
(1990) 01 KL CK 0045
In the High Court Of Kerala
Case No : Criminal A. No. 446 of 1988

Asst. Labour Officer

APPELLANT

Vs

Muraleedharan

RESPONDENT

Date of Decision : 03-01-1990

Acts Referred:

Kerala Shops and Commercial Establishment Act, 1960 — Section 2(5), 29, 5A

Citation : (1990) CriLJ 1987 : (1990) KLJ 192 : (1990) 2 LLJ 335

Hon'ble Judges : K. Balakrishnan Nair, J

Bench : Single Bench

Advocate : Aysha Youseff, P.P, for the Appellant;

Final Decision : Allowed

Judgement

Balakrishnan, J.—This is an appeal filed by the State challenging the acquittal of the accused in S.T. No. 24 of 1986 on the file of Judicial First Class Magistrate, Shertallai. The Assistant Labour Officer, Shertallai (North) filed a complaint against the respondent alleging that he violated the provisions of Section 5(A) of the Kerala Shops and Commercial Establishments Act, 1960 (hereinafter referred to as the Act). During the relevant time the accused was conducting cation shop ARD No. 59-A at Eramalloor. The complainant. Assistant Labour Officer, inspected the shop on 10th July 1980 at 11.45 AM and required the accused to produce the visit book and the registration certificate. The accused failed to produce the registration certificate and the visit book and prosecution was launched against him u/s 29 of the Act.

2. Two witnesses. PW1 and PW2 were examined on the side of the complainant. PW1 is the complainant. He deposed that the accused is a ration shop dealer of shop No. A.R.D.59.A, Eramalloor and at the time of inspection of the shop, the accused did not produce the registration certificate and the visit book. PW2 is an employee in the ration shop. The accused when questioned u/s 313 CrI.P.C. admitted that he is a retail dealer of ration articles. The defence of the accused was that the ration shop is owned by the Government and it is not a shop or

commercial establishment as defined u/s 2(15) of the Act.

3. So, the short question that arises for consideration is whether a ration shop would come within the purview of the Act. The term "shop" has been defined in the Act as follows. Section 2(15) reads:

"Shop means any premises where any trade or business is carried on or where services are rendered to customers and includes offices, store-rooms, godowns or warehouses, whether in the same premises or otherwise used in connection with such trade or business, but does not include a commercial establishment or a shop attached to a factory where persons employed in the shop are allowed the benefits provided for workers under the Factories Act, 1948 (Central Act 63 of 1948)"

The contention of the accused that the ration shop belongs to the Government and he is only a retail distributor cannot be accepted. The ration shop dealer is given licence as per the provisions of the Kerala Rationing Order, 1966. Section 45 of the Rationing Order deals with the manner in which appointment of retail distributor is to be made. Application for appointment of authorised retail distributor shall be made to the District Supply Officer in the form prescribed by the Commissioner. The order appointing such retail distributor shall be made in the form prescribed by the Commissioner by notification in the gazette. After the issue of the order of appointment, the authorised retail distributor had to apply for rationed articles in accordance with order in such areas as are specified in the order of appointment. The authorised retail distributor will execute an agreement with the Taluk Supply Officer in the form prescribed by the Commissioner. Under Sub-Clause 7 of Clause 45, an authorised retail distributor shall give reasonable facilities at all times when the District Collector or any officer of Civil Supplies Department not below the rank of Rationing Inspector or any Audit Officer attached to the Civil Supplies Department to inspect the stocks or accounts in the shop. Order of appointment as an authorised retail distributor will indicate the Corporation, Municipality or Panchayat ward and the building number in which shop is to be conducted. The provisions of the Kerala Rationing Order do not show that the rationing shop would be a Government establishment. The dealer will be a licensee and he is free to conduct the trade of articles subject to the restrictions laid down in the Kerala Rationing Order. Going by the definition of shop in the Kerala Shops and Commercial Establishments Act 1960 a ration shop is a premises where trade or business is carried on and rationed articles are being distributed through these shops and the customers pay the price of the rationed articles. Therefore the ration shop clearly comes within the ambit of the provision of the Act. The ration shop is not specifically exempted from the purview of the Act. u/s 5 of the Act the Government may, if they are satisfied that public interest so requires exempt either permanently or for any specified period, any establishment or class of establishments from all or any of its provisions of the Act. There is no notification exempting the ration shop from all or any of the provisions of the Act.

3. The accused being a ration shop dealer was bound to obtain a registration certificate as contemplated u/s 5(A) of the Act. Therefore he is liable to be punished u/s 29 of the Act.

4. The acquittal of the accused by the Court below was improper. The acquittal is reversed and the respondent accused is found guilty and he is sentenced to pay a fine of Rs. 250/-. If the fine is not paid he is liable to undergo simple imprisonment for a period of 15 days.