

Ratnaweera V. Arulampala

448/1963

Present: G. P. A. Silva, J.

M. D. S. RATNAWEERA (Labour Officer), Appellant, and K. ARULAMPALAM, Respondent

S. C. 897/1962—M. C. Colombo, 15579/A

Employees' Provident Fund Act, No. 15 of 1958, ss. 8 (1) (3), 10 (1), 15, 34 (a), 37—Employees' Provident Fund Regulations, Regulation 2 (1) (a)—"Covered employment"—Cigar factory—Meaning of word "cigar".

In a prosecution for a contravention of the provisions of section 15 of the Employees' Provident Fund Act in respect of a covered employment, viz., a business of manufacturing tobacco or tobacco products—Held, that, in regard to the question whether the proprietor of a cigar factory carries on the business of manufacturing tobacco or tobacco products, the meaning of "cigar" in the Oxford Dictionary which says that it is a roll of tobacco leaf for smoking is a factor to be taken into consideration, if there is no reference to tobacco at all in the oral evidence called by the prosecution.

APPEAL from a judgment of the Magistrate's Court, Colombo.

L. B. T. Premaratne, Senior Crown Counsel, for the Attorney-General.

No appearance for Accused-Respondent.

Cur. adv. vult.

May 9, 1963. G. P. A. SILVA, J.—

The accused-respondent in this case, hereinafter referred to as the accused, was charged on three counts with having contravened the

provisions of section 15 of the Employees' Provident Fund Act, No. 15 of 1958.

On the 1st count he was charged as follows:—

That he being the employer of P. Ponnadurai, a person to whom the Employees' Provident Act, No. 15 of 1958 (hereinafter referred to as "the said Act") applied in that he was a male over the prescribed age of 14 years and under the age of 55 and was employed in the service of an undertaking in which five or more persons are employed and which is established for the purpose of carrying on wholly or partly the business of manufacturing tobacco or tobacco products, to wit: Arulampalam Cigar Factory, Kurumbacity, Tellipalai, which is a covered employment within the meaning of section 8 (1) of the said Act, read with regulation 2 (1) (a) of the Employees' Provident Fund Regulations (hereinafter referred to as "the said regulations") published in the Government Gazette No. 11,573 of October 31, 1958, did in contravention of section 15 of the said Act, fail to pay in Colombo before the last day of November, 1960 to the Employees' Provident Fund from the earnings of the said employee for whose benefit there was no Provident Fund or a contributory Pension Scheme approved under the provisions of section 27 of the said Act, his contributions for the month of October, 1960 for the payment of which the said employee became liable under section 10 (1) read with order made under section 10 (3) of the said Act and published in the Government Gazette No. 11,924 of 26.10.1959 and that the accused respondent is thereby guilty of an offence under section 34 (a) of the said Act punishable under section 37 of the said Act.

In the 2nd and 3rd counts he was charged with the same offence in respect of two other persons N. Kandavanam and N. Arulambalam.

The prosecution led evidence of the following facts:— (a) that the accused-respondent was the proprietor of Arulampalam Cigar Factory, and that the nature of business of the said factory was the manufacture of cigars. (b) that the accused-respondent was the employer of P. Ponnadurai, N. Kandavanam and N. Arulambalam who were males over the age of 14 years and under the age of 55.

(c) that the said employees were employed at Arulampalam Cigar Factory. (d) that there was no approved contributory Pension Scheme or Provident Fund for the benefit of the said employees. (e) that in October, 1960 there were 70 persons employed at Arulampalam Cigar Factory. (f) that the accused-respondent failed to pay before the last day of November, 1960 to the Employees' Provident Fund the contributions for October, 1960 in respect of the said P. Ponnadurai, N. Kandavanam and N. Arulambalam.

After the close of the prosecution case, when the Magistrate called upon the accused for his defence, counsel for the accused called no evidence but submitted that the prosecution failed to prove that the business carried on by the accused was the manufacture of tobacco or tobacco products.

The Magistrate upheld this contention and acquitted the accused stating inter alia "It is therefore essential for the prosecution to prove that the business of the accused was the manufacture of tobacco or tobacco products. There is no reference to tobacco at all in the oral evidence called by the prosecution. Even in P2, the declaration given by the accused, the nature of the business was given as cigar business. There too there is no reference to tobacco. Cigars no doubt are normally manufactured of tobacco but it cannot be denied that there are cigars in the market which are not made of tobacco. Since this is a criminal case I think the prosecution should prove conclusively such facts which will bring it within the definition of para 10 of P3. Failure to prove that cigars were made of tobacco is therefore in my view fatal to this case."

The Labour Officer, Colombo, who was the complainant in this case in the Magistrate's Court, has with the sanction of the Attorney-General appealed against this order on the ground that the learned Magistrate was wrong in holding that the prosecution failed to prove that the business carried on by the accused was the manufacture of tobacco or tobacco products and that there is no evidence on record that in Ceylon cigars are made by any substance other than tobacco.

Mr. Premaratne, Senior Crown Counsel, who appeared for the appellant in this case has placed several arguments before me in support of his contention that the Magistrate has misdirected himself in his order. In the first place he referred me to the meaning of 'cigar' in the Oxford Dictionary which says that it is a roll of tobacco leaf for smoking and has submitted that, when a person is charged in the English language with having committed an offence as proprietor of his cigar factory, one should be guided by the Oxford Dictionary meaning of 'cigar' which does not permit the meaning contended for it.

Section 8 (1) of the Employees' Provident Fund Act, No. 15 of 1958 provides that any employment including any employment in the service of a corporation whose capital or part of whose capital is provided by the Government may by regulation be declared to be a covered employment and sub-section 8 (3) provides that every person over a prescribed age who is employed by any other person in any covered employment shall be an employee to whom this Act applies. Regulation 2 (1) of the Regulations published by the Minister of Labour, Housing and Social Services by virtue of the powers vested in him by section 46 of the Employees' Provident Fund Act, No. 15 of 1958, and published in the Government Gazette of 1.1.1958 makes every employment specified in the First Schedule to these Regulations a covered employment and according to this First Schedule a covered employment means every employment other than employment (a) under the Government of Ceylon, (b) under any local authority, or (c) under the Local Government Service Commission established under the Local Government Service Ordinance, No. 3 of 1945. Section 10 of the Act sets out the liability of an employee and employer to pay a monthly contribution to the fund and sub-section 3 of this section empowers the Minister by order published in the Gazette to fix the date of commencement of the contribution in respect of covered employments. In pursuance of these powers the Minister of Labour made an order of 26th October, 1959, published in a Gazette Extraordinary of the same date specifying in a Schedule the covered employments to which the above provisions were applicable. Para. 10 of this Schedule enumerated the business of

manufacturing tobacco or tobacco products as one of the covered employments.

As to whether the accused was liable for the contributions in terms of the provisions of this Act in respect of the employees mentioned in the charges if the accused's business was a covered employment there was hardly any dispute. It was proved in evidence, as stated earlier, that the accused was the employer of Ponnadurai, Kandavanam, and Arulambalam who were over the age of 14 years and under the age of 55 and that they were employed in the accused's cigar factory and that there was no approved contributory pension scheme or provident fund which had been established in the accused's business prior to the Act which would have had the effect of exempting the accused from making contributions required by this Act.

The only question at issue, therefore, was whether the cigar factory of the accused was a covered employment under the Act. While the accused's counsel contended at the trial that there was no proof that the cigars turned out in the accused's factory were out of tobacco the prosecution had produced in evidence particulars of employees in the accused's cigar factory which the accused had furnished on 15.2.1960, prior to the material date in the charge, as required by regulation 8 of the Regulations of 29.10.1958.

Crown Counsel strongly relied on the conduct of the accused in sending this form furnishing particulars of his cigar business which the accused would only have done on the basis that his cigar business was engaged in manufacturing tobacco or tobacco products to which the order of 26.10.1959 made by the Minister under section 10 (3) of the Act applied. If his cigar business was engaged in manufacturing cigars not out of tobacco or tobacco products but out of some other leaf or material there was no obligation on his part to comply with the order dated 26.10.1959 by the Minister. It appears to me that the date on which the accused forwarded this form namely, 15.2.1960, is material as it is approximately three months after the publication of the Minister's order imposing an obligation on the employer of an undertaking

established for the purpose of carrying on the business of manufacturing tobacco or tobacco products to forward such particulars.

I am of the view that the meaning of the English word 'cigar' as given in the Oxford Dictionary and the furnishing of the particulars of his cigar industry by the accused in the circumstances of this case have sufficiently established the case for the prosecution and that the Magistrate should have convicted the accused. I feel certain that if the submissions that were placed before me were made to the Magistrate he would have had no hesitation in finding the accused guilty.

I, therefore, set aside the order of acquittal of the Magistrate and convict the accused of the charges laid against him and sentence him to a fine of Rs. 100 on each count and to a further fine of Rs. 5 on each count for each day on which the offence is continued after the decision of this Court is communicated to the accused, and I remit the case to the Magistrate to take necessary action in terms of section 38 of the Act to recover such sums as may be found by the Magistrate to be due from the accused by way of his contributions under the Act.

Acquittal set aside.