Champak Lal H. Thakkar and Others

Vs

State of Gujarat and Another

Criminal Appeals Nos. 606 and 607 of 1979

(Syed M. Fazal Ali, A. D. Koshal JJ)

18.08.1980

JUDGMENT

KOSHAL, J. –

1. By this judgment we shall dispose of Criminal Appeals 606 and 607 to 1979 both of which are directed against a judgment of a Division Bench of the High Court of Gujarat dated January 19, 1979 upholding the conviction recorded against and the sentences imposed upon the three appellants under Section 22-A of the Minimum Wages Act (hereinafter called the 'Act') in each of two cases by a Judicial Magistrate at Morvi.

2. Some of the facts leading to the prosecution of the appellants are not in dispute and may be shortly stated. Appellant 3 is Morvi Vegetable Products Ltd., a limited company carrying on the business of manufacture and sale of vegetable oil and vanaspati in Morvi. Appellant 1 is the Managing Director and appellant 2 the Secretary of appellant 3 which is hereinafter referred to as the Company.

3. On May 2, 1973 Kumari J. G. Mukhi, who is a Government Labour Officer-cum-Minimum Wages Inspector, visited the Company's establishment and found that the following documents which, according to her, the Company was bound to maintain in compliance with the provisions of Section 18 of the Act read with the relevant rules of the Gujarat Minimum Wages Rules, 1961, had not been maintained by it :

(a) Muster Roll in form V as contemplated by Rule 26(5).

(b) Wage Register in form IV-A as required by Rule 26(1).

(C) Attendance cards in form V-D as provided by Rule 26-B.

(d) Wage slip in form IV-B prescribed by Rule 26(2).

4. In consequence, two complaints were filed against the appellants by N. H. Dave, Labour Officer-cum-Minimum Wages Inspector, Rajkot in the court of the trial Magistrate, each praying that the appellants be convicted and sentenced for an offence under Section 22-A of the Act. Once of the complaints was in respect of the contravention of Rules 26(1) and 26(5) while the other embraced that of Rules 26(2) and 26-B. They were registered as Criminal Cases 674 and 675 of 1973 respectively.

5. At the trial the appellants pleaded not guilty. Their defence consisted mainly of the following

pleas :

(a) Different types of industries are covered by the Act but the company does not run any such industry and is, therefore, not liable for any contravention of the Act or the rules framed thereunder. According to the prosecution the factory run by the Company is an oil mill, an industry which is certainly covered by the Act. However, the Company is running a mill which manufactures vanaspati and vanaspati is not an oil but is vegetable ghee. Oil extraction is no doubt a major operation carried on by the Company but that operation is merely incidental to the preparation of vanaspati. No separate licence for the oil expelling machinery used by the Company has been obtained from the State Government nor has sales tax been paid on the oil extracted by the Company. Vanaspati is manufactured by subjecting oil to the processes of neutralization, bleaching, deodorisation, hardening, hydrogenation, etc. and is a product quite different from oil.

(b) The Company does not carry on the business of sale of the oil manufactured by it except as an operation incidental to the manufacture of vanaspati, e.g., when there is a breakdown of the machinery used for converting oil into vanaspati or when oil becomes surplus on account of a shift in the government policy in regard to the percentage of oil to be consumed by the Company. In spite of the sale of oil, therefore, the Company remains a vanaspati manufacturer and cannot be considered to be running an oil mill.

(c) Undet Section 5 of the Act committees were appointed by the government from time to time to hold inquiries and advise it in respect of fixation or revision of minimum rates of wages for employees in various industries. No representative of the vanaspati industry was taken on any of these committees nor was any questionnaire issued to any of the manufacturers of vanaspati, with the result that the Company was not bound by the recommendations of those committees or decisions taken in pursuance thereof by the government.

(d) In respect of oil mills rates of minimum wages were fixed under the Act by the government for three types of employees, namely, skilled, semi-skilled and unskilled. Apart from these a vanaspati manufacturer has to arrange for the services of other types of employees which shows that a vanaspati manufacturing mill is different from an oil mill.

6. After the trial the learned Magistrate repelled all the pleas taken up by the appellants in his Judgment dated October 13, 1976. His findings were as follows :

(i) The Company no doubt manufactured oil from oil-seeds and subjected the same to further processes in order to produce vanaspati. However, the Company was selling not only the vanaspati manufactured by it but also oil and refined oil as such in addition to oilcakes and de-oiled cakes, which was being done not merely in exigencies pleaded by the Company but in the regular course of business.

(ii) One of the committees appointed by the government under Section 5 of the Act had issued a questionnaire to the Company itself before making recommendations regarding fixation and revision of minimum wages for various kinds of employees

working in an oil mill and it was not, therefore, open to the Company to contend that no opportunity was given to it to be heard in relation to such fixation and revision.

(iii) The Company was an oil mill within the meaning of that expression as used in item 5 of Part I of the Schedule to the Act and the Act, therefore, is applicable to it.

7. It was in these premises that the learned Magistrate convicted the three appellants, in both the cases tried by him, of an offence under Section 22-A of the Act. The sentence imposed in consequence was a fine of Rs. 50 on each of the appellants in each case.

8. The appellants filed before the Sessions Court two applications for revision of the order of the learned Magistrate, one pertaining to each case. Those applications were transferred by the High Court to its own file for reasons which are not relevant for the purpose of these appeals. The pleas raised before the learned Magistrate were reiterated on behalf of the appellants at the argument stage in the High Court but were again repelled with the result that both the applications were dismissed by the impugned judgment. The High Court took into consideration various provisions of the Act and came to the conclusion that the same would apply to the Company only if it could be held to be running an oil mill and thus falling within the ambit of item 5 aforesaid. In holding that the factory run by the Company was such a mill the High Court made the following points :

(a) Vanaspati is nothing but hydrogenated vegetable oil and, therefore, only vegetable oil which has been subjected to certain processes. It remains an oil in spite of those processes and is not essentially different therefrom.

(b) The finding arrived at by the learned Magistrate that oil, refined oil, oilcakes and de-oiled cakes were being sold by the Company not merely as an operation incidental to the business of manufacturing vanaspati but in the regular course of business is a finding of fact and cannot be called in question in revision. Part of the mill is, therefore, in any case, an oil mill.

(C) The Company was issued a questionnaire in its capacity as an oil mill by the committee appointed by the government. It cannot, therefore, urge that it had no opportunity to present its case before the committee which made recommendations in regard to fixation and revision of minimum wages.

9. A survey of the various relevant provisions of the Act may be useful at this stage. Section 2 contains definitions. Clause (e) of that section defines an 'employer' as a person who employs one or more employees in any scheduled employment in respect of which minimum rates of wages have been fixed under the Act. According to clause (g) of the same section a 'scheduled employment' means any employment specified in the Schedule to the Act or any process or branch of work forming part of such employment. The Schedule is in two parts. Part I enumerates various employments. Item 5 of that Part reads : "Employment in any oil mill". Section 5 lays down procedure for the fixation and revision of minimum rates of wages in respect of any scheduled employment by the government which is authorised to appoint as many committees or sub-committees as it considers necessary to hold inquiries and advise it in respect of such fixation or revision. Section 9 deals with the composition of the aforesaid committee and reads thus :

Each of the committees, sub-committees and the Advisory Board shall consist of persons to be nominated by the appropriate government representing employers and

employees in the scheduled employments, who shall be equal in number, and independent person not exceeding one-third of its total number of members; one of such independent persons shall be appointed the Chairman by the appropriate Government.

10. The following corollaries are immediately deducible from the provisions of the Act above-noted :

(i) For an employer to be covered by the Act the following conditions must be fulfilled :

(a) he must be employing one or more employees in any scheduled employment;

(b) minimum rates of wages for such scheduled employment must have been fixed under the Act; and

(c) if a committee has been appointed by the government under Section 5 in respect of such scheduled employment it must consist of persons representing employers and employees in the scheduled employment who shall be equal in number.

(ii) Employment in an oil mill is a scheduled employment.

11. It is not disputed that the Company is not covered by any of the items enumerated in Part I of the Schedule to the Act, except item 5. The most important point to be determined in the case, therefore, is whether employment in a vanaspati manufacturing concern would fall within the ambit of item 5 of Part I of the Schedule to the Act, i.e., whether it is an employment in an oil mill or not. The only argument advanced on behalf of the appellants in this connection is, as it was before the two courts below, that vanaspati is a form of ghee which is not an oil; and this contention we find to be without force. Vanaspati, in our opinion, is essentially an oil although it is a different kind of oil than that oil (be it rapeseed oil, cotton-seed oil, ground-nut oil, soya bean oil or any other oil) which forms its basic ingredient. Oil will remain oil if it retains its essential properties and merely because it has been subjected to certain processes would not convert it into a different substance. In other words, although certain additions have been made to and operations carried out on oil, it will till be classified as oil unless its essential characteristics have undergone a change so that it would be a misnomer to call it oil as understood in ordinary parlance. The word 'oil' is not defined in the Act and therefore, its dictionary meaning may well be pressed into service for interpreting the term 'oil mill'. According to WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY (1966 edition) the word 'oil' has different connotations in different situations but in the context of item 5 aforesaid the meaning to be given to would be :

Any of various substances that typically are unctuous viscous combustible liquids or solids easily liquefiable on warming and are not miscible with water but are soluble in ether, naphtha, and often alcohol and other organic solvents, that leave a greasy not necessarily permanent stain (as on paper or cloth), that may be of animal, vegetable, mineral, or synthetic origin, and that are used according to their types chiefly as lubricants, fuels and illuminants, as food, in soap and candles, and in perfumes and flavoring materials.

12. All the ingredients of this meaning are fully satisfied in the case of hydrogenated vegetable oil. We may specially point out that even solids easily liquefiable on warming fall within the meaning given by Webster. Now the various processes, namely, neutralization, bleaching, deodorisation,

hardening and hydrogenation to which oil is subjected for being converted into vanaspati leave its basic characteristics untouched, i.e., it remains a cooking medium with vegetable fat as its main ingredient. Neutralisation, bleaching and deodorisation are merely refining processes so that the colour, the odour and foreign substances are removed from it before it is hydrogenated and hardened and even the two processes last-mentioned allow the oil to retain those characteristics. Even ghee, for that matter, is nothing but a form of oil although it is obtained from animal fat, being a drivative from milk. It may be of use to mention that in Persian language ghee is known as 'raughan zard', i.e., yellow oil, and it does not need an expert to point out that the viscosity of ghee depends upon the weather because with the rising temperature during summer months it turns into a liquid while the cold of December and January solidifies it. Nonetheless it remains an oil and it makes no difference that it is called ghee in ordinary parlance. The word is merely a different name for an oil which is not derived frem vegetables. From that point of view the term 'vegetable ghee' is a contradiction in terms, ghee being essentially an animal fat. The reason why it has come to be called vegetable ghee appears to be that in its finished form in resembles ghee in appearance and viscosity and is also considered a more respectable from of cooking medium when so called, thus catering to the psychological satisfaction of the consumer.

13. We pointedly asked learned counsel for the appellants if he could indicate any difference between vegetable oil and vanaspati which would essentially distinguish the former from the latter, either in physical or chemical properties or in food value. No such difference was indicated and all that he said was that vanaspati would normally be available in solid state and had the appearance of ghee rather than that of any oil. This, in our view, is a superficial difference which does not at all go to the root of the matter. Accordingly we hold that vanaspati must be regarded as an oil for the purpose of the aforesaid item 5 in spite of all the processes to which the oil forming its base has been subjected in order to convert it into the finished product.

14. Although the finding just above arrived at obviates the necessity of out determining the question whether the Company would be an oil mill even if vanaspati were not considered to be an oil, we have every reason to answer that question in the affirmative in view of the finding arrived at by the learned Magistrate that the Company sells oil in its unhydrogenated form not only when the exigencies pointed out by it arise but also otherwise and in the regular course of business. That finding being a finding of fact is no longer open to challenge; and that being so, the operation of sale of oil as such would make the Company an oil mill even if the bulk of the oil produced by it is converted into vanaspati and sold in that form. The reason is obvious. It is not the case of the Company that the proportion of sales of oil to those of vanaspati is so low that the former should be ignored. In this situation is sizeable part of the activities of the Company must be held to be connected with running an oil mill and the Company, therefore, would be liable to be classified as such to that extent even though it also carries on business other than that of selling oil.

15. The grouse of the Company that the provisions of Sections 5 and 9 have not been complied with has for its basis the assumption that it is not an oil mill - an assumption which must be held to be ill-founded in view of the foregoing discussion and the classification of the Company with reference to item 5 in Part I of the Schedule to the Act. It is not disputed that if the Company is to be regarded as an oil mill, Sections 5 and 9 do not come to its rescue because representatives of oil mills did man the committee appointed by the government for fixing the minimum rates of wages in respect of employment in an oil mill and that the Company itself (as well as other oil mills) was invited through a questionnaire to submit their views and thus were given the opportunity to be heard in relation to the fixation of such wages.

16. The only other contention raised on behalf of the appellants was that while he relevant notification issued by the government has fixed rates of wages in respect of skilled, semi-skilled, and unskilled employees working in oil mills, the Company employs other types of workers in connection with the process of hydrogenation of vegetable oil and that such workers do not form the subject-matter of the committee's deliberations or the government's attention. This contention is also without substance. We asked the learned counsel for the appellants to point out which of the employees of the Company fell outside the three categories just above specified and he was unable to name any. Obviously the said three categories exhaust the types of workers which would be employed in any undertaking, barring of course specialists and technical experts who admittedly do not fall within the category of employees embraced by the Act.

17. It is not disputed that if the Company is an oil mill it is guilty of all the contraventions of which it has been convicted. Nor has any argument been advanced to the effect that the sentences awarded are excessive. In the result, therefore, both the appeals fail and are dismissed.

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