(1958) 10 BOM CK 0029

Bombay High Court

Case No: Criminal Revision Application No. 297 of 1958

Radhakishan Ramnath		APPELLANT
	Vs	
State of Bombay		RESPONDENT

Date of Decision: Oct. 10, 1958

Acts Referred:

- Factories Act, 1948 - Section 2, 5
- Maternity Benefits Act, 1961 - Section 2

Citation: (1959) 61 BOMLR 711 : (1959) 2 LLJ 177

Hon'ble Judges: S.P. Kotval, J

Bench: Single Bench

Judgement

1. The applicants are the proprietor and manager respectively of the Ramkrishna Ramnath Bidi Factory at Kamptee. Both have been convicted under S. 9 of the Central Provinces and Berar Maternity Benefit Act, 1930, read with S. 5(3) and under rule 10 read with rule 4 of the Central Provinces and Berar Maternity Benefit Rules, 1930, for not paying maternity benefit to a female employee in their factory, and for failing to maintain a muster-roll of female employees. Both the applicants have been fined Rs. 200 and Rs. 25 respectively on each of the above counts, or in default, ordered to undergo simple imprisonment for three weeks each.

2. The merits of the convictions have not been challenged before me, nor was the evidence referred to. But Mr. M. N. Phadke on behalf of the applicants has raised several contentions.

3. In order to show the nature of these contentions it is necessary to state certain facts. The Central Provinces and Berar Maternity Benefit Act is Act VI of 1930. Though published in the Central Provinces and Berar Gazette Extraordinary of 22 March, 1930, it was brought into force on 1 January, 1931 by a notification of the then Government of the Central Provinces and Berar, dated 16 December, 1930, notification No. 3308-1740-XIII, issued under the powers vested in the State

Government by S. 1(c) of the Act. By virtue of S. 2(a) of the Act as originally enacted "factory" was defined as follows :

""factory'' means a factory as defined in S. 2(j) of the Factories Act, 1911."

4. After the enactment of the Maternity Benefit Act, the Factories Act of 1911 was replaced by the Factories Act of 1934 (Act XXV of 1934), and in consequence of the enactment of that Act S. 2 of the Maternity Benefit Act was amended. The amendment of S. 2 was made by the Central Provinces Maternity Benefit (Amendment) Act, 1935, (Act 22 of 1935). As amended, S. 2(a) defines "factory" as follows :

""factory'' means a factory as defined in S. 2(i) of the Factories Act, 1934, or any premises declared to be a factory under S. 5 of the Act."

5. It will be noticed that the definition remained in substance the same except that instead of reference to S. 2(j) of the Factories Act of 1911, S. 2(i) of the Factories Act of 1934 was referred to and a clause added permitting a factory to be declared a factory.

6. The amendment of S. 2(a) came into force on 15 November 1935. After the Maternity Benefit Act was thus amended in 1935, the then existing Factories Act of 1934 was repealed and reenacted. It is now Act LXIII of 1948. The Factories Act of 1948 came into force on 1 April, 1949. When the new Factories Act came into force, it is to be noted that the definition of "factory" in S. 2(a) of the Central Provinces and Berar Maternity Benefit Act of 1939 was not amended with the result that even to day the Maternity Benefit Act in defining "factory" refers to S. 2(i) of the Factories Act of 1934, and makes no reference to the Factories Act of 1948. Mr. Phadke''s argument is founded upon this failure to amend the Maternity Benefit Act in consequences of the enactment of the Factories Act of 1948.

7. The Factories Act of 1948 made sweeping changes in the definition of "factory" as contained in S. 2(m) of the Act. I need not stress the points of difference but it is sufficient for the purposes of this revision to state that if the definition of "factory" in S. 2(m) of the 1948 Factories Act is considered, the applicants'' premises would be included in the definition of "factory" whereas under S. 2(i) of the Factories Act of 1934 it is conceded, it would not fall within the definition of "factory." Now Mr. Phadke contends that the omission to amend S. 2 of the Maternity Benefit Act shows that reference was deliberately intended only to the definition of "factory" in the old Factories Act of 1934 and that the new definition contained in S. 2(m) of the Factories Act of 1948 was not intended to be brought into force so far as payment of maternity benefit was concerned. Therefore, he urges that the applicants'' premises admittedly would not be "factory" and the conviction under the Maternity Benefit Act of 1930 and its rules cannot be sustained.

8. On behalf of the State reliance was placed by the Additional Special Government Pleader on S. 8 of the General Clauses Act which is the same as S. 7 of the Central Provinces and Berar General Clauses Act and S. 38 of the English Interpretation Act. Section 8(1) of the Central General Clauses Act runs as follows :

"Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and reenacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so reenacted."

9. No doubt, if S. 8(1) of the General Clauses Act were applicable, it is clear that the repeal of the Factories Act of 1934, followed by its reenactment as the Factories Act of 1948, would have this effect, that in the Central Provinces and Berar Maternity Benefit Act the reference to the Factories Act of 1934 would have to be read as a reference to the Factories Act of 1948. This of course would be subject to the governing clause of S. 8(1) "unless a different intention appears."

10. Mr. Phadke relied upon those words and urged that such a different intention does appear in the present case. He urged that that would be so for three reasons. Firstly, that the nature of the change brought about in the definition of "factory" in the Factories Act of 1948 is so fundamental and sweeping that it would include within its ambit several business premises which were never factories in the accepted sense of that term and could never have been intended to be included in the definition of "factory." Therefore, according to him, a contrary intention appears. Secondly, he urged that when the Factories Act of 1911 was repealed and reenacted in 1934, S. 2(a) of the Maternity Benefit Act was soon after amended in order to bring it in conformity with the Factories Act of 1934, but it is of great significance that when the new Factories Act of 1948 was brought into force and the Factories Act of 1934 was repealed, no corresponding change was made in the Maternity Benefit Act. He contends that this omission was deliberate and it shows a clear intention on the part of the legislature, so far as payment of the maternity benefit is concerned, to define "factory" with reference to the Factories Act of 1934 and not with reference to the Factories Act of 1948. Thirdly, Mr. Phadke urged that when the Factories Act was reenacted in 1948 there was extant in the former territory of the Central Provinces and Berar an Act knows as the Central Provinces and Berar Unregulated Factories Act, 1937 (XXI of 1937). That Act no doubt was later on repealed by the Madhya Pradesh Unregulated Factories Repealing Act, 1952, which came into force on 25 July, 1952, but in 1948 Act XXI of 1937 was in force. Mr. Phadke''s further contention was that the Unregulated Factories Act was in force at the time when the Factories Act of 1948 was brought into force, and therefore at that time the legislature advisedly did not amend the Maternity Benefit Act because they probably took the view that the provisions of the Unregulated Factories Act were sufficient to deal with the case of unregulated factories under which class the

applicants'' factory fell and that it was not necessary to apply the wider definition in the Factories Act of 1948 to such unregulated factories so far as maternity benefit was concerned. He urged that the omission was deliberate and, therefore, a contrary intention appears within the meaning of S. 8(1) of the General Clauses Act.

11. Now, in the first place, it seems to me that the words "unless a different intention appears" in S. 8(1) of the General Clauses Act must be read in the light of the precedent words of the section and they cannot be isolated from their context. The precedent words are :

"Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and reenacts ... any provision of a former enactment then references in any other enactment or in any instrument to the provisions so repealed shall"

12. and the succeeding words are :

"be construed as references to the provision so reenacted."

13. The words "unless a different intention appears" therefore qualify the words "reference in any other enactment or in any instrument" or "this Act or any Central Act or Regulation." The effect of this is, therefore, that the contrary intention must be found in the repealing Act or in the other enactment or instrument, and we cannot turn to circumstances outside those Acts or instruments to find whether a contrary intention appears or not. All the three contentions raised by Mr. Phadke refer to such circumstances outside the enactment, namely the Factories Act, 1948, and the Minimum Wages Act, in the present case and, in my opinion, having regard to the terms of S. 8(1) of the General Clauses Act we cannot look to those circumstances. It was conceded that there was nothing in the Maternity Benefit Act as such to indicate a contrary intention.

14. Apart from this, there is no doubt that when the Factories Act of 1934 was repealed and its provisions were reenacted in the shape of the Factories Act of 1948, by virtue of S. 8(1) of the General Clauses Act the references to the Act of 1934 must be taken as references to the Act of 1948. Even if S. 8 would not strictly apply, still the principle of construction enunciated in that section would apply. It has been held by the Supreme Court of India to be a principle of general application in construing statutes in National Sewing Thread Co. Ltd. Vs. James Chadwick and Bros. Ltd. (J. and P. Coats Ltd., Assignee), .

15. When the rule of interpretation was clearly laid down in S. 8 of the General Clauses Act, it is to be presumed that the legislature had in mind the provisions of that law when they reenacted the Factories Act in 1948 and the alleged failure to correspondingly amend the Maternity Benefit Act must be construed in the light of that provision of law. In this view it seems to me that it was entirely unnecessary to have amended Clause 2(a) of the Maternity Benefit Act because references to the

Factories Act of 1934 in that clause would, without further amendment of the Maternity Benefit Act, be construed as references to the Factories Act of 1948, by virtue of S. 8(1) of the General Clauses Act, and therefore, no amendment was made.

16. No doubt, when the Factories Act was brought into force in 1934, an amendment was made in the Maternity Benefit Act, but if such an amendment was made, one can only hold that it was made by way of abundant caution. At any rate, I am unable to hold that mere omission on the part of the legislature to amend an Act can be indicative of a contrary intention as required by S. 8 of the General Clauses Act. The drawing of any such inference would render the provisions of S. 8 of the General Clauses Act largely otiose. The second of the contentions raised by Mr. Phadke, therefore, fails.

17. I am also not impressed by the third contention founded upon the provisions of the Unregulated Factory Act. That Act has now been repealed, and the effect of the repeal without reenactment is that that law had never existed. Therefore, no advantage can be taken of such a law. Even if reference could be justified to the Unregulated Factories Act, I do not think that I can speculate as to what must have been the intention of the legislature, in the face of provisions of S. 8 of the General Clauses Act. Nor can I presume that because the Unregulated Factories Act was then in force, the legislature did not amend the Maternity Benefit Act.

18. As to the first argument that the amendment of the definition of "factory" as contained in the Factories Act of 1948 makes sweeping changes and indirectly lays a liability upon the applicants for the first time by amending the Factories Act rather than the Maternity Benefit Act, it is only necessary to say that if the legislature clearly has the power to make an amendment and its terms are clear, it is not for the Courts to speculate upon its possible effect or the so-called hardship to the citizen. The Maternity Benefit Act is a necessary and very salutary measure of social amelioration and any hardship upon factory-owners like the applicants is far outweighed by the benefits thereby conferred upon their female employees.

19. On a question similar to the second contention of Mr. Phadke as to the applicability of the definition of "factory" contained in the Factories Act of 1948 to the Workmen''s Compensation Act, a Division Bench of the Calcutta High Court ruled in Khuda Bux Vs. Manager, Caledonian Press, that S. 8 of the General Clauses Act would apply. With reference to an argument similar to the one advanced in this case. Chief Justice Chakravartti held as follows :

"(7) In my opinion, this contention is plainly unsound. The Factories Act of 1934 was repealed and reenacted by the Act of 1948, and therefore by virtue of S. 8, General Clauses Act, references in the Workmen''s Compensation Act to the Act of 1934 must be construed as references to the Act of 1948. This is nothing from which a different intention appears. Had the workmen''s Compensation Act been amended after 1948, and had the reference to the Act of 1934 yet remained, there would be reason

for saying that it was the Act of 1934 which was intended to be regarded, but there has been no amendment of the Workmen''s Compensation Act after the Factories Act of 1948, nor is there any other indication that the new Act is not to be read for the old, as required by S. 8, General Clauses Act.

(8) As against these considerations, it was urged that the Factories Act of 1948 was not a repealing and amending Act, but was an Act to consolidate and amend the law relating to labour in factories, as the preamble showed, and consequently, S. 8 General Clauses Act, would not apply. That argument was founded on a misconception. Section 8, General Clauses Act, does not require that the later Act repealing and reenacting an earlier Act, should be a repealing and amending Act. All that it requires is that a Central Act should repeal and reenact a former enactment."

20. I am in respectful agreement with this view. It seems to me that there is no doubt in the present case that the definition of "factory" contained in the Factories Act of 1948 must be read into the Maternity Benefit Act of 1930. The contentions raised by Mr. Phadke on behalf of the applicants fail and the convictions of the applicants must be upheld. The sentences of fine in the circumstances were proper. The application for revision fails and is dismissed.