(SUPREME COURT)
SINHA, IMAM & SUBBA RAO, JJ.
Cr. A. No. 93 of 1955.
(Decided on February 18, 1958)
SHRI CHINTAMAN RAO and another (Appellant)
v.
THE STATE OF MADHYA PARDESH (Respondent)

Factories Act, 1948, Ss. 2 (1), 92—"Worker", who is—Independent contractor or his coolies or servants who are not under control and supervision of employer not included—Non-inclusion of their names in register of adult worker—No offence.

A worker under the definition of the Factories Act is a person who enters into a contract of service under the management and does not include an independent contractor or his coolies or servants who are not under the control and supervision of the employer.

The instant case does not lay down a general proposition that under no circumstances the independent contractor or his coolies or servants who are not under the control and supervision of the employer can be considered to be a worker within the meaning of its definition in the Act. Whether a particular person under whatever designation he may be known is a worker or not under the Act depends upon the terms of the contract entered into between him and the employer.

Where no attempt has been made by the prosecution to establish that the persons above referred were employed by the management for doing work in the factory, the uncontradicted evidence is that they were independent contractors who come to the factory to deliver the bidis or send their coolies to do the same, *held* that the non-inclusion of their names in the register of adult workers or the absence of any entries in regard to them in the said register would not constitute an offence u/S. 92 of the Act.

Sri N. C. Chatterjee, Senior Advo., (Rameshwar Nath, Advo. of M/s. Rajinder Narain & Co., with him) for Appellants.

Sri I. N. Shroff Advo., for Respondent.

SUBBA RAO, J.—This appeal by Special Leave is directed against the Order of the High Court of Judicature at Nagpur and raises the question of construction of some of the provisions of the Factories Act (LXIII of 1948) (hereinafter referred to as the Act). Before posing the questions raised it would be convenient and useful at the outset to state the facts either found by the High Court or admitted by the parties.

Messrs. Brijlal Manilal and Company is a bidi factory situated in Sagar. The 1st Appellant, Chintamanrao, is the Managing Partner of the firm while the 2nd appellant, Kantilal, is its active Manager. The Company manufactures bidis. The process of manufacture, so far as is relevant to the question raised, is carried out in two stages.

The first stage : The management enters into a contract with independent contractors, known as Sattedars, for the supply of bidis locally. The documents embodying the terms of the contract entered into by the Sattedars were not produced in the case. But the terms of the contract are not in dispute. The Management supplies tobacco to the Sattedars and in some cases bidi leaves. Some of the Sattedars maintain a small factory where they get bidis manufactured by engaging coolies. Others give tobacco and bidi leaves to outsiders who prepare bidis in their houses. After bidis are rolled in the Sattedars collect the bidis so manufactured and take them to the factory directly or through coolies where they are sorted and checked by the workers in the factory. The selected or approved bidis are separately packed in bundles of 10 and 25 and taken by the Sattedars or the coolies in gauze trays to *tandul* and left there. The rejected bidis, commonly known as 'chhant' are again rebundled by the Sattedars and delivered to the factory. The management pays the Sattedars the cost of the manufacture of bidis after deducting therefrom the cost of tobacco supplied to them. Thereafter the second stage of the process of the manufacture begins in the factory. It is carried out exclusively by the labourers employed in the factory. It consists of warming of bidis to give taste, wrapping them in tissue papers, labelling and finally bundling them in the 'Pudas'. The finished product is then marketed. From the aforesaid description of the dual process of manufacture of bidis it is manifest that a Sattedar is only an independent contractor, who undertakes to do a specific job of work i.e. the supply of bidis, directly or indirectly through his coolies, by manufacturing them either in his own factory or by entrusting the work to third parties, at a price to be paid by the management after delivery and approval. He (Sattedar) or his coolies neither work in the appellants' factory nor are they subject to the supervision or control of the appellants. The coolies or the third parties, to whom the work of making of bidis is entrusted by the Sattedars, are employed by the Sattedars and are paid by them. None of them works in the factory though they

bring bidis to the factory for delivery in accordance with the terms of the contract. It may also be pointed out that the factory employs workers who are under the direct control and supervision of the factory management and who attend to the second part of the process of manufacture described above.

On 9-12-1952, Sri B. V. Desai, the Inspector of Factories, Madhya Pradesh, Nagpur, visited the factory at 5-30 p.m. At the time of his inspection he found the following persons in the factory :

1. Pirbaksha, son of Amir.
2. Abdul Sagir, son of Sk. Alam.
3. Deviprasad, son of Uddam.
4. Ramshankar, son of Mulchand.
5. Gopal, son of Mulchand.
6. Nirpat, son of Bhagirath.
7. Ramchand, son of Gyan,
8. Gotiram, son of Lila.
9. Basodi, son of Gulu.

Of the aforesaid persons, Deviprasad, Nirpat and Gotiram are Sattedars and the rest are coolies employed by the Sattedars. The Inspector found the first seven persons sorting out bidis and packing them into bundles of 10 and 25 in the premises and the last two bringing the bidis to the room in *jali* for warming. The said facts are practically admitted by some of the aforesaid persons, who gave evidence in the case, and they explained that they came to the factory on that day for delivering the bidis manufactured by them to the factory.

Thereafter the Chief Inspector of Factories filed a complaint in the Court of the Judge-Magistrate, Sagar, against the appellants for violation of the provisions of Ss. 62 and 63 of the Act, under the former for failure to maintain the register of adult workers with all the prescribed entries duly filled in and under the latter for allowing the workers to work in the factory without making beforehand the entries of their attendance in the register of adult workers The Judge Magistrate, Sagar, held that the appellants contravened the provisions of the aforesaid sections and on that finding convicted them u/S. 92 of the Act and directed them to pay a fine of Rs. 50 and Rs. 25 respectively. On appeal the second Addl. Sessions Judge, Sagar, confirmed the conviction of the 2nd appellant for contravening the provisions of Ss. 62 and 63 but set aside that of the 1st appellant in regard to S. 62 but confirmed the conviction for contravening S. 63 of the Act. The Revision Petition filed by the appellants in the High Court of Judicature at Nagpur was dismissed. As aforesaid with Special Leave of this Court this appeal was filed against the Order of the High Court.

The conflicting contentions of the parties may briefly be stated. The learned counsel for the appellants contends that a Sattedar is an independent contractor, who undertakes to do a specific job of work for other persons without submitting himself to their control, and that he or his employee, is not a worker within the definition of S. 2(1) of the Act and therefore the appellants are not under duty to comply with the conditions of Ss. 62 or 63 in respect of them. Whereas the learned Connsel for the State argues that the definition of the word 'worker' is comprehensive enough to take in all persons who work in the factory, whether employed by the factory or not.

The answer to the question raised turns upon the construction of the relevent provisions of the Act. They read : "S. 62. Register of adult workers :

(1) The manager of every factory shall maintain a register of adult workers, to be available to the Inspector at all times during working hours, or when any work is being carried on in the factory, showing—

(a) the name of each adult worker in the factory ;

(b) the nature of his work ;

(c) the group, if any, in which he is included ;

(d) where his group works on shifts, the relay to which he is allotted ;

(e) such other particulars as may be prescribed ;

Provided that, if the Inspector is of opinion that any muster roll or register maintained as part of the routine of a factory gives in respect of any or all the workers in the factory the particulars required under this section, he may, by order in writing, direct that such muster roll or register shall to the corresponding extent be maintained in place of, and be treated as, the register of adult workers in that factory.

S. 63. Hours of work to correspond with notice under S. 61 and register u/S. 62.—

No adult worker shall be required or allowed to work in any factory otherwise than in accordance with the notice of periods of work for adults displayed in the factory and the entries made before-hand against his name in the register of adult workers of the factory."

"S. 92. General penalty for offences.

Save as is otherwise expressly provided in this Act and subject to the provisions of

S. 93, if in, or in respect of, any factory there is any contravention of any of the provisions of this Act or of any rule made thereunder or of any order in writing given thereunder, the occupier and manager of of the factory shall each be guilty of an offence and punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both, and if the contravention is continued after conviction, with a further fine which may extend to seventy-five rupees for each day on which the contravention is so continued."

"S. 2(1). 'worker' means a person employed, directly or through any agency, whether for wages or not, in any manufacturing process, or in cleaning any part of the machinery or premises used for manufacturing process, or any other kind of work incidental to, or connected with, the manufacturing process,or the subject of the manufacturing process."

"S. 2 (m) "factory" means 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,.....

S. 2(n), "occupier" of a factory means the person who has ultimate control over the affairs of the factory,....."

The gist of the aforesaid provisions relevant to the question raised may be stated thus: The Manager of a factory—factory is defined under the Act as the premises wherein a specified number of workers are working and in any part of which a manufacturing process is carried on, with or without the aid of power—shall maintain a register of adult workers working in that factory, showing the necessary particulars mentioned in S. 62 of the Act. No adult worker shall be required or allowed to work in any such factory otherwise than in accordance with the notice of periods of work for adults displayed in the factory and the entries made beforehand against his name in the register of adult workers of the factory. If there is any contravention of the said provisions, the occupier, who is defined as a person who has ultimate control over the affairs of the factory, and the manager are guilty of offences punishable under the Act.

Admittedly the names of the 9 persons, stated supra, were not entered in the register of adult workers maintained by the factory. Neither any notice of the periods of work allotted to them was diplayed in the factory nor any entries made beforehand against their names in the register of adult workers of the factory. The appellants, therefore, would have certainly contravened the provisions of the Act, if, in fact, the said persons were workers in the factory as defined under the Act.

This takes us to the consideration of the definition of the term 'worker' under the Act. 'Worker' is defined to mean a person employed, directly or through any agency, whether for wages or not, in any manufacturing process. It is and it cannot be disputed that the making of bidis is a manufacturing process. But is a Sattedar a person 'employed', directly or through agency, within the meaning of the definition "employed". The concept of employment involves three ingredients. (1) employer (2) employee and (3) the contract of employment. The employer is one who employs, i.e., one who engages the services of other persons The employee is one who works for another for hire. The employment is the contract of service between the employer and the employee whereunder the employee agrees to serve the employer subject to his control and supervision. Can it be said that a Sattedar is employed by the management of the factory to serve under it? There is a well understood distinction between a contractor and a workman and between contract for service and contract of service In Stroud's Judicial Dictionary (Third Edition, Volume I, page 616) the distinction between a contractor and a workman is brought out in bold relief in the following manner:

"Of course, every person who makes an agreement with another for the doing of work is a contractor, in a general sense; but as used in Workmen's Compensation Act, 1897 (60 & 61 Vict., c. 37), S. 4 "contractor" and "WORKMAN" "have come to have a more restricted and distinctive meaning," and "contractor" means 'one who makes an agreement to carry out certain work specified, but not on a contract of service'."

The same idea is repeated in a different terminology thus:

"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".

There is, therefore, a clear-cut distinction between a contractor and a workman. 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. This Court in *Dharangadhara Chemical Works Ltd.* v. *State of Saurashtra*(1) in the context of the definition of "workman" under the Industrial Disputes Act (XIV of 1947) made the following observations at p. 157 :

"The essential condition of a person being a workman within the terms of this definition is that he should be *employed* to do the work in that industry, that there should be, i.. other words, an employment of his by the employer and that there should be the relationship between the employer and him as between employer and employee or master and servant. Unless a person is thus employed there can be no question of his being a workman within the definition of the term as contained in the Act."

Elaborating the point further, Bhagwati, J., who delivered the judgment on behalf of the Court proceeded to state:

"The test which is uniformly applied in order to determine the relationship is the existence of a righe of control in respect of the manner in which the work is to be done".

After considering the Case-law on the subject the learned Judge restated the principle at page 160 thus :

"The principle which emerges from these authorities is that the *prima facie*, test for the determination of the relationship between master and servant is the existence of 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 his work, or to borrow the words of Lord Uthwatt at page 23 in *Mersey Docks and Harbour Board* v. *Coggins & Griffith (Liverpool) Ltd., and another*(2), "The proper test is whether or not the hirer had authority to control the manner of execution of the act in question."

After noticing the subsequent trend of decisions wherein it is observed that the test of control is not one of universal application, the learned Judge expresses his view thus :

"The correct method of approch, therefore, would be to consider whether having regard to the nature of the work there was due control and supervision by the employer....."

There is no reason why the test laid down by this court in the context of the definition of 'workman' under the Industrial Disputes Act of 1947, cannot be invoked or applied for ascertaining whether a person is a 'worker' under the Act. If the test be applied, it is not possible to hold that Sattedars in the present case, having regard to the nature of the work undertaken by them and the terms where under their services were engaged, are "workers" within the meaning of the definition under the Act. It has been established in the present case that the Sattedar is only an independent contractor and the agreement between the management and the Sattedar is only that the Sattedar should receive tobacco from the management and supply them rolled in bidis for consideration. He is not under the control of the factory management and he can manufacture bidis wherever he pleases. It is immaterial to the management whether he makes the bidis in his own factory or distributes tobacco to different individuals for making bidis under a separate agreement entered into by him with them. The management cannot regulate the manner of discharge of his work. His liability is discharged by his supplying bidis and delivering them in the factory. The terms of the contract between the management and the Sattedar, as disclosed in the evidence, do not enjoin on the latter to work in the factory. His only obligation is to deliver bidis at the factory. That would be an obligation imposed on any contractor who undertakes to supply and deliver the goods, to the other party. We, therefore, hold that the Sattedars in this case were not employed by the management as workers but were only independent contractors who performed their part of the contract by making bidis and delivering them at the factory.

If the Sattedars, i.e., three out of the nine persons found at the factory, were not workers within the meaning of the Act, can it be said that the other persons, who were coolies employed by the Sattedars to enable them to keep up their contract with the management of the factory, were workers as defined under the Act? A "worker" under the definition means a person employed, directly or through any agency. The words 'directly or through any agency' indicate that the employment is by the management directly or through some kind of employment agency and in either case

(1) 1957 SCR 152
(2) (1947) 1 A.C. 1, 23

there is a contract of employment between the management and the persons employed. Admittedly the coolies were not employed by the management; there was no privity of contract between them and the management. It is not disputed that the coolies were not employed by the Sattedars for or on behalf of the management of the factory. They were employed by the Sattedars on their own account and they paid them for the work extracted from them. On the aforesaid facts it is obvious that the coolies were not employed by the management directly nor were they employed by the management through the agency of Sattedars. If so, it follows that coolies employed by the Sattedars are not workers within the meaning of the definition in the Act.

The evidence discloses a third category of persons who took some part in the manufacturing process of bidis. They were the persons to whom the Sattedars distributed tobacco for making bidis in their respective homes. It does not appear from the evidence that any one of the nine persons found in the factory belongs to that category. That apart those persons cannot, in any sense of the term, be called the persons employed by the management directly or through any agency.

That that should be the construction of the provisions of S. 2 (1) of the Act is reinforced by other relevant provisions of the Act. Chapter 6 is headed "Working hours of Adults", S. 51 prescribes the weekly hours of work for a worker. S. 52 provides that no adult worker shall be required or allowed to work in a factory on the first day of the week and if he is made to work on that day for the substitution of another holiday in its place. S. 53 gives compensatory holiday to a worker who is made to work on a regular holiday. S. 54 fixes the daily hours of work and S. 55 intervals for rest. S. 56 limits the spreadover of period of work for an adult worker to 10½ hours in a day, including the intervals for rest. Ss. 57, 58 and 59 deal with night shifts prohibition of overlapping shifts and extra wages for overtime. S. 60 prohibits double employment, i.e. employment of the same worker in a factory on any day on which he has already been working in any other factory. S. 61 enjoins on the management of the factory to display and maintain the notice of periods of work for adults, showing clearly for every day the periods during which the adult workers may be required to work and directs that the said notice shall be such that the workers working for those periods would not be working in contravention of any of the provisions of Ss.51, 52, 54, 55, 56 and 58 of the Act. S. 62, for breach of which provisions the prosecution was launched in the present case, imposes a duty on the manager of every factory to maintain a register of adult workers, showing the name of each adult worker in the factory, the nature of his work, the group, if any, in which he is included, where his group works on shifts, the relay to which he is allotted and such other particulars as may be prescribed. S. 63 directs that the hours of work of an adult worker should correspond with the particulars given in the notice u/S. 61 and the register u/S. 62. S. 92 constitutes the contravention of any of the provisions of the Act or any rules made thereunder an offence punishable with imprisonment or fine or with both. The scheme of the aforesaid provisions indicates that the workmen in the factory are under the direct supervision and control of the management. The conditions of service are statutorily regulated and the management is to conform to the rules laid down at the risk of being penalised for dereliction of any of the statutory duties. The management obviously cannot fix the working hours, weekly holidays, arrange for night shifts and comply with other statutory requirements, if the persons like the Sattedars, working in their factories and getting their work done by others or through coolies, are workers withinin the meaning of the Act. It is well nigh impossible for the management of the factory to regulate their work or to comply with the mandatory provisions of the Act. The said provisions therefore, give a clear indication that a worker under the definition of the Act is a person who enters into a contract of service under the management and does not include an independent contractor or his coolies or servants who are not under the control and supervision of the employer.

There is a conflict of decisions between the Allahabad and the Nagpur High Courts on the construction of S. 2 (1) of the Act. A Divisional Bench of the Nagpur High Court in *Provincial Government, Central Provinces and Berar* v. *Robinson* (3) considered the scope of the definition of the word "worker" in the Factories Act. There the facts were: On 10-11-1943, a new battery of boilers was being erected on the premises of the Jubbulpore Electric Supply Co. in order to supply

(3) ILR (1947) Nagpur 43

energy to the New Ordnance Factory at Khamaria. The work of erection was entrusted to Messrs. Babcock and Wilcox of Calcutta. The persons who were employed by Messrs. Babcock and Wilcox were found working in the premises of the Electric Supply Co. in contravention of the provisions of the Factories Act. The question was whether the employees of an independent contractor were workers as defined u/S. 2(1) of the Act. Pollock, J., who delivered the judgment of the Division Bench stated at p. 44 thus:

"The definition of 'worker' is a very wide one, and it is wide enough, in our opinion, to include persons employed in repairing machinery or putting up new machinery, even if such a machinery is not in actual use at the time."

It may be noticed that no contention was raised in that case that the persons found in the factory were not the employees of Jubbulpore Electric Supply Co. The only question raised and decided was whether the persons employed in repairing the machinery or putting up new machinery were persons engaged in any manufacturing process or any work incidental to or connected with it. The question now raised was not before the learned Judge and therefore there was no occasion for them to express any opinion thereon. The fact that if this question was raised and decided in the way we did, the conclusion of the learned Judges would have been different cannot make the said decision an authority on a point not raised or decided upon by the learned Judges.

Another Bench of the Nagpur High Court in *The State* v. *Jiwabhai*(4) gave a wide connotation to the word "employed" u/S. 66(1)(b) of the Factories Act. The learned Judges observed that the word "employed", in their opinion, did not only connote employed on wages but also being occupied or engaged in some form of activity. If the learned Judges meant by that observation that if a person is found engaged in some form of activity in a factory, irrespective of whether there was any contract of employment or not between him and the employer, he is a worker, we should express our respectful dissent from the said observation. But on the other hand, if they had only emphasized on the fact, which is obvious from the provisions of S. 2(1), that the employment need not be for wages, the statement is unobjectionable.

The decision in *State* v. *Shri Krishna Prasad Dar*(5) need not be considered in detail as the learned Judges therein accepted the same interpretation that we have placed on the provisions of S. 2(1) of the Act and came to the conclusion, on the facts of that case, that the persons therein were workers of the factory.

We, therefore, hold that neither the Sattedars nor the coolies found by the Inspector to be working in the factory were workers, as they were not employed by the factory.

As they were not workers, the non-inclusion of their names in the register of adult workers or the absence of any entries in regard to them in the said register would not constitute an offence u/S. 92 of the Act.

Before leaving this case we would like to make one observation. Our decision is not intended to lay down a general proposition that under no circumstances a Sattedar can be considered to be a worker within the meaning of its definition in the Act. Whether a particular person, under whatever designation he may be known, is a worker or not under the Act depends upon the terms of the contract entered into between him and the employer. In the case before us no attempt has been made by the prosecution to establish that the Sattedars were employed by the management for doing work in the factory. The uncontradicted evidence is that they were independent contractors who came to the factory to delive the bidis or sent their coolies to do the same. Our decision is, therefore, confined to the facts of this case.

In the result we allow the appeal and set aside the convictions of the appellants u/S. 92 of the Act and the sentences imposed upon them. The fines if paid will be refunded. ——— Appeal allowed.