

NAGPUR HIGH COURT

Provincial Government

Vs

R. Robinson

(Pollock and Puranik , JJ.)

27.03.1946

JUDGMENT

Puranik , JJ.

1. On the complaint of the Inspector of Factories, C.P. and Berar, the accused Robinson, the manager of the Jubbulpore Electric Supply Company, was prosecuted for the breaches of the provisions of Sections 34, 35 and 47, Factories Act, and acquitted. The Provincial Government has filed this appeal against the order of acquittal. The facts are not disputed. On 10-11-1943 a new battery of boilers was being erected on the premises of the Jubbulpore Electric Supply Company, in order to supply energy to the New Ordnance Factory at Khamaria. The work of erection was being done by Messrs. Babcock and Wilcox off Calcutta. On that day the factory inspector (P.W. 1) found 32 persons employed in the erection of these new boilers. These persons who were employed by Messrs. Babcock and Wilcox were admittedly working 6 hours a day on Sundays and 12 hours a day on other days without receiving overtime pay. The sole question in this appeal is whether they were "workers", as defined in Section 2(h), Factories Act. It is not disputed that the premises of the Jubbulpore Electric Supply Company, constituted a factory, as defined in Section 2(j). If these persons were "workers" in the factory, then it is not disputed that there were breaches of Sections 34, 35 and 47, Factories Act.

2. "Manufacturing process" is defined in Clause (g)(iii), Section 2, Factories Act, as including any process for generating, transforming or transmitting power, and "power" is defined in Section 2(f) as electrical energy and any other form of energy which is mechanically transmitted and is not generated by human or animal agency. "Worker" as defined in Section 2(h), includes a person employed in any manufacturing process, or in any other kind of work whatsoever incidental to or connected with the manufacturing process or connected with the subject of the manufacturing process. The learned Magistrate held that, as the new boilers were merely being erected at the time of the inspection and could not then be used for generating power, the persons employed in erecting them were not engaged in any manufacturing process or any work incidental to or connected with it He appears to have overlooked the fact that "worker" includes a person

employed in any kind of work connected with the subject of the manufacturing process. If a boiler had burst and persons were employed in repairing it, the boiler could not, while the repair was going on, be used for the purpose of generating power, but we think it is clear that such persons would be persons employed in the work connected with the subject of the manufacturing process. In the same way we think that persons erecting new boilers would be persons employed in the work connected with the subject of the manufacturing process. The definition of "worker" is a very wide one, and it is wide enough, in our opinion, to include persons employed in repairing machinery or putting up new machinery, even if such a machinery is not in actual use at the time.

3. We therefore allow the appeal and convict the accused Robinson of breaches of Sections 34, 35 and 47, Factories Act, punishable under Section 60 of that Act. In the circumstances of this case we do not think that a heavy fine should be imposed and sentence the accused to pay a fine of L 50 for each offence. In default of payment he will undergo one month's simple imprisonment.

Appeal allowed.