

Cr. A. Nos. 157 and 158 of 1957 and 5 of 1958 by Special Leave from the Judgment and Order dated 31-10-1955, of the Allahabad High Court in Criminal References Nos. 28, 29 and 30 of 1955 arising out of the Judgment and Order dated 18-12-1954, of the Sessions Judge, Deoria, in Criminal Revisions Nos. 7, 8 and 9 of 1954.

(Decided on December 15, 1959)

STATE OF UTTAR PRADESH (Appellant)

v.

- 1 M.P. SINGH (In Cr. A. No. 157 of 57)
- 2 S.P. SABHARWAL (In Cr.A.No. 158 of 57) and
- 3 R.K. LAHRI (In Cr. A. No. 5 of 58).

(Respondents)

A—Factories Act, 1948, S 2 (1) (m)—

Worker, definition of.

By the combined operation of definitions of 'worker' and 'factory' in S. 2 (1) (m) persons employed in any manufacturing process or in cleaning any part of the machinery or part of the premises used for the manufacturing process or any other kind of work incidental to or connected with the manufacturing process or the subject of the manufacturing process are deemed to be workers in a factory.

B—UP Shops and Commercial Establishments Act, 1947, S. 2 (3)—Supervisors and kamdars employed by sugar factory to guide, supervise and control growth and supply of sugarcane for use in factory are employees of 'commercial establishment' and not workers of factory.

It is difficult to hold that field workers who are employed in guiding, supervising and controlling the growth and supply of sugarcane to be used in the factory are employed either in the precincts of the factory or in the premises of the factory; and if these workers are not employed in a factory, the provisions of the Factories Act, 1948 do not apply to them and they evidently fall within the definition of 'Commercial Establishment.'

Sri G. C. Mathur, Advocate and Sri C. P. Lal, Advocate for Sri G. N. Dikshit, Advocate for the appellant.

Sri W. S. Barlingay, Senior Advocate (Sri A. G. Ratnaparkhi, Advocate, with him) for respondents.

SHAH, J.—The question which falls to be determined in this group of appeals is whether field workers, i.e. Supervisors and Kamdars employed by a sugar factory to guide, supervise and control the growth and supply of sugarcane for use in the factory are employees of a 'Commercial Establishment' within the meaning of the UP Shop and Commercial Establishment Act, XXII of 1947 (hereinafter referred to as the Act). The Magistrate who tried the respondents for offences u/S. 27 of the Act held that the field workers were employees of a Commercial Establishment. The High Court at Allahabad took a contrary view, and the State of UP has appealed to this court against the order of the High Court with special leave u/Art. 136 of the Constitution.

The United Provinces Shop and Commercial

SUPREME COURT

B.P. SINHA, C.J., GAJENDRAGADKAR,
SUBBA RAO, DAS GUPTA AND SHAH, JJ.

Establishment Act, 1947 was enacted to regulate the hours of employment and certain other conditions of employment in shops and commercial establishments. Commercial Establishment is defined by S. 2, Cl. 3 of the Act. By S. 12 of the Act, provision is made for giving to the employees a weekly holiday besides holidays which may be granted u/S. 11. S. 13 provides for granting ordinary, casual and "sickness leave". S. 26 requires the employer to maintain such registers and records and to display such notices as may be prescribed and S. 27 penalises contraventions of the Act and the rules made thereunder.

The Laxmi Devi Sugar Mills Ltd. (hereinafter referred to as the company) owns a factory at Chhitauni for manufacturing sugar. The three respondents are respectively the General Manager, Assistant Manager and Secretary of the company. The company employs certain classes of field workers to guide, supervise and control the growth and supply of sugarcane for use in the factory. The Deputy Chief Inspector of Shops and Commercial Establishment, UP, filed three complaints against the respondents in the court of the Judicial Magistrate, Deoria charging them with contravention of the provisions Ss. 12, 13 and 26 of the Act in respect of certain field workers employed by the company for guiding, supervising and controlling the growth and supply of sugarcane. The respondents contended that the Act did not apply to those employees as they were workers within the meaning of the Factories Act and accordingly exempt from the operation of the Act. The Judicial Magistrate rejected the contention and convicted the respondents of contravention of S. 26 of the Act and sentenced each of them to pay a fine of Rs. 30 in each of the three cases. Against the orders of conviction and sentence, the respondents preferred revision applications to the Court of Sessions at Deoria. The Sessions Judge disagreed with the view of the Trial Magistrate and referred the cases to the High Court at Allahabad recommending that the orders of conviction and sentence passed by the Trial Magistrate be set aside. The High Court accepted the references and ordered that the respondents be acquitted.

By the definition of a Commercial Establishment in S. 2, Cl. 3 of the Act, the clerical and other establishments of a factory to whom the provisions of the Factories Act, 1934 do not apply, are included in the connotation of that expression. It is true that the reference in the definition by which clerical and other establishments of factories are included is to the Factories Act of 1934, but by virtue of S. 8 of the General Clauses Act X of 1897, it must be construed as a reference to the provisions of the Factories Act LXIII of 1948 which repealed the Factories Act of 1934 and re-enacted it. The contention raised by the State by special leave, that since the repeal of the Factories Act, 1934, in the definition of Commercial Establishment in S. 2, Cl. 3 are included all clerical and other establishments of a factory without any exemption has therefore no force.

The Factories Act, 1948 defines a worker by S. 2 (1) as meaning :

"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 a manufacturing process, or in any other kind of work incidental to or connected with, the manufacturing process, or the subject of the manufacturing process."

and a factory is defined by S. 2 (m) as meaning any premises including the precincts thereof wherein a

specified number of workers on any day of the preceding twelve months is employed. By the combined operation of these definitions, persons employed in any manufacturing process or in cleaning any part of the machinery or part of the premises used for the manufacturing process or any other kind of work incidental to or connected with the manufacturing process or the subject of the manufacturing process are deemed to be workers in a factory. By the use in S. 2 (1) of the Factories Act of the expression, 'employed in any other kind of work incidental to or connected with the subject of manufacturing process,' not only workers directly connected in the manufacturing process, but those who are connected with the subject of manufacturing process in a factory are included. It is unnecessary for the purpose of this case to decide the precise meaning of the expression 'subject of the manufacturing process' in S. 2 Cl. (1), because the diverse provisions of the Factories Act are intended to benefit only workers employed in a factory, i.e., in the precincts or premises of a factory. It is difficult to hold that field workers who are employed in guiding, supervising and controlling the growth and supply of sugarcane to be used in the factory are employed either in the precincts of the factory or in the premises of the factory; and if these workers are not employed in a factory, the provisions of the Factories Act, 1948 do not apply to them and they evidently fall within the definition of 'Commercial Establishment.'

The High Court was of the view that the Supervisors and Kamdars connected with the subject of manufacturing process, namely sugarcane, were workers within the meaning of the Factories Act and accordingly they were excluded from the definition of 'Commercial Establishment' under the Act. However, even if the Supervisors and Kamdars were employed "in any other kind of work connected with the subject of manufacturing process," unless they were employed in the factory, the provisions of the Factories Act do not apply to them, there is no dispute that they are employees of a 'Commercial Establishment' within the meaning of the Act.

The High Court was therefore in error in acquitting the respondents of the offences of which they were convicted by the trial Magistrate. The orders of acquittal passed by the High Court are set aside and the orders of conviction and sentence passed by the trial Magistrate are restored. In view of the order of this Court dated 1-10-1966, made at the time of granting special leave, the respondents are entitled to their costs of hearing in this Court.

Appeal allowed