V. P. Gopala Rao vs Public Prosecutor, Andhra Pradesh on 7 March, 1969

Equivalent citations: 1970 AIR 66, 1969 SCR (3) 875

Author: R.S. Bachawat

Bench: R.S. Bachawat, S.M. Sikri, K.S. Hegde

PETITIONER:
V. P. GOPALA RAO

Vs.

RESPONDENT:
PUBLIC PROSECUTOR, ANDHRA PRADESH

DATE OF JUDGMENT:
07/03/1969

BENCH:
BACHAWAT, R.S.
BENCH:
BACHAWAT, R.S.
SIKRI, S.M.
HEGDE, K.S.

CITATION:
1970 AIR 66 1969 SCR (3) 875
1969 SCC (1) 704
CITATOR INFO :
R 1974 SC 37 (19)

ACT:
Factories Act (63 of 1948), ss. 2(k)(i), 2(1)-'manufacturing process and 'workers'--Meaning of.

HEADNOTE:
The appellant who was the manager-cum-occupier of a company's establishment at Eluru was prosecuted for operating a factory without obtaining a licence as required by the Factories Act, 1948 and the Andhra Pradesh Factory Rules, 1950. The company had its main factory at Bombay. In the company's Eluru premises, sun-cured tobacco leaves purchased from local producers were subjected to the processes of moistening, stripping and packing. The tobacco leaves were moistened so that they could be handled without

breakage. The moistening was done for 10 to 14 days by sprinkling water on stacks of tobacco and shifting the top and bottom layers. The stalks were stripped from the leaves. The Thukku (wholly spoilt) and Pagu (partly spoilt) leaves were separated. The leaves were tied up in bundles and stored in the premises. From time to time they were packed in gunny bags and exported to the company's factory at Bombay where they were used for manufacturing cigarettes. The appellant's defence was that it was not necessary to obtain the licence, or permission because (i) no manufacturing process was carried on in, the premises; and (ii) the persons who worked in the premises were not workers as they were employed by independent contractors. The Magistrate accepted the defence contentions, and acquitted the appellant. But the High Court convicted the appellant. Dismissing the appeal, this, Court :-

HELD : The company's premises at Eluru were a factory.

(i)Manufacturing processes as defined in s. 2 (k) (i) of the Factories Act were carried on in the premises. Under s. 2(k) (i) manufacturing process means any process for '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." The definition is widely worded. The moistening was an adaptation of the tobacco leaves. The 'stalks were stripped by breaking them up. The leaves were packed by bundling them up and putting them into gunny bags. The breaking up, the adaptation, and the packing of the tobacco leaves were done with a view to their use and transport. All these, processes are manufacturing process within s. 2(k)(i). [878 B]

State of Kerr v. V. M. Patel, [1961] 1 L.L.J. 549, Sara C. S. Andre v. The State, I.L.R. [1965] 15 Rae. 117, referred to.

(ii)The persons employed were workers as defined in s. 2 (1) of the. Factories Act. More than 20 persons worked in the premises regularly every day. The was the positive evidence of P.W.s that the work of stripping stalks from the tobacco leaves was done under the supervision,"

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of the management. There was no evidence to show that the other work in the premises was not done under like supervision. The prosecution adduced prima facie evidence showing that the relationship of master and servant existed between the workmen and the management. The appellant did not produce any rebutting evidence. In the cross-examination of P.W. 1, it was suggested that the workmen were employed by independent contracts, but the suggestion was not borne out by the materials on the record. [881 BEE]

Sri Chintaman Rao & Anr. v. State of Madhya Pradesh, [1958] S.C.R. 1340, 1349, Short v. J. W. Henderson Ltd., [1946] S.C. (H.L.) 24, 33-34, Dharangadhara Chemical Works v. State

of Saurashtra, [1957] S.C.R. 152, State of Kerala v. V. M. Patel L1961] 1 L.L.J. 549, Shankar Balaji Wage v.State of Maharashtra, [1962] 1 Lab. L.J. 119, Bridhichand Sharma v. First Civil Judge, Nagpur, [1961] 2 Lab. L.J. 86, and D. C. Dewan Mohinder Saheb & Sons v. United Bidi Workers' Union, [1964] 2 L.L.J. 638, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 271 of 1968.

Appeal by special leave from the judgment and order dated July 3, 1968 of the Andhra Pradesh High Court in Criminal Appeal No. 883 of 1966.

M. C. Setalvad, J. M. Mukhi and G. S. Rama Rao, for the appellant.

P. Ram Reddy and A. V. V. Nair, for the respondent. The Judgment of the Court was delivered by Bachawat, J. M/s. Golden Tobacco Co., Private Ltd. have their head office and main factory at Bombay where they manufacture cigarettes. The appellant is the occupier-cum- manager of the company's premises at Eluru in Andhra Pradesh where sun-cured country tobacco purchased from the local producers is collected, processed and stored and then transported to the company's factory at Bombay. The prosecution case is that the aforesaid premises are a factory. The appellant was prosecuted and tried for contravention of 16(1) of the Factories Act 1948 and rules 3 and 5(3) of the Andhra Pradesh Factory Rules 1950 for operating the factory without obtaining a licence from the Chief Inspector of Factories and his previous permission approving the plans of the building. The appellant's defence was that the premises did not constitute a factory and it was not necessary for him to obtain the licence or permission. The 2nd Addl. Munsif Magistrate, Eluru, accepted the defence contention and acquitted the appellant. According to the Magistrate the prosecution failed to establish that the premises were a factory ,or that any manufacturing process was carried on or that any worker was working therein. The Public Prosecutor filed an 87 7 appeal against the order. The Andhra Pradesh High Court allowed the appeal, convicted the appellant under s. 92 for contravention of s. 6(1) and rules 3 and 5(3) and sentenced him to pay a fine of Rs. 50 under each count. The present appeal has been filed by the appellant after obtaining special leave.

The question in this appeal is whether the company's premises at Eluru constitute a factory. Section 2(m) defines factory. Under s. 2(m) factory means any premises including the precincts thereof "Whereon twenty or more workers are working, or I 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." It is not disputed that more than 20 persons were working on the premises. The points in issue are : (1) whether those persons were "workers"; and (2) whether any manufacturing process was being carried on therein.

For the purpose of proving the prosecution case the respon- dent relied upon the following materials : (1) the testimony of PW 1 A. Subbarao, the Assistant Inspector of Factories; (2) his report of

inspection of the premises on December 20, 1965; (Ex. P1); (3) the show cause notice Ex. P3, and the appellant's reply dated January 15, 1966; (Ex. P5); (4) the testimony of PW 2 B. P. Chandrareddi, the Provident Fund Inspector; and (5) Six returns (Exs. P7 to P12), submitted by the Eluru establishment, to the Regional Provident Fund Commissioner.

The materials on the record show that in the company's Eluru premises, sun-cured tobacco leaves bought from the growers were subjected to the processes of moistening, stripping and packing. The tobacco leaves were moistened so that they may be handled without breakage. The moistening was done for 10 to 14 days by sprinkling water on stacks of tobacco and shifting the top and bottom layers. The stalks were stripped from the leaves. The Thukku (wholly spoilt) and Pagu (partly spoilt) leaves were separated. The leaves were tied up in bundles and stored in the premises. From time to time they were packed in gunny bags and exported to the company's factory ;it Bombay where they were used for manufacturing cigarettes. All these processes are carried on in the tobacco industry. In Encyclopaedia Britannica, 1965 edition, Vol. 22, page 265 under the heading"'tobacco industry" it is stated : "After curing, only during humid perio ds or in special moistening cellars can the leaf be handled without breakage. It is removed from the stalks. or sticks and graded according to colour, size, soundness and other recognizable elements of quality. It is tied into hands, or bundles, of 15 to 30 leaves by means of a tobacco leaf Wrapped securely around the stem end of the leaves. After grading the leaf is ready for the market."

In our opinion, manufacturing processes as defined in s. 2

(k) (i) were carried on in the premises. Under s. 2 (k) (i) manufacturing process means any process for "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." The definition is widely worded. The moistening was an adaptation of the tobacco leaves. The stalks were stripped by breaking them up. The leaves were packed by bundling them up and putting them into gunny bags. The breaking up, the adaptation and the packing of the tobacco leaves were done with a view to their use and transport. All these processes are manufacturing processes within s. 2 (k) (i). The reported cases are of little help in deciding whether a particular process is a manufacturing process as defined in s. 2 (k) (i). In State of Kerala v. V. M. Patel(1) the Court held that the work of garbling pepper by winnowing, cleaning, washing and drying it on concrete floor and a similar process of curing ginger dipped in lime and laid out to dry in a warehouse were manufacturing processes. With regard to the decision in Col. Sardar C. S. Angre v. The State (2) it is sufficient to say that the work of sorting and drying potatoes and packing and re-packing them into bags was held not to be a manufacturing process as the work was done. for the purpose of cold storage only and not for any of the purposes mentioned in s. 2 (k) (i). The next question is whether 20 or. more persons worked on the premises. On behalf of the appellant it is admitted that more than 20 persons work there, but his contention is that they are employed by independent contractors and are not workers as defined in s. 2(1). Section 2(1) reads :-

> "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;"

In Sri Chintaman Rao & anr. v. State of Madhya Pradesh($) the Court gave a restricted meaning to the words "directly or (1) [1961] 1 L.L.J. 549. (2) I.L.R. [1965] 15 Rai. 117. (3) [1958] S.C.R. 1340, 1349, through an agency" in s. 2(1) and held that a worker was a person employed by the management and that there must be a contract of service and a relationship of master and servant between them. On the facts of that case the Court held that certain Sattedars were independent contractors and that they and the coolies engaged by them for rolling bidis were not "workers".

It is a question of fact in each case whether the relationship of master and servant exists between the management and the workmen. The relationship is characterized by contract of service between them. In Short v. J. W. Henderson Limited(1) Lord Thankerton recapitulated four indicia of a contract of service. As stated in Halsbury's Laws of England, 3rd ed. vol. 25, p. 448, Art.

> "The following have been stated to be the indicia of a contract of service, namely, (1) the master's power of selection of his servant; (2) the payment of wages or other remuneration; (3) the master's right to control the method of doing the work; and (4) the master's right of suspension or dismissal (Short v. J. and W. Henderson Ltd. (1946 S. C. (H. L.) 24, at pp. 33, 34, Could v. Minister of National Insurance, [1951] 1. K. B. 731 at P. 734; [1951] All E. R. 368 at p.371; Pauley V. Kenaldo Ltd. [1953] 1 All. E. R. 226, C. A., at p. 228); but modem industrial conditions have so affected the freedom of the master that it may be necessary at some future time to restate the indicia; e.g., heads (1), (2) and (4) and probably also head (3), are affected by statutory provisions (Short v. J.

W. Henderson Ltd., supra at p. 34."

In Dharangadhara Chemical Works v. State of Saurashtra(2) the Court held that the critical test of the relationship of master and servant is the master's right of superintendence and control of the method of doing the work. , Applying this test workmen rolling bidis were found to be employees of independent contractors and not workers within s. 2(1), in State of Kerala v. Patel V. M.(3) and Shankar Balaji Waje v. State of Maharashtra(4) while they were found to be workers within S. 2(1) in Bridhichand Sharma v. First Civil Judge, Nagpur(5) and workmen within the meaning of s. 2(s) of the Industrial Disputes Act in D. C. Dewan Mohinder Saheb & Sons v. United Bidi Workers' Union(6).

(1) [1946] S.C. (H.L.) 24, 33-34.(2) [1957] S.C.R. 152. (3) [1961] 1 L.L.J. 549. (4) [1962] 1 Lab. L.J. 119. (5) [1961] 2 Lab. L.J 86. (6) [1964] 2 Lab. L. J. 638.

There is no abstract a priori test of the work control required for establishing a contract of service. In Short v. J. N. Henderson Ltd.(1) Lord Thankerton quoting Lord Justice Clerics dicta in an earlier case said that the principal requirement of a contract of service was the right of the master "in some reasonable sense" to control the method of doing the work. As pointed out in Bridhichand's case(2)

the fact that the workmen have to work in the factory imply a certain amount of supervision by the management. The Court held that the nature and extent of control varied in different industries and that when the operation was of a simple nature the control could be exercised at the end of the day by the method of rejecting the bidis which did not come up to the proper standard. In the present case, the prosecution relied on (1) Ex. P7 to P12, (2) the testimony of PWI and (3) Exs. P1 and P5 to prove that the persons working at the company's premises' at Eluru were employed by the management. Exhibits P7 to P12 are monthly returns for July to December 1966 submitted by the company's Eluru establishment to the Regional Provident Fund Commissioner under paragraph 38(2) of the Employees Provident Fund Scheme, 1952. The returns disclosed the number and names of about 200 persons employed every month and the recoveries from the wages and the company's contributions on account of the provident fund of each employee. At the top of each return it was stated that the employees were contract employees. Section 2(f) of the Employees Provident Fund Act 1952 defines "employee" as including any person employed by or through a contractor. Paragraphs 20 and 30 of the Employees Provident Fund Scheme 1952 shows that the employer is required to pay contributions in respect of all such employees. Paragraph 26 of the Scheme shows that employees who have actually worked for not less than 12 months or less in the factory or establishment is entitled and required to become a member of the Fund. In view of the fact that the returns are in respect of all persons employed in the establishment either, by the management or by or through a contractor they are not of much help in determining whether the employees- were employed by the management or were employed by the contractors. They only show that in the months of July to December 1966, 200 workers had been working in the establishment for not less than 240 days.

The testimony of PWI, A. Subbarao, the Assistant Inspector of Factories shows that on December 20, 1965 he found 120 workmen working in the premises. He is corroborated by his inspection report Ex. PI. In his reply Ex. P-5 the appellant did not dispute the fact that 120 persons were working there. PW1 (1) (1946] S.C. (H.L.) 24.

(2) (19611 2 L.L.J. 86.

found workmen doing the work of stripping stalks from the tobacco leaves. The work of stripping was being done under the supervision of the management's clerk J. Satyanarain Rao. At the end of the day the clerk collected the stripped tobacco and noted the quantity of work done in the work sheet allotted to the worker. PW1 found some workmen doing other work.

The onus of proving that the workmen were employed by the management was on the prosecution. We think that the prosecution has discharged this onus. It is not disputed that more than 20 persons worked in the premises regularly every day. There is the positive evidence of PW1 that the work of stripping stalks from the tobacco leaves was done under the supervision of the management. There is no evidence to show that the other work in the premises was not done under the like supervision. The prosecution adduced prima facie evidence showing that the relationship of master and servant existed between the work-men and the management. The appellant, did not produce any rebutting evidence. In the cross-examination of PW1, it was suggested that the workmen were employed by independent contractors, but the suggestion is not borne out by the materials on the record. We

hold that the persons employed are workers as defined in s. 2(1). The High Court rightly held that the company's premises at Eluru were a factory.

In the Courts below the appellant produced (1) am order of the Chief Inspector of Factories, Madras and (2) a letter of Superintendent of Central Excise I.D.O. Vijayavada. Mr. Setalvad conceded, and in our opinion rightly that these documents throw no light on the question whether in 1966 premises were a factory within the meaningof s. 2 (m). We,therefore say nothing more with regard tothese documents In the result, the appeal is dismissed.

Y.P. Appeal dismissed.