers" in the following terms:

Wages of labourers: A "labourer" is a person who earns his daily bread by personal manual labour, or in occupations which require little or no art, skill or previous education. Thus, persons who agree to spin cotton and to receive a certain amount of money for a certain quantity of cotton spun by them are labourers and their wages cannot be attached. The old provision only applied to the wages of labourers and domestic servants and there was no provision to exempt the salary of a person in private employment. From the collocation of words used in the clause it was arguable that the word "salary" in the clause was intended to mean salary of labourers and domestic servants only. It has, however, been held that though

the latter part of the clause should have been the subject of a separate clause, yet on a consideration of the entire section, there is no doubt that the

clause protects from attachment salary of all persons in receipt of it other than public officers and servants of a railway company or local authority

so far as the protection goes.

In Stroud's Judicial Dictionary, Vol. III, at page 2205 the word ""wages"" is defined in the following manner:

Though this word might be said to include payment for any services yet in general the word ""salary"" is used for payment for services of a higher

class and wages is confined to the earnings of labourers and artisans.

In Wharton's Law Lexicon, at page 1052, the definition contemplates:

Compensation agreed upon by a master to be paid to a servant, or any other person hired to do work or business for him.

Stroud's Judicial Dictionary gives the meaning of the word "wages" in the various English Statutes as well as in certain enactments in the United

States. In the United States the word "wages" in some of the enactments does not imply that the compensation is to be determined solely upon the

basis of time spent in service. It may be determined by the work done. But the English statutes make a distinction between "wages" and "salary".

18. In -- "Gordon v. Jennings", (1882) 51 LJ QB 417, Grove J. attempted to define and make a distinction between the words "wages" and

"salary". The learned Judge was of opinion that regard must be had to the object and intention of the Act, and to the connotation of the words

used. In the context of the particular statute he was considering, the use of the word, "wages" is an indication of the object of the Act, for

according to the learned Judge though it might be said to include payment for any services, in general the word ""salary"" is used for payment of

services of a higher class, and ""wages"" is confined to the earnings of labourers and artisans. We find a report of the same case in -- "Gordon v.

Jennings", (1882) 9 QBD 45, where the judgment as reported differs in material particulars from that reported in --"Gordon v. Jennings", (1882)

51 L J Q B 417. of the former report, Grove J. makes the following observation:

The intention of the Act is to abolish the attachment of "wages". Now it may be that the term "wages" according to the etymological meaning of

the word, may be correctly applied to any remuneration for services, but it

seems to me that the popular signification must be looked to. The term "wages" is not applied to the remuneration of a high or important officer of the State or a company, for instance, but to that of domestic servants, labourers, and persons of a similar description.

19. Parke B in -- "Riley v. Warden", (1849) 18 L. J: Ex. 120, uses the term "compensation wages". This decision is followed by Cockburn C. J.

in -- Ingram v. Barnes". (1857) 26 LJQB 319. Observations of a similar kind can be found in -- "Sharman v. Sanders". (1853) 13 C B 166. In --

"Ingram v. Barnes". (1857) 26 LJQB 319, Gresswell J. speaks of personal services being paid in wages.

20. "Wages" is defined in the English Statute Truck Amendment Act, 1887, 50 and 51 Vict. Ch. XLVI. In Halsbury's Laws of England, 2nd

Edn., Vol. 14, at page 650 we find the following definition for "wages":

Any money or other thing had or contracted to be paid, delivered, or given as recompense, reward, or remuneration for any labour done, or to be

done, whether within a certain time or to a certain amount, or for a time or an amount uncertain, is deemed to be wages for such labour.

In the Concise Oxford Dictionary "salary" is defined as a fixed periodical payment made to a person doing other than manual or mechanical work.

The terms "workman" and "wages" were also the subject of consideration in a number of English cases: Vide -- "Simpson v. Ebbw Vale Steel

Iron and Coal Co.", (1905) 1 K B 453, -- "Bagnall v. Levinstein Ltd.", (1907) 1 KB 531 and -- "Nash v. Hollinshead", (1901) 1 KB 700,

21. In -- "Simpson v. Ebbw Vale Steel Iron & Coal Co.", (1905) 1 K B 453, the Court of Appeal held that the certificated manager of a coal

mine, who is paid a yearly salary, and who, although his duties require his presence in the mine, is not required to engage in manual labour, is not a

"workman" within the meaning of the Workmen's Compensation Act, 1897. There are various passages in the judgments of Collins M. R. as well

as in the judgment of the other Lord Justices which deal with the meaning of the term "workman" and the definition to be put upon "wages". At

page 459 Collins M. R. observes as follows:

In my opinion it should be so drawn as to embrace the classes whose remuneration can properly be described as wages. The popular meaning

must be given to a definition where we are confronted with such an expression

as "wages", and we must interpret the Act as applying to persons whom "ex hypothesi" the Legislature regards as not being in a position to protect themselves. None of these considerations apply to the case of a person holding the position of a certified manager of a colliery, who comes within a very different category from that of an ordinary workman.

"Bagnall v. Levinstein Ltd.", (1907) 1 K B 531 which follows -- "Simpson v. Ebbw Vale Steel Iron & Coal Co Ltd.", (1905) 1 K B 453 is instructive in this way; in that even if a person who is employed in a dye and chemical company under a written agreement for five years service and upon terms with regard to salary, commission on profits of inventions or improvements, had to do manual labour, still it cannot be said that he can be called a "workman" within the meaning of the Workmen's Compensation Act. The criterion applied by the majority of the Court of Appeal in that case was whether the remuneration was a fixed one and a salary was paid. The agreement provided that the person employed was to receive a salary payable monthly at the rate of ₹ 200 a year in the first year, increasing by ₹ 15 yearly till the fifth year. In addition to that he was to be paid a commission on the net profits of inventions, improvements and discoveries etc. Since his duties included manual labour it was contended that he was a "workman" though he was receiving a salary. The majority of the Court of Appeal, following -- "Simpson v. Ebbw Vale Steel Iron & Coal Co.", (1905) 1 KB 453 repelled that argument.

22. To make out the distinction between wages and salary a few Indian decisions have been referred to by the learned counsel for the appellant.

"K.U. Kulkarni v. Ganpati Hiraji". ILR (1942) Bom 287 and -- Manilal Bhaichand Vs. Mohanlal Maganlal, , were cited for showing that where

the compensation is for manual or physical labour, the term used is wages & not "salary" & that in ordinary parlance the word "wages" cannot be

used to apply to persons other than manual labourers. In -- "Manilal Bhaichand v. Mohanlal Maganlal", AIR 1946 Bom 102 it was even

suggested that a clerk doing manual labour is not a "labourer" receiving wages and what he gets is "salary". The substance of the decision in --

Raghunandan Sahai Vs. Jaigobind Sahay and Others, is to the same effect.

23. Mr. Gopalaratnam then contends that the preamble to the Factories Act should be looked into for the purpose of finding out the intention with

which the enactment was brought into being and that the Factories Act of 1948 was an Act to consolidate and amend the law regulating labour in

factories. The preamble states that whereas it is expedient to consolidate and amend the law regulating labour in factories, it is hereby enacted as

follows: For this purpose he invites the attention of the Court to certain excerpts in -- "London County Council v. Bermondsey Bioscope Co. Ltd."

(1911) 1 KB 445. However useful it might be to consider an Act with the aid of its preamble and though such a practice was prevalent in England

for some time, the present tendency is not to lay much stress on the preamble unless it is so difficult to determine the scope of the statute by

understanding its provisions. We have already expressed our opinion that the Act is not confined to manual labour alone and that its operation is

extended to persons whose intellect is utilised and compensation paid for it by the Gemini Studio. It does not therefore seem very helpful to read

into the preamble the intention of the framers.

24. It is very strongly pressed before us that the artists employed in Studio, some of whom receive a monthly remuneration of more than Rs. 3000

can under no stretch of imagination be termed as persons who receive wages. They belong to a category of people whose natural talents, aptitude

and expression, have been so trained as to bring out in full blossom the results of a combination of training and equipment. Such people cannot be

considered as ""workers"" who receive wages, is the argument of learned counsel. It is further contended that the directorial department consisting of

individuals who regulate the production and whose work is not in any way connected with physical exertion should not be considered a person

receiving wages. The same point of view has been put forward in favour of those employed in the departments of art, make-up, music and dance.

It cannot be disputed that those engaged in the camera, sound and electricity departments are persons trained in the field of science and the

question has to be considered as to whether their emoluments can be treated as wages. Departments like laboratory and wardrobe also can be

said to come under the same conditions.

25. The strenuous argument very forcibly put forward on behalf of the appellant is that it will be doing violence to the language to describe the

compensation for work done by the persons engaged in aforesaid departments as

""wages"" in any sense of the term. One has to visualise an overall and general picture of the whole situation in viewing whether the Factories Act was intended to control the nature of work of such persons. For this purpose a rather extended and wide, review of the provisions of the Factories Act and the scheme of the same has been attempted on behalf of the appellant. Looking at the scheme of the Act it is urged that there could be no intention to bring within its purview employees of the category described above. We are told that even a cursory glance of the various parts of the Act would be sufficient to confirm the above view. Chapter III of the Act deals with health, and among the sections are those devoted to cleanliness, disposal of wastes and effluents, ventilation, dust and fume..... artificial humidification, overcrowding, lighting, drinking water, laterines and urinals. Chapter IV deals with "the safety of the machines and employees in the factory. Chapter V deals with labour welfare. Chapter VI deals with working hours of adults and Chapter VII deals with the employment of young persons in the factory and Section 67, the first section in that chapter contains a strict and absolute prohibition that no child who has not completed his fourteenth year shall be required or allowed to work in any factory. Chapter VIII concerns itself with leave with wages and Sections 78 and 79 specifically relate to annual leave with wages and wages during the leave period. Section 79, Sub-section (1) states that every worker who has completed a period of twelve months" continuous service in a factory shall be allowed during the subsequent period of twelve months" leave with wages for a number of days calculated at the rate of..... so that wages have to be calculated during leave according to the number of days. Section 80 lays down that the worker shall be paid at a rate equal to the daily average of his total full time earnings exclusive of any overtime earnings and bonus, but inclusive of dearness allowance. This section contemplates ""daily wages"". The learned counsel for the appellant contends that it is ludicrous and highly fanciful if not thoroughly harmful to apply these provisions of the Act to the intellectual labour employed in the Gemini Studio, and such being the case it could not have been the intention of the framers of the Act to bring such an institution within the ambit of the Factories Act. It is rather further argued that if the application of the Act is tested in the light of the considerations to be

adumbrated below, then it would mean that insurmountable difficulties & absurdities would ensue by the acceptance of the construction put

forward by the authorities. The following are stated as some of them.

26. According to the argument for the State the managing director of this Studio who controls the working and who feels the throb and the pulse of

the whole institution would be a worker, and the manager, the person who is now prosecuted, would also be a worker.

27. If we are to apply Section 66 of the Act, as is intended to be applied, then no woman can be employed in the shooting of films for acting after

7 p.m. and before 6 a.m. because Section 66(1) Clause (b) says that no woman shall be employed in any factory, except between the hours of 6

a.m. and 7 p.m. provided that the Provincial Government may, by notification in the official Gazette in respect of any class or description of

factories, vary the limits laid down in Clause (b), but so that no such variation shall authorise the employment of any woman between the hours of

10 p.m. and 5 a.m. Such a prohibition would reduce the preparation of a film to a nullity.

28. Section 79 of the Act which allows annual leave with wages cannot apply to part time workers because they do not work every day or even

part of the day. What they turn out is spasmodic work under contracts by which they cannot be subject to regular hours. In the application of

Sections 67, 68 and 71 which relate to the prohibition about the employment of young persons, it is impossible to conform to the provisions of

those sections because it is well known that in many films dealing with stories from Hindu Puranas young children will have to act. It is emphatically

contended by Mr. Gopalaratnam, that if these sections are to be strictly complied with, a Shirley Temple could never act in a studio. Other

instances of the impossibility of applying the provisions of this Act are those contained in Section 60 which lays down that no adult worker shall be

required or allowed to work in any factory on any day on which he has already been working in any other factory, save in such circumstances as

may be prescribed. It is common knowledge that most of the well known actors and actresses have contracts with more than one production

studio and therefore one person has to work in different studios at various hours of the day. It is impossible for the management to have any

control over them. Lastly it is argued that the Factories Act and rules cannot regulate the work of people like poet, song composers, story writers

and others whose art is creative and who rely upon their genius produce works of art and it is urged that this consideration should weigh upon the

Court in finding out whether the Act can be applied. It may be that a song composer or a story writer or a poet may find an opportunity to express

his genius at odd hours of the day when he has to compose or put down in writing the results of sudden impulses and intentions that come upon

him. These persons cannot be regulated by the rules under the Factories Act.

29. The learned State Prosecutor contends that these difficulties are not insurmountable because under the rules framed under the Act it is

"possible to exempt such persons. He invites our attention to Rules 81, 82 and 84 framed under the Act. Rule 81 says that the persons mentioned

in the schedule thereto are deemed to hold positions of supervision or management and Rule 82 says that the persons mentioned thereunder are

deemed to hold confidential positions. The schedule gives the provisions of the Act from which such persons can be exempted. With regard to

cinema studios, the nature of the exempted work consists of erection or dismantling of "settings" or the make up of actors and actresses in cinema

studios and the extent of exemption relates to Sections 51, 54, 55, 56 and 61 of the Act. Because there are provisions regarding exemption it is

contended on behalf of the State that there is no insuperable difficulty in the application of the Act to Cinema studios. By G.O. No. 5072

(Development) dated 14-11-1951, certain cinema workers are exempted from the operation of Section 64(2)(b) and (c) and Section 64(3) such

as light boys, shifting furniture or set attendants, and clap boys.

30. In view of the provisions regarding the exemption we are asked to hold that there can be no difficulty in applying the Act.

31. The fact that exemption can be given to employees engaged in a "bona fide" executive, administrative or professional capacity is relied upon

for the contention that the Act is intended to apply to the Studio as such. We are not prepared to accede to the argument that because in certain

classes of cases it is possible under the provisions of the Act to grant exemption, such a state of circumstances would make the Act applicable to

persons to whom it would not be applicable if the Act is properly construed.

32. The learned State Prosecutor, by applying analogies, laid stress upon the meaning of the term ""wages"" occurring in certain similar statutes. In

the Payment of Wages Act, 4 of 1936, Section 2 Clause (vi) defines wages as follows:

"Wages" means all remuneration, capable of being expressed in terms of money, which would, if the terms of the contract of employment express

or implied, were fulfilled, be payable whether conditionally upon the regular attendance, good work or conduct or other behaviour of the person

employed, or otherwise, to a person employed in respect of his employment or of work done in such employment, and includes any bonus or other

additional remuneration of the nature aforesaid which would be so payable and any sum payable to such person by reason of the termination of his

employment, but does not include...

Various other provisions of the same statute were brought to our notice viz., Section 5, Sub-section (4) relating to the payment of wages on a

working day, and Section 6 to the effect that all wages, shall be paid in current coin or currency notes or in both. If anything at all can be gathered

from the preamble to this Act it is that this legislation is intended to regulate the payment of wages to certain classes of persons employed in

industry. One cannot by reference to this Act gather the impression that the term wages is intended to apply to persons who receive a fairly good

sum of money as monthly salary. It is noteworthy that Section 1 Sub-section (6) prohibits the application of the Act to wages payable in respect of

a wage-period, which, over such wage-period, average two hundred rupees a month or more. If the intention of the legislature had been that the

term ""wages"" can be applied to monthly salaries, in our opinion, there was no necessity for the enactment of this section. By restricting the

remuneration for a wage-period, to Rs. 200 and less, the section seems to suggest that the wage period is something which is less than a month.

Otherwise it could easily have said that the wages for a period of one month should not exceed Rs. 200. Moreover the Act is intended to apply to

persons to whom wages have to be paid in current coin or in currency notes or in both. It is admitted that in the case of most, if not all, of the highly

paid employees, the remuneration is paid in the form of cheques drawn on banks. To such persons if Section 6 is made applicable, then their

remuneration would not have been properly paid if the same is paid through cheques drawn on banks. We are inclined to think that on a

construction of the various provisions of the Payment of Wages Act, the underlying idea is that the term ""wages"" should be understood as

compensation paid for work done for a period less than a month. It may be either daily or weekly but where the payment is to be made monthly,

one finds it difficult to apply the provisions of the Payment of Wages Act to such state of circumstances. Moreover, Section 4, Sub-section (2)

says that no wage period shall exceed one month. That makes it very plain that the Act is not intended to apply to any kind of salaries payable

monthly. The other enactment on which reliance is placed is the Workmen's Compensation Act (8 of 1923) where the word ""wages"" has been

defined in Section 2(1), Clause (m) as follows:

"Wages" includes any privilege or benefit which is capable of being estimated in money, other than a travelling allowance or the value of any

travelling concession or a contribution paid by the employer of a workman towards any pension or provident fund or a sum paid to a workman to

cover any special expenses entailed on him by the nature of his employment.

Clause (n) defines ""workman"" in the following terms:

"workman" means any person (other than a person whose employment is of a casual nature and who is employed otherwise than for the purpose

of the employer's trade or business).

(i)

(ii) employed on monthly wages not exceeding four hundred rupees, in any such capacity as is specified in schedule II.

We do not think that the sections of this Act are in any way in "pari materia" or even analogous to the provisions of the Act we have to construe.

There are schedules to the Workmen's Compensation Act where a large number of persons are defined as workmen coming within the meaning of

Section 2(1) Clause (n) of the Act and the third paragraph of Schedule II is to some extent analogous to the definition ""manufacturing process"". No

useful guidance can be got by considering an analogous statute like the Workmen's Compensation Act determining what meaning should be given

to the term ""wages"" in the Factories Act. We do not feel satisfied that a reference to this Act would in any way help in the solution of the question

before us.

33. The learned State Prosecutor also referred to Section 2 Clause (h), Factories Act of 1934 where ""worker"" is defined and this clause excludes

from its scope any person solely employed in a clerical capacity in any room or place where no manufacturing process is being carried on. In this

connection a decision of the Calcutta High Court in -- Superintendent and Remembrancer of Legal Affairs Vs. H.E. Watson, was also brought to

our notice. At page 733 there are observations to the effect that the expression ""worker"" need not necessarily be restricted to manual labour. We

have on a construction of the present Act, already come to that conclusion. It seems to us that in finding out whether a person employed directly or

through any agency in a manufacturing process, is receiving wages, the question has to be determined with regard to the period for which the

amount is settled to be paid. We are definitely of opinion that if the remuneration is to be paid daily or weekly, it can be called wages. But where it

is monthly remuneration payable on the last day of the month or after that date and where the remuneration, considering the general standards of

payment, is fairly high, then it has to be understood as salary. We do not think that in order to bring the compensation within the term ""salary"" any

lower limit need be fixed. In the Payment of Wages Act the same is Rs. 200 and under the Workmen's Compensation Act it is Rs. 400 per month.

So far as the Factories Act is concerned there is no restriction at all. But we also feel that even if the compensation is paid at the end of the month

is less than Rs. 200 as laid down in Payment of Wages Act, it would be more appropriate to call it as wages. But where it is Rs. 200 or more the

same may be termed as salary"". There has been no evidence let in as to how many of the persons employed in directorial, technical and other

departments are receiving wages. If ten or more workers are receiving wages, then each of those departments would be a factory. But if there are

departments in which less than ten persons receive wages and the rest receive salary, as defined by us above, such departments would not be

factories within the meaning of the term. This question has to be gone into before the various departments can be held to employ workers as

defined in Section 2 Clause (1).

34. The next question is, what is meant by the expression ""premises"" including

""precincts"" in Clause (m). There is no difficulty in understanding the term ""precincts"" because it is usually understood as a space enclosed by walls. We are told that within the enclosed space of the Gemini Studio there are a number of buildings in which the various departments are housed. We have no doubt whatever that each of these buildings if they employ ten or more workers as defined in Section 2 Clause (1) will be a factory. Various decisions such as -- "Pragnarain v. The Crown", 8 Lah 666, -- "Emperor v. Ganpat", 32 Bom L R 329 and -- "Ramanthan v. Emperor", 50 Mad 834, were cited before us for the elucidation of the term, ""precincts"". We are not satisfied that these decisions help us in ascertaining whether the buildings in question are factories or not.

35. The further question has to be considered whether if any one of these departments is a factory as being situated within the precincts of the Gemini Studio, then it is legally possible to separate those departments from the others which cannot be styled as factories. The building where carpenters, moulders, and tinkers are carrying on their work is admittedly a factory and the rules and regulations of the Factories Act apply to that departments. Evidence is lacking as to whether the other departments can be so separated. It is permissible to separate the carpentry, moulding and tinkering departments which are really unnecessary for the production of films from the others. There is no evidence to show that the other departments are so intertwined as to be a composite one without being able to be separated. On that aspect of the case there does not seem to have been any evidence let in. In our opinion it is possible, even if some of those departments are factories, to separate those which are not factories from those which are factories. No attention seems to have been paid to this aspect of the case also.

36. In the view which we take that it is not specifically determined as to whether workers, as defined in the Act, of the requisite number have been employed in the various departments, it is difficult to sustain the conviction. We therefore set aside the convictions and sentences and direct a retrial of the case to find out whether the persons employed are workers or not. In respect of those departments where the provisions of the Factories Act have been held to be not applicable, there will be no retrial and the order of the lower court will stand.