

(1960) 07 KL CK 0020
In the High Court Of Kerala

State of Kerala

APPELLANT

Vs

Mulloth (V.M.)

RESPONDENT

Date of Decision : 08-07-1960

Acts Referred:

Factories Act, 1948 — Section 2(m), 85
Kerala Factories Rules, 1957 — Rule 3

Citation : (1961) 1 LLJ 184

Hon'ble Judges : T.C. Raghavan, J;S. Velu Pillai, J

Bench : Division Bench

Judgement

Raghavan, J.—This appeal has been referred to a Division Bench by Raman Nayar, J. The facts of the case are not in dispute. The accused, who is the respondent before us, is the proprietor and manager of the Mulloth Industrial School in Trichur district, where handloom weaving of cloth and mat-weaving are demonstrated and instructions given in such weaving to pupils. P.W. 1, the factories inspector, visited the school on 24 June 1958, when he found 15 persons actually engaged in weaving cloth, apart from 26 students who were present and watching the demonstration. The accused was prosecuted for contravening Rule 3 of the Kerala Factories Rules, 1957, for running a factory without obtaining permission for the same in writing from the Chief Inspector of Factories. The accused raised several contentions before the lower Court and the lower Court held that the business conducted by the accused was not a factory as in its view the notification issued by the Kerala Government u/s 85 of the Factories Act, making certain provisions of the Act applicable to certain premises not covered by the definition of "factory" u/s 2 of the Act, was ultra vires the powers of the Government under the said section and, therefore, void. The lower Court also held that the complaint in the case was not in order as P.W. 1, when he visited the Industrial school, was not a factories inspector, but became one only subsequently. On these findings the lower Court acquitted the accused and the State has filed the present appeal.

2. We are concerned in this appeal with two questions, one being whether the

notification issued by the Kerala Government u/s 85 dated 8 November 1957, is intra vires the powers of the Government under the said section and thus valid and the other being whether, even if the notification is valid, the premises in question will be a "factory" coming within the said notification. We are of opinion that it is not necessary to decide the first question in the present case as, in our view, the question involved in this case is much restricted in scope. Even if we are to hold that the notification of the Kerala Government is intra vires and valid, even then we will have to sustain the acquittal in the present case, in the view we are taking on the second question stated above. Therefore, we proceed to dispose of the second question first, assuming without deciding, that the notification of the Kerala Government is intra vires and valid.

3. The portion of Section 2(m) of the Act, relevant for the purposes of this case, is Sub-section (ii) thereof which reads:

Section 2(m) "factory" means any premises including the precincts thereof-

* * *

(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.

4. This is the relevant portion of the definition of "factory" with which we are concerned in this case. We would now extract Section 2(l) of the Act which defines "worker":

Section 2(l) "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.

5. These two sub-sections necessitate the understanding of the meaning of "manufacturing process" and this term is defined in Section 2(k) and Sub-section (i) of Section 2(k) is the portion of the definition relevant for the purposes of this case. The said definition reads:

Section 2(k): "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.

6. The relevant portion of Section 85(i) is in the following terms:

Section 85. Power to apply the Act to certain premises. - The State Government may, by notification in the official gazette, declare that all or any of the provisions of this Act shall apply to any place wherein a manufacturing process is carried on with or without the aid of power or if so ordinarily carried on,

norwithstanding that-

(1) the number of persons employed therein is less than ten if working with the aid of power and less than twenty if working without the aid of power.

7. It is under this sub-section that the notification dated 8 November 1957 was issued by the Kerala Government. We will assume that the notification is valid. Even then the notification can apply only to a place wherein a "manufacturing process" is carried on and the industrial school involved in the present case can come within the mischief of this notification only if the weaving that is carried on there falls within the definition of "manufacturing process." The result is the same if we examine the definitions of the terms "factory" and "worker" given in Section 2 of the Act.

8. P.W. 1, the factories inspector, in his evidence says:

Weaving is being carried on in the school to teach the pupils. Thus cloth is being produced.

Q:-Is it cloth that is saleable that is being produced?

A.-Yes.

9. The learned Public Prosecutor argues that this evidence brings the premises within the definition of factory in Section 2 because, according to him, cloth is being produced in this industrial school "with a view to its sale," which is one of the ingredients to constitute "manufacturing process " u/s 2(k). The "manufacturing process" that has to be carried on in any part of the premises to convert the premises into a "factory" is the making, altering, etc., of any article or substance with a view to its use, sale, etc. Therefore, in this particular case if cloth is being produced in the industrial school with a view to its sale, as contended by the learned Public Prosecutor, then, such production of cloth becomes a "manufacturing process" and consequently, because the premises are being used for such "manufacturing process," the premises become a "factory," either under the Act itself or by virtue of the notification, and further, the fifteen persons actually engaged in weaving cloth therein will become "workers " as defined in Section 2(l), if they are employed directly or through any agency whether for wages or not. Thus the whole question, whether this industrial school is a "factory" or the persons actually engaged in the weaving of cloth are "workers" or whether the provisions of the Act can be applied to this institution by notification by the Government, depends on the decision whether the production of cloth in this institution is a "manufacturing process" or not. If we hold that it is a "manufacturing process," then the further question will arise whether the notification can validly apply the provisions of the Act to this institution. If, on the other hand, we hold that it is not a "manufacturing process," then, notification or no notification, the provisions of the Factories Act cannot apply to the institution in question. We are definitely of the view that, in view of the evidence of P.W. 1 extracted above, the production of cloth is carried

on in the school only for the purposes of demonstration and instruction in weaving to the students. It may be that by this demonstration cloth is being produced and such cloth happens to be saleable also. But it cannot be said that the cloth that is being produced is produced with a view to its sale. Therefore, we hold that the production of cloth in an industrial school like the one in question is not a "manufacturing process" and, therefore, the definition of "factory" cannot apply to such an institution and, consequently, the provisions of the Factories Act are neither applicable nor can they be made applicable by notification u/s 85(1) of the Act. In this connexion we may only refer to one English decision of the King's Bench, *Weston v. London County Council* (1941) 1 All B.R. 555. His lordship, Wrottesly, J., after extracting Section 151 of the Factories Act, 1937, defining factory, observes as follows:

As far as that is concerned, I do not think that anyone can suggest that this institute falls within that general definition. In the first place, while it is true that manual labour takes place here, I do not think that there are any persons, other than the instructor, employed in manual labour here in any process, nor do I think that the persons engaged here are engaged in a process which is for or incidental to any of the purposes there set out, such as the making of the articles, the altering of articles or adapting them for sale....

Further, in so far as they are occupied, they are not occupied in a process which is incidental to any of the purposes mentioned, and it appears to me that they are there for the purposes of instruction. Whether or not I am right in that, it is quite clear that they are not occupied or employed there by way of trade, or in any work which is carried on by way of trade or any work which is carried on for gain, so that the institute is not premises within the general definition to be found in the Factories Act, 1937, Section 151.

10. In the present case also the fifteen persons engaged in actual weaving of cloth are not engaged in any manufacturing process, for such weaving is not carried on for the purpose of producing cloth with a view to its sale. They are there weaving cloth for the purposes of instruction and demonstration to the pupils. Therefore, the institute is not premises falling within the definition of factory in the Indian Factories Act or premises to which the provisions of the said Act can be made applicable by notification by the Government. In the above view we uphold the order of acquittal by the lower Court and dismiss the appeal.