

(1980) 03 KL CK 0017

In the High Court Of Kerala

Case No : Criminal Appeal No's. 244, 296 and 299 of 1978

Assistant Labour Officer

APPELLANT

Vs

Kadungalloor Service Co-operative Bank Ltd.

RESPONDENT

Date of Decision : 27-03-1980

Acts Referred:

Kerala Shops and Commercial Establishment Act, 1960 — Section 10, 11, 12, 13, 14
Kerala Shops and Commercial Establishments Rules, 1961 — Rule 10(1), 10(18),
10(1A), 10(5), 10(9)

Citation : (1980) 03 KL CK 0017

Hon'ble Judges : S.K. Kader, J;N.D.P. Namboodiripad, J

Bench : Division Bench

Advocate : Public Prosecutor, for the Appellant; P. Balagangadhara Menon, for the Respondent

Judgement

Namboodiripad, J.—The circumstances which led to the proceedings before us may be briefly stated.

2. There is a Bank by name Kadungalloor Service Co-operative Bank Ltd. No. 2165, East Kadungalloor, which is a body functioning under the Kerala Co-operative Societies Act, 1969 and the Rules thereunder. The society is conducting a Manure Depot at Alwaye. The Assistant Labour Officer, Alwaye, is an authority functioning under the Kerala Shops and Commercial Establishments Act, 1960 (shortly the "Act") and the Rules thereunder. The Assistant Labour Officer on inspecting the business premises of the society in relation to its manure business, came to the conclusion that the manure depot of the society constitutes an "establishment" to which the provisions of the Act apply and that the society has not complied with certain provisions of the Act and the Rules thereunder. Three independent prosecutions were initiated against the society by the Assistant Labour Officer, Alwaye under the Act and Rules.

3. One charge, which is the subject matter of the proceedings initiated against the society is non-compliance with Section 5A of the Act. Another proceedings

initiated is for non-compliance with Sub-rules 1 and 1A of Rule 10. The third prosecution related to non-compliance with Sub-rules 5, 9 and 18 of Rule 10 of the Rules under the Act.

4. Though the society raised certain objections on the facts on which the prosecutions were laid, the main contention urged was that the business of the society is outside the purview of the Act in view of Section 3(1)(f) of the Act. That objection of the society regarding the maintainability of the prosecution found favour with the learned Magistrate and in all the three cases, the accused society was acquitted. The State has filed appeals against the three judgments of the learned Magistrate. The learned Single Judge who heard the matter felt that since the cases involved a question of law of some importance all the three appeals were referred to a Bench.

5. It is agreed to by both sides that the only question that arises for decision in all the three cases is whether the society can claim immunity from the operation of the Act.

6. Section 3(1)(f) of the Act, which formed the basis of the acquittal may be read:

3. Exemptions.--(1) Nothing contained in this Act shall apply to--

(f) establishments which not being factories within the meaning of the Factories Act, 1948 (Central Act 63 of 1948) are in respect of matter dealt with in this Act, governed by a separate law for the time being in force in the State of Kerala.

On a reading of the provision it would mean that if a law other than the Act contains a provision on a matter which is dealt with by any Section of the Act or the rules thereunder, than, non-compliance with the provisions of the Act or the rules thereunder cannot invite the penal provisions contained in the Act or the Rules thereunder. The main argument advanced on behalf of the society was that the particular provisions, for which charges were laid, are exempted from the ambit of the Act since there are corresponding provisions in the Rules framed under the Co-operative Societies Act. The learned Magistrate also relied upon the decision rendered by the Madras High Court in *Madras State Electricity Board v. Commissioner of Labour and Ors.* 1961 1 L.L.J. 297. The question raised there was whether the law pertaining to the service conditions of the Madras State Electricity Board constitutes a separate law for the purpose of Section 4(1)(f) of the Madras Shops and Establishments Act (36 of 1947). Section 4(1)(f) of the Madras Act corresponds to Section 3(1)(f) of the Act. While rendering the decision the Court observed as follows:

It is not necessary that the separate law, the existence of which would exclude the applicability of Madras Shops and Establishments Act u/s 4(1)(f), should be a law comprising within its scope all the details of the Madras Shops and Establishments Act with precision and minuteness. Nor can it be said that a separate law in relation to one or a few of the matters governed by the Madras

Shops and Establishments Act will, to that extent, exclude the operation of the Act. A separate law which can exclude the operation of the Act in accordance with the provisions of Section 4(1)(f) of the Act is one which in substance and in effect must cover the same field as that covered by the Act.

On the strength of the above passage it is contended on behalf of the Respondent-society that there are rules framed under the Co-operative Societies Act relating to the service conditions of the employees and consequently, the rules constitute a separate law as contemplated by Section 3(1)(f) of the Act. We are afraid that the proposition as stated by the society is too wide and cannot be accepted.

7. As the preamble to the Act shows, the Act was enacted to consolidate and amend the law relating to the regulation of conditions of work and employment in shops and commercial establishments in the State of Kerala. Section 2 of the Act contains definitions of various expressions and particularly of "commercial establishment", "establishment" and "shop", with which we are directly concerned in this case. It is fairly conceded to by the Respondent-society that the manure depot conducted by the society is an "establishment" falling within the four corners of the definition contained in Section 2 of the Act and referred to above. To appreciate the question as now posed before us, it may be relevant to advert briefly to the main provisions of the Act and some of the rules framed under the Act. Section 5A deals with registration of establishments. One of these cases pertains to non-compliance with Section 5A of the Act. Section 5A enjoins that the employer of every establishment has to make an application to such authority as the Government may notify in the gazette and supply in such form and pay such amount as is prescribed for a registration certificate in respect of that establishment. The provision would show that the registration is for one establishment. If the same proprietor has more than one establishments, it would appear that each establishment must be separately registered under the Act. Chapter 2 of the Act deals with the hours of work. Sections 5 to 11 give the details regarding the daily and weekly hours, extra wages for overtime work, intervals for rest, spread over, opening and closing hours and closing of shops and grant-of weekly holidays. Chapter III deals with holidays and leave, Sections 12 to 16 (both inclusive) deal with the different aspects of the holidays and leave. Chapter IV contains provisions regarding wages and the details are set out in Sections 17 and 18. Chapter V relates to the prohibition of employment of children and women. Chapter VI deals with health and safety of the employees as well as the business premises. Sections 21 and 22 deal with cleanliness, ventilation and lighting and precaution against fire. Section 23 deals with appeals and Section 24 provides for apportionment of expenses under preceding sections. Chapter VII as its heading shows, is concerned with enforcement and inspection. Inspection is to be made by the Inspectors and the Chapter contains various provisions regarding the powers and duties of the Inspectors. Offences, penalties and procedure are contained in Chapter VIII. Chapter IX deals with miscellaneous provisions. Section 30 deals with maintenance of registers and

records and display of notices. Section 31 saves certain existing rights and privileges. Section 32 deals with indemnity from action in the matter of anything done in a good faith under the Act. Section 33 relates to delegation of powers. Section 34 relates to the power of the Government to make rules. Sub-section (3) Section 34 enjoins that in making rules under that Section the Government may provide that a contravention of the rules shall be punishable with fine which may extend to fifty rupees. Section 35 confers power on the Government to suspend provisions of the Act during fairs and festivals. Section 36 is a repealing provision.

8. In exercise of the powers conferred by Section 34 of the Act the Kerala Shops and Commercial Establishments Rules, 1961 (for brevity the "Rules") were promulgated. The rules deal with the details regarding registration, renewal, amendment of registration certificate, issuance of duplicate of registration certificate, fee payable, refund of fees, etc. Rule 4 deals with cleanliness and it takes in six sub-rules, providing elaborate directions regarding the action to be taken in keeping the premises clean. Rule 5 deals with ventilation. Rule 6 deals with precaution against fire. There are similar rules regarding the steps to be taken against risks of fire and precautions where water mains are available.

9. An analysis of the Act and the Rules would show that they contain many a provision to safeguard the welfare of the employee like age of the employee, working hours, sanitation, precaution against accidents, hours of rest, etc. Though broadly speaking every one of these items may have casual connection with employment, each one of them by itself is an independent matter.

10. We may briefly refer to the rules framed under the Kerala Co-operative Societies Act, 1969. Chapter XV of the Rules deals with "establishment". Rules 182 to 200 generally deal with the terms and conditions of employment. Rule 183 for example prescribes the age limits. Rule 184 deals with probation; Rule 185 is concerned with promotions and Rule 186 is concerned with qualifications, etc. A perusal of the provisions would show that those provisions are concerned with what we generally consider as "terms and conditions of service of employees", as ordinarily understood in law. Those rules do not deal with the welfare measures and safety measures specifically provided for in the Act and the Rules. It may be that regarding certain matters like holiday and payment of wages, there may be common provisions in the Act and the Co-operative Societies Act and the Rules framed thereunder. But, that by itself is not sufficient to attract Section 3(1)(f) of the Act. The main aspect which attracts Section 3(1)(f) is that there are analogous provisions in the Act and in the separate act with respect to a "matter". The expression "matter" cannot be construed as any subject. Regarding employment we often refer to the conditions of service. Each condition by itself may be and can be a matter. So simply because there are certain provisions relating to the service conditions in the Co-operative Societies Act or the Rules thereunder, the Respondent society, which functions in the capacity of an "employer" cannot claim immunity from the penal provisions of

the Act when it violates any provision of the Act or the Rules. We may not be understood as enunciating the proposition that to attract Section 3(1)(f) of the Act, the provision in the Act or the Rules thereunder and the provisions in a separate Act or Rules must be identical in wording. The "matter" in substance must be the same. If the "separate law" referred to in Section 3(1)(f) of the Act contains a provision regarding payment of salary at a particular rate, it can well be argued that that provision will prevail, overriding any provision regarding payment of wages in accordance with the provisions of the Act. The real test to be applied, therefore, is whether in substance, regarding a particular matter dealt with either in the Act or in the Rules thereunder, there is a specific provision in a separate law. If there is such a provision in any separate law for the time being in force in the State of Kerala, then a body functioning under that separate law can certainly claim immunity from the concerned provisions of the Act or the Rules, on the strength of Section 3(1)(f) of the Act. By way of illustration, we may again refer to the various safety measures mentioned in the Act and the Rules. The Rules under the Co-operative Societies Act do not provide for similar amenities. Consequently, it cannot be said that regarding those amenities also, the co-operative society concerned can claim immunity from the application of the Act and the Rules on the basis that the society is functioning under the Co-operative Societies Act and that the rules under that Act provide certain rules regulating certain conditions of service of the employees. What the court has to look into is regarding the identity of the matter dealt with in the Act and in a separate law, even though the language used in dealing with the matter may not be identical in terms. Thus, if a particular matter is covered by the specific provisions under the Co-operative Societies Act or the Rules thereunder and if there is a similar provision in the Act or the Rules thereunder upon the same matter, then the Respondent-society, which functions under the Co-operative Societies Act can justifiably claim protection u/s 3(1)(f) of the Act regarding that particular matter alone.

11. By way of clarification, we may add that in substance, what is to be considered is the relevancy of a particular provision and not the applicability or inapplicability of the Act as a whole.

12. The learned Magistrate has acquitted the Respondent-society on the only ground that there are provisions in the Co-operative Societies Act dealing with the conditions of service and registration, and consequently the "establishment" of the Respondent-society is outside the purview of the Act by the operation of Section 3(1)(f) of the Act. We hold that for the reasons stated above, that approach is apparently incorrect. But, since there are other questions to be considered and decided on merits and which have not been gone into by the trial court, we are not rendering any final decision in these three cases. We think that the proper courses for us will be to remit back the matter to the learned Magistrate for trial and disposal of the case on merits and in the light of the observations made above regarding the scope and amplitudes of Section 3(1)(f) of the Act.

In the result, the three judgments under challenge are hereby set aside and the matter is remitted back to the learned Magistrate for fresh trial and disposal in accordance with law and in the light of the observations made above. The three appeals are disposed of as shown above by this common judgment.