

In Re: M. Ratnaswami Mudaliar and ors.

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Court : Chennai

Decided On : Sep-24-1958

Reported in : AIR1959Mad203; 1959CriLJ614; (1959)ILLJ631Mad

Judge : Panchapakesa Ayyar and ;Basheer Ahmed Sayeed, JJ.

Acts : [Factories Act, 1948](#) - Sections 2

Appeal No. : Criminal Revision Case Nos. 141 to 146 of 1958 and Cri. Revision Petition Nos. 131 to 136 of 1958

Appellant : In Re: M. Ratnaswami Mudaliar and ors.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : K. Narayanaswami Mudaliar and ;R. Rajagopalan, Advs.

Disposition : Petitions allowed

Judgement :

1. The petitioners in these six cases are owners of weaving concerns in Karur. They have put up thatched sheds, where they have installed a certain number of handlooms. Of these, towels and bed-sheets are manufactured by casual piece-workers who go there. The staff in each of these establishments consists of only two clerks and a Mistry, who alone constitute the permanent members.

The residents of the neighbourhood, when they have time and feel inclined to do so, go to these sheds at whatever hour they like, when the work is in operation there, and are supplied with the yarn by the owners of these sheds, if they like, and work on the looms as they fall vacant. This yarn they weave into towels and bed-sheets for which they are paid at certain rates.

When they spoil the cloth, they are fined, and the fines are deducted out of the amounts due to them for the cloth woven by them. The principal occupation of the residents of Karur is agriculture. But weaving is also a well-known industry of the place, and many agriculturists are well versed in it, and take to it as a spare-time occupation.

2. The evidence on record clearly shows that these irregular piece workers go to the sheds when they like, leave the sheds when they like, and even when in the sheds can work fast or go slow as they like and leave for days together as they like, without taking any permission, and go back after several days of absence, without limitation as they like, and that the owner of the sheds was also not bound to give them work as soon as they went, or question their absence, or as to why they did not work on particular days, or direct them to work on towels rather than on bedsheets or vice versa, or direct them to make a particular kind of towel or bed-sheet he wants. There are a hundred such establishments in Karur employing more than 20 persons daily though the twenty persons would differ almost every day, because of the facts above mentioned, All of them use only hand-looms and no power.

3. They were all forced to register these as factories, despite their protests, and to take out licences under the Factories Act. Their contention all along was that they were not factories, and that the persons working in their premises would not be workers within the definition contained in the Factories Act, and that they were not, therefore, bound to maintain a muster roll in the prescribed form No.

79. or to conform to the requirements of the Payment of Wages Act, or of the Madras Maternity Benefit Rules. Since they had taken out licences under the Factories Act, they were all prosecuted when they failed to keep the prescribed registers. There have been three batches of prosecutions till now.

4. The first batch of cases was stayed by the orders of Balakrishna Aiyar J. in W. P. Nos. 1165 to 1167 of 1956 (Mad). Eventually, Balakrishna Aiyar J. allowed the writ petitions and held that the Factories Act would not apply to these cases and made the orders in the rule nisi absolute, and held that, in the state of the evidence in the case, such persons working in the sheds would not be workers within the meaning of the Factories Act, there being no contract of services but only a contract for services, and there being no effective supervision or control by the owners of the sheds, as masters, over the persons working in the sheds, as servant, and no right to even control the method of production, of the towels and bed-sheets. When he disposed of the writ petitions the accused in the first batch of prosecutions had their charges quashed.

5. The second batch of cases consists of the cases against these petitioners in these six cases. They were all convicted and sentenced to various fines, by the Additional First Class Magistrate, Kuli-talai. and the convictions and fines were confirmed in appeal by the Sessions Judge, Tiruchirapalli. The accused in those cases have thevefore filed these revision petitions.

6. The third batch of cases of the same description, against the owners of sheds for similar offences, ended in acquittal on 21st May, 1958. The Additional First Glass Magistrate, Karur, who tried the cases, acted on the ruling of Balakrishna Aiyar J. in the above writ petitions (reported in Palaniappa Mudaliar v. A. F. C. M. Kulitalai, 19oS Mad WN 429: (AIR 1958 Mad 602) and acquitted the accused, holding that these concerns were not factories and the casual piece-workers were not "workers".

7. We are informed by the learned counsel for the petitioners that no appeals have been so far preferred against the acquittal of the accused. We have perused the records, and heard Mr. Nara-yanaswami Mudaliar, the learned counsel for the petitioners, and the learned Public Prosecutor contra. We are of opinion that, in the light of the evidence in these cases, there is no contract of service between the owners of the sheds and the miscellaneous, heterogeneous and irregular piece-workers employed therein, and there is also no power of supervision or control exercised by the owners over the miscellaneous assemblage of persons working

in their sheds, and that it is purely a case of contract for services by independent contractors.

Of course the learned Public Prosecutor is right in urging that the mere fact that people are paid for their piece work, and not daily wages, will not by itself make the place cease to be a factory or the employees cease to be workers. But he frankly admitted that there must be a contract of employment, in other words a contract of services and not a contract for services. There must also be a right of supervision and control as to the manner in which the work was to be done, as laid down by the Supreme Court in *Dharangadhra Chemical Works Ltd. v. State of Saurashtra*, (S) AIR 1937 SC 264.

He urged that, even though the persons working in these sheds are not bound to go and work regularly, or daily, or even for stated hours, or for a fixed number of hours, and are not bound to work at any particular speed, and may work fast or go slow, or leave without taking permission and return when they like, still the owners of the sheds supplied the yarn and the looms, and the work was done inside the sheds and there was some kind of supervision by the Maistry over those, as admitted by D. W. 1 in the case covered by Crl. R. C. No. 142 of 1958. There, D. W. 1 said, "There is a maistry to supervise our work."

But that supervision is shown by the evidence in all these cases to be not supervision over the kind of work, but only a general supervision, evidently to see who comes and works, and who does not, on any particular day, and to see that the yarn supplied is utilised in the shed itself for making the cloth for the owner, and not stolen and taken away, and to see that cloth manufactured at home is not brought to the premises and passed as cloth manufactured in the premises, and to see that the premises are not fouled or the equipment damaged, and that the persons working do not quarrel and create disturbance.

It is clear that the persons working are not bound to work on the towels or bed sheets. at the behest of the owners, or on any particular kind of towels or bed sheets, or to finish them within a particular time, or indeed to finish a towel or bed-sheet at any time. This is a kind of *piyudari* work done by independent contractors and this cannot be said to come within the definition of a factory or a worker under

the Factories Act. We agree with the order of Balakrishna Aiyar J. to that effect.

8. The learned Public Prosecutor also pointed out that D. W. 1 had in the case in Crl. R. C. No. 142 of 1958. stated that the persons who work in his shed would go at 7-30 a.m. and work inside the factory till 6 p.m. and the word factory has been used by him. We are satisfied that he used the word factory loosely, because everybody called it a factory. It will not be of any use when the point to be proved is that it is a factory. As regards his working there from 7-30 a.m. till 6 p.m. he might have referred only to particular days, as he himself has said, in that very same deposition, that there are no fixed hours of work, and it is not the case of the learned Public Prosecutor that there are fixed hours of work in any of these concerns or establishments.

9. The learned Public Prosecutor wanted to urge that the case before us is similar to the case in (S) AIR 1937 SC 264, where the Supreme Court has held that the persons (Agarias) would be workers, though they were not bound to go at fixed hours, or to do fixed work, and might even employ other people to do their work for them. The Supreme Court ruling will not apply. There are two distinctions here.

One is that the ruling of the Supreme Court was given not under the Factories Act, but under the Industrial Disputes Act, and it is well known that the definition of the word "workers" differs from Act to Act. Secondly, the Supreme Court found that there was effective and complete supervision over the workmen, Agarias, there, and over the nature of their work or the way in which they did it, whereas, here, as we have seen, there was no supervision at all regarding the nature of the work or the way the work was done.

It is also found that, in that case, the Agarias worked day after day, year after year, at the same place, producing salt; whereas, here, the evidence shows that the people working in the sheds did not go day after day to work at the production of the cloth, but did so only if and when they liked and exactly as they pleased. So these cases are more similar to the case decided by the Supreme Court in Chintaman Rao v. State of M. P., , where, in circumstances similar to this the people were held not to be workers under the Factories Act. this Supreme Court case being one under the Factories Act.

10. The learned Public Prosecutor then relied on two judgments of Ramnswami J. not cited before or considered by Balakrishna Aiyar J. The first was Chockalingam v. State, 1953 Mad WN Cr. 250: (AIR 1924 Mad 324). There, the learned Judge held that casual employees paid on piece work system would be workers in factories. But, then, he took for granted that they were employed, without discussing the question whether the relationship of master and servant, or a contract of service existed, and whether there was a right of supervision and control over the manner in which the work has to be done, probably because, by that time, these two tests, laid down by the two Supreme Court cases had not been laid down. The facts in our cases are also different in some respects from the facts in the case before Ramaswami J.

11. The second decision was that In re Chin-niah. Manager Sangu Soap Works, . There too, the facts were somewhat different and the learned Judge has not discussed about the contract of service and the right to supervise and control, obviously because the Supreme Court decisions laying down the two tests were not then available. So these two decisions are not of much use to the learned Public Prosecutor, in these cases, and the decision of Balakrishna Aiyar J. alone will apply.

12. Lastly, the learned Public Prosecutor relied on the presumption in S. 103 of the Factories Act. That presumption will not be of any avail to him, because the persons must be found working in a factory when work is going on there, and the first thing to be proved is that these sheds are factories, before the presumption can be applied. These sheds will not, in our opinion, come within the definition of factories under the Factories Act, or the pieceworkers therein workers. The burden of proving these things, lay heavily on the prosecution, which failed to discharge it.

13. In the end, therefore, we- allow all these six revision petitions and hold that the sheds in question are not factories, and the workers working there are not workers, within the meaning of the Factories Act, and set aside the convictions and sentences passed on the petitioners and acquit them. The fines, if paid, will be refunded.

14. Before we close, we want to say that it is very desirable that some rules must be made quickly, either by amending the Factories Act suitably, or by independent legislation, for regulating these numerous establishments employing more than 20 persons every day, even though the workers would be workers within the Factories Act under the present definition. Obviously, the supply of drinking water and sanitary amenities, and provision of maternity benefits, and a muster roll, may have to be extended to such establishments also in the interest of the public. We are only acquitting the petitioners because the law, as it stands, is not wide enough to book them.

Basheer Ahmed Sayeed, J.

15. I am in agreement with the order pronounced by my learned brother. I am of the opinion that all these six revision petitions should be allowed. The onus lay heavily on the prosecution to prove that the concerns held by the petitioners came within the four corners of the definition of a "factory" contained in the Factories Act, and those who worked there came within the definition of the term "workers" in the Act. The evidence on this score on the side of the prosecution has been next to nothing. It has to be held that the prosecution has miserably failed in discharging the burden which heavily lay on them to establish that these concerns were factories."

16. Apart from this even applying the test that has been laid down in (S) or the test set forth in the

cases, from out of which these revisions have arisen, could not be held to come within the purview of the definition of "a factory" nor the persons employed in or working in these concerns could ever come within the definition of "workers" as contained in the Factories Act of 1948.

The broad requirements for establishing that the persons working in such concerns are workers is that there should be a relationship of master and servant and that there should be scope for the master to exercise control over the manner and method of the work of the servant. The evidence does not establish that there has been in these concerns any such control or relationship as between master

and servant.

On the other hand, what has been established is a very loose contact between the proprietor of the concern and the persons who go in, mostly casually in these establishments to produce either towels or bedsheets out of yarn given to them. The control exercised extends only to see that the yarn supplied is put to proper use. The sum and substance of the relationship between the proprietors and these weavers who are called "workers" seems to be that the proprietors desire to produce a certain result in the manufacture of towels and bed-sheets and they require some labourers to help them to produce this result in order that they might market the produce.

At best the relationship between the proprietors and the labourers indicated by the evidence could be only that of a contract for service and not a contract of service. Unless the prosecution succeeded in establishing that there was a contract of service in the type of work that the labourers did within these establishments, which amounted to a contract of service, neither the definition of "factory" nor the definition of "workers" would attract itself to the establishments and the labourers working therein.

17. In my view the ruling which has been very elaborately and succinctly discussed and laid down by Balakrishna Aiyar J. and also the principles in the judgment in Writ App. No. 22 of 1955, D/-1-7-1956 -- (Mad), which is not yet reported, as also the decisions in (S) and will apply to the facts of the

present case. That being the case, these revision petitions cannot but be allowed, and the prosecution quashed and the fine, if paid, refunded.

I entirely agree with the observations of my learned brother, that there is every need and desirability for the State to undertake legislation in order to provide for seeming necessary amenities and proper health conditions for the labourers in concerns and establishments of these and other kinds in the country, if the proprietors have not already taken steps in that direction.

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