

1955

Present : Rose, C.J.

FERNANDO, Appellant, and APPADURAI, Respondent

*S. C. 103—M. C. Kandy, 3,200**Wages Boards Ordinance, No. 27 of 1941—Sections 50 and 52 (b)—“Hindering an officer in the exercise of his powers”.*

The accused-appellant prevented an Inspector of Labour from asking routine questions as to wages and holidays from a labourer in a tea factory while the labourer was in charge of certain noisy machinery.

Held, that the conduct of the accused did not amount to hindering an officer in the exercise of his powers within the meaning of section 52 (b) of the Wages Boards Ordinance.

APPPEAL from a judgment of the Magistrate's Court, Kandy.

H. V. Perera, Q.C., with *Sir Ukwatte Jayasundera, Q.C.*, and *M. M. Kumarakulasingham*, for the accused-appellant.

Vincent T. Thamotheeram, Crown Counsel, for the Attorney-General.

Cur. adv. vult.

February 25, 1955. ROSE, C.J.—

In this matter the appellant was convicted of having on 8th June, 1953, hindered an Inspector of Labour, a prescribed officer under the Wages Boards Ordinance, in the exercise of his powers under Section 52 (b) of the Ordinance. The allegation was that the appellant prevented this said officer from questioning persons in the Tea Factory on Palagalla Estate.

It is to be noted that the questions which were sought to be asked from the labourer in question who was engaged in the actual operation of the machinery at that time did not relate to such matters as the safety conditions applicable in the factory during working hours but concerned questions as to the rate of wages that the worker in question was receiving and whether or not he had been awarded an annual holiday with full pay.

The history of the matter discloses that on a previous occasion the appellant and the Inspector of Labour in question had had a difference of opinion, the Inspector stating that the appellant had been obstructive

and the appellant contending that the Inspector had asked for a gratification. Whatever the true position as to that may be, the fact remains that on the present occasion at about 10.30 in the morning this machinery, which according to the uncontradicted evidence was extremely noisy in operation, was in full blast. The Inspector of Labour accompanied by another official entered the factory and carried on a shouted conversation with a labourer in charge of the machine. The appellant objected to this—quite possibly in heated tones—and it is that objection on his part that is alleged to be the “hindering” in question.

It is, of course, obvious that on the part of a factory owner or manager obstructive tactics against officials carrying out their functions under the Ordinance cannot be tolerated. On the other hand, the officials themselves must take every precaution to see that their conduct is reasonable and does not verge upon the provocative. After a careful consideration of all the factors in the present matter, I have come to the conclusion that the questioning of the labourer at the time when his noisy machinery was operating, in order to ask him perfectly routine questions as to wages and holidays, was unreasonable and that therefore the appellant in objecting to the official's conduct did not bring himself within the scope of the Ordinance.

I would refer to one answer in cross-examination that was given not by the Inspector of Labour but by his companion Appadurai, Assistant Commissioner of Labour, Kandy. This witness when asked whether it was not a dangerous thing to question a factory worker who was actually in charge of the machinery in operation answered, “when workers are actually working it is the best time to question them”.

Had the question related to safety conditions—adequate fencing and so on—such an answer might be correct. When, however, the questions relate to such purely routine matters as wages and holidays with pay, it seems to me that the answer discloses an ignorance of the proper functions of the officials under the Ordinance.

The appeal is therefore allowed and the conviction quashed. If the fine has been paid it must be remitted.

Appeal allowed.
