Supreme Court of India
Mohan Lal Goenka And Another vs The State Of West Bengal on 18 April, 1961
Equivalent citations: 1961 AIR 1543, 1962 SCR (2) 36
Author: K D Gupta
Bench: Sinha, Bhuvneshwar P.(Cj), Das, S.K., Gupta, K.C. Das, Ayyangar, N. Rajagopala, Mudholkar, J.R.

PETITIONER:
MOHAN LAL GOENKA AND ANOTHER

Vs.

RESPONDENT:
THE STATE OF WEST BENGAL

DATE OF JUDGMENT:
18/04/1961

BENCH:
GUPTA, K.C. DAS
BENCH:
GUPTA, K.C. DAS
SINHA, BHUVNESHWAR P.(CJ)
DAS, S.K.
AYYANGAR, N. RAJAGOPALA
MUDHOLKAR, J.R.

CITATION:
1961 AIR 1543 1962 SCR (2) 36

ACT:
Mining-Regulations providing Creches for women employees in mines-Breach of-Liability of owner, agent and manager--Indian Mines Act, 1923 4 of 1923), Cl. (bb) S. 30-Indian Mines Act, 1952, (35 of 1952), cls. (1)(2) s.18, cl. (d) S. 58-Mines Creche Rules, 1946, sub-.Y. (1), r. 7-General Clauses Act, 1897 (Act X of 1897), S. 24.

HEADNOTE:
The appellants one of whom was the owner and the other the manager of a colliery were convicted for contravening the provisions of the Mines Creche Rules, 1946, under which the owner of every mine employing women was required to construct creches for the use of the women employees and also to appoint a "Creche-in-charge" for the supervision of the creches. Their contentions mainly were (1) that the Mines Creche Rules, 1946 stood repealed as the Mines Act , 1923 itself under which those rules were framed were repealed by the Mines Act of 1952 and (2) that the said rules having been framed under s. 30(bb) of the Mines Act,

1923, could not be deemed to be rules made under the corresponding s. 58(d) of the 1952 Act the requirements of which were different from those of s. 30(bb) of the 1923 Act. On behalf of the manager a further contention was raised that he was not liable for the Contravention of r. 7(1) under which he

37

had no duty to perform and no question of his omission to appoint a creche-in-charge arose.

Held, per Sinha, C. J., S. K. Das, Das Gupta and Ayyangar, JJ., that the regulations framed tinder s. 30 of the Mines Act, 1923, survived the repeal of that Act.

Criminal Appeals Nos. go to 106 of 1959, followed.

The Mines Creche Rules, 1946, framed under s. 30(bb) of the Mines Act of 1923 covered a part of the ground that was covered by the provisions of S. 58(d) of the Mines Act of 1952, and to the extent the provisions of the two enactments overlap each other these rules would continue to be in force by virtue of S. 24 of the General Clauses Act and operate as rules under the 1952 Act. Contravention of r. 7 of the Mines Creche Rules, 1946, was in law contravention of a rule under s. 58(d) of the 1952 Act within the meaning of s. 73 of the Act.

Under s. 18(1) of the Mines Act, 1952, the manager, the agent and the owner are responsible for observance of the Mines Creche Rules which form part of the conditions of employment of female labour engaged in "mining operations" and under subS. (2) of S. 18 each of them shall be deemed to be guilty of the contravention of any rule by "any person whosoever", unless he proves that he took all reasonable means to prevent such contravention. The manager in the present case not having proved that he took all reasonable means to prevent the contravention of r. 7 by the owner even though the rule in terms laid no duty on him, must be deemed to be guilty of the contravention.

State Government, M. P. v. Deodatta Diddi, A.I.R. (1956) Nag. 71, held inapplicable.

G. D. Bhattar v. State, A.I.R. (1957) Cal. 483, the view making the manager liable to be approved.

Per Mudholkar, J.-In the mining industry a "mining operation", as contemplated under s. 18 of the Mines Act, is understood to mean an operation undertaken for the purpose of mining minerals and cannot be extended to mean "management of mines" such as employment of labour and providing amenities to employees etc. The manager of a mine cannot be made vicariously liable for the omission of the owner to carry out his own duty under r. 7(1) of the Mines Creche Rules. Sub-s. (2) of s. 18 would also absolve the manager from vicarious liability if he could show "that he had taken all reasonable means by publishing and to the best of his power enforcing those provisions to prevent such contravention". But there is nothing in the Act or the rules which empowers the manager to enforce the performance

by the owner of his duty under sub-r. (1) of r. 7 of the Mines Creche Rules and the manager was therefore not liable for the breach of that rule.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 7 of 1957.

Appeal from the judgment and order dated July 12, 1956, of the Calcutta High Court in Criminal Revision No. 270 of 1956.

S. C. Mazumdar, for the appellants.

B. Sen, D. N. Mukherjee and P. K. Bose, for the respondent.

1961. April 18. The Judgment of Sinha C. J., S. K. Das, K. C. Das Gupta and N. Rajagopala Ayyangar JJ. was delivered by Das Gupta J. Mudholkar J. delivered a separate Judgment. DAs GUPTA, J.-This appeal on a certificate granted by the High Court of Calcutta under Art. 134(1)(c) of the Constitution is against a judgment and order of that court, upholding the conviction of these appellants under s. 73 of the Indian Mines Act, for contravention of Rule 7 of the Mines Creche Rules, 1946. Rule 3 of these rules requires the owner of every Mine to Construct there a creche in accordance with the plans prepared in conformity with the rules and previously approved by the competent authority; Rule 7 provides that the owner of the mine shall appoint "a creche in charge, who shall be a woman possessing such qualifications and training as may be approved by the competent authority. The complaint which resulted in the conviction of the two appellants, of whom, one Goenka was the owner of the Khas Jawbad Colliery, and the other, viz., J. N. Gupta, the manager of the colliery, alleged that they had contravened Rule 7 of the Mines Creche Rules, 1946, inasmuch as no creche attendant as required by that rule had been appointed there. After an appeal of the present appellants to the Court of Sessions was dismissed, they moved the High Court in revision, but were unsuccessful, except that their sentences were reduced. The High Court however gave a certificate under Art. 134(1)(c) and on that certificate the present appeal has been filed. The main contentions raised on behalf of the appellants are, (1) that the Mines Creche Rules, 1946, had stood repealed, along with the repeal by s. 88 of the Mines Act of 1952, of the Mines Act, 1923,. under which these rules were admittedly framed and, (2) they having been framed under s. 30 (bb) of the Mines Act, 1923, cannot be deemed to be rules made under the Mines Act, 1952, as. the requirements of the corresponding section of the 1952 Act, viz., s. 58(b) are different from what is required by s. 30(bb) of the 1923 Act.

In Criminal Appeals Nos. 98 to 106 of 1959 we have decided that regulations framed under s. 29 of the Mines Act, 1923, survive the repeal of that Act. The same reasons which form the basis of that decision apply to the rules framed under s. 30 of the Mines Act, 1923; and so, the first contention raised on behalf of the appellants must be rejected as unsound.

The second question arises in this way. Clause (bb) of s. 30 of the 1923 Act mentions one of the purposes for which rules may be made in these words "For requiring the maintenance in mines, wherein any women are ordinarily employed, of suitable rooms to be reserved for the use of the children under the age of 6 years belonging to such women, and for prescribing, either generally or with particular reference to number of women ordinarily employed in the mine, the number and standards of such rooms, and the nature and extent of the supervision to be provided therein."

In the Mines Act, 1952, section 58 contains the provision empowering the Central Government to make rules for all or any of the purposes mentioned there. Clause (d) of this section runs thus:-

> "For requiring the maintenance in mines, wherein any women are employed or were employed, on any day of the preceding twelve- months, of suitable rooms to be reserved for the use of the children under the age of six years belonging to such women, and for prescribing either generally or with particu- lar reference to the number of women employed in the mines, the number and standards of such rooms, and the nature and extent of the amenities to be provided and the supervision to be exercised therein;".

While it is obvious that cl. (d) of s. 58 of the 1952 Act corresponds to cl. (bb) of s. 30 of the 1923 Act, it has to be noticed that the requirement in the 1952 Act is wider. For, whereas rules under s. 30(bb) could require the maintenance of creches and could prescribe certain matters in regard to these, only in mines, wherein "any women are ordinarily employed", s. 58(d) authorises the framing of similar rules for maintenance of creches and prescription of similar matters, in respect of all mines, "wherein any women are employed or were employed on any day of the preceding twelve-months". It is contended on behalf of the appellants that the Creche Rules, 1946, framed as they were under s. 30(bb) of the 1923 Act, must be read as requiring the maintenance of creches and prescribing certain matters relating to creches, only for mines "wherein any women are ordinarily employed". They cannot therefore be considered to be rules under s. 58(d) of the 1952 Act, which have to require the maintenance of creches, and prescribe matters relating thereto, not only for mines where women are ordinarily employed, but for mines "wherein any women are employed or were employed on any day of the preceding twelve months". It is urged that the content of the rules cannot be extended by the fact that the 1952 Act permits rules to be framed in respect of mines other than those in respect of which the rules were originally framed. In our opinion, the argument is not without force, and it might be difficult to say that, the Mines Creche Rules framed under s. 30(bb) of the 1923 Act, would apply to all mines contemplated by s. 58(d) of the 1952 Act. This difficulty would not however stand in the way of the Mines Creche Rules, 1946, operating in respect of "mines where women are ordinarily employed", as rules under the 1952 Act. It has to be noticed that the mines in respect of which rules may be made under s. 58(d) of the 1952 Act, do not exclude mines, where women are ordinarily employed; the description "mine wherein any women are ordinarily employed "include, in the first place the mines where women are ordinarily employed and include in addition to those other mines", 'wherein any women are employed or were employed on any day of the preceding twelve months', even though the attribute of "women being ordinarily employed there", is not present. Assuming therefore as correct the argument that the content of the rules does not stand extended, the Mines Creche Rules, 1946, may still be reasonably deemed to be rules under

S. 58(d) of the 1952 Act, though not fully exhausting the purpose mentioned in that section. In other words, the position is that while under s. 58(d) of the 1952 Act rules may be framed in respect of (1) mines wherein women are ordinarily employed and (2) mines wherein though women are not ordinarily employed, women are employed and (3) mines, where though women are not ordinarily employed, women were employed on any day of the preceding twelve months, the Mines Creche Rules, 1946, cover a part of the ground that could be covered by rules under s. 58(d) of the 1952 Act. To the extent the provisions of s. 58(d) of the 1950 Act and s. 30(bb) of the earlier enactment overlap, these rules would continue in force by virtue of s. 24 of the General Clauses Act.

On an examination of the evidence adduced in the case before the Magistrate, we find that the Jawabad Mine was one, where women were ordinarily employed. With regard to this Mine therefore the Mines Creche Rules operated as rules under the 1952 Act; and consequently, contravention of Rule 7 of the Mines Creche Rules, 1946, was in law a contravention of a rule made under the 1952 Act, within the meaning of s. 73 of that Act. On behalf of the second appellant, Gupta, who was the manager of the colliery at the relevant time, a further contention is raised. It is pointed out that Rule 7(1) does not in terms lay any duty on the manager and it is contended that the manager having no duty to perform under Rule 7(1) of the Creche Rules; no question of his contravening the same by omission to appoint a creche-in-charge arises. The answer to this question depends on the interpretation of s. 18 of the Mines Act, 1952, which is in these words:- "18. Duties and responsibilities of owners, agents and managers:-

> (1) The owner, agent and manager of every mine shall be responsible that all operations carried on in connection therewith are conducted in accordance with the provisions of this Act and of the regulations, rules and bye-laws and of any orders made thereunder. (2) In the event of any contravention of any such provisions by any person whosoever, the owner, agent and manager of the mine shall each be deemed also to be guilty of such contravention unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing those provisions, to prevent such contravention. (3) It shall not be a defence in any proceedings brought against an owner or agent of a mine under this section that a manager of the mine has been appointed in accordance with the provisions of this Act".

It has to be noticed that after the first sub-section states in general terms that the owner, agent and manager shall be responsible for the carrying out of "all operations carried on" in connection with the mine, in accordance with the provisions of the Act and of the regulations, rules and bye- laws and of any orders made thereunder, the second sub-section d eals with the question of guilt of the owner, the agent and manager for contravention of such provisions by "any person whosoever"; and the third sub-section goes on to say that the owner or agent cannot escape liability merely because a manager of the mine has been appointed. The first contention urged on behalf of the appellant is that the Mines Creche Rules have nothing to do with "operations carried on in the mines" and that s. 18 deals only with the proper observance of the provisions of the Act directly touching the work carried on in the mines, for raising coal and allied activities. In our opinion that will be an unduly narrow interpretation of the section. The employment of female labour is obviously and admittedly

connected with the raising of coal in the mine; and all conditions of employment of female labour should reasonably be held to be inextricably connected with "operations carried on" in the mines. The Mines Creche Rules are no less conditions of female labour than are the provisions of, say, s. 46 of the Act. That section prohibits the employment of women in a mine which is below ground and also employment of women in mines above ground except between 6 a.m. and 7 p.m. except to the extent there is variation of the hours of employment above ground by the Central Government in exercise of the powers given by that very section. Section 46 as it now stands also provides that every woman shall be allowed an interval of not less than eleven hours, between the termination of employment on any day and the commencement of the next period of employment. It cannot be seriously argued that if in any mine, women labour is employed, in breach of these provisions of s. 46, operations would have been carried on in the mine in accordance with the provisions of the Act. We see no reason why employment of female labour in a mine, without compliance with the Mines Creche Rules, should not be similarly held to amount to "carrying on operations in connection with the mine" in contravention of a rule made under the Act. The true position in our opinion is that in order that operations carried on in connection with the mine can be said to have been conducted in accordance with the provisions of the Act, and of the regulations, rules and bye-laws, and of the orders made thereunder, it is necessary not only that such provisions as are directly connected with the work of raising coal are observed, but also that provisions governing the conditions of employment of the persons engaged in the mining operations are also observed. The Mines Creche Rules, as already pointed out undoubtedly form part of the conditions of employment, of female labour engaged in mining operations. Observance of these rules is therefore necessary before operations can be said to have been carried on in accordance with the rules made under the Act. In our opinion, therefore, the effect of s. 18(1) is that all three-the manager, the agent and the owner-are responsible for the Observance of the Mines Creche Rules.

On behalf of the State it is urged that the result of such a responsibility being laid on all the three is that the manager is liable to penalty for a contravention of the Mines Creche Rules by the owner. It is unnecessary however to consider whether s. 18(1) by itself has this consequence; for the matter is put beyond doubt by s. 18(2). This sub- section of s. 18 makes all the three-the owner, the agent and the manager-severally liable for the breach of any regu- lations by "any person whosoever". Not only is that person who contravened the provisions guilty but each of these three-the manager, the agent and the owner is also deemed to be guilty though the contravention was not by himself. It would be illogical to say in the face of this provision that two of them should not be held liable for the contravention of the provisions within s. 18(1) by the third.

But, says, the manager-appellant, such a construction of s. 18(2) should be avoided as it will be thorough. by unjust. "How am I to secure", says he, "the observance of a rule which in terms fixes a duty on the owner only to do certain things". The argument really is that the Legislature acted improperly making the owner, the agent and the manager vicariously liable for the contravention of certain provisions by " any person whosoever". With the wisdom of the law the Court is not however concerned. It is pertinent to notice however that it was clearly to avoid injustice which may result from the fixation of such vicarious liability that the legislature has provided for a special defence of the owner, the agent and the manager in such cases.

Thus, if a rule or a bye-law in terms lays a duty on the manager, and the owner is prosecuted he will escape punishment as soon as he shows that he did all that he could reasonably do in seeing that the manager duly performed his duty. The effect of sub-section (3) is that the mere appointment of a manager would not be a sufficient defence. Where, as in the present case, the rule in question lays a duty in terms on the owner and the manager is prosecuted he will escape conviction on showing that he took all reasonable means to prevent the contravention of the rules by the owner.

The whole purpose of s. 18 read as a whole appears to be clearly this:-The provisions of the Act and of the regulations, rules and bye-laws or orders made thereunder may require certain things to be done or forbidding the doing of certain things with or without mentioning the person required to do the thing or forbidden to do it. Where a person definitely indicated is required to do or forbidden to do a certain thing he is straightaway, liable to penalty for contravention of the rules. But the owner, the agent and the manager will have the additional responsibility that even though any of them is not named as the person required or forbidden to do a thing, the owner, the manager or the agent, will be liable to punishment for the contravention of the rule, subject to this that the liability will disappear as soon as he shows that he had taken all reasonable means to prevent the contravention. In the present case, the manager-appellant has neither suggested nor proved that he took all reasonable means to prevent the contravention of the provisions of Rule 7 of the Mines Creche Rules by the owner. He must therefore be deemed guilty of the contravention, even though the rule in terms laid no duty on him.

In support of his contention that the law does not impose any duty on the manager of the mines to carry out the provisions of the Creche Rules, Mr. Majumdar relied on a decision of the Nagpur High Court in the State Government, M. P. v Deodatta Diddi (1). The question there was whether one Deodatta Diddi, Agent, Rawanwara Khas Colliery, could be held to have contravened rule 3(1) of the Coal Mines Pithead Bath Rules, 1946, where no pithead baths had been con- structed as required by the rules. In terms, rule 3(1) provided that the owner of every coal mine shall construct pithead baths in accordance with the plans prepared in conformity with the rules and approved by the competent authority. It was held by the High (1) A.I..R. (1956) Nag. 71.

Court that it was the owner alone who could be deemed to have contravened the rule and that the Agent even assuming that he was the representative of the owner in respect of the management of the colliery had no duty to perform in this matter. We notice however that the attention of the learned Judges was not drawn to the provisions of s. 18 of the Indian Mines Act. This decision is therefore of no assistance. The question as regards the liability of any agent or manager of the mine for the construction of pithead baths or of mine creches appears to have been raised before the Calcutta High Court in G. D. Bhattar v. The State (1). In that ease both the learned Judges considered s. 18 of the Mines Act, 1952, but came to different conclusions, one of them holding that under s. 18 the manager would be liable for carrying out the provisions of these rules while the other learned Judge took a different view. In our opinion, the former view is correct.

All the contentions raised on behalf of the appellants therefore fail. The appeal is accordingly dismissed. MUDHOLKAR, J.-While I agree to the order proposed with respect to Mohan Lal Goenka, I am of the opinion that the conviction of the co-appellant Gupta who was a manager of the

mines cannot be sustained.

It has throughout been accepted that under r. 7(1) of the Mines Creche Rules, 1946, as they stood on the date of the alleged contravention the responsibility for appointing a creche in charge was on the owner of the mine only. It was, therefore, contended on behalf of Gupta that he cannot be held liable for the contravention of the rule made by the owner Mohan Lal Goenka. Reliance was, however, placed on behalf of the State in the courts below as well as before us on the provisions of s. 18 of the Mines Act, 1952 (35 of 1952). That section reads thus:

> "(1) The owner, agent and manager of every mine shall be responsible that all operations carried on in connection therewith Are conducted in accordance with the provisions of this Act and of the (1) A.I.R. (1957) Cal. 483.
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> regulations, rules and bye-laws and of any orders made thereunder.
>
> (2) In the event of any contravention of any such provisions by any person whosoever, the owner, agent and manager of the mine shall each be deemed also to be guilty of such contravention unless he proves that he had taken all reasonable means, by publishing and to the best of his power enforcing those provisions, to prevent such contravention: Provided that the owner or agent shall not be so deemed if he proves-
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> (a) that he was not in the habit of taking, and did not in respect of the matter in question take, any part in the management of the mines; and
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> (b) that he had made all the financial and other provisions necessary to enable the manager to carry out his duties; and
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> (c) that the offence was committed without his knowledge, consent or connivance. (3) Save as hereinbefore provided, it shall not be a defence in any proceedings brought against an owner or agent of a mine under this section that a manager of the mine has been appointed in accordance with the provisions of this Act."

It was urged that this section holds the owner, the agent as well as the manager liable for the contravention of any provision of the Act or of a regulation, rule or bye-law made by any person unless the owner, agent or manager can bring his case within any of the exceptions set out in sub- s. (2) of s. 18. It is pointed out that Gupta has not relied on any exception and, therefore, his conviction is correct in law.

Section 18 is in Chapter IV of the Mines Act which deals with "Mining operations" and "Management of mines". This chapter thus deals with two topics. Section 18, however, deals with only one of these two topics, that is, "Mining operations". This would clearly follow from the language of sub-s. (1) or s. 18. The duties and responsibilities of owners, agents and managers with which this section deals are with respect to "all operations carried on in connection there with", i.e.,

the mine. Therefore, the inference must be that this section deals with duties etc., in connection with mining operations only. The chapter itself has drawn a distinction between "Mining operations" and "Management of mines". Employment of labour, providing amenities for them and allied matters would pertain mainly to "management" and not to "Mining operations". The expression "Mining operations" occurring in an Act dealing with mines should be accorded that meaning which it has in the mining industry. In the industry a mining operation is understood to mean an opera- tion undertaken for the purpose of winning minerals and cannot, as suggested by my learned brother, be given an extended meaning so as to embrace within it matters such as employment of labour, providing amenities to labour etc., even though that labour is utilised or required for the purpose of carrying on mining operations. I can see no justification for giving an extended meaning to the expression "Mining operations" and none was suggested at the bar. Upon this view it would follow that the manager of a mine cannot be made vicariously liable for the omission of the owner, to carry out his duty under r. 7(1) of the Mines Creche Rules.

There is an additional reason for coming to the same conclusion. Upon the language of s. 18(2) the manager of a mine cannot be held liable for the contravention by the owner of any provision of the Act, regulation, rule or bye- law unless that contravention was with respect to a matter in' regard to which the exception could be available. To put it a little differently, a manager cannot be held vicariously liable for a contravention unless there was on his part also an omission to do something which was in his power to do. Sub-section (2) of s. 18 would absolve a manager from vicarious liability if he could show "that he had taken all reasonable means by publishing and to the best of his power enforcing those provi. sions to prevent such contravention". This, therefore, implies that by resorting to certain steps he can escape liability. The first part of the quotation is clearly in. applicable to the present case. The second part would apply provided the manager had the power to enforce the performance of a particular duty by the owner.

There is nothing in the Act or the rules which empowers the manager to enforce the performance by the owner of his duties under sub-r. (1) of r. 7. Since that is the position it must be held that the manager is not liable for the contravention by the owner of his duty under sub-r. (1) of r. 7 of the Mines Creche Rules. That the construction I am placing on this provision is the proper one would appear from the following illustration.

Section 17 of the Act provides that the owner or an agent of every mine shall appoint a person having the prescribed qualification as a manager of the mine. Section 57(c) provides for the framing of regulations prescribing the qualifications for the manager of mines. I will assume that regulations have been made thereunder prescribing the qualifications for managers. If a person is appointed as a manager of a mine even though he does not possess the prescribed qualification would he be held vicariously liable for the contravention by the owner or the agent of the duties placed upon the owner and agent by a Regulation and by s. 17? I do not think that there would be any difficulty in saying that he would not be liable for the simple, reason that it was not within his power to enforce the compliance by the owner of the duty cast upon him by the regulations. I would, therefore, allow the appeal of Gupta and set aside the sentence of conviction passed upon him. ORDER. In accordance with the opinion of the majority the appeal, on behalf of both the appellants, is dismissed. Appeal dismissed.