

# **BOMBAY HIGH COURT**

State

Vs.

Alisaheb Kashim Tamboli

Criminal Appeals Nos.805 to 807 and 832 of 1954, 1st Class, 3rd Court, Kolhapur, in Case  
No.526 of 1953

(Dixit and Vyas, JJ.)

17.09.1954

## **JUDGMENT**

### **Dixit, J.**

1. This is a group of four appeals, each of which arises from a distinct set of facts but all of which raise common questions under the Factories Act, 1948. Before setting out the questions raised, it may be convenient first to refer to the facts in each appeal.

2. In Criminal Appeal No.805, the facts are these. The respondent is the manager of a factory called "Pistol Bidi Factory", situated at 943-E Ward, 6th Lane, Shahupuri, Kolhapur. One V.M. Mardhekar, Junior Inspector of Factories, visited this factory on 13-9-1952, at 2-30 p.m. along with one M.V. Ponshe, Government Labour Officer and Additional Inspector of Factories, Kolhapur. It was alleged that 110 workers were working in the factory at the time of the visit, but the register of leave with wages (Form No.18) in respect of a Worker named Airavan Subrao Ghugre was not maintained in the factory and the worker was not provided with a leave book (Form No.19). Ghugre was working in the factory for about five years. The prosecution, therefore, alleged that by not maintaining Form No.18 and not providing Ghugre with Form No.19, the accused had contravened the provisions of Rules 94 and 95 read with Sections 83 and 112, Factories Act, thus rendering himself liable to punishment under Section 92, Factories Act, 1948.

3. At the trial, the complainant gave evidence, and he stated that when he visited the factory, there were 110 workers working in the factory and they were engaged in the process of making and packing 'bidis'. He also stated that the register of leave with wages in respect of three workers including Airavan Subrao Ghugre who were working in the factory for five years was not maintained and they were not provided with leave books.

He was cross-examined and in cross-examination he stated that 'bidi' workers were working on piece work basis; some were on monthly pay basis, though he had not got a full list of workers working on monthly basis. Checkers and one Ramu Mallappa Sonar were on monthly basis and Sonar was paid Rs. 80 per month. According to the complainant, 'bidi' winders were paid on piece work basis and there were some workers who wound 'bidis' at their homes after taking the material from the factory, while some worked in the factory itself. He admitted that there was no specific notification making the Factories Act applicable to the Pistol Bidi Factory on the date of the offence and he said that Airavan used to work in the factory.

4. The statement of the accused was taken and he said that he had nothing to say but wished to lead evidence, and on the adjourned date of hearing the defence pleader stated that the accused did not wish to lead any evidence. Thereupon arguments were heard and the case stood adjourned for judgment.

5. The learned Judicial Magistrate, First Class, Kolhapur, acquitted the accused, and in support of the order of acquittal he relied upon a judgment delivered by Bavdekar J. in - '*Ramnath Shankarlal Chandak v. State*<sup>1</sup>', He also relied upon the fact that Government Notification mentioned in the judgment was not made applicable to the Pistol Bidi Factory. A judgment of the Madras High Court in (Cri. Revn. Appln. No.1257 of 1952 now reported in) - *In re K. Chockalingam*<sup>2</sup>, was pointed out to the learned Magistrate, but he said that it was under the old Act of 1934 and that in any event he was bound by the decision of this Court.

6. Feeling aggrieved by this order the State has come up in appeal.

7. In Criminal Appeal No.806, the facts are these. The complainant Mardhekar visited the factory on 13-9-1952, at 2-30 p.m. when he noticed 110 workers working in the factory at that time. According to the complainant, working hours of the factory were from 12 noon to 4 p.m. and from 5 p.m. to 9 p.m. It was alleged that a drinking water tap was kept in the premises, but it gave water from 4 p.m. to 5 p.m., the total capacity of Storing drinking water being about 32.75 gallons. It was complained that by not making arrangements to store drinking water to the extent of 110 gallons the accused, who was the manager, had contravened the provisions of Rule 37 read with Section 18(4), Factories Act, 1948, as subsequently amended. It was also alleged that the total amount of drinking water available at the time was only 13 1/2 gallons and by not keeping sufficient amount of drinking water the accused had contravened the provisions of Rule 35 read with Section 18(4), Factories Act, 1948, as subsequently amended. It was also alleged that the drinking water pot in the office was not marked as "drinking water" in any language, and by doing so the accused had contravened the provisions of Section 18(2), Factories Act, 1948, as subsequently amended. The complaint ended by reciting that the accused had thereby committed an offence under the said sections and the said rules and had rendered himself liable to punishment under Section 92, Factories Act, 1948.

8. The learned Magistrate, Mr. S.S. Thakur, made an order of acquittal precisely on the same grounds on which the order of acquittal was based in Criminal Appeal No.805 of 1954.

9. In Criminal Appeal No.807, the facts are these. The complainant visited the factory on 13-9-1952, at 2-30 p.m. in the company of one M.V. Pongshe and at the time of the visit the complainant found that certain adult workers named in the complaint were allowed to work in the factory. But it was said that their names were not shown in the register of workers (muster-roll) that was available in the factory. The complaint was that by not

<sup>1</sup> Criminal Revn. Applns. Nos.685, 686 and 687 of 1952 decided by Bavdekar J., on 6-10-1952 (Bom)

<sup>2</sup> AIR 1954 Mad 324

showing the names of the said workers in the register of workers (muster-roll) the accused had contravened the provisions of Section 62(1), Factories Act, 1948, as subsequently amended and had thus rendered himself liable to punishment under Section 92, Factories Act.

10. The learned Magistrate, Mr. S.S. Thakur, made a similar order of acquittal upon the same grounds on which the order of acquittal was based in Criminal Appeal No.805 of 1954.

11. In Criminal Appeal No.832 of 1954 the factory with which it is concerned is known as "Karim Bidi Factory" situate at Jon Saheb's Gali, Lal Darwaja, Shahpur, Ahmedabad. One B.L. Bokil, Inspector of Factories, Ahmedabad, visited the factory on 15-3-1951, and upon checking the register of leave with wages of the factory found that a worker named Fazal Rahim had completed a period of twelve months' continuous service from 1-4-1949, to 31-3-1950, and was, therefore, entitled for leave with wages during the subsequent period of twelve months' ending 31-3-1951. According to the complainant, the worker had not been allowed leave with wages by the manager during the twelve months ending 31-3-1951, on the ground that he was not entitled and in doing so, the accused had contravened the provisions of Section 79(1), Factories Act, 1948, and had thus rendered himself liable to punishment under Section 92.

12. The learned Magistrate, Mr. K.N. Parikh, also acquitted the accused, holding that the Karim Bidi Factory was not a factory as contemplated by the Factories Act, 1948.

13. The State, feeling aggrieved by the orders of acquittal in these cases, has come up in appeal.

14. Mr. Mandgi who appears for the State contends that the order of acquittal in each case is contrary to law. At the outset, it may be noticed that so far as the judgment under appeal in Criminal Appeals Nos.805, 806 and 807 is concerned, it must be stated that the learned Magistrate has not found upon the facts which were in dispute. After referring to the evidence of the complainant, he referred to the judgment of Bavdekar J., and said that he was bound by that decision and also said that the notification referred to in the judgment was not made applicable to the factory. However that may be, there is the evidence of the complainant to which reference has been made in an earlier part of this judgment and the evidence shows that in the Pistol Bidi Factory there were at the time of the visit on 13-9-1952, as many as 110 workers and what is of

importance is that some of these workers were working on piece work basis, some on monthly basis, some worked in the factory itself and still some others took the material to their homes and prepared the 'bidis'. The complainant has not been cross-examined in any effective way. It would appear, therefore, on facts, that this factory contained more than 20 workers in any case, although all of them did not work in the premises of the factory. This is necessary to mention because of the definition of the expression "factory" which is to be mentioned presently. Criminal Appeals Nos. 805, 806 and 807 will, therefore, be disposed of upon the basis that on 13-9-1952, the workers working in the factory on that day were more than 20.

15. It is now necessary to refer to some of the material sections of the Act. The principal section is Section 2(m) which defines the word "factory". So far as material, it says :

" 'factory' means any premises including the precincts thereof-

(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,-.."

It is obvious that to satisfy this definition there must be first a manufacturing process, that the number of workers must be twenty or more and that the persons working there must be workers. To appreciate the definition of "factory" it is necessary to look at the definitions of the expressions "manufacturing process" and "worker".

The expression "manufacturing process" is defined in Section 2(k) and, so far as material, it says:

" 'manufacturing process' means any process for- (i) making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or ..."

One cannot but be struck by the very wide language of this definition. Manufacturing process is any process provided it is a process for doing one of the several things mentioned in Section 2(k) with the further requirement which is that the doing must be with a view to the use, sale, transport, delivery or disposal of the article or substance. Mr. Gokhale contends that 'bidi' making is not a manufacturing process. He says that the expression "process" suggests some transformation, i.e., it is a process by which an article is changed into something different from its original condition. It seems to me that the language of the definition as contained in Section 2(k) does not justify this contention. The process of making 'bidis' is simple. One has to take the leaves and then to turn out the 'bidis'. The process would, therefore, be one of either making or packing and it is undeniable that one or the other of these two things is done with a view to its use, sale, transport, delivery or disposal. In my opinion, therefore, there is no doubt that 'bidi' making is a manufacturing process within the meaning of Section 2(k).

The more important definition is one which relates to the expression "worker" and that is to be found in Section 2(1). It says that:

" '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 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."

It is evident that in order to enable a person to be a worker, he must be employed. It is immaterial whether he is employed for wages or for no wages provided he is employed in a manufacturing process. The word which has given rise to a keen dispute between the State and the respondent is the word "employed" and two different meanings are suggested with regard to this expression. Mr. Mandgi contends that the expression "employed" means merely "engaged." Mr. Gokhale, on the other hand, contends that the expression "employed" means no doubt engaged, but it is something more than that. It involves the connotation of the relationship between a person employed and the employer as being one of master and servant. To understand the expression "employed" one has also to consider the expression "whether for wages or not." The clause "directly or through any agency" occurring between the expression "employed" and the expression "whether for wages or not" is an adjectival clause and what one has to see is whether the expression "employed" necessarily involves the connotation that there must be a relationship of master and servant. No doubt the expression "employed" would suggest that the employment would be by a person of another person, the first, being an employer and the second, being an employee and, therefore, the first would be a master and the second would be a servant. But the expression "employed" is qualified by the expression "whether for wages or not." Indeed, the expression "employed" is controlled by the expression "whether for wages or not", and the real question is what is the meaning of the expression "whether for wages or not". If the intention was that a person to be a worker must be paid wages, then obviously Mr. Gokhale would be right. The very expression "wages" would suggest that the idea of a servant is involved. But Mr. Gokhale has to meet a further difficulty because the expression "for wages" is followed by the expression "or not". The expression "or not" suggests that a person to be a worker may be paid wages or may be paid no wages. It is, therefore, futile to contend that the expression "employed" must involve necessarily the idea of a relationship of master and servant. It is conceivable, for example, where you have a person who is paid wages in which case there may be a relationship of master and servant. But it is also conceivable to have a case where a person may not be paid wages and yet he may be a worker. There is authority for this view to which I will refer hereafter. Therefore, in order to enable a person to be a worker, the person must be engaged. Such a person may be paid wages or may not be paid wages, but the important requirement is that the person must be engaged in a manufacturing process. In the present case I have already said that 'bidi' making is a manufacturing process and, therefore, so far as that requirement is concerned, there is no difficulty whatever. Mr. Paranjpe who appears for the respondent in Criminal Appeal No.805 contends that the expression "employed" must necessarily mean that there is a

relationship of master and servant, and unless there is such a relationship, it will not be possible to work the Factories Act. Now, as to what the meaning of the word "worker" is, is to be judged not by what the supposed consequence is likely to be, but an expression or a word is to be construed by the language employed by the Legislature, and if the expression "employed" is qualified by the expression "whether for wages or not", I do not see how one cannot give the expression "for wages or not" its literal and plain meaning.

The grievance which Mr. Paranjpe has put forward is, I think, on the whole imaginary. If the expression "worker" as occurring in Section 2(1), contemplates at least two kinds of workers, i.e. those who are paid wages and those who are not paid wages, I do not see why the Act should not be workable in practice. The provisions of the Act will apply to a certain type of workers and may not apply to another type of workers, but there is no reason for saying that the expression "whether for wages or not" should not be given its plain and ordinary meaning. Side by side with the definition of the expression "worker" as occurring in Section 2(1), one has also to look at Section 85. As already pointed out, the expression "factory" is defined in Section 2(m) and there is also another definition of the expression "factory" and that is to be found in Section 85(2). Section 2(1) applies to a factory where, among other conditions, there is a number of persons which is either ten or more, or twenty or more. In Section 85 the number which is referred to is either less than ten or less than twenty. Indeed, as in the case of Section 2(m) so also in Section 85, there must be a manufacturing process. The number of persons employed, if working with the aid of power, must be less than ten and the number of persons working must be less than twenty, if they are working without the aid of power.

16. Then there is Section 85(1) which provides: "The Provincial Government may, by notification in the Official Gazette, declare that all or any of the provisions of the Act shall apply to any place wherein a manufacturing process is carried on with or without the aid of power or is so ordinarily carried on notwithstanding that.....

- (ii) the persons working therein (which means the persons working as mentioned in clause (i)) are not employed by the owner thereof but are working with the permission of, or under agreement with, such owner:"

Now, the persons working may be employed by the owner or they may not be employed by the owner, and it is to the latter type of case that clause (ii) of Section 85 will apply, and that clause will apply where the persons working in the place are working with the permission of, or under agreement with, the owner. Section 85(1)(ii), therefore, contemplates a case where the persons working in the place are not employed by the owner of the place but they are working with the permission of, or under the agreement with the owner of the place. To such a case Government may make the Factories Act applicable by means of a notification and after the place is so declared by notification, then, in that event, the place shall be deemed to be a factory, the owner shall be deemed to be the occupier, and any person working therein, a worker. If one may say so, you have in Section 85(2) an artificial definition of the expression "factory", of the expression

"occupier" and of the expression "worker". It is evident, therefore, that there may be a factory if it satisfies the requirements of Section 2(m) and there may be a factory provided the conditions of Section 85 are satisfied, in which case there would be a factory as contemplated by Section 85(2). Now, Mr. Gokhale and Mr. Paranjpe contend that it is possible to construe the expression "worker" with reference to the expression "employed" as used in Section 85. I do not see how it is possible to construe the expression "employed" by reference to what is stated in Section 85. All that Section 85 does is to say that if the conditions mentioned in Section 85(i) are fulfilled, then in that event the place mentioned by Section 85(i) would, as though artificially, be a factory, the owner, the occupier and any person, a worker. If one has to construe the expression "employed" as occurring in Section 2(1), one has necessarily to construe the expression by reference to the language of Section 2(1). One may turn to some of the provisions of the Act and try to see whether it is possible to get any assistance on the question of construction by what is stated in different sections, but primarily and essentially one has to consider the language of Section 2(1) in order to find as to what the expression "employed" means. In my opinion, therefore, it would not be right to construe the expression "employed" by what is stated in Section 85. Mr. Mandgi has referred to certain sections and, according to him, those sections show that the expression "employed" merely means "engaged". In this connection he has referred to Sections 27, 34, 45, 46, 47, 48 and 49 and his contention is that the expression "employed" as used in those sections merely means "engaged". By way of an illustration, one may refer to Section 27 which provides, so far as material, that "No woman or child shall be employed in any part of a factory for pressing cotton in which a cotton opener is at work". Obviously, the expression

"employed" as used in the section merely means "engaged". Then there is Section 34(1) which says that

"No person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury."

Here also, the expression "employed" obviously means nothing more than "engaged". Similar is the meaning of the expression "employed", which is to be found in Sections 45, 46, 47 and 48, though Section 49 may perhaps suggest a different interpretation about the expression "employed". Mr. Paranjpe, on the other hand, referred to Sections 59, 60, 64 and 79, among others, to support his contention that the expression "employed" must mean not merely engaged but as involving the relationship of master and servant. Now, if one initially bears in mind the fact that the expression "worker" may have at least a two-fold meaning, that is, persons working for wages and persons not working for wages, then it is evident that Section 79 may apply to one type of workers and will not apply to another type of workers. But that does not mean that one is required to construe the expression "employed" as used in Section 2(1) by what is said in Section 79.

17. On the whole, therefore, I am inclined to take the view that the expression "employed" as

used in Section 2(1) does not necessarily involve the relationship of master and servant. It may be that if one is employed upon the basis of wages, then in that case there may be a relationship of master and servant, but there are other conceivable cases in which there may not be a relationship of master and servant and yet such persons would be workers.

18. There was some discussion as to whether it is necessary to enable a person to be a worker that he should necessarily work for wages. There may be a person who may be a worker who works on the basis of monthly wages or weekly wages. There may again be persons who may work on the basis of the quantum of work, i.e. piece work, and yet they would be workers, and it would not be right to say that a person can be a worker only if he is paid wages, either in the form of weekly wages or in the form of monthly wages. Mr. Mandgi also relied upon Section 103 which raises a presumption and his contention is that once a presumption under Section 103 is raised, it is for the party who disputes that position to show that a particular person is not a worker. Section 103 provides that:

"If a person is found in a factory at any time, except during intervals for meals or rest, when work is going on or the machinery is in motion, he shall until the contrary is proved, be deemed for the purposes of this Act and the rules made thereunder to have been at that time employed in the factory."

Section 103 will apply provided there is first a factory and any person found in the factory in circumstances mentioned in that section will be considered to have been at a particular time employed in the factory, i.e. the person will be considered to be a worker. Now, in this case it is not necessary to consider the effect of Section 103 because according to the evidence of the complainant Mardhekar there were 110 persons working at the time of his visit and there is no difficulty in finding that, at any rate, at the time of his visit more than twenty persons were working in the factory. Therefore, strictly, there is no question of any presumption arising in this case, but it does show that if a person is found in a factory at a particular time in circumstances mentioned in that section, then he will be considered to be employed in the factory, and if one has to rebut that position, one has to show that he was in the factory for purposes other than the purposes of work.

19. The principal ground upon which the orders of acquittal were passed was the ground afforded by the judgment of Bavdekar J. in - '*Ramnath Shankarlal Chandak v. State*' In that case the facts were these. The applicant was the owner of certain premises in which twenty or more labourers were working in the process of manufacturing 'bidis'. In October 1950 the complainant in that case visited the premises and noticed that there was no latrine accommodation in the factory, as required by the Act. The defence of the applicant was that it was true that there was no latrine accommodation, but he contended that the premises were not a factory, as defined in Section 2(m), the ground being that the persons who were working in the factory were not employed within the meaning of Section 2(1). Now, in that case certain concessions were made. They will

be found in the beginning of the judgment. It was conceded in that case that the process of making 'bidis' was a manufacturing process. It was also conceded in that case that the manufacturing process was carried on ordinarily upon the premises. But the principal dispute raised in that case was that the persons were not workers as defined in the Act. Bavdekar J. observed:

".....The persons who were making 'bidis' were making them for remuneration by piece work; but that would not prevent them from coming within the definition of 'worker', because the definition specifically uses the words 'whether for wages or not'."

This suggests that Bavdekar J. was prepared to hold that from the circumstance that the person was working upon the basis of piece work, that would not result in the person not being a worker. Even if the person worked upon the basis of piece work, such a person would be a worker, according to Bavdekar J. But Mr. Gokhale who appeared in that case also contended that the expression "employed" as used in Section 2(1) did not mean "engaged" or "occupied" but involved the relationship of master and servant and Bavdekar J. was persuaded to take the view contended for. Bavdekar J. then referred to Section 85 and referred to Section 151, English Act of 1937 and, in the end, concluded as follows:

".... It is obvious, therefore, that it was thought necessary to include in the Act the provision of Section 85(1) so as to enable Government to declare as a factory even premises where more than twenty persons worked, who were not employed by the owner of the premises, but were working there with the permission of, or under agreement with, the owner, because the meaning which the Legislature gave to the word "employed" in Section 2(1) was that there was a contract of service between the workers and somebody. In that view of the case, the place where the applicant was carrying on the business of manufacturing 'bidis' has not been shown to have been a factory. All that we know is that the 'bidi' makers were paid by piece work and could take the materials home for making 'bidis'. These facts are consistent with there being no relationship of master and servant between the applicant and the 'bidi' makers."

It is, therefore, clear that although in the beginning of his judgment Bavdekar J. was persuaded to take the view that merely because a person was working upon the basis of piece work, that would not prevent him from being a worker, he considered that inasmuch as the 'bidi' makers were paid by piece work and could take the materials home for making 'bidis' and as it was necessary to have the relationship of master and servant, the applicant in that case was entitled to an order of acquittal. In so far as Bavdekar J. was prepared to take the view that the expression "employed" as used in Section 2(1) involved the relationship of master and servant, we think that that is with respect, not a reasonable view to take. That is not a reasonable view for the reason that it is not justified by the language of Section 2(1), but what must have weighed with Bavdekar J. is the circumstance that the persons in that case could take the materials home for making 'bidis'. This

observation is prompted by what he said:

"....All that we know is that the 'bidi' makers were paid by piece work and could take the materials home for making bidis."

It is probable that he thought that if the persons could take the materials home for making 'bidis' then naturally the owner of the factory would have no control over them and this would suggest that it would be a case where there would be no relationship of master and servant. He considered that the facts in that case were consistent with there being no relationship of master and servant. In my view, although Section 2(1) may, in conceivable cases, involve, as between the owner of a factory and workers who were paid wages, the relationship of master and servant, it would not be right to construe Section 2(1) as suggesting that the relationship of master and servant is necessarily involved in the expression "employed", as used in Section 2(1), and if Bavdekar J.'s judgment is intended to say that such a relationship is necessarily involved in Section 2(1), I am not with respect to Bavdekar J., prepared to accept that as a reasonable construction of Section 2(1).

20. Reference was made to certain decisions of other High Courts. Reference was made to - '*Kamlapat v. Emperor*<sup>3</sup>', That was a case arising under the Act of 1911. It may be noted that the expression "worker" was defined for the first time in the Act of 1934. Prior to the Act of 1934 the expression which was used in the Act of 1911 was the expression "employed" and the definition there given was contained in Section 2(2). The Allahabad case is an authority for the proposition that if a piece worker is paid according to the work turned out by him, such a person would be a person employed in the factory, provided he is engaged in any kind of work connected with the manufacturing process. This shows that a person can be a worker even if he does the work upon the basis of piece work. There is another decision in AIR 1954 Madras 324, which says that even if a person is engaged not on the time wages system but on the piece work system, such a person would be a worker within the meaning of the Factories Act. The more important case is the case reported in - '*In re K.V.V. Sarma*', AIR 1953 Madras 269. At p.273 of the report, reference is made to the English Act, as also to the Indian Act and it goes on to state that the expression "manufacturing process" as occurring in Section 2(k) has a much wider

<sup>3</sup> AIR 1930 All 214

import and is more comprehensive than it was in the Act of 1934. Then at p.274 of the report, reference is made to the expression "worker" and it is observed:

".....A 'worker' should be a person employed directly or through any agency whether for wages or not in the manufacturing process, the other portions of the definition being immaterial for the purpose of the present case. It cannot be disputed that the antithesis "or not" is not intended to bring within the ambit of the definition persons who receive emoluments which cannot be termed as wages. The expression "whether for wages or not" means whether the person receives as remuneration for his services wages, or

whether such a person is an apprentice learning work or is an honorary worker."

This shows that in the expression "worker" may be included a person who is an apprentice and a person who is merely an honorary worker. Therefore, to enable a person to be a worker, it may be that he may receive wages upon the basis of time work or it may be that he may receive remuneration upon the basis of piece work. There may be a person who may be a worker merely by his being an apprentice or merely by his being an honorary worker. That indeed shows that the expression "worker" has a very wide import. Indeed, it must be so, having regard to the language as used in Section 2(1), viz., a person employed, whether for wages or not. Finally, it is necessary to mention that an English case upon which Bavdekar J.'s judgment principally rested is the case to be found in - '*Weston v. London County Council*', There, the Factories Act of 1937 is reproduced at p. 609 of the report and it shows that the expression "factory" means any premises in which persons are employed in manual labour in a process mentioned in that section. There is no definition of the expression "worker" as such, but the meaning is to be gathered from what is said in Section 151(4). Now, the expression "employed" is to be found in Section 151(4) as well as in Section 2(2), Factories Act, 1911. At p. 611 of the report this is what is stated:

".....The general definition of a factory is to be found in Sub-Section (1) of Section 151 of the Act, and I do not think that anyone could suggest that this institute falls within it. While it is true that manual labour takes place therein, I do not think that there are any persons, other than the instructor, "employed" in manual labor there, for "employed" does not mean "busy", 'engaged" or occupied ,....."

Now, what one has to remember in this connection is that we have now to construe the expression "worker" as occurring in Section 2(1) of the Act of 1948, and in my view, therefore, it would not be right to construe Section 2(1) by what is contained in Section 15(14), Factories Act, 1937. In the first place, the language as used in the two Acts is different, and unless the two enactments are in identical language, it would not be right to construe Section 2(1) by what is contained in Section 151(4) of the Act.

21. For these reasons, we think it must be held that the Pistol Bidi Factory which is the factory concerned in Criminal Appeals Nos.805, 806 and 807 as well as "Karim Bidi Factory" with which Appeal No.832 is concerned is a factory within Section 2(m), Factories Act, 1948, and the Court below was wrong in saying that the Factories Act of

<sup>4</sup>1941-1 KB 608

1948 was not applicable to this factory. The lower Court was also wrong in saying that the expression "employed" as occurring in Section 2(1) necessarily involved the relationship of master and servant. These being our conclusions it must be held that the orders of acquittal are wrong and will have to be set aside.

22. We, therefore, allow Criminal Appeals Nos.805, 806 and 807 of 1954 and also Criminal

Appeal No.832 of 1954 and set aside the orders of acquittal. As these cases were disposed of on a pure question of law and the facts were not investigated, it is directed that the parties will be allowed to lead evidence and the cases will be disposed of in accordance with law.

**Vyas, J.**

23. I agree with my learned brother.

24. These are appeals from orders of acquittal. The person prosecuted in cases from which Appeals Nos.805, 806 and 807 of 1954 have arisen was the manager of the Pistol Bidi Factory at Kolapur and the charges against him were in respect of contraventions of the various rules and sections of the Factories Act. In the case which has led to appeal No.805/54, the allegation against the manager was that he had contravened Rules 94 and 95 of the rules framed under the Factories Act and had, therefore, committed an offence under Section 92 of the Act. Rule 94 requires that the name of a worker in the factory should be entered in the register of leave with wages and Rule 95 requires that a leave book should be supplied to a worker in the factory. The prosecution contended in this case that, when the Factory Inspector Mr. Mardhekar visited the factory at 2-30 p.m. on 13-9-1952, 110 workers were working in the factory, the names of three out of these workers were not entered in the register of leave with wages and they were not provided with leave books. In the case which has given rise to Appeal No.806/54, the charge against the manager was that he had contravened Rules 35 and 37 of the rules. Rule 35 requires that arrangements for drinking water should be made for workers in the factory and Rule 37 requires that a label should be attached to the pot containing drinking water showing that there was drinking water in the pot for the factory workers. Mr. Mardhekar noticed during his visit to this factory that these rules were also contravened. In Appeal No.807/54, the charge against the manager was that he had contravened the provisions of Section 62(1) of the Act which requires a register of adult workers to be maintained showing the name of the worker, the nature of his work, the group in which he is included, the relay to which he is allotted if his group works on shifts, etc. In the case from which Appeal No.832/54 has arisen, the person prosecuted was the manager of the Karim Bidi Factory at Ahmedabad and the charge against him was that three workers Fazal Rahim, Ibrahim Mohmed and Abdulla Juma who had rendered continuous service of twelve months from 1-4-1949 to 30-3-1950, were not allowed leave with wages though they were entitled to such leave.

25. The trial Magistrates in these Kolhapur and Ahmedabad cases, relying on a judgment of Bavdekar J. in Cri. Revn. Applns. Nos.685, 686 and 687 of 1952 (Bom) (A) held that the persons who were engaged in making, packing and winding 'bidis' were not employed within the meaning of Section 2(1), Factories Act, 63 of 1948, that they were, therefore, not workers within the meaning of Section 2(1) and that accordingly the premises which were visited by Mr. Mardhekar on 13-9-1952, and which were managed by the respondent in Appeals Nos.805, 806 and 807 of 1954 and the respondent in Appeal No.832/1954 were not factories within the

meaning of Section 2(m) of the Act. They therefore acquitted the respondents without going into the question of fact involved in each case.

26. As a matter of fact, the state of the evidence which was led against the respondents was also unsatisfactory and perfunctory. For instance, the persons whose names were alleged to have been not entered in the register of leave with wages were not examined in order to show whether they were employed in the factory and whether they were present in the factory on the day when the factory inspector visited the factory. No evidence was led to show how many of the workers were paid fixed wages and how many were paid according to piece work. No evidence was led even to show how many of the persons who were found present in the factory when the inspector visited it were actually working in the premises and how many of them used to take the 'bidi' making material to their homes. No worker was examined to show whether adequate facility was provided to the workers in the factory for drinking water or whether the workers were provided with leave books. On several other material points also, such as how the employment was obtained by workers, through whom it was obtained etc. the evidence was not led or recorded. The Magistrates hardly applied their minds to the issue of fact involved in the cases and relying on Bavdekar J.'s judgment in 'Ramnath Shankarlal's case' they disposed of the cases on the ground that the Pistol Bidi Factory and the Karim Bidi Factory were not factories under the Act and, therefore, no offence under the Act was committed by the respondents. All this is regrettable. In our opinion, full evidence ought to have been recorded by the Magistrates in order to enable us to dispose of the appeals finally in case we came to the conclusion that the acquittals of the respondents must be set aside. As the state of the evidence stands, we are not in a position to decide the appeals finally, though in our view the acquittal of the respondents has to be set aside in each case. We will, therefore, have to order a retrial in each case.

27. Now, the view taken by Bavdekar J. in - 'Ramnath Shankarlal's case' was that in the case of 'bidi' makers who were paid according to piece work and who could take the material home for making 'bidis', there was no contract of service, i.e. no relationship of master and servant between the manager or occupier of the factory and the worker. Bavdekar J. held that as in his view there was no contract of service, i.e. no relationship of master and servant between the management of the factory and the 'bidi' makers, the 'bidi' makers could not be said to have been employed within the meaning of Section 2(1), Factories Act and therefore the concern could not be held to be a factory within the meaning of Section 2(m) of the Act.

28. Now, the question which has directly arisen for our decision in these appeals is whether the view expressed by Bavdekar J. in - 'Ramnath Shankarlal's case' is a correct view of law. In my opinion with great respect, the view taken by Bavdekar J. is not in consonance with the connotation of the term employed' nor is it in consonance with the language of clause (1) of Section 2 of the Act nor with the scheme of the Act. Besides, again with great respect, the expression of the view itself has not been consistent in the judgment. In para.3 of his judgment, Bavdekar J. observed:

".....The persons who were making 'bidis' were making them for remuneration by piece work; but that would not prevent them from coming within the definition of 'worker'."

Then Bavdekar J. proceeded to set out Mr. Gokhale's contention, which was advanced on behalf of the manager of the factory concerned, that the term 'employed' in Section 2(1) of the Act was not used in the sense of being actually engaged or kept, but was used in the sense indicating a contract of service between the persons engaged in making 'bidis' and the management of the factory. Then Bavdekar J. set out the provisions of Section 151(1), English Factories Act and observed that the term 'employed' in that section had the same meaning which Mr. Gokhale sought to give to the word 'employed' in Section 2(1), Indian Factories Act. In other words, Bavdekar J. accepted Mr. Gokhale's contention that the term 'employed' in Section 2(1) indicated a relationship of master and servant between the management of the factory and the worker. In the light of this position to which Bavdekar J. arrived in his judgment, it is obvious that Bavdekar J.'s observations "The persons who were making 'bidis' were making them for remuneration by piece work; but that would not prevent them from coming within the definition of 'worker'" must mean that, when he was making those observations he was of the opinion that the fact that the persons who were making 'bidis' were paid by piece work was not inconsistent with there being a relationship of a master and servant between them and the manager or occupier of the factory. Had Bavdekar J. felt that there was an inconsistency between the fact that the makers of 'bidis' were paid according to piece work and the existence of a relationship of a master and servant between them and the management, he would have said that the fact that the 'bidi' makers were paid according to piece work would prevent them from being called workers within the definition of 'worker' given in Section 2(1) of the Act. However, what he said was

".....The persons who were making 'bidis' were making them for remuneration by piece work; but that would not prevent them from coming within the definition of 'worker',"

and yet towards the end of the judgment, he made these observations:

".... All that we know is that the 'bidi' makers were paid by piece work and could take the materials home for making 'bidis'. These facts are consistent with there being no relationship of master and servant between the applicant and the 'bidi' makers,"

clearly suggesting thereby that they were not workers under the Act. In short, Bavdekar J. began his judgment by saying that the piece workers could fall under the definition of 'worker' given in Section 2(1) of the Act and ended up by saying that the fact that the 'bidi' makers were paid according to piece work was consistent with there being no relationship of master and servant between the applicant and the 'bidi' makers, suggesting thereby that they were not workers under the Act.

29. In coming to the conclusion that before a person could be held to be a worker within the

meaning of Section 2(1) of the Act, it must be shown that there was a relationship of master and servant between the management of the factory and him, Bavdekar J. was guided considerably by the language of Sections 151 and 152, English Factories Act and by the decision in the case of (1941) 1 KB 608. It must be seen however that Section 152(4), English Factories Act does not define a worker, but merely lays down who shall be deemed to be employed. Indeed there is no definition of the term 'worker' in that Act.

In the Indian Factories Act, 1911, also, there was no definition of a worker. Section 2, Sub-Section (2) of the Act of 1911, was certainly worded on the model of Section 152(4), English Factories Act, because it provided that a person who worked in a factory whether for wages or not was to be deemed to be employed in the factory if he fulfilled certain requirements. These provisions of the Act of 1911 were altered, and they must have been altered deliberately, when the Indian Factories Act, 1934, was enacted. The phraseology "shall be deemed to be" was purposely dropped from Section 2 and what was meant by the term 'worker' was laid down. There is an obvious difference between 'what is' and 'what is deemed to be'. One who does not fall within the definition of a worker given in Section 2(1) of the Act and is not, therefore, a worker under the Act may have to be deemed to be employed if he fulfils certain conditions. With respect, therefore, Bavdekar J. was not right when he proceeded on the basis that the definition of a worker in the Indian Factories Act as it stood at present was modelled on the English Factories Act. In AIR 1953 Madras 269 it was observed by Govinda Menon and Basheer Ahmed Sayeed JJ. that it was futile to make comparisons between the English Factories Act and the Indian Factories Act; for one thing, the idea underlying the Factories Act in England was the regulation of the employment of manual labour. There was no such restriction in the Factories Act prevalent in India.

30. It would now be convenient to set out Clauses (k), (1) and (m) of Section 2, Factories Act, 63 of 1948. Clause (k) lays down that the manufacturing process means any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal. Clause (1) says that '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 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 clause (m) lays down that

" 'factory' means any premises including precincts thereof-.....

(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 etc."

31. It is clear from the abovementioned provisions of Clauses (k), (1) and (m) that until the requirements of all these clauses are satisfied, there cannot be a factory under the Factories Act.

There must be a manufacturing process under the Act carried on the premises and there must be workers under the Act working on the premises before the premises can amount to a factory under the Act. It is clear to my mind that the expression "a person employed" in clause (1) of Section 2 means a person who is actually engaged or occupied in a manufacturing process, a person whose work is actually utilized in that process. In this conclusion of mine, I am fortified by the meaning assigned to the word 'employed' by Blacks in his Law Dictionary at p.657. Blacks says that the word 'employed' signifies both an act of doing a thing and doing under a contract or order of doing a thing. Aiyer in his Law Lexicon says that the word 'employed' means engaged or occupied in the performance of work or hired to perform labour. There are two decisions, one of the Madras High Court and the other of the Allahabad High Court, to which our attention has been invited by the learned Assistant Government Pleader. In the Madras case, AIR 1954 Madras 324 it was held that the persons who were employed in manufacture of cigars on piece work system were workers within the meaning of clause (h) of Section 2, Factories Act, 1934, and it may be noted that there is no difference in terminology between clause (h) of Section 2, Factories Act of 1934 and clause (1) of Section 2, Factories Act of 1948. In the Allahabad case AIR 1930 Allahabad 214 also it was held that the piece workers who were paid according to the work turned out by them were persons employed within the meaning of the factories Act.

32. If we turn to the preamble to the Factories Act, we find that the Act was enacted because it was considered expedient to amend the law regulating labor in factories. When the Legislature sought to amend the law regulating labor, it is inconceivable that they would have intended to exclude from the purview of legislation the well-known category of labor, namely those who do piece work on the premises of the factory itself and are paid accordingly. If we turn to Section 27 of the Act, it speaks of the employment of a woman or a child and it is only too obvious that the Legislature would not have intended that a child should enter into a contract of service with the authorities of the factory.

Then again, if we turn to Section 34, it provides that no person shall be employed in any factory to lift, carry or move any load so heavy as to be likely to cause him injury. There is no doubt that this provision must apply to all workers, i.e. piece workers and others who might have entered into a contract of service with the management of the factory. In enacting Section 34, the Legislature was obviously moved by a humane consideration. We do not see any reason why the Legislature in enacting the definition of a worker should have intended to define the word in such a manner as to exclude the workers who do piece work from the benefit of the provisions of the Act which are inspired by considerations of humanity.

33. Let us turn next to Section 45. It is a section which deals with the safety of the person of the workers. We cannot imagine that where the safety of the person of the workers was concerned, the Legislature would have intended to discriminate between workers who had entered into a contract of service and those who were doing piece work on the premises of the factory. Then there are Sections 46, 47 and 48. In these sections, we find provisions regarding maintenance of

canteens, rest rooms; etc. Now, the provision of canteens, shelters, rest rooms and lunch rooms is under the modern legislation considered essential for the welfare and efficiency of labor and we cannot believe that in such matters the Legislature would have intended to deny these comforts to piece workers and provide them only to those who might have entered into a relationship of master and servant with the management of the factory. Drinking water to which reference is made in Section 47 is an elementary need of all human beings, indeed of the entire animate creation. It is as vital to the sustenance of life of piece workers as of workers who may have entered into a contract of service and we have no doubt that the Legislature while enacting Section 47 of the Act could not have intended to make a differentiation between the two categories of labour when the question of providing drinking water for sustenance of life is concerned. Then there is Section 48 which deals with providing facilities to women workers in the shape of their children being looked after. Again, we must proceed on the assumption that the Legislature must have had the interests of the children of all women workers equally at heart. They would not have made a distinction in this respect between women who might be piece workers and women who might have entered into a contract of service with the management. Thus, Bavdekar J.'s construction of the term 'worker' namely that it means only that person who has entered into a relationship of master and servant with the authorities of the factory, is against the manifest scheme of the Act.

34. As I have said already above with respect, Bavdekar J.'s construction is also not in consonance with the language of Section 2(1) of the Act. The definition of a worker in clause (1) is clearly enacted in terms of a person who is "employed in" and not in terms of a person who is employed by. Under the definition, it is immaterial how or by whom he is employed so long as he is actually employed in a manufacturing process. His being engaged in a manufacturing process may not be directly at the instance of the manager or any of his agents. It may be through any agency. A person who is engaged in a 'bidi' factory may tell his friends, relatives or acquaintances who are without work that the work of making 'bidis' is available in a certain factory. So saying, he may take them to the factory and those people may find piece work employment there. They are not employed by the manager in the sense of there being a relationship of master and servant between him and them. They are just given work, because work has got to be done and people are there for doing it. The words "through any agency" are important in clause (1) of Section 2. They show that when a person becomes employed in a manufacturing process within the meaning of clause (1) of Section 2, there may be no direct relationship of a master and servant between the manager and him. The employment may be brought about through any agency, not necessarily through the manager or his agency.

35. Now, if we turn to the present cases, we find that some of the persons who were engaged or employed in making 'bidis' are said to have been working in the factory for as long as five years. For instance, the contention of the prosecution is that Airawan Subrao Ghugre had put in five years' work in this factory. He was working for eight hours a day. He was paid according to the quantity of work turned out by him. The prosecution further contends that there were checkers

who were employed in the factory and the work of the checkers was to supervise the work which was turned out by the 'bidi' makers. Some persons in addition to working on the premises of the factory took the material home for making 'bidis'. Indeed, it may be stated that if these persons had not been engaged in the factory for doing the work of making 'bidis, bidis' would not have been made at all. In these circumstances, I fail to understand why these persons who were packing, winding and making 'bidis' should not be said to be "employed" in the factory simply because the management chooses not to pay fixed wages to them or chooses not to enter into a contract of service with them, so as to be able to contend subsequently that they are not workers under the Act, that the premises would not amount to a factory and that therefore the management would not be liable to discharge any of their obligations under the Act in relation to these persons. It is not easy to understand why to this category of labour, namely to piece workers, the benefit of the provisions relating to sanitation, drinking water, lunch rooms, shelter rooms etc. should not be extended just as it is to be extended to the workers who might have entered into a relationship of master and servant with the manager or occupier of the factory.

If the Legislature had intended to enact that the persons who were not paid fixed wages were not to be considered workers under the Act, they would not have used the words "whether for wages or not" in clause (1) of Section 2. In my opinion, this deliberate phraseology "whether for wages or not" would show that the Legislature had clearly intended that the persons who were paid according to the quantity of work turned out by them were to be considered workers within the meaning of the Act. Thus, the fact that these piece workers were not paid fixed wages, but were paid according to the quantity of work turned out by them, would not prevent them from being called workers under the Act. Having pointed out that the language of clause (1) of Section 2 is clearly against the construction that before a person could be held to be a worker under the Act, there must be established a relationship of master and servant between the manager or occupier of the factory and the person concerned, I would now point out further that even the word 'wages' in the expression "whether for wages or not" in clause (1) does not necessarily lead to a conclusion that between the wage-giver and the wage-earner there must be a relationship of master and servant. Stroud in his Judicial Dictionary (Vol. III, at p.2205) has defined the word 'wages' in this manner:

"Though this word (i.e. "wages") might be said to include payment for any services, yet in general the word 'salary' is used for payment for services of a higher class and wages is confined to the earnings of labourers and artisans."

If the word 'salary' is used, then undoubtedly there would be a relationship of master and servant between the person paying the salary and the person receiving the salary. But, when what is paid to laborers and artisans, which expression must include persons who do miscellaneous labor or piecework labor, is to be considered as wages earned by them, there would not necessarily arise a relationship of master and servant between the management of the factory and the wage earners. In the United States, the word 'wages' in certain enactments does not imply that the compensation i.e. money paid to a laborer or artisan as his earning, is to be determined solely upon the basis of

time spent in service. It may be determined by the work done. AIR 1953 Madras 269 at p.275 (D). The point thus is that even the payments made to piece workers for the quantity of work turned out by them could be called wages within the meaning of the Act without there being a relationship of master and servant between the management of the factory and them.

36. We must next proceed to deal with Mr. Gokhale's contention that the term 'employed' in clause (1) of Section 2 signifies the existence of a relationship of master and servant between the manager or occupier of a factory and a worker. In this connection, it may be noted that there are no such words in clause (1) as 'contract of service' or 'relationship of master and servant' or any other words from which such a relationship must be necessarily deduced. There is nothing in the language of clause (1) to suggest that the manager or his agent makes the appointment of a worker. The section expressly says that a person may get employment or work through any agency. It is actual work in a manufacturing process which makes a person a worker under Section 2(1). How he gets work is immaterial. In this connection also it would be convenient to refer to the decision in 'In re K.V.V. Sarma (D)'. It was held in that case that the expression "whether for wages or not" meant whether the person received as remuneration for his services wages, or whether such a person was an apprentice learning work or was an honorary worker. In the case of an honorary worker, it is impossible to conceive of a relationship of master and servant between the authorities of the concern or factory, where he puts in honorary work, and him. Then again, there are the words "whether for wages or not" and it is difficult to conceive of a position where a person who is in relationship of a servant 'quae' the authorities of the institution would not be paid wages at all. In this connection, the learned advocate Mr. Paranjpe has endeavoured to contend that wages need not always be paid in cash. Sometimes they may be paid in kind or partly in kind and partly in cash. Mr. Paranjpe has quoted an example of an institution where workers may be provided with uniforms, cheap grain and certain other conveniences in lieu of cash. That may be so in some cases, but in the generality of cases, it would be difficult to conceive of a position that a servant would not be paid any wages, but would continue to do work without receiving any remuneration in cash. In our view, therefore, the words "whether for wages or not" in the definition of a worker in clause (1) of Section 2 of the Act would clearly indicate that the Legislature did not intend that, before a person could be considered a worker under the Act, there must be a relationship of master and servant between the authorities of the institution and him. I have already commented on the words "through any agency" which are found in clause (1) and those are also important words. They would also show that the method as to how a person comes to be employed is not at all material for the purpose of deciding whether the person is a worker or not. He may get work through any agency. He may get work directly from the authorities of the factory or through the authorities' agents or through any other agency. How he gets work is immaterial. What matters is that he should be actually doing work in a manufacturing process.

37. In this connection, it would not be out of place to refer to Section 103 of the Act also. Section 103 lays down that

"If a person is found in a factory at any time, except during intervals for meals or rest, when work is going on or the machinery is in motion, he shall until the contrary is proved, be deemed for the purposes of this Act and the rules made thereunder to have been at that time employed in the factory."

I do not think that the Legislature intended to lay down that if any person, say for instance the wife of a worker, just happened to be found in a factory at the time referred to in Section 103, there should be presumed a relationship of master and servant between the management and her, though the presumption would certainly extend to this that she would have to be deemed to be employed in the factory at the time unless she proved the contrary. I do not think I need make any further observations on this point. For the reasons which I have stated above, I am of the view that Mr. Gokhale's contention that, before a person could be said to be a worker there must be a relationship of master and servant between the management of the factory and him, must be rejected.

38. There is one more section referred to during the course of arguments in these appeals and that is Section 85 of the Act. This is what Section 85 lays down:

"1. The State Government may, by notification in the official Gazette, declare that all or any of the provisions of this Act shall apply to any place wherein a manufacturing process is carried on with or without the aid of power or is so ordinarily carried on, notwithstanding that-

(i) the number of persons employed therein is less than ten, if working with the aid of power and less than twenty if working without the aid of power, or

(ii) the persons working therein are not employed by the owner thereof but are working with the permission of, or under agreement with, such owner:

Provided that the manufacturing process is not being carried on by the owner only with the aid of his family...."

Mr. Gokhale has invited our attention particularly to clause (ii) of Sub-Section (1) of this section. His contention is that the words "are not employed by the owner" in clause (ii) must mean "have not entered into a contract of service with the owner." He says that the words "are not employed by the owner" are used in juxta-position with the words "but are working with the permission of, or under agreement with, such owner" in clause (ii) of Sub-Section (1). Then Mr. Gokhale says that in order that the words "but are working with the permission of, or under agreement with such owner" should have an appropriate meaning, we must construe the words "are not employed by the owner" as meaning "have not entered into a contract of service with the owner." I have considered this contention carefully, but I am unable to accept it. I do not see how clause (ii) of Sub-Section (1) of Section 85 imports a notion of a relationship of master and servant between the management of the factory and a worker. It is to be remembered that "worker" is defined by

clause (1) of Section 2 of the Act. So far as the definition of a worker is concerned, Section 85 is not a defining section. The word 'factory' is defined in clause (m) of Section 2. Thus, so far as the definition of the word 'factory' also is concerned, Section 85 is not a defining section. Section 85 only says that when a certain place becomes a place to which all or any of the provisions of the Factories Act are applied, certain persons who would not be workers under Section 2(1) shall be deemed to be workers, and the place itself which would not be a factory under Section 2(m) shall be deemed to be a factory. Thus, Section 85 cannot help us in the construction of clause (1) of Section 2. Clause (1) of Section 2 must be construed by itself and I have already stated that in the terminology of clause (1), there is no expression from which a relationship of master and servant between the authorities of the factory and a worker could be deduced.

39. It is clear that Section 85 was enacted by the Legislature for applying the provisions of the Factories Act to those concerns which but for Section 85 would not amount to factories. Take a concrete example. A person has a tenement consisting of six rooms. In that tenement he has a factory. His workers are forty-five in number. He wants to circumvent the provisions of the Factories Act. With that intention, he makes a show and the show is that in two of the rooms the concern which is working belongs to his son and the 15 workers who are working in those rooms are not his workers, but are the workers of his son. Then he makes another show and says that the concern which is carried on in two other rooms belongs to another son of his and the 15 laborers who are working there are not his own men, but are the laborers of his second son. Then he says that the concern which is going on in the remaining two rooms is his own concern and his laborers number only fifteen. In such circumstances, the provisions of the Factories Act would not apply to that factory but for the existence of Section 85 on the statute book. Mr. Gokhale says that even for meeting such a contingency it should have been enough for the Legislature to enact clause (i) of Sub-Section (1) of Section 85 only. It was not necessary, says Mr. Gokhale, to enact clause (ii) for that purpose. According to Mr. Gokhale, the object of enacting clause (ii) was to lay down that a place, where persons whose number is less than 10 or 20 as it may be and who have not entered into a contract of service with the owner of the factory are working, shall be deemed to be a factory. That to my mind is not the distinction between clause (i) and clause (ii) of Sub-Section (1) of Section 85. Clause (i) of Sub-Section (1) would apply where workers are employed, so far as appearances go, by the owner of a factory and clause (ii) would apply where workers are employed, so far as appearances go, not by the owner but by somebody else, but are on the premises with the permission of the owner. Thus, even in Section 85, I see no justification for the contention that before a person could be a worker under the Act or could be said to have been employed under the Act, there must be a relationship of master and servant between the management of the factory and him.

40. In support of the contention that a relationship of master and servant must exist between the management of a factory and a person employed in the factory before the said person could be called a worker under the Act, our attention was invited to Section 79. Section 79 at the time when these offences are alleged to have taken place was in these words: "Every worker who has

completed a period of twelve months' continuous service ...." Both the learned advocates Mr. Gokhale and Mr. Paranjpe have contended that this would show that before a person could be said to be a worker under the Act, he must have entered into a contract of service with the management of the factory. While advancing this argument, however, it is forgotten that there may be workers under the Act who may have entered into a contract of service with the management of the factory.

I do not mean to say that there cannot be a body of workers who may have entered into a contract of service with the management of the factory. All that I wish to point out is that there is another category of labourers also who may not have entered into a contract of service with the management of the factory, but are yet workers under the Act Section 79 obviously refers to workers who may have entered into a contract of service with the manager or occupier of the factory.

41. Then Mr. Paranjpe has drawn our attention to certain other sections in the Act, namely Sections 64 and 59, and has argued on the authority of these sections that a relationship of master and servant must exist between the management of the factory and a worker under the Act. We have gone through these sections. We do not find any warrant therein for the submission of Mr. Paranjpe.

42. The net result therefore is that the orders of acquittal in all these cases, which have been recorded by the learned Magistrates, must be set aside and for the reason that the evidence in all the cases has been unsatisfactorily recorded and the cases have been perfunctorily handled, all the cases must be sent back to the learned Magistrates for retrial.

Retrials ordered.