(1968) 02 KL CK 0017

High Court Of Kerala

Case No: Crl R.P. No''s. 415 and 416 of 1967

R. E. D''Souza	APPELLANT
Vs	
S. Krishnan Nair and another	RESPONDENT

Date of Decision: Feb. 21, 1968

Acts Referred:

- Factories Act, 1948 - Section 102, 2(1), 2(k), 2(k), 92

Citation: (1968) KLJ 329

Hon'ble Judges: T. C. Raghavan, J

Bench: Single Bench

Advocate: R.G. Dias, for the Appellant;

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

T. C. Raghavan, J.
The petitioner in these cases is the same; and the result of the second case will follow the result of the first case. The petitioner has been convicted u/s 92 of the Factories Act for using a building as a factory without obtaining the previous permission in writing of the Chief Inspector of Factories, for failing to apply for registration and grant of license for the factory and also for failing to maintain a muster roll of the workers employed in the factory in one case, and for failing to give attendance cards to every person employed in the factory in the other case. He has been sentenced to pay a fine of Rs. 20/- in each case. He has also been directed u/s 102 of the Factories Act to rectify the defects within a specified period.

2. In revision, the counsel of the petitioner has contended that no manufacturing process is being carried on in the premises; and that the persons working there are not workers under the Factories Act.

3. The work done in the premises is the peeling, washing, cleaning, etc. of prawns brought there in lorries. The modus operandi of the work and the type and nature of the workers doing the work are given in Ex. P4, a letter sent by the petitioner to the Inspector of Factories. This document has been marked at the instance of the prosecution; and it is admitted that this contains the nature, manner, etc. of the work that is being done and the type of the workers working there, their remuneration, etc. This document shows that as and when catches of prawns are made, a consignment of prawns is brought to the premises in a lorry at any time of the day or the night; that the women and girls of the locality who form a "casual, heterogeneous, miscellaneous and irregular group", come at their convenience and do the peeling, washing, etc. at piece- rates; and that there are no specified hours of work, nor is there any control by the petitioner over their regularity and attendance or of the nature, manner or quantum of their work. The same workers, after finishing the work in the premises of the petitioner, go to other similar premises in the locality, where other lorry loads of prawns are taken. In other words, if more prawns are caught at a particular time, they are brought and distributed among several premises like the petitioner''s and the local women and girls collect at the several premises, and do the work at piece- rates. The same workers do not go to the same premises on different occasions; and the owners of the several premises do not have any control over the manner or quantum of work these women and girls do. The rates of remuneration naturally depend upon the quantity of prawns available, the number of women and girls that come to do the work, the hour of the day or the night when the catches arrive, etc. Sometimes for days no work is done in the premises.

4. The first question for consideration is whether the work done in the premises of the petitioner, viz., peeling, washing, cleaning, etc. of the prawns, is a "manufacturing process" coming within section 2 (k) of the Factories Act. u/s 2(k) "manufacturing process" is defined, inter alia, as

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.

5. The counsel of the petitioner argues that the peeling, washing, etc. of prawns done at the premises is not with a view that the prawns might be used, sold, transported, delivered or disposed of. He argues that the purpose of the work is only to send the prawns to the cold storage plant nearby owned by another person. I do think this contention has any force. The prawns are intended for use or sale or other disposal after they are peeled, washed, etc. and preserved at the cold storage plant.

It may be that the petitioner is doing only a part of the process. Which ultimately ends in the sale or use or disposal of the prawns. But, that does not mean that the work he is doing is not with a view to the sale or use or disposal of the prawns.

Therefore, the work done in the premises of the petitioner is certainly a "manufacturing process

6. The more important question is the next one, viz., whether the women and assemble at the premises and do the peeling, washing, cleaning, etc. are coming within section 2(1) of the Factories Act. "Worker" is defined by section 2(1) as

a person employed, directly or through any agency, whether for wages or not, in any manufacturing process, or in cleaning any port of the machinery or premises used for a manufacturing process or in any other kinds of work incidental to connected with, the manufacturing process, or the subject of the manufacturing process.

7. The plea of the counsel of the petitioner is that the women and girls who do the work are not "workers" coming within the aforesaid definition'' but are "independent contractors". In support of this plea he has cited a few decisions.

8. The first decision is Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra, . The case arose under the Industrial Disputes Act still the decision applies to a case under the Factories Act as well. Bhagwati J. has observed in the said decision that the essential condition of a person being a workmen is that he should be employed to do the work in the industry, in other works there should be an employment of his by the employer and there should be the relationship between the employer and him as between employer and employee or master and servant. The learned Judge has further observed that the prima facie test for the determination of such relationship between master and savant is the right in the master to supervise and control the work done by the servant not only in the matter of directing what work the servant is to do, but also the manner in which he shall do the work. Bhagwati J. has also pointed out that the nature or extent of control, which is requisite to establish the relationship of employer and employee must necessarily vary from business to business, and the correct method of approach would be to consider whether there was due control and supervision by the employer having due regard to the nature of the work: the mere fact that a person is paid not per day but by the job does not make a person any the less a workman: the question whether the relationship is one as between employer and employee or between master and servant is a, pure question of fact the broad distinction between a workman and an independent contractor lies in that while the former agrees himself or personally to work, the latter agrees to get other persons to work.

9. The next decision cited is Chintaman Rao and Another Vs. The State of Madhya Pradesh, . That was a case under the Factories Act; and Subba Rao J, who spoke for the Court has observed that a contractor is a person who, in the pursuit of an independent business, undertakes to do specific jobs of work for other persons without submitting himself to their control in respect to the details of the work the learned Judge has pointed out that there is a clear -cut distinction between a

contractor and a workman; and that the identifying mark of the latter is that he should be under the control and supervision of the employer in respect of the details of the work. Subba Rao J. has followed the earlier decision of the Supreme Court already referred to and has observed that the prima facie test for determination of the relationship between the employer and the employee is the existence of the right in the employer to supervise and control the work done by the employee not only in the matter of directing what work the employee is to do, but also the manner in which he shall do his work.

10. Yet another decision of the Supreme Court is State of Kerala v V. M. Patel 1960 K. L. J. 1524), where Hidayatullah J. has pointed out that an independent contractor is charged with a work, and has to produce a particular result, but the manner in which the result is to be achieved is left to him; a servant, on the other hand, may also be charged with a work and asked to produce a particular result, but is subject to the directions of the master as to the manner in which the result is to be achieved. This again, I would point out, was a case under the Factories Act.

11. From these decisions what clearly emerges is that the main features or identifying marks that distinguish a worker from an independent contractor are that the latter is not controlled by the employer regarding the manner in which the work allottee to him is to be done; and that he need not do the work personally, but may get it done by employing others. With this principle in mind if the facts of the present case are considered, it will be apparent that the women and girls who assemble and do the work when a catch of prawns is brought to the premises of the petitioner are not "workers" coming within the definition of the Factories Act. The petitioner does not insist as to who should do the job or how it should fee done: he only wants the work to be done for the agreed remuneration without spoiling the prawns, i.e., within a short time. (A quantity of prawns is taken for peeling, cleaning, washing, etc. by a particular individual for a fixed remuneration, and that individual, with the assistance of others whom she employs finishes the job as quickly as possible.)

12. The counsel has cited a few other decisions as well. But, I do not propose to refer to all of them; and I shall refer only to the decision of Balakrisna Ayyar J. of the Madras High Court in Palartiappa Mudaliar v Additional First Class Magistrate, Kullittalai (1958 II L.L.J.744) and to the decision of a Division Bench of the same High Court in In re M. Ratnaswami Mudaliar A. I. R. 1959 Mad. 203). Both the decisions were under the Factories Act; and Balakrishna Ayyar J. has pointed out in the first decision that in the case of a manufacturing process carried on in a factory, the process normally calls for a large measure of co-ordination between various sections inside a factory and between various individual workers even inside the same section; that the management of a factory may properly require that certain hands should do some particular work and not some other work; and that the management may also have to tell the hands how they are to do that work. The

learned Judge has concluded by saying that regard being had to actualities, a worker in a factory is normally liable to constant and close supervision. From the decision it is clear that the control in a factory is quite close and constant, not only as to what work the worker should do, but also as to how he should do it; and such control is lacking in the case before me. In the Division Bench ruling, Panchapakesa Ayyar J. has observed that where the owners of certain weaving sheds had their weaving done by "miscellaneous, heterogeneous and irregular piece-workers" and the owners exercised no supervision or power of control over them in relation to the kind of work done and there was no obligation on the part of the owners to provide work for them, etc., there was no contract of service between the owners and the workers which was essential to make latter "workers" within the meaning of the definition in the Factories Act. The women and girls who undertake to do the work in the case before me are not controlled by the petitioner as to how they should do the'' work. Of course, by undertaking to do a job on a piece-rate basis, the worker does not cease to be a worker and become an independent contractor. As pointed out by Supreme Court, the question whether in a particular case the worker is a worker independent contractor is a question of fact which has to be decided in the circumstances of the case having regard to the nature of the work. From the materials available in Ex. P4, what appears is that the women and girls who come to do the peeling, cleaning, etc. are not being controlled in the manner they would be controlled if they were workers in a factory. Therefore, the conclusion of the lower court that women and girls who collect and do the work at the premises of the petitioner are workers coming within the Factories Act does not appear to be correct.

13. As already stated at the commencement of this judgment, the result of both will depend upon the conclusion on this question. Now that I have found that the women and girls are not workers but contractors, the criminal revision petitions have to be allowed, though agreed with the lower court that the work that is being carried out in the patenerses is manufacturing process. The revision petitions are allowed; and the convictions and sentences passed'' by the lower court are set aside. The fines, if paid, will be refunded.