

(1993) 09 GUJ CK 0028
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Lallubhai Thakorebhai Desai

RESPONDENT

Date of Decision : 23-09-1993

Acts Referred:

Factories Act, 1948 — Section 62, 73, 87, 88, 92

Citation : (1994) 1 GLR 144 : (1994) 2 LLJ 996

Hon'ble Judges : K.J. Vaidya, J

Bench : Single Bench

Judgement

Vaidya, J.—"What is the meaning and importance of issuance of the "Identity Card" to the workers by the Owner/Occupier/Manager of the Factory under Rule 110-A of the Gujarat Factories under Rule 110-A of the Gujarat F'ories Rules, 1963? " and "Can the contravention of this provision be treated as trivial, technical offence and the contravenor of the same be let off with lighter sentence of fine only or the same can be said to be grave and serious enough calling for stricter view of the matter while awarding the sentence? " This in short, is the question which has cropped up for consideration in the back ground of following prosecution cases.

2. According to Mr. K. B. Parekh, Factory Inspector, Surat, when he visited the factory named "Dayaram Brothers" at Bardoli on date 8-10-1986 of the Ownership/under management of Lallubhai Thakorebhai Desai, on inquiry it was learnt that two worker; namely - Chandrakant Harkishandas and Shankerbhai Nathubhai were engaged in diamond polishing and finishing work, and were not provided with Identity Card in Form No. 36, as warranted under Rule 110-A of the Factories Rules. On the basis of these allegations, the Factory Inspector filed two separate complaints against the respondents on 11-12-1986 before the learned J. F. M. C., Bardoli for the alleged contravention of Rule 110-A read with section 92 of the Factories Act. Thereafter, the respondent immediately on appearing before the Court on 8-1-1987 pleaded guilty, and the learned Magistrate accepting the same, convicted and sentenced him to pay fine of Rs.

20/- and in default, to undergo one day simple imprisonment in each one of these two cases, giving rise to the present two appeals for enhancement of the sentence.

3. Heard the learned A. P. P. Mr. K. C. Shah and Mr. S. N. Shelat, the learned Advocate appearing for the respondent.

4. In order to appreciate whether the impugned order of fine of Rs. 20/- only, is unduly lenient and manifestly unjust, it is indeed necessary first of all to appreciate and understand what is the gravity and seriousness of the alleged offence of not providing the Identity Cards as prescribed under Rule 110-A. The said Rule 110-A reads as under :

Rule 110-A. Identity Cards :- (1) The Manager, of every factory shall provide to each worker an Identity Card with photograph, free of cost, in Form No. 36 and shall enter the serial number of 36 and shall enter the serial number of such card against the name of such workers in the register of adult workers maintained by him u/s 62 read with Rule 88 or the register of child workers u/s 73 read with Rule 93, as the case may be :

Provided that it shall not be necessary to furnish such Identity Card to any worker to whom an identity Card containing similar particulars and information is furnished under any other, law applicable to him.

(2) No worker shall be allowed or required to work in a factory unless he carried while he is at work an Identity Card, provided under Sub-rule (1).

(3) Every worker shall, on demand by an Inspector appointed for the purposes of the Act, produce the Identity Card, provided under sub-rule (1).

(4) If any worker loses his Identity Card a duplicate Card shall be furnished to him by the Manager immediately on production of a recent passport size photograph by the worker for affixing on it, free of charge.

FORM NO. 36

(a) Name and address of the factory;

(b) The full name and address of the worker;

(c) Date of birth of the worker;

(d) Date of joining the service in the factory;

(e) Recent passport size photograph of the worker.

Signature or left thumb impression of the worker.

Signature of Manager of Authorised Agent.

Date of issue".

With reference to above rule 110-A(1) it may also be briefly stated that Section

62 of the Act pertains to "the register of adult workers", Section 73 pertains to "register of child workers", Section 88 pertains to "Notice of certain accidents", and Section 93 pertains to "Liability of owner of premises in certain circumstances".

4.1. Now, on perusal of the above Rule 110-A alongwith Form 36, Secs. 62, 73, 88 and 93 of the Act, the object of making it obligatory upon the Owners/ Occupiers/Managers of the factory to provide Identity Cards to the workers, before even employing them in the workers, before even employing them in the factory and taking work from them, appears to be just to protect the interest of the unwary, illiterate poor workers in the event of some accident taking place, causing injury (serious and/or fatal) costing life or limb and/or some other injuries affecting their service rights by seeing that they did not escape from the ultimate financial liability under various laws, under the pretext that victim worker was not working in the factory. Thus, the very issuance of the Identity Card by the Owner/Occupier/Manager in Form 36 is indeed an unquestionable and the most important documentary evidence in favour of the worker, which bind them down from conveniently shirking and running away from the liability towards workers which may incidentally fall upon them by saying that the injured worker was not working in their factory at the relevant time. In this view of the matter, the Identity Card is not a mere sheet of paper with a show-piece photograph of the worker, but he same is in fact the guarantee card, guarding the worker's right and interest in eventualities like injury, death, etc., arising out of the accident during the course of employment. It is also equally necessary to vouch-safe the worker's interest in case of accident for successful prosecution on the one hand, and determination of any claim or compensation arising therefrom, in the event of injury, fatal injury or death, as the case may be. When such is the obvious and indisputable object underlying issuance of the Identity Card, not providing the same as warranted under the Statutory provision can never be permitted to be under-rated. Thus, examining these cases in the background of the above discussion, non-issuance of the Identity Card to the worker is indeed a very serious contravention of the Rule 110-A going to the very root of the workers' interest. In fact, sub-clause (2) of the Rule 110-A has made it abundantly clear that no worker can be allowed to work in a factory unless he carried, while he is at work, an Identity Card provided under sub-rule (1). In this view of the matter, be it a case under the Factories Act, the Essential Commodities Act, Prevention of Food Adulteration Act or any other such Act where the accused is tried for the alleged contravention of its orders or rules, unless the learned Magistrate knows it or attempts to trace out the underlying object of the Impugned provision in question, he would not certainly be in a position to appreciate the gravity and seriousness of the alleged offence which in turn can equip him further to inflict just and proper sentence qua the alleged offence. In substance, issuance of the Identity Card to a worker is a sort of complete bulwark against the arbitrary exploitation of the worker by the Employers/Managers who having taken work from him, schemingly managers to

avoid undertaking any liability in case of accident, death, etc., of the worker. Thus, the very workers despite specific provisions under relevant rules ex-facie demonstrates mala fide intention of the Owner/Manager to exploit the workers with total impunity. Accordingly, unless the above aspect and importance of providing Identity Card to the workers is understood and appreciated in its true colour and perspective, it is indeed not possible for any Court to award appropriate sentence in case of non-compliance of the relevant rule pertaining to the same.

4.2. Further, having regard to the fact that the Factories Act, 1948, is a special legislation meant for the protection and enhancement of the welfare of workers, It is indeed required to be vigorously enforced not only by the law enforcing agency viz., the Labour Department of the Government but also by the Court before which such cases are filed for trial.

4.3. With aforesaid discussion, having appreciated the gravity and seriousness of the alleged offence underlying non-issuance of the Identity Card, we may also further refer to the relevant penal provision u/s 92 of the Factories Act, as applicable then at the time when the alleged incident took place. The said Section 92 reads as under :

"Section 92. General penalty for offences : Save as is otherwise expressly provided in this Act and subject to the provisions of Section 93, if in or in respect of, any factory there is any contravention of any of the provisions of this Act or of any Rules made thereunder, the occupier and Manager of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to 3 months or with fine which may extend to two thousand rupees or with both, and if the contravention is continued after conviction with a further-fine which may extend to 75 rupees for each day on which the contravention is so continued :

Provided that where contravention of any of the Rule made thereunder or u/s 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than 1,000/- rupees in the case of an accident causing death, and five hundred rupees in case of an accident causing serious bodily injury.

Note :- At this state, it may be pointed out that the above Section 92 of the Act came to be amended by Act No. 20 of 1987 which came into force w. e. f. 1-12-1987 wherein the offence in question have been made punishable with imprisonment for a term which may extend to 2 years or with a fine which may extend to one lakh rupees or with both, and if the contravention is continued after conviction, with a further fine which may extend to one thousand rupees for each day on which the contravention is so continued :

Provided that where contravention of any of the provisions of Chapter-IV or any rule made thereunder or u/s 87 has resulted in an accident causing death or serious bodily injury the fine shall not be less than twenty five thousand rupees in the case of accident causing death, and five thousand rupees in the case of an

accident causing serious bodily injury".

4.4. On parcel of the above Section 92, it is very clear that a flee-bite sentence of fine of Rs. 20/-, and that too, to the owner of a Diamond Cutting Factory, which is not only unduly lenient and manifestly unjust, but the same is on face of it quite ridiculous and travesty of justice. It is really unfortunate that the learned Magistrate has not been able to appreciate the gravity and seriousness of the contravention of Rule 110-A, whereby the caused did not provide Identity Card to the workers working in the factory.

5. Mr. S. N. Shelat, the learned Advocate appearing for the respondent submitted that more or less this appears to be a case of "plea-bargaining" and in that view of the matter deserves to be remanded to the trial Court for de novo trial. Mr. Shelat, in the alternative, submitted that in case this Court was not inclined to accept his above submission and feels that the impugned order of sentence is required to be enhanced, then in that case, little sympathetic view of the matter be taken as the offence alleged against the respondent is pretty stale.

5.1. Now having regard to the facts and circumstances of the present cases it is indeed not possible to agree with the first submission of Mr. Shelat, for the simple reason that nothing has been pointed out by way of an affidavit or otherwise to suggest that this was the case of "plea-bargaining". In this view of the matter, the only question which this Court has now to decide in whether the accused should be sentenced to undergo substantive imprisonment for some period and also pay fine or should he only be sentenced to pay minimum fine as prescribed u/s 92 of the Act?

5.2. On the point of sentence, while asking the learned A. P. P., he quite fairly submitted that he leave it entirely to the discretion of this Court. As according to him, the State has filed the present two appeals as the test-cases to take verdict of this Court as to whether the alleged contravention under rule 110-A can be said to be trivial and technical or the serious one. This according to the learned A. P. P. was necessary with a view to impress upon the concerned learned Magistrates of the State not to take such type of offences lightly, while awarding the sentence upon the accused. The learned A. P. P. further submitted that since this Court has rightly taken view that the alleged offence of non-issuance of Identity Cards is not trivial or technical offence, but the same is quite serious, the State's purpose to that extent is served. This fairness on the part of learned A. P. P. is quite appreciable.

6. Taking into consideration the fact that two workers were working in a diamond factory and it was in this factory that they were not provided with the Identity Cards, this Court thinks that the ends of justice will be fairly met with if the sentence of fine of Rs. 20/- in each one of these two costs is enhanced of fine to Rs. 1,020/-. It may be clarified that but for the fact that these offences are of the year 1986, that is to say before the amendment came into force wherein most stringent punishment is provided, this Court would have, perhaps, taken still

stricter view of the matter by sentencing the respondent to some imprisonment and still higher amount of fine, than what has been awarded. The reason is (at the cost of repetition) not to provide Identity Cards despite statutory mandate clearly reflects the cold-blooded and scheming defiance of law and the interest of working class by the Owner/Occupier/Manager, which indeed can never be treated lightly at the cost of disrespect of law? Accordingly, the exploiters enjoying luxurious life out of the blood, toils, tears and sweat of poor helpless and needy workers can neither have claim for sympathy and mercy from the Court nor indeed it is just and proper for the Court to show misplaced sympathy and mercy to such under-serving delinquents; unless of to such under-serving delinquents; unless of to such under-serving delinquents; unless of to such under-serving delinquents; unless of course some special and genuine grounds are made out, to be recorded in writing. Here also if the Statute has prescribed the minimum sentence, than there is indeed no discretion vested in the Court to take sympathetic view in favour of the accused.

7. In the result, these two appeals are allowed. The impugned order of sentence of find passed by the trial Court is modified and accordingly enhanced from that of Rs. 20/- to Rs. 1,020/- in default to undergo simple imprisonment for 30 days in each case. Fine to be paid on or before 3rd November, 1993.