
(1966) 09 KL CK 0019
In the High Court Of Kerala

Seshan (V.) (Manager, Umayal Weaving Establishment No. 2
Factories) APPELLANT

Vs

Inspector of Factories RESPONDENT

Date of Decision : 23-09-1966

Acts Referred:

Factories Act, 1948 — Section 2, 92

Citation : (1967) 2 LLJ 423

Hon'ble Judges : P. Govinda Menon, J

Bench : Single Bench

Judgement

P. Govinda Menon, J.—This revision petition is against the judgment of the Industrial Tribunal and Special First class Magistrate, Kozhikode, in Calendar Case No. 191 of 1963 convicting the petitioner who is the manager of the Umayal Weaving Establishment, Factory No. 2, Cannanore, for failure to submit the returns for the half-year ending 31 July 1963 as enjoined under Sub-rule (3) of Rule 127 of the Kerala Factories Rules, punishable u/s 92 of the Factories Act. It is admitted that the particular return was not sent. The case of the accused was that the Factories Act does not apply to his establishment and that no offence is committed. So the question that arises in the case is whether the Umayal Weaving Establishment No. 2 is a factory as envisaged under the Factories Act, 1948.

2. The complainant was examined as F.W. 1. In his evidence he has proved Ex. P. 1 the notice calling upon the accused to send the half-yearly return. As it was not sent, a show-cause notice Ex. P. 2 was sent. Exhibit P. 3 is the reply sent by the accused in No. 2 where the connexion with factory accused has stated that

by oversight the half-yearly returns in form 22 in respect of factories Nos. 1 and 2 have not been submitted. We regret the inconvenience caused to you.

and he had enclosed the half-yearly returns. Exhibit P. 4 is the return in form 22; in respect of factory No. 2. Exhibit P. 5 is the application for registration, and

grant or renewal of licence for the year 1963 In form 2 sent by the accused in connexion with factory No. 2. In his 342-statement, the accused did not put forward the plea that his establishment does not come within the term "factory" as envisaged in the Factories Act or rules. The accused, on the other hand, admitted that he has sent all the returns properly except the concerned one and stated that It was unfortunate that the returns due on 31 July 1963 could not be Bent at the proper time.

3. D.W. 1 Ia a clerk In the office of factory No. 1. When examined he stated that both factories Nos. 1 and 2 are having: one and the same office and that the office is situated in No. 1 establishment at Narayaua Park, Cannanore. No. 2 establishment is at Kakkat, Cannanore. In answer to a leading question by the defence counsel In examination-In-chief, the witness stated that there is no employer-employee relationship between the workers and the management and that the workers are a miscellaneous heterogeneous and irregular group of pieceworkers with no specific hours of work or control over the regularity of attendance or the nature or quantum of work to be done. When he was questioned why then licence was taken, he gave the answer that it was because of fear of prosecution and not because It is conceded that the establishments are factories.

4. In cross-examination It was brought out that the working time of the workmen is between Sam, and 5-30 p.m., lunch time specified is between 12 noon and 1 p.m. and during the forenoon workmen are given 15 minutes and In the afternoon again another 15 minutes is allowed for taking tea and the witness admitted that a bell would be rung. D.W. 1 was the person who had typed out the notice of the periods of work. The statement sent to the factory Inspector containing the specified periods of work is Ex. P. 7. He admitted that the workmen are working In accordance with the specified periods of work contained in Ex. P. 7. Explaining the nature of the work, D.W. 1 admitted that there is a designer for the factory who draws the design given by the management and after it is approved workers are given such designs and asked to work according to these designs. The witness has farther deposed that there are attendance registers for the workmen in which, if any worker comes late, late mark is recorded. The witness admitted that there were standing orders for the establishment. There was a weaving master and maistris and It was the duty of the maiatris to supervise the workers whether the workers are working without damaging the cloth, whether they were working in accordance with the designs given to them and whether they were working according to the direction contained in Ex. P. 7 notice. He further categorically admitted that In both the establishments muster-rolls, leave with wages registers, attendance-cards, Inspection books, etc., are maintained. Leave books are also given to the workers. With these materials on record the question for decision is whether the establishment would come within the ambit of the Factories Act and Rules.

5. It is true that merely because the manager of a factory has taken out a licence

under the Factories Act and had purported to conform to the requirements of that Act and the rules by submission of half-yearly returns or by putting up a notice of the hours of work or maintenance of registers would not bring the establishment within the scope of the Factories Act. It had to be established from circumstances and upon evidence that the factory falls within the definition u/s 2(m) of the Act and that the workmen employed in such place come within the definition contained in Section 2(l). It is not necessary to set out the definition and it would suffice to consider the various cases bearing on the subject.

6. The question whether relationship of master and servant subsists between an employer and employee has been the subject of consideration by the Supreme Court in a number of cases. In *Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra*, it was held that the question whether a person was a workman depended on whether he had been employed by the employer and the relationship of the employer and employee or master and servant subsisted between them. A prima facie test of such relationship was the existence of the right in the employer not merely to direct what work was to be done but also to control the manner in which it was to be done, the nature or extent of such control varying in different industries and being by its very nature incapable of being precisely defined. The correct approach, therefore, was to consider whether having regard to the nature of the work there was due control and supervision by the employer. It was further held that the question whether the relation between the parties was one as between an employer and employee or master and servant was a pure question of fact depending upon the circumstances of each case,

7. The next case is *Chintaman Rao and Another Vs. The State of Madhya Pradesh*, . The test laid down in *Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra*, was adopted to find out whether a person employed was a workman or not and it was found that the sattedars were not under the control of the factory management and it was held that they were independent contractors and the workers employed by them were not the workers of the management.

8. Then we come to the case in *Shri Birdhichand Sharma Vs. First Civil Judge Nagpur and Others*, . That was a case of bidi manufacture. The workmen who rolled bidis had to work at the factory and were not at liberty to work in their house; their attendance was noted in the factory and they had to work within the factory hours, though they were not bound to work for the entire period and could come and go away when they liked; but if they come after midday, they were not supplied with tobacco and thus not allowed to work in the factory. There was also a provision that the workmen could be removed from service if absent for eight days. Payment was made on piece-rates according to the amount of work done and if the bidis which did not come up to the proper standard could be rejected. On these facts it was held that the workers were workmen under the Factories Act and were not independent contractors.

9. The next case is *Shankar Balaji Waje Vs. State of Maharashtra*, There the

decision In Shri Birdhichand Sharma Vs. First Civil Judge Nagpur and Others, was distinguished on the facts, but there also their lordships held that the criteria for coming to the conclusion whether a person was an employee or an independent contractor was as laid down In Chintaman Rao and Another Vs. The State of Madhya Pradesh, .

10. All these decisions have been reviewed In the recent decision of the Supreme Court In D. C. Dewan Mohideen Sahib & Sons and Anr. v. Secretary, United Bidi Workers Union, Salem 1964 II L.L.J. 633 and it was held that the correct approach in such a case was to consider whether, having regard to the nature of the work, there was due control and supervision by the employer, the nature of the control required to make a person a servant of the master depending upon the facts of each case. On the facts of that case their lordships held that the so-called Independent contractors were mere agents or branch managers of the appellants and that the workers employed by the so-called contractors were really the workmen of the appellants.

11. Judged In the light of these well-settled principles, the evidence of D.W. 1 would" clearly go to show that the persons employed in the petitioner"s establishment are workmen. The decision relied on by the learned Counsel for the petitioner will not help as they were based on the evidence brought out in those oases.

12. The conviction and sentence are, therefore, confirmed and the revision petition is dismissed.