

# Evolution of Beedi and Cigar Workers in Respect of Shankar Balaji Waje Case

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## Abstract

*Beedi and Cigar worker constitutes a large chunk of working population, it becomes necessary to critically examine the applicability of labor laws on their working condition. In various cases, the workers working in Beedi factories are not even considered as workers. Labor laws are made with the objective to safeguard workers' right and make employment more secure for the labors. Furthermore, they ensure fair and reasonable working conditions against exploitation. They ensure employment related disputes are solved by statutory body recognized by State. Therefore, in this paper we will look into various judgements and statutes to determine whether Beedi and Cigar workers also considered as workers or not, in India. We found that there was no clarity in the judgements as to who would be categorized as workers. Consequently, the act came which clearly brought Beedi and Cigar workers under the purview of definition of workers. Hence, the four new codes consider Beedi and Cigar workers as workers. It is the clear intention of the legislature that the labor laws are made for the betterment of all the classes of labor and to uplift the quality of livelihood among all the working class. From now onwards, every worker working in the factory involved in the manufacturing of Beedi and Cigar will get all the benefits like paid leaves, job security, provident fund, and many more.*

**Keywords:** Worker, leave wage, bidi factory workers, case analysis, factories act, beedi and cigar act

## INTRODUCTION

### Shankar Balaji Waje V. State of Maharashtra Air 1962 SC 517

In this landmark case section 2 of the Factories Act, 1948 [1] was disputed. The interpretation of definition of “worker” defined under the Act whether applies on bidi factory workers or not. Through this article, we have researched various case laws and different opinions of the judges on the question as to who would be included in definition of workers, whether it is inclusive or exclusive in nature and through this article the prevailing position of the bidi factory workers are determined. The celebrated case of Shankar Balaji Waje V. State of Maharashtra is delivered by 3 judges benches with 2:1 majority. But the current position of the case is reversed and now the workers working in the Bidi Factory are also treated as normal workers.

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## Facts

In this celebrated case, Shankar Balaji Waje, the appellant was running a bidi factory named “Jay Parkash Sudhir Private Ltd,” which manufactures Bidi the petitioner and other workers were required to roll bidis and they were paid on the basis of how many bidis turned out. The workers were not bound to attend factory for any fixed hours of work. They may come at any time and may leave at any time whenever they like. They can be absent from the work for any day they like, even without informing the appellant. Only then were they obligated to

notify the appellant if he would need to be away for longer than 10 days, not to ask for permission but rather to reassure the appellant that they would not be giving up their jobs. Depending on the number of bidis produced, they were paid at the established rates. In the past, the leaves were given to the workers to be brought home and rolled there [2].

Pandurang Trimbak Londhe, one of the laborer employed in the work of rolling bidis for number of days in 1957. He desisted his work from August 17, 1957. On the ground that appellant terminated his service by putting up the notice on August 12, 1957. On August 22, 1957, the facility was visited by Shinde, Inspector of Notified Factories, PW 1. According to section 79(11) of the Factories Act, 1948, a worker who is entitled to leave wage is terminated by the occupier before taking such leave to which he is entitled or having applied for or not being granted, the worker quits his employment, before he has taken leave. He learned this information from the factory's weekly register. Pandurang worked for 70 days and earned 4 days' leave wages, which were not paid to him. Pandurang was not paid the leave wage. Thus, Shankar Balaji contravened with the provisions of section 79 (11) of the Act.

Pandurang as a result filed a grievance with Judicial Magistrate, First Class, Sinnar. According to the appellant, Pandurang was not a worker covered by section 2 (1) of the Factories Act of 1948, hence no leave could have been owing to him and the appellant could not have violated section 79 (11).

The learned magistrate rejected the argument, determined that Pandurang was a worker, and found the appellant guilty of violating section 92 read in conjunction with section 79(11) of the Factories Act of 1948, hereinafter referred to as "the Act." The appellant visited the Court of the learned Additional Sessions Judge in Nasik to file a revision. The Sessions Judge believed that Pandurang was not the worker and that the appellant's conviction was improper. The High Court was then referred to as the next step. The High Court declared Pandurang to be a worker in opposition to the Sessions judge's judgement.

The appellant, Shankar Balaji Waje, then appealed the High Court of Bombay's decision to the Supreme Court with special leave.

### Issues

1. Whether Pandurang was a "worker" or not within the meaning of Section 2 (1) of the act?
2. Whether Pandurang was allowed any leave wages under section 79 and 80 of the act?

### ARGUMENTS

#### Appellant

The foremost argument of the appellant was that there was no master and servant relationship, the appellant was not having any supervision or control over the workers working in the factory. To prove his point the appellant highlighted these facts:

1. There was no agreement and contract of service between the appellant and the Pandurang.
2. Workers were not bound to come to the factory at certain time they can come any time they want and similarly leave the work any time they want.
3. They can be absent from the work for 10 days even without informing the owner of the factory.
4. There was no strict supervision on the worker, they can come to the factory roll bidis and after submitting the rolled bidis can leave the factory at any time. They were paid with a certain rate on how many bidis rolled by a worker.
5. There was no such minimum quantity prescribed by the owner of number of Bidis to be rolled.
6. Worker can also work from home and roll bidis in their home and then submit it to the owner, the bidis which were not up to the standard will be rejected and for rest the worker will be paid.
7. The appellant cannot remove the worker for being absent for certain number of days.

The second contention is based on the fact that section 79 and 80 of the act are not applicable to the facts of the case as calculation of the number of days the employee worked or his total full-time earning

for the days for which he worked is not possible because there was no specific days for which Pandurang used to work and so there was no fixed pay for him to calculate the average.

### **Respondent**

The argument raised by the state was that there was sufficient supervision of appellant on Pandurang and there was certain control so Pandurang can be called Worker. It was also argued that the total number of working days can be calculated easily and so section 80 of the act can be applied in this case and full-time earnings can be found as a work register is maintained in the factory in which the bidis rolled by every worker on each day is noted. Every day Pandurang used to roll Bidis can be counted as one day of work for the sake of this section. The inspector himself found that Pandurang Trimbak had worked 70 days and so earned 4 days of leave, also it was not enjoyed by him and he was also not paid for that leaves by the owner.

### **JUDGEMENT**

The judgement is delivered by 3 judges benches with a 2:1 majority, where two judges are in favor and one judge gave dissenting opinion.

Justice Raghubar Dayal, observed that Pandurang cannot be considered under the meaning of worker given under section 2 of the Act. The respondent placed reliance on the case of Shri Birdhichand Sharma v. First Civil Judge [3], Nagpur, it was held by the judges that the facts of that case are different from the facts of the case of Shankar Balaji Waje. Furthermore, only some facts are similar which are as follows: Pandurang as the as the workers in that case could go to the work at any time they like and leave at any time they like and they were paid as per number of bidis rolled and the Bidis, which were not up to the mark were rejected and the workers were not paid for that Bidis. The decision of the that case referred above is based on the below stated facts:

1. The workers had to work in the factory and they cannot work in their homes.
2. Their daily attendance was being recorded by the management.
3. If they came to factory after half of the day, they were not given their daily wages.
4. The management can remove the worker who is absent for eight straight days.

In this case, Pandurang can take the tobacco leaves to the home, he may come to the factory after mid-day, there is no proper record of attendance, there is no allegation that appellant had power to remove him, unless a continued absent from work for ten days. The court therefore believes that the facts of the Birdhichand case make that decision distinct and that it cannot be applied to the facts of this case. The petitioner is not a worker as defined by Section 2(l) of the Factories Act of 1948 [4].

The other essential aspect was that Pandurang was not entitled to leaves wages because he was not covered under the meaning of worker which states that “worker” means a person [employed, directly or by or through any agency (including a contractor) with or without the knowledge of the principal employer, whether for compensation or not], in any manufacturing process, or cleaning any part of the equipment or space used for a manufacturing process, or in any other type of work incidental to, connected with, or the subject of the manufacturing process [but does not include any member of the United States armed forces] In the case of Chintaman Rao V. state of Madhya Pradesh [5] the term “employed” is defined. Thus, the word employed here does not cover the case of Pandurang as there was no employer-employee relationship between appellant and respondent which implies that there was no contract of service or term of employment. Any time a person wants to work cannot be the criterion; there was no set amount of time had to be worked each working day or every day. The most that can be said is that whenever Pandurang reported to work, the appellant promised to provide him with tobacco for rolling bidis, and that Pandurang agreed to roll bidis in exchange for payment at a specific amount for the finished bidis. Pandurang was not under the appellant's supervision or control. The case's facts also show that the appellant had no oversight or control over Pandurang's work's specifics. He was unable to manage his working hours. His days at work were out of his control. Pandurang had the

freedom to go to the factory whenever he wanted, enter it at any moment, and leave it whenever he wanted. The appellant was not permitted to insist on a specific minimum quantity. Therefore, the Supreme Court held the judgement in favor of Appellant by acquitting him and setting aside the judgement of High Court.

## ANALYSIS

*Bidi factory workers should be considered as 'worker' to provide for the welfare of them and to regulate the conditions of their work for matters connected therewith* [6]. This is the purpose led down by The Beedi and Cigar Workers Act, 1966. Beedi industry in India is unorganized and there are various tax benefits given by the government to the beedi factory owners to protect the interest of workers working in the beedi factory. Even after hundreds of cases being decided on the question of whether beedi factory laborers are categorized under the meaning of workers or not. Honorable judges have exercised their minds to decide on this question and in many of the landmark cases the beedi workers are considered as the workers with the ambit of the definition. The Indian Government formulated the legislation and policies to monitor the working conditions and providing social security for the welfare of beedi and cigar factory laborers. The few other aspects which make us consider for the welfare of laborers of beedi factory as worker are as follows;

1. Bidi Industry contributed almost 0.65% of the total gross value added in the total manufacturing industry [7].
2. The production of bidis is carried out by hundreds of small-scale contractors and manufacturers, as well as more than 300 big bidi brands [8].
3. There are approximately 4.4 million full time workers and 4 million Bidi industry-oriented jobs [9].

Although there are various bidi industries but then also the conditions of the labor there is vulnerable. Even after various efforts taken by the government the conditions of Bidi factory workers is not up to the mark. Bidi rolling is a highly capital-intensive task so if the conditions of Bidi factory have to be improved then the conditions of the workers working there has to be improved. There are various laws made for the betterment of the workers but the main issue is that whether the workers rolling the bidis in the factory comes under the definition of worker or not.

Many judgements have tried to interpret the position of Bidi factory worker and the workers who work on contract basis. The case of Shankar Balaji also revolves around the issue that whether the Bidi factory workers comes under the purview of the worker under the Factories act, 1948. This case is an old case and the majority judgement here was that the worker working without any contract of service and where there is no direct supervision will not be termed as a worker under the Factories act, 1948.

But our opinion differs from that of the majority judgment as the worker who is working under supervision whether direct or indirect, and working in the organization with the intention of working there for a long time should be termed as a worker and should get all the benefits of a worker prescribed under the act.

We have considered their points to determine who is a worker and who is not:

1. The way the task was to be done was under the employer's control and oversight.
2. Worker is subject to the master's instructions for how the desired outcome is to be accomplished.
3. The degree of control and supervision over the work of employee could be nominal or extensive depending on the technicality of the work.

In many other cases, the concept of Bidi worker is discussed some case took the reference from Shankar Balaji case, some criticized it. In Mangalore Ganesh Beedi Works v. Union of India [10] was one of the landmark judgement which is on the issue that whether Beedi and Cigar Workers Act, 1966 is constitutional or not and whether the Bidi workers will be considered as the workers, the supreme

court in the judgement advised to amend the act to avoid any confusions but made it clear that any working either working in a factory or outside factory and getting wage in cash or in kind will be called as worker and will get all the benefits of the worker. In *P.M. Patel & Sons v. Union of India* [11] the court criticized the judgement of *Shankar Balaji Case*, this was a case regarding the contention that some provisions in the employee provident fund act which gives certain benefits to the employee should not be applicable to the beedi home workers, as beedi workers who work on payment of rolling the number of bidis should not be considered s workers, but the court rejected the plea and held that Bidi workers are also workers under the act and all the benefits received by regular workers will also be provided to bidi workers. The judges criticized the judgement given in the *Shankar Balaji case* which held that the Bidi workers are not considered as workers under the factories act, 1948. In *New India Assurance Co. Ltd. v. A. Sankaralingam* [12], the judges referred to the *Shankar Balaji case* to find whether the part time worker can also claim the benefits which the ordinary worker gets.

So afterwards when the court were struggling to figure it out that whether Bidi worker should be considered as normal worker or not and whether they should get benefits like other workers, the parliament passed a law regarding the workers working in the Bidi factory named as *Beedi and Cigar Workers Act, 1966*, which clearly defined that the Bidi worker either working at home or at factory either getting salary or getting payment on the basis of number of bidis rolled by him, but in any case he will be called as worker. The parliament also passed a law *Bidi Workers Welfare Fund Act, 1976* [13] to provide basic facilities like healthcare and education to children. So, in our opinion, it is clear that the worker working in the Bidi factory is also a worker and so is the current position.

## CONCLUSION

Workers are integral part of the society. Government has taken valuable measures and developed legislations for the benefit of them. Depriving the workers of their rights and remedies would be harmful. In conclusion, we are of the view that bidi factory workers are recognized as workers including the manufacturing process as defined under *The Beedi and Cigar Workers (Condition of Employment) Act, 1966*. Furthermore, succeeded by *The Occupational Safety, Health and Working Conditions Code, 2019*, which defines that No worker can work for more than 6 days a week. Maximum working hours are 48 hours in a week or it can also be 9 hours in a day (for underground mine workers it is 8 hours). Also, employees are entitled to at least one paid holiday for every 20 days they are on the job. The pay for overtime hours will be doubled. The terms apply to everyone. This code covers occupational health, a branch of public health that works to preserve and promote workers' overall physical, emotional, and social well-being across all occupations. We came across many judgements of Supreme Court which recognizes the term worker and their term of employment.

The majority judgements are of the view that the degree of control can be nominal or extensive depending on the nature of the work and as the technicalities of the work demands it may differ from the manner in which the work has to be done. We would like to conclude by saying that this is a modern age recognizing every industry, be it bidi factory or pharmaceutical companies recognizing the health of the workers as the first priority in the business would earn the goodwill in the market and providing the workers with sense of belonging shall be the most important part of the process to sustain and manage the business.

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