

APPELLATE CRIMINAL.

Before Lord-Williams and Mallik JJ.

SUPERINTENDENT AND REMEMBRANCER
OF LEGAL AFFAIRS, BENGAL,

1931

April 22;
May 22;
June 19.

v.

J. J. ANDREWS.*

*Factory—“Specified hours”, meaning of—“Standing orders”, meaning of—
Indian Factories Act (XII of 1911), ss. 21, 22, 26, 28, 30, 35, 36.*

In the case of a factory, to which exemption under certain conditions from the provisions of sections 21, 22 and 28 of the Indian Factories Act has been granted, section 26 of the same Act has no application.

“Specified hours” imply some degree of permanence and stability.

The expression “standing orders” in section 36 cannot refer to orders which vary from hour to hour.

Work which is not done in or about the factory does not come within the provisions of the Act.

CRIMINAL APPEAL.

The accused respondent was the Manager of the Lightfoot Refrigerator Company's factory at Salkia in Howrah. He was charged under section 41 (a), read with section 26 of the Indian Factories Act, for having employed, on the 31st July, 1930, four labourers for more than 8 hours. The standing orders of the factory posted at the door showed that these men were to be employed in 7½-hour shift which was their specified hour.

During trial, a notification, being notification No. 1770—T. Com., dated the 1st October, 1927, was produced, by which the Government of Bengal, under section 30 (c), exempted all the ice factories from the operation of sections 21, 22 and 28. It was claimed by the accused that the said exemption also exempted them from the operation of section 26 of the Act.

*Government Appeal, No. 3 of 1931, against the order of C. A. Noronha, Deputy Magistrate of Howrah, dated Oct. 24, 1930.

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No change was made in the standing orders of the factory as to the specified hours of the four labourers in question, nor any information of such change given to the Chief Inspector of Factories as contemplated under section 36 (3) of the Act. The engineer of the factory, Mr. Truster, was called for the defence and said that these men were employed in taking ice to ships, but admitted that their period of extra work was entered in the employment register as he considered that they were employed in factory work. The trial court, by his order, dated the 24th October, 1930, acquitted the respondent, holding that the exemption in question *ipso facto* also exempted the factory from the operation of section 26 of the Act.

B. M. Sen (with him *Anilchandra Ray Chaudhuri*) for the Crown. The trial court was wrong in holding that the factory must be taken to have been exempted from the operation of section 26. Section 30 has divided factories into various classes for the purpose of exemptions. An ice factory comes within clause (c) of sub-section (1) of section 30, as being a factory in which the work necessitated continuous production. Even the Local Government could not exempt this class of factories from section 26, because it does not belong to the classes contemplated by clauses (e) (i) and (e) (ii) of sub-section (1) of that section. When the legislature has thought fit to divide factories into definite classes for exemption from definite sections, it cannot be said that exemption of a factory from one section also exempted it, by implication, from the operation of another section, which is specifically dealt with in another sub-clause of section 30. The position, therefore, is that, although the manager could employ some men beyond 11 hours, he could not do so without previously changing the standing orders with regard to these men, a notice of which had to be sent to the Chief Inspector's office. The employment register shows that these men were employed beyond the hours specified by the standing orders. The offence is, therefore, clearly made out.

Pugh (with him *Balaram Basu*) for the accused. Exemption from section 28 carries with, by necessary implication, an exemption from section 26. Otherwise, the exemption will be useless for all practical purposes. If a man's relief does not turn up at the last moment, how can the standing order be changed at once before he is allowed to continue his work. Standing orders are permanent orders of the factory and cannot be altered every hour. In any case, the work these men were doing, did not come within sub-clause (2) of section 2 of the Act. They were not employed for factory work at all. The statement of Mr. Truster in cross-examination to the effect that they were employed in factory work was merely his own opinion. It did not bind any body, nor was it conclusive. This is not a case in which an order of acquittal should be set aside.

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Sen, in reply.

[Subsequently Mr. Truster was called and examined by the High Court and Mr. McBride, the Chief Inspector of Factories, Bengal, attended at their Lordships' direction.]

Cur. adv. vult.

LORT-WILLIAMS J. In this case, the Inspector of Factories, Bengal, complained against J. J. Andrews, the Manager of the Lightfoot Refrigerator Company at Howrah, that from an examination of the Factory Wages Book, he had discovered that certain persons had been employed on a particular day in contravention of section 26 of the Indian Factories Act, for more than the hours specified for all employees, namely, $7\frac{1}{2}$ hours for each shift.

Section 26 provides that—

The manager of a factory shall fix specified hours for the employment of each person employed in such factory, and no person shall be employed except during such hours.

During the hearing, before the magistrate, it appeared that this factory had been exempted by the Government of Bengal, under section 30 (1) (c), from

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the provisions of sections 21, 22 and 28, as being one of a class of factories, in which the work necessitated continuous production. Sections 21 and 22 provide for daily rest periods and weekly holidays and section 28 forbids the employment of any person for more than 11 hours per day.

The conditions attached to this exemption were:—

(a) that the persons engaged on such work shall ordinarily be employed on daily 8-hour shifts; and

(b) that no such persons shall be employed for more than 14 consecutive days without a compensatory rest period of at least 24 hours at one time.

It will be observed that no exemption had been granted from the provisions of section 26, nor is such an exemption permitted under section 30 (1) (c).

The magistrate held nevertheless that the factory must be considered to be exempted from the provisions of section 26, because otherwise the section would be inconsistent with the position granted to the factory by its exemption from the limit of hours imposed by section 28, coupled with the condition imposed, that ordinarily, the work people should be employed in daily 8-hour shifts. Therefore, he dismissed the complaint. In our opinion, this view was correct.

In the circumstances of the case, it was not possible to apply the provisions of section 26 in any way, which would be, at the same time, practical and consonant with the spirit of the Act, and the terms of the condition imposed. The manager had fixed specified hours for all work people at 7½-hour daily shifts, which was consistent with the condition. If, therefore, the last line of section 26 applied, the factory would be deprived, *ipso facto*, of the benefit of the exemption given from the provisions of section 28.

It was argued on behalf of the Government that this dilemma could be avoided if the manager fixed longer "specified" hours, as for example, shifts of 12 or 13 hours' duration.

This contention the magistrate rejected, and we think rightly, on the ground that such an interpretation of the section would militate against the very object for which it was framed, namely, to prevent the sweating of labour, and would result gradually, in longer shifts being regarded as normal, rather than as exceptional cases to meet emergencies. Moreover, such a course would be in conflict with the condition imposed.

At the adjourned hearing before this Court, Mr. McBride, the Chief Inspector of Factories, Bengal, was present at our request, and explained how the Government considered the Act could be and ought to be applied.

His contention was that, so long as no person was employed beyond the "specified" hours fixed by the manager, no harm was done. It did not matter how long were the hours fixed. If a man's relief did not come, and it became necessary for him to work on beyond the specified hours of his shift, the manager must then and there, and before allowing him to continue his work, re-fix his specified hours, to meet this emergency. And he must carry out this system of re-fixing the hours, whenever any such emergency occurred, however short or long was the extra time required to be worked.

The result of such an interpretation of the section would, in our opinion, completely destroy any benefit which might be derived from it.

A continually changing system of hours "specified" is something altogether different from what is contemplated by a fixation of "specified" hours.

The latter implies some decree of permanence and stability.

According to Mr. McBride's contention, the provisions of the section would be fulfilled, if the manager fixed "specified" hours for all work people at 24 hours per day, and so avoided all subsequent dilemmas arising from the necessity for re-fixation.

Doubtless such a course is possible and permissible within the terms of the section, but it would have the

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result of rendering the section both useless and meaningless.

Apart from the inapplicability of section 26 to the facts of this case, it is clear from the evidence that the extra work, of which complaint was made, was not work which came within the provisions of the Factory Act. It was stated before the magistrate, by Mr. Truster, the engineer of the company, that these men were employed on "taking ice to ships." As this evidence appeared to us to be ambiguous, we recalled Mr. Truster, who informed us that no extra work was done by these men at the factory. When a request for ice came from a ship in the docks, the ice was brought from the storage godowns and loaded upon the lorry by men who were working in the factory on their regular shifts, then volunteers were called for from men who had finished their shifts, or who were waiting for their shifts to commence, and happened to be standing about, and they rode down to the docks on the lorry, unloaded it on arrival, and put the ice on board the ship.

In our opinion, this work did not come within the provisions of the Act. It was not work which was done in or about the factory. For this reason also the prosecution must fail.

We desire further to point out to the authorities concerned that it will be difficult to uphold prosecutions under many of the sections of this Act, unless they are amended, especially in cases of factories to which exemptions have been granted under section 30. The Act is carelessly and loosely drawn. It seems to consist mainly of parts of the English Act taken from their context and patched together.

It is a penal statute, and as such it is essential that its terms should be clear, definite, and unambiguous. On the contrary, it is difficult, if not impossible for a lawyer, still less a layman, to understand many of its provisions.

Dealing only with the sections mentioned during the hearing of this case, section 26 does not indicate

how the manager is to fix the specified hours. Is this a mental act only, or must he make a record of it? If so, when and how? Is he to fix the total number of hours worked daily, or the hours of the clock, for example, from 8 a.m. to 4 p.m. Then in section 35 does "hours of work" mean total hours or hours of the clock? Does it mean something different from the phrase "hours for the employment" in section 26?

Section 36 is a most important section, yet taken in conjunction with the forms provided in the Bengal Factories Rules, it is most difficult to understand. What are the standing orders and when and how are they given? In sub-section (1) (a) (c) (d) the following expressions are used, namely "time of beginning and ending work," "hours of beginning and ending work," "hours of employment." Presumably as different words and phrases are used, different meanings are intended or, for example, does, "time of beginning and ending" mean something different from "hours of beginning and ending."

Does hours of employment in (d) mean total hours or hours of the clock?

What is still more important, does section 36 mean that the "specified" hours fixed under section 26, of each person employed in the factory must be shown on the notice affixed in some conspicuous place near the main entrance of the factory. This seems to be the plain meaning, but the Government of Bengal, represented by their Chief Inspector, Mr. McBride, seems to think that such an interpretation would put an unnecessary burden upon managers of factories and doubtless it would.

The prescribed form under the Bengal Factories Rules makes no provision for such entries. But this reading of the section leads immediately to difficulties, and has been one of the causes of this prosecution.

Because section 36 provides further, that the notice shall be kept up to date, also that any change

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in the standing orders shall be entered therein before such change comes into force, and a copy of the notice or order in duplicate sent to the Inspector.

If, therefore, a man's relief comes late or does not come at all, and he has to continue working beyond his regular shift, for however short a time, the standing orders must be altered, before he begins, and altered again when the relief arrives, and duplicates sent each time to the Inspector. The term "standing" seems inappropriate to describe orders which vary from hour to hour. Moreover such a burden would be not only unnecessary but intolerable and the Government has recognised this to some extent. In the prescribed form there is no provision made for entries of the specified hours of each person employed. This information according to Mr. McBride is obtained from the Wages Register, or the Employment Register. But he was insistent upon the requirement, that the standing orders must be altered whenever a man's relief did not arrive. He was hard put to it, however, to say how this could be done in any way, which would be at the same time practical, and in accordance with the section. His explanation was that a slip of paper, on which the altered hours were recorded, must be pinned to the notice board whenever a change was made necessary by the delay of a relief, or for any other cause.

It was the omission to pin up such slips, which he regarded as the offence for which it was necessary to prosecute the manager of this factory. The answer to this contention is that there is no provision in the Act requiring any such procedure to be followed, and that managers of factories cannot be convicted for omissions which the law does not recognise.

There are many other provisions in the Act which are equally confused and ambiguous, and the rules, and forms provided do not tally with the requirements of the sections. The truth seems to be

that the application of the Act to special factories has never been properly thought out. Drastic redrafting and amendment of this important Act seem to be required urgently.

The appeal is dismissed.

MALLIK J. I agree.

A. C. R. C.

Appeal dismissed.

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