Privy Council Appeal No. 78 of 1919

Addar Khan and others - - - - - - - *Appellants*

v.

John Mullins - - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF THE STATE OF QUEENSLAND.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 2ND DECEMBER, 1919.

Present at the Hearing:

VISCOUNT FINLAY.
LORD SUMNER.
LORD PARMOOR.
THE LORD JUSTICE CLERK.

[*Delivered by* LORD PARMOOR.]

This is an appeal from a judgment of the Full Court of the Supreme Court of Queensland. In August, 1918, the appellants were summoned to appear at the Police Court at Cairns to answer a complaint under the Sugar Cultivation Act 1913, that they were employed in the cultivation of sugar cane, and the manufacture therefrom of sugar, not having first obtained a certificate of having passed the dictation test within the meaning of the Act, and not being exempted from the operation of the said Act by the regulations made thereunder. At the hearing, before the Magistrate, evidence was given on behalf of the prosecution that the appellants were Indians, working, without having obtained a certificate of exemption under the dictation test, at cutting cane for Charles Butler, a farmer residing at Edmonton, and were being paid so much a ton, on contract work. No evidence was called on behalf of the appellants, but the objections were taken:—

1. That the men were not employed under the Sugar Cultivation Act of 1913.
2. That the men were not engaged in sugar cultivation, but in harvest work.

The appellants were convicted, and, on the 8th October, 1918, appealed from such conviction on motion to the Full Court of the Supreme Court of Queensland for orders to show cause why their respective convictions should not be set aside. On the same day the Supreme Court refused the applications.

At the hearing of the appeal before their Lordships, the counsel for the appellants, in his clear argument, raised three questions :—

1. That the Sugar Cultivation Act, 1913, did not apply to persons employed to cut cane by contract.
2. That no evidence was given by the prosecution that the appellants did not come within the exemption regulations.
3. That the appellants were wrongly prevented from applying for exemption by Regulation No. 15.

Section 4 of the Sugar Cultivation Act of 1913 enacts that any person who has not first obtained a certificate of having passed the dictation test, and who is employed in or in connection with the industry of the cultivation of sugar-cane and the manufacture therefrom of sugar, shall be guilty of an offence and liable to penalties. Their Lordships are of opinion that each of the appellants was so employed, but it was argued on their behalf that the penalties were only imposed on an employee, and that persons, working under contract, did not come within this definition. The expression " employee " in the Sugar Cultivation Act of 1913 has the same meaning as in the Industrial Peace Act of 1912. In this Act an employee, unless the context otherwise indicates, means any employee, whether on wages or piecework rates, in any calling to which the Act applies, the term including any person whose usual occupation is that of employee in such calling. Mr. Slade contended on behalf of the appellants that this definition denoted the relationship of master and servant, and only applied to a person working as servant on wages or piecework rates, to the exclusion of a person working on contract. Owing to subsequent legislation it is not necessary to determine this question, but it must not be assumed that their Lordships would be prepared to assent to this argument.

By the Industrial Arbitration Act of 1916, the Industrial Peace Act of 1912 is repealed, and the term " employee " is defined to mean any employee whether on wages or piecework rates or as a member of a butty-gang, the term including any person whose usual occupation is that of employee in a calling, the fact that a person is working under a contract for labour only or substantially for labour only, not in itself preventing such person being held to be an employee. The appellants are persons who in their usual occupation were employed in the cutting of cane, and they were working under a contract for labour only or substantially for labour only, so that if the modified definition is applicable, the fact that the appellants were working under such a contract would not exempt them from the operation

of the Sugar Cultivation Act, 1913, or be an answer to the charge in the summons.

It is enacted in the Acts Shortening Act of 1867 that where an Act repeals and re-enacts with or without modification any provisions of a former Act, references in any other Act to the provisions so repealed shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted. The Industrial Arbitration Act, 1916, does repeal the Industrial Peace Act of 1912, and re-enacts with modification the definition of "employee" contained in that Act. The reference therefore in the Sugar Cultivation Act of 1913 to the definition of "employee" in the Industrial Peace Act of 1912 must be construed as a reference to the definition of the employee as re-enacted in the Industrial Arbitration Act of 1916. The result is that the contention of the appellants that they were not employees, owing to the fact that they were working under contract, cannot be sustained.

On the second question it is clear that, if the appellants desired to claim that they came within the Exemption Regulations, it was for them to produce the necessary evidence. No such evidence was produced, and, so far as appears, no such point was raised at the hearing before the Magistrate. On the third question it was argued that Regulation 15—which provides that any person to whom the Sugar Cultivation Act of 1913 applies who desires to apply under Regulation 4 for a certificate of exemption must apply for such exemption to a Clerk of Petty Sessions on or before the 31st December, 1913, and that no certificate for such exemption should be granted unless application therefor should be made on or before the said date—wrongly prevented the appellants from applying for exemption. Whatever the effect of this regulation may be, it has, upon publication in the Gazette, the same effect as if enacted in the Act, and is not open to be questioned in any proceeding whatsoever. It was not suggested that the regulation was beyond the power of the Governor in Council, or that there was any irregularity in the method of its publication.

In the opinion of their Lordships the appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

ADDAR KHAN AND OTHERS

v.

JOHN MULLINS.

DELIVERED BY LORD PARMOOR.

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