

State of Gujarat Vs. Bipln N. Shah, Director, Beep Jyoti Engineering Pvt. Ltd.

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Court : Gujarat

Decided On : Jul-24-1995

Reported in : (1996)1GLR570

Judge : D.G. Karia, J.

Acts : [Factories Act, 1948](#) - Sections 2, 3, 85, 87, 92 and 112

Appeal No. : Criminal Appeal Nos. 1035 & 1036 of 1992

Appellant : State of Gujarat

Respondent : Bipln N. Shah, Director, Beep Jyoti Engineering Pvt. Ltd.

Judgement :

D.G. Karia, J.

1. Both these Criminal Appeals arise out of order of acquittal, both dated July 22, 1992 passed by the learned Chief Judicial Magistrate, Surendranagar, acquitting the respondent-accused of the offenses punishable under Section 4(1) and 3(a) of the [Factories Act, 1948](#) (for short, 'the Act').

2. In both the appeals, the questions of fact and law are common and therefore the appeals were heard together and are being disposed of accordingly by this common judgment. It is the prosecution case that the respondent-accused is the owner of the factory named Beep Jyoti Engineering Private Limited, at 53-B,

Udyognagar, Surendranagar. The said factory is 'factory', according to the case of the prosecution, within the meaning of Section 85 of the said Act. It is alleged that the factory has been doing the dangerous operations as the operations in the factory are being carried on with the aid of gas welding and power. The factory, though liable to be registered under Section 2(m)(1) of the Act, has not been so registered and accordingly the Respondent-accused committed offence punishable under Section 2(m)(1) of the Act, as the factory was in contravention of Section 4(1) of the Act. These are the allegations against the respondent-accused in Criminal Case No. 2824 of 1989.

3. In Criminal Case No. 2823 of 1989, from which (Criminal Appeal No. 1036 of 1992) arises, the allegation against the respondent-accused is that the respondent did not get approved the plans and maps of the factory and the arrangement of machines therein from the Chief Inspector of Gujarat State, Ahmedabad and in absence of this prior approval before starting the factory in question, no such permission is obtained and thereby the petitioner has committed offence punishable under Section 92 of the Act read with Rule 3 of the Gujarat Factory Rules.

4. The respondent-accused pleaded not guilty to the aforesaid charges.

5. The prosecution filed its arguments in writing by Exh. 39, whereas the accused persons submitted their written arguments as per Exb. 42. The learned Magistrate, considering the evidence on record, came to the conclusion that the guilt against the accused was not established, as there was no material on record to show as to how many workers were employed and as to who these workers were in the factory. It was not proved that more than ten workers were working in the factory. The learned Magistrate, therefore, held that in absence of any notification under Section 85 of the Act, the provisions of the Factories Act cannot be said to be applicable to the factory of the respondent-accused. The learned Magistrate, therefore, ordered to acquit the accused person by the impugned judgments and orders of acquittal.

6. The State Government, being aggrieved by the aforesaid order of acquittal, has preferred both the aforesaid appeals.

7. Mr. Y.M. Thakkar, Learned Additional Public Prosecutor, submitted that pursuant to the notification dated March 27, 1986, which is produced at Exh. 38 in Criminal Case No. 2824 of 1982, the provisions of the Factories Act were made applicable to the factory of the respondent and as such the learned Magistrate has committed error of law in acquitting the respondent. Mr. Thakkar also referred to and relied upon the definition of 'factory' occurring in Section 2(m) of the Act.

8. Section 2(m) of the said Act defines 'factory' as meaning any premises including the precincts thereof (i) whereon ten 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 with the aid of power, or is ordinarily so carried on, or (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. Explanation I of the aforesaid definition provides that for computing the number of workers for the purpose of this clause, all the workers in different groups and relays in a day shall be taken into account. In the present case, however, there is no evidence, as is observed by the learned Magistrate, to show as to how many workers were employed on any day. Having regard to the evidence and material on record, the learned Magistrate has rightly recorded that it is not established from the evidence of the complainant as to how many workers were working in the factory of the respondent on any day of the year and as to who these workers were. The Factory Inspector, P.W. 2, Gordhanbhai Anandbhai Nasit, Exh. 30, has not recorded statement of any such worker nor any worker of the factory has been examined as the prosecution witness. It was, therefore, not established conclusively that in the factory of the respondent, ten or more workers have been working or were working on any day of the preceding 12 months. The learned Magistrate has also held that it was also not proved that the cutting job work was being done with the aid of the gas and as such it cannot be conclusively said that the provisions of the Factory Act were applicable to the factory of the respondent.

9. Section 85 of the Act is with regard to the power of the State Government to apply the Act to certain premises. It provides that the State Government may, by notification in the official Gazette, declare that all or any of the provisions of the Act

shall apply to any place wherein a manufacturing process is carried on with or without the aid of power or is so ordinarily carried on notwithstanding that -

(i) the number of persons employed therein is less than ten, if working with the aid of powers and less than twenty if working without the aid of power, or

(ii) the persons working therein are not employed by the owner thereof but are working with the permission of, or under agreement with, such owner.

Sub-section (2) of Section 85 contemplates that after a place is so declared, it shall be deemed to be a factory for the purposes of the Act, and the owner shall be deemed to be the occupier, and any person working therein, a worker.

Relying upon the provisions of Section 85 of the Act, Mr. Thakkar, Learned Additional Public Prosecutor, pointed out the notification at Exh. 38 and contended that the provisions of the Factories Act were made applicable to the factory of the respondent. I see no merit in this submission, for the notification dated March 23, 1986 at Exh. 58 is under Section 87 read with Section 112 of the Act. Section 112 of the Act is in respect of general power for making rules by the State Government. The said Section 112 provides that the State Government may make rules providing for any matter which, under any of the provisions of the Act, is to be or may be prescribed or which may be considered expedient in order to give effect to the purpose of this Act. Section 87 of the Act relates to dangerous operations, providing that where the State Government is of the opinion that any manufacturing process or operation carried on in factory exposes any persons employed in it to a serious risk of bodily injury, poisoning or disease, it may make rules applicable to any factory or class or description of factories in which the manufacturing process or operation is carried on, as specified in the said Section 87.

10. On plain reading of both these provisions of Section 87 and 112, it is clear that the State Government has power to make rules which can be made applicable to the factory or class or description of factories wherein dangerous operations are being carried on. In fact, the notification at Exh. 38 is for the purpose of making the rules further amending Gujarat Factories Rules, 1963 and inserting Schedule XXIV

therein. Thus, the said notification cannot be read or construed as a notification under Section 85 declaring that the factory of the respondent is covered under the provisions of the Factories Act. In absence of such declaration, as is contemplated under Section 85 of the Act, the factory of the respondent cannot be deemed to be a 'factory' for the purpose of the Act, nor the respondent can be said to be owner or occupier of the factory to which the provisions of the Factories Act can be said to be applicable. The evidence and the material on record do show that there is no proof or other evidence that there were ten or more workers in the factory of the respondent on the day the Factory Inspector visited it. The premises in which a manufacturing process is carried on where the number of workers is less than the minimum prescribed do not fall within the definition of 'factory'. Again, a person to be a 'worker' must be employed in a manufacturing process or in cleansing machinery used for the process, or in any work incidental to or connected with the manufacturing process. To attract the provisions of the Factories Act which confer certain benefits and privileges upon workers and impose obligations upon owners of factories qua those workers, there must, therefore, be a manufacturing process carried on in the premises, the number of persons working in the manufacturing process or cleansing machinery used for the process or in work incidental to or connected therewith be not less than the number specified in the definition in Section 2(m) and that the persons so working must be employed for wages or not and directly or indirectly

11. The factory of the respondent has not been declared as a factory to which the provisions of the Act would be applicable, as is provided by Section 85 of the Act. After a place is so declared, it shall be deemed to be a factory for the purposes of the Factories Act, and the owner shall be deemed to be the occupier, and any person working therein a worker. Section 85 is enacted with the object of conferring authority to extend in appropriate cases the provisions of the Act to establishments which are otherwise not factories within the meaning the Act, the benefits provided thereby. The section authorises the State Government to make all or some of the provisions of the Act applicable to any place wherein a manufacturing process is carried on with or without the aid of power, notwithstanding that the number of persons employed therein is less than the numbers specified in the definition of 'factory', or where the persons working

therein are not employed by the owner but are working with the permission of, or under agreement with such owner. On the issue of a Notification by the State Government the place designated will be deemed a factory, the owner of the place will be deemed an occupier and persons working therein will be deemed workers. For all these, there must be a proper and valid notification under Section 85 of the Act. On perusal of the notification at Exh. 38, it cannot be concluded that the said notification is under Section 85 of the Act. It is clearly stated therein that the Notification is under Section 87 read with Section 112 of the Act, making further Rules and inserting Schedule XXIV in the said Rules. Therefore, in absence of any such notification under Section 85 of the Act for the purpose of extending the provisions of the Factories Act to the factory of the respondent, the respondent cannot be held guilty either for the offence under Section 4(1) or under Section 3(a) of the Act.

In the above view of the matter, I see no merit in either of the appeals.

In the result, both the appeals fail and are accordingly dismissed.