Messrs Fancy Nets, Ltd. v. Messrs Kishan Dass-Khia Ram and others

Kapur, J.

In the result no appeal would be competent either under section 96 or Order 43, rule 1, Civil Procedure Code.

It was contended by the learned counsel for the appellant that the order under section 52, was itself without jurisdiction and, therefore, even if the appeal is not competent it can be treated as a revision. The learned counsel submits that order under section 52 could be made only where execution of a decree is issued against any property of a debtor which is saleable in execution and that the money lying with respondent No. 2, was not property saleable in execution. We are unable to agree to this submission. Debt is a chose-in-action and, therefore, a saleable property. Debt like any other property can be attached and sold. Only the mode of attachment may be different. Whereas attachment in case of movable property is effected by actual seizure, a debt is attached by a prohibitory order. Reference in this connection may be made to Order 21, rule 46, Civil Procedure Code. In our opinion there is no force in this contention. In the result the appeal fails and is dismissed. There will, however, be no order as to costs.

Mahajan, J.

D. K. MAHAJAN, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before D. Falshaw, C.J., and Mehar Singh, J.

THE DELHI CLOTH & GENERAL MILLS CO., LTD.,—*Petitioner.*

versus

THE CHIEF COMMISSIONER, DELHI AND OTHERS,—*Respondents.*

Civil Writ No. 3-D of 1963.

1965

February, 11th.

Factories Act (LXIII of 1948)—*S.* 112—*Rules framed under—Delhi Factories Rules* (1950)—*Rules* 5 *and* 7 *and Schedule—Whether valid—Levy of Licence fees and renewal fees—Whether valid,*

Held, that the object of the Factories Act, 1948, is to ensure the safety, health and welfare of persons employed in Factories which are required to be approved, licensed and registered under section 6 of the Act. To carry out the objects of the Act, rules are

framed by the appropriate Government under section 112, thereof. Delhi Factories Rules, 1950, were framed for the State of Delhi and rule 5 deals with the grant of licences which, when granted, are to remain in force upto the 31st of December of the year for which the licence is granted and is to be renewed annually. The schedule incorporated in rule 5 prescribes the annual licence fee which under rule 7 remains the same as for the original licence granted. In return for the fees levied the Department which grants and renews licences renders very definite services to the factories through its officers whose duty it is to see that all the beneficient provisions of the Act for the health and welfare of the workers employed employed in factories are fully implemented. Rule 5 and the Schedule contained therein and rule 7 the Delhi Factories Rules, 1950, are, therefore, valid and the fees prescribed therein are payable by factories concerned.

Petition under Article 226 and 227 of the Constitution of India praying that writ in the nature of Certiorari or any other appropriate writ or order may be issued quashing the said rule 7 read with rule 5 and in Schedule of the Delhi Factories Rules 1950 and all proceedings taken in pursuance thereof, and a writ in the nature of Mandamus or any other appropriate writ or order may be issued restraining the respondents from enforcing in future the said rules in any manner whatever, and all other orders or directions may be issued in order to grant complete relief to the petitioner.

D. K. KAPUR, AND R. L. TONDON, ADVOCATES, for the Petitioner.

S. N. SHANKER, ADVOCATE, for the Respondents.

ORDER

Falshaw, C.J.

FALSHAW, C.J.—In this writ petition filed under Article 226 of the Constitution the Delhi Cloth and General Mills Co., Ltd., an industrial group of very considerable magnitude, has challenged the validity of rule 7 read with rule 5, and its schedule of the Delhi Factories Rules of 1950.

The impugned rules had been framed in exercise of the powers conferred by section 112 of the Factories Act of 1948. The object of the Act is to ensure the safety, health and welfare of persons employed in factories, which, according to the definition contained in section 2(m) of the Act, mean places where 10 or more persons are employed on a manufacturing process carried on with the aid of power, or 20 persons are employed where no power is used.

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Under section 6 of the Act, any establishment falling within this definition has to be approved, licensed and registered. Of the appropriate rule, rule 3 provides for the approval of site and plans which would of course only apply where a new factory is being set up after the commencement of the Act. Rule 4, deals with applications for registration and grant of licences and rule 5, with the actual grant of a licence which, when granted, is to remain in force upto the 31st of December, of the year, for which the licence is granted and is to be renewed annually. The schedule incorporated in rule 5 prescribes the annual licence fee which under rule 7 remains the same as for the original licence granted. The scale varies from Rs. 10 in the case of a factory employing upto 20 persons without any power machinery to Rs. 2,000 where the workers employed exceed 750 in number and machinery of above 100 H.P. is used.

The Delhi Cloth and General Mills Co., operates within the Delhi area no less than 5 factories for which the annual licence fee is the maximum of Rs. 2,000. These include four Cloth Mills and one Chemical Works. It also has two factories for which the annual licence fee is Rs. 1,000, a Vanaspati Works and a Silk Mills, and it also has four smaller establishments, an Industrial Power House rated at Rs. 500, a Tin Container Works, rated at Rs. 150, an Engineering and Development Works, rated at Rsfl. 75 and a Central Distribution Shop, rated at Rs. 50. The company thus has to pay a total sum of Rs. 12,775 to the Delhi authorities annually in respect of the renewal of the licence fee of these factories.

The main basis for the attack on the validity of the relevant rules and schedule is that in return for these considerable so-called licence fees the Department concerned, that of the Chief Inspector of Factories, renders no service at all to the petitioner and that, therefore, the imposition, though described as a licence fee, is not in fact a mere licence fee, but amounts to a tax, which the State authorities are not competent to impose. The company apparently does not object to this fee being charged on the original registration of the factories under the Act, in connection with which a certain amount of work has to be done by the Department, but it contends that no services are rendered for the annual renewal of the licence at the same fee, all that is done by the department being a mere

entry on the original licence form declaring it to be renewed for a particular year.

On behalf of the company it is contended that although under the provisions of Chapter II of the Act, Inspectors and Certifying Surgeons are to be appointed with certain powers, the subsequent beneficient provisions of the Act are to be carried out by the factory owner at his own expense. Chapter III deals with 'Health' and the section headings indicate the nature of the duties required from the factory owner in respect of cleanliness, disposal of wastes and effluents, ventilation and temperature, dust and fume, artificial humidification, overcrowding, lighting, drinking water, latrines and urinals and spittoons. Chapter IV deals with 'Safety' and the section headings are 'fencing of machinery' works on or near machinery in motion, employment of young persons on dangerous machines, striking gear and devices for cutting off power, self-acting machines, casing of new machinery, prohibition of employment of women and children near cotton openers, hoists and lifts, lifting machines, chains, ropes and lifting tackles, revolving machinery, pressure plant, floors, stairs and means of access, pits, pumps, opening in floor, etc., excessive weights, protection of eyes, precaution against dangerous fumes, explosive or inflammable dust, gas, etc., precaution in case of fire, power to require specifications of defective parts or tests of stability and safety of buildings and machinery. Chapter V deals with 'Welfare' and contains provisions for such amenities as washing facilities, facilities for storing and drying clothing, facilities for sitting, first aid appliances, canteens, shelters, rest rooms and lunch rooms, creches and welfare officers. Subsequently Chapters deal with such matters as working hours, registration of workers, employment of young persons and annual leave with wages, with which matters we are not really concerned in this petition. As I have said, it is pointed out that all the matters dealt with in Chapters III, IV, and V concern facilities or safeguards which are to be provided for the benefit of the workers by the factory owner at his own expense and it is argued that since the only duty of the Inspectors is to see that the provisions of these Chapters are properly carried out and to institute prosecutions against factory owners under the provisions of Chapter X of the Act, in case of any breach of the provisions of the statute or rules, it cannot be said that the

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Inspectors and other employees working under the Chief Inspector perform any service whatever to the factory owner.

In the affidavit of the Chief Inspector of Factories filed in reply to the petition it was flatly denied that no services were rendered and that the renewal fee was charged only for making an endorsement on the licence. It was stated that the renewal fees are charged for the running of the whole establishment including the Factory Inspectorate which provides free inspection and expert technical advice to factory owners in matters concerned with safety, health and welfare and allied matters in respect of compliance with the provisions of the Act. It was pointed out that whereas in older industrial countries consultants were available to give expert advice to owners of factories, this state of affairs did not exist in India where a great deal of advice on the matters covered by the Act had to be given by the Inspectors to the factory owners.

These allegations were treated rather scornfully by the learned counsel for the petitioner, and no doubt he is right in saying that the management of the petitioner company, with long years of experience in running large factories concerned with different branches of industry is in a position to have, and in fact has, all the experts necessary for advising it on any points which arise regarding the efficient running of its factories, and therefore, it does not need any expert advice on these matters from Factory Inspectors. It seems to me, however, that this is altogether a wrong way of looking at matters, since what we are concerned with is not what services Inspectors or other employees of the Department are doing for the Delhi Cloth and General Mills Co., Ltd., but what they are doing for the owners of the other 1,400 or so factories which were registered in the year 1962-63, the year for which the figures have been given to us.

What the argument of the learned counsel for the petitioner company amounts to is really that so far from being of any service the Inspectors employed by the Department are little more than a nuisance to the company, since all they do is to inspect the factories periodically to see whether all the provisions of the Act, are being carried out with a view to institute prosecutions in case of any

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breach. This again is in my opinion a completely wrong way of looking at the matter. In India, as in other countries, social justice is an ideal which is being aimed at, and although the financial interests of the management may be slightly hurt by the imposition of licence fees like those we are concerned with, I do not think it can be denied that the ultimate prosperity of factory owners is linked closely with the health and welfare of the workers employed by them, and I consider that even without other services the work carried out by Inspectors under the Act of seeing that all the beneficient provisions of the Act for the health and welfare of the workers employed in factories are fully implemented must definitely be regarded as a service rendered in return for the fees levied for the annual renewal of the licences for the factories and the contention that a fee in some cases of Rs. 2,000 is being levied from the petitioner company annually merely for making an endorsement of renewal on the licence form must be firmly rejected as wholly untenable.

The second line of argument was that in any case the cost of the services rendered even on my interpretation bore no relation to the amount realised. On this point reliance was principally placed on the case of *Chandrakant Krishnarao Pradhan and another* v. *The Collector of Customs, Bombay, and others* (1). In that case the petitioners, who went direct to the Supreme Court were persons holding licences renewable annually for working as *dalals* at the New Customs House, Bombay. These licences were granted by the Chief Customs Authority under rules framed under the Sea Customs Act after enquiry into the character and status of applicant at a fee of Rs. 50 and this was also made the annual charge for renewal of the licence. The matter is dealt with on page 209 of the report as follows:—

> "The next rule which is questioned is rule 11, which enjoins the payment of a fee of Rs. 50 both for a fresh application as well as renewal of the licence. In so far as the fee for the grant of a licence in the first instance is concerned, it cannot be said that the charge is exorbitant. It is not disputed that a fee is an amount collected to

(1) A.I.R. 1962 S.C. 204.

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reimburse the Government for the expenses of licensing. It must reasonably be measured against the cost which may be entailed in the process of granting licences. In the initial stage the Customs authorities have to scrutinise applications, subject the candidates to an examination, and provide them with licence to carry on their work. A fee of Rs. 50 initially may not be considered unreasonable, regard being had to the services involved. The same, however, cannot be said in the case of renewals. It is pointed out in the petition that formerly the charge was only 50 nP. It is averred in the petition that all that the licensing authority does is to make an endorsement on the licence that it is renewed for a further period. It has been ruled in this Court that under the guise of a fee there must not be an attempt to raise revenue for the general funds of the State. In our opinion a renewal fee of Rs. 50 does not entail services which can be reasonably said to measure against the charge. It may be pointed out that, though this averment was made in the petition, no attempt was made by the answering respondents to traverse it. In our judgment, the renewal fee of Rs. 50 ceases to be a fee, and is, in its nature, a tax to raise revenue. Such an impost cannot be justified as a fee, and we accordingly hold that this charge is improper. It would, however, be open to the Government to frame a rule in which the renewal fee to be charged is reasonable in the circumstances."

Nobody can possibly question the soundness of this view, but in my opinion it has no bearing whatever on the present case in which a licence of a totally different kind is concerned. The question of annual renewal of a licence for a man to practise a particular trade or profession is hardly on any different footing than the grant of a licence to him to drive a motor vehicle, and obviously the expense involved in the annual renewal of the licence is negligible, and there can hardly be any question of any service being performed by the Department in return for the fee paid for renewal of such a licence. In the case of a licence for running a factory the matter is altogether different and

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very difinite services are carried out by officers of the Department which renews the licence, as I have held above. When this petition was about to come up for actual hearing an application was filed on behalf of the company asking us to call on the Department to furnish some facts and figures from which it would be possible to come to a decision as to how much of the total fees realised from the owners of factories licensed in the Delhi area was actually expended on the activities of the Department. For myself, I was rather of the opinion that once it is held that substantial services are being paid for out of the sums realised from the licence renewal fees, it would not be open to any petitioner in a case of this kind to call on the Department concerned for what virtually amounts to a rendition of accounts, but we were prevailed on to ask for some facts and figures because it was pointed out to us that in a similar case, *Maharaja Shri Umaid Mills Ltd.,* v. *State of Rajasthan and another* (2), Wanchoo, C. J., and Modi J., had actually adopted this course. Incidentally this case is an authority for the fact that the Inspectors appointed under the Act do render services to the owners of factories by seeing that the provisions of the Act are carried out, and although the figures for the year in question which were submitted in that case showed that Rs. 65,000 had been realized and only Rs. 23,500 spent the learned Judges dismissed the writ petition.

In the present case we have been given detailed figures for the year 1962-63, which is the relevant year as regards the filing of the present petition, which was filed in January, 1963. These figures show a total realisation of Rs. 1,54,658 including some arrears from the preivous years and some amount on account of late fees, while the total expenditure on the personnel of the department is shown as Rs. 98,542. According to these figures 63.5 per cent of the amount realised as licence fee was spent on running the Department. The only item in the expenditure which was seriously criticised by the learned counsel for the company was one of Rs. 11,800 as one-fifth share of the salaries of Additional Inspectors of Factories. It seems that certain officers appointed under other Acts such as Conciliation Officers under the Industrial Disputes Act are also *ex officio* appointed as Inspectors of Factories and in my opinion it is not unfair to include one-fifth of such

(2) A.I.R. 1954 Raj. 178.

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officers' salaries as extended in this Department. If this amount were excluded the percentage could be about 57. There is unfortunately no authority, except the Rajasthan decision to which I have referred, in which any standard has been laid down regarding the minimum percentage of sums realised as licence fees and utilised on services by the Department concerned which would cause a licence fee to be held as merely a colourable disguise for the imposition of tax, but I should certainly not be inclined to strike down such a licence fee where about 63 per cent is actually spent on services rendered. In the Rajasthan case the percentage was considerably below, but several special circumstances existed in that case. Perhaps a bill will have to be drawn somewhere, but this is not a case for it. The result is that I would dismiss the petition with costs. Counsel's fee Rs. 200.

Mehar Singh, J.

MEHAR, SINGH, J.— I agree.

B.R.T.

REVISIONAL CRIMINAL

Before J. S. Bedi, J.

CHANI ALIAS CHANAN SINGH,—*Petitioner.*

versus

THE STATE,—*Respondent.*

Criminal Revision No. 515 of 1964.

1965

February, 12th.

Evidence Act (I of 1872)—S. 27—Disclosure statement made under—Proof of—Production of Investigating Officer as a witness—Whether obligatory.

Held, that section 27 of the Indian Evidence Act, 1872, is an exception to sections 25 and 26 of the Act and it no where lays down that to prove a disclosure statement under the section, the examination of the investigating officer, who had interrogated the accused, as a witness was obligatory. What is required under this section is that the person when he makes the disclosure statement should be accused of an offence and must be in the custody of a police officer. Even then only so much of the information, whether it amounts to a confession or not as relates distinctly to the fact thereby discovered, can be proved.