

**Periera Vs. State of Madras**

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**Court :** Chennai

**Decided On :** Mar-22-1961

**Reported in :** (1962)IILLJ122Mad

**Judge :** Kunhamed Kutti, J.

**Appellant :** Periera

**Respondent :** State of Madras

**Judgement :**

**Kunhamed Kutti, J.**

1. Perlera, the managing director, Modern Embroidery (Private), Ltd., and proprietor, Colombo Saree Works, Oppanakar Street, Coimbatore, has filed these criminal revision oases against his conviction and sentence confirmed in C.A. Nos. 544 and 545 of 1959, by the District Magistrate, Coimbatore. He was charged by the Assistant inspector of Labour, Circle I, Coimbatore (P.W. 1), for having contravened Rules 16(1) and 16B of the rules framed under the Madras Shops and Establishments Act, 1947, in that on 30 May 1959 when P.W. 1 visited the establishments he found columns (3) to (5) (for the months of February, March and April 1959) in form F left blank and the register of wages was not made available for inspection. The sub-magistrate convicted the petitioner of both the offences and sentenced him to pay a fine of Rs. 25 in each case, in default simple imprisonment for two weeks. In appeal, the District Magistrate confirmed the

convictions and sentences and hence these revisions.

2. It is not disputed that when P.W. 1 inspected the petitioner's establishments on 30 May 1959, columns (3) to (5) of the register in form F had been left blank for the months of February, March and April and the register of wages was not available for his inspection. The plea of the petitioner in respect of the first charge was that, instead of the register in form F, he had exhibited a notice in form G and kept a record of hours of work in form H and therefore he had not contravened Rule 16(1). His plea in respect of the second charge was that since the register of wages was with his auditor at the time of inspection he could not make it available then and there. Both the Courts have found that the petitioner's plea that he had exhibited a notice in form G or kept a record of hours of work in form H was an afterthought, and that, since admittedly columns (3) to (5) in form F had not been filled up, the petitioner was guilty of contravention of the provisions of Rule 16(1).

3. Under Rule 16(2) an employer may, instead of maintaining a register as provided in Sub-Rule

(1) of that rule, exhibit in his establishment a notice in form G specifying the daily hours of work and the intervals for rest and meals to be allowed to the persons employed. Rule 16(3) provides that after such notice is exhibited he shall keep a record of hours of work in form H. If an employer complies with the provisions of Sub-Rules

(2) and (3), he is not liable to be proceeded against for non-compliance with the provisions of Rule 16(1). In this case, P.W. 1 has admitted that for the months of July to October 1958, against columns

(3) to

(5) in form F, was written 'see in the form G notice.' He noted this on 15 October 1958. Apparently no action was deemed necessary. He would now explain that he was not concerned with the form G notice. What is urged for the petitioner is that when the exhibition of form G notice was indicated in the register in form F. P.W. 1 was bound to satisfy himself whether such notice had been exhibited and a record

of hours of work kept in form H. Not having done so, it is argued, the petitioner cannot be said to have contravened Rule 16(1) as it was open to him either to keep a register in form F or to exhibit a notice in form G and keep a record in form H. After his inspection on 30 May 1959, P.W. 1 issued a notice to the petitioner to show cause why he should not be proceeded against for contravention of the Rules 16(1) and 16B. In his reply, the petitioner stated that he would fill up the columns in the register in form F and would make the register of wages available. The sub-magistrate and the District Magistrate relied on this reply to hold that no notice in form G could have been exhibited by the petitioner. That the petitioner wrote to the Inspector that he would fill in columns

(3) to (5), is not conclusive that he had not exhibited the notice in form G. Before he proceeded to take action for contravention of Rule 16(1) he should have satisfied himself that the petitioner had not complied with Rule 16(2) and (3). Not having done that, it seems to me that a charge for contravention of Rule 16(1) cannot be sustained. The stand taken by P.W. 1 that he was not concerned with notice in form G is hardly tenable. Exhibition of notice in form G and keeping a record of hours of work in form H is a sufficient compliance under the rules; be that if this had been done the register in form F would be a superfluity, the defect wherein would not render the petitioner liable to be proceeded against under Rule 16(1). I am satisfied that the charge under Rule 16(1) has not been conclusively established.

4. Coming to the charge relating to the non-production of the register of wages, the prosecution relied upon rule 16B to sustain the said charge. This rule lays down that the registers, records and notices, maintained or exhibited under the provisions of the rules, shall always be available in the establishment and shall be produced or caused to be produced for inspection at all reasonable hours by any inspector having jurisdiction. Emphasis is laid on the word 'always' and it appears to have been argued before the lower Courts that the fact that the register had been sent for audit purposes would not be a legitimate excuse for its non-production. The auditor has given evidence in this case as D.W. 1 that from 23 May 1959 to 5 June 1959 the register was with him. Both the lower Courts have believed his evidence. The question is whether by the word 'always' appearing in

Rule 16B is meant that the registers, etc., should under no circumstances be removed from the establishment premises. Prima facie the expression 'always be available in the establishment' would suggest the interpretation put upon it for the prosecution. But it appears to me that these words have to be read along with the succeeding sentence 'and shall be produced or caused to be produced for inspection at all reasonable hours.' So read the word 'always' can only mean that the registers, etc., should be available, to be produced or caused to be produced when called for inspection at all reasonable hours. I think the word has to be given this reasonable interpretation and should not be construed to mean that all the twenty-four hours of the day it should be in the establishment premises. A temporary non-availability for sufficient cause shown would not, therefore, constitute a breach of Rule 16B. In the present case, the register in question had been sent for audit purposes. It can not be said that this is not a reasonable or legitimate cause. The inspector had visited the establishment without notice. This he was perfectly entitled to do. But, after he was told that the register was with the auditor, he did not choose to call upon the establishment for its production. The fact that the register was with the auditor is also not denied. In the circumstances, the petitioner cannot be deemed to have contravened the Rule 16B.

5. For the foregoing reasons, I allow both the petitions and set aside the convictions and sentences against the petitioner. The fines, if collected, will be refunded.

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