
(1978) 02 KL CK 0036
In the High Court Of Kerala
Case No : O.P. No. 1329/75

Beeyems Construction Co.

APPELLANT

Vs

Government of Kerala and Others

RESPONDENT

Date of Decision : 01-02-1978

Acts Referred:

Constitution of India, 1950 — Article 13(3), 366(4A), 368
Employees State Insurance Act, 1948 — Section 1(5), 2, 73
General Clauses Act, 1897 — Section 24

Citation : (1978) 02 KL CK 0036

Hon'ble Judges : Khalid, J

Bench : Single Bench

Advocate : B.S. Krishnan and B.V. Ramachandran, for the Appellant;
Government Pleader for 1st Respondent and C. Sankaran Nair, for 2nd
Respondent, for the Respondent

Final Decision : Dismissed

Judgement

Khalid, J.—The Petitioner is a construction company represented by its partner. He is engaged in the business (f) undertaking civil contract works for which purpose workers are engaged from time to time at the site. The Petitioner has an office at Thoppumpadi, Cochin-5, in order to co-ordinate the work and supervise the same.

2. The 1st Respondent is the Government of Kerala and the 2nd Respondent, the Regional Director, E.S.I. Corporation, Trichur. In exercise of the powers conferred on the 1st Respondent by Section 1(5) of the Employees' State Insurance Act, for short the Act, notice was issued of its intention to extend the provisions of the Act to certain classes of establishments specified in the schedule annexed to the notification. A true copy of the notification is Ext. P-1. Section 1(5) reads as follows:

1(5) The appropriate Government may, in consultation with the Corporation and (where the appropriate Government is a State Government, with the approval of

the Central Government), after giving six months" notice of its intention of so doing by notification in the Official Gazette, extend the provisions of this Act or any of them, to any other establishment or class of establishments, industrial, commercial, agricultural or otherwise.

Under this section, the Government can extend or make applicable the provisions of the Act to any establishment it likes, by the issuance of a notification before six months of the date from which the Government intends to extend the Act to such establishments. The permission of the Central Government is also necessary when a State Government issues such notification. The annexure to Ext. P-1 categories six establishments. They are:

- (i) Hotels;
- (ii) Restaurants;
- (iii) Shops;
- (iv) Road Motor Transport Establishments;
- (v) Cinemas including preview theatres;
- (vi) Newspaper establishments as defined in Section 2(d)....

The Petitioner felt that his establishment was attempted to be roped in, in the category "shop" and hence this writ petition. Ext. P-2 is the correction notification and Ext. P-3 is the notice to the Petitioner calling upon him to submit the necessary indent for declaration forms. The Petitioner challenges Exts. P-1, P-2 and P-3 and prays for an appropriate writ to quash them and for a direction prohibiting the Respondents from implementing the provisions of the Act to the Petitioner's establishment.

3. The 2nd Respondent in his counter affidavit states that the Petitioner's establishment comes under serial No. iii, namely, "shops" and Exts. P-1, P-2 and P-3 cannot be attacked on any sustainable ground. It is further stated that the word "shop" takes within its ambit any place of employment or activity and, therefore, the Petitioner's business comes within the mischief of Ext. P-1.

4. The Petitioner has not clearly indicated in his petition the contention that the Petitioner's business premises do not come within the expression "shops". In the grounds all that is stated is that the Petitioner's business is not an establishment and that even if it is an establishment it does not come within the five classes of establishments mentioned in Ext. P-1. Be that as it may, from the submission at the bar it is clear that the Petitioner and the Respondents have joined issue on the question whether the category "shops" in Ext. P-1 would include the business which the Petitioner is carrying on.

5. What has to be decided in this case is whether the Petitioner's business can be brought within the ambit of the expression "shops". For a consideration of this question an enquiry has to be first made whether the principles governing

interpretation of statutes are applicable to interpretation of notifications also. If the principles that govern the interpretation of statutes are to govern interpretation of notifications also, then the task appears to be easy. It was forcefully contended by the Petitioner's counsel that the statutes and notifications cannot be placed on the same par and principles governing interpretation of statutes cannot be made applicable to notifications. If the Government wanted to include establishments like the Petitioner's business within the ambit of the Act, it was easy for them to issue a fresh notification including such establishments also. Under no circumstances, is it contended, that a business like the Petitioner's can be brought within the expression "shops". "Shop" according to common parlance is not a place where contract work is undertaken. In the absence of a notification including establishments like the Petitioner's, Ext. P-1 cannot be pressed into service to achieve the said object, however laudable it may be.

6. I will first consider the question whether the principles governing interpretation of statutes apply in interpretation of notifications also. Article 13(3) (a) of the Constitution states that "law includes any ordinance, order, bye-law, rule, regulation, notification custom, or usage having in the territory of India the force of law". Article defines "Central law" as:

"Central law" means any law other than a State Law; but does not include any amendment of the Constitution made under Article 368;.

The same Article defines "State law" in (26A)(e):

(26A) "State law" means

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(e) any notification, order, scheme, rule, regulation or bye-law or any other instrument having the force of law made under any Act, Ordinance or provisions referred to in Sub-clause (a), Sub-clause (b), Sub-clause (c) or Sub-clause (d); and....

There can be no doubt that a notification issued under an Act has the force of law. The next step in our search to find out an answer to the first question is to discover authorities if available which lend support to the contention that statutes and notifications stand on the same footing regarding law as to their interpretation. The following authorities are serviceable in this behalf. Para 25 in *State of Bombay v. F.N. Balsara* AIR 1951 S.C. 318 reads:

An order made by the Provincial Government in exercise of the power conferred by this section owes its legal efficacy to this section and therefore in the eye of the law the notification has the force of law as if made by the legislature itself.... This notification was superseded on 1st April 1950, by another notification which is more liberal in certain respects, and these notifications, being made in exercise of the power given by the Act itself have undoubtedly the force of law and must be read alone with the Act

In *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, there is the following observation which may be useful for our purpose:

Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction or obligation.

7. In *The Chief Inspector of Mines and Another Vs. Lala Karam Chand Thapar etc.*, there is some discussion about the place that rule and regulation occupy in relation to the parent Act. In that case the Supreme Court was construing a Mines Act in which there was a provision that the rules and regulations made under the Act will have the effect "as if enacted in the Act" Though the question that fell for consideration before the Supreme Court was something different, the following observation in paragraph 20 can be usefully quoted to show some light for the purpose of this case:

The true position appears to be that the Rules and Regulations do not lose their character as rules and regulations, even though they are to be of the same effect as if contained in the Act. They continue to be rules subordinate to the Act, and though for certain purposes, including the purpose of construction, they are to be treated as if contained in the Act, their true nature as subordinate rule is not lost. Therefore with regard to the effect of a repeal of the Act, they continue to be subject to the operation of Section 24 of the General Clauses Act.

8. In *Kailash Nath and Another Vs. State of U.P. and Others*, it is observed that a notification made in accordance with the power conferred by the statute has statutory force and validity and any exemption under the notification has the same effect as if it is contained in the Parent Act.

9. In *Sable Waghire and Company and Others Vs. The Union of India (UOI) and Others*, the nature of a notification passed in Emblems and names Act is described. In paragraph 20 it is laid down that a notification issued in exercise of a power conferred by the parent Act is not an executive order but is a piece of subordinate legislation made by the concerned Government. In other words, a notification has the same effect as a statute, the only difference being that one is enacted by the law making body and the other by its delegate. The earlier is legislation proper and the latter subordinate legislation. From the foregoing discussion it becomes abundantly clear that a statute and a notification for the purpose of interpretation, stand more or less on the same footing. On this reasoning, the contention that the principles applicable to interpretation of statutes shall not apply to notifications has to fail. I will conclude this part of the discussion with the following extract from Maxwell's interpretation of Statutes, 10th Edn., pp. 50-51, under the Head "Statutory Instruments":

Instruments made under an Act which prescribes that they shall be laid before Parliament for a prescribed number of days, during which period they may be annulled by a resolution of either house, but that if not so annulled they are to

be of the same effect as if contained, in the Act, and are to be judicially noticed, must be treated for all purposes of construction or obligation or otherwise, exactly as if they were in the Act. If there is a conflict between one of these instruments and a Section of the Act, it must be dealt with in the same spirit as a conflict between two sections of the Act would be dealt with. If reconciliation is impossible, the subordinate provision must give way, and probably the instrument would be treated as subordinate to the section. If a statutory instrument contains words identical to those used in the Act under which it is made, those words must be construed in the same way as they are construed in the Act.

10. The next question to be considered is as to how the word "shops" in the notification has to be interpreted, whether it should be in its usual popular archaic sense or in a broad and liberal sense. Though it can be said that a word or words in a notification should be strictly construed in contrast to a word or words in a statute, I would like to caution myself with the observation that in interpreting a notification brought into being in the context of a social security legislation, a liberal interpretation is necessary. The area of statutory interpretation is a murky area and to adopt a hard and fast rule in the interpretation of a statute or notification is often difficult. There are occasions when in interpreting an instrument, courts will have to emphasize the obvious more than to elucidate the obscure. It should not be the object of the enquiry to find out what the law making body meant. The court asks only as to what was the purpose of the instrument. It will not be proper, especially in considering social security legislations, for the courts to be imprisoned by words. Very truly has Justice Frankfurter said that "there is no surer way to misread a document than to read it literally". Traditional over emphasis on the literal aspects of meaning may sometimes defeat the object of a legislation. If more than one interpretation is possible in trying to interpret a statute or notification which has been enacted for the welfare of the weaker section in society or in furtherance of the fulfilment of the directive principles of the Constitution, that construction which fulfils the object has to be preferred. If a doubt arises as to the correct interpretation that has to be given to a word it will be necessary to call in aid the ground and the cause of the insertion of such a word. The court should normally lean in favour of the person or persons whose benefit the law making body had in view. In cases of doubt the benefit of doubt should be given to them. It is with this prefatory observations that I try to find out what exactly is meant by the word "shops" in the notification in question.

11. Courts invariably search for the meaning of a word in dictionaries. But dictionaries should not become the dictators in interpreting words. Though support can be had from dictionaries, courts have to decide a particular question regarding the interpretation of a word independently of what is contained in dictionaries. The word "shop" in the popular sense is a place where things are bought and sold. A shop in a village may differ from a shop in a city. The emphasis made by the Petitioner's counsel that there should always be an

element of sale and purchase of goods along with the concept of shop cannot be accepted as a rigid rule for more than one reason. Shop is the genus of which there are many species. It is a genetic word and it may be possible to bring within its ambit many things that normally one may not associate with shop. If shop is a place where things are bought or sold then it would be difficult to reconcile this concept when we consider a barber shop or a beauty shop. In neither of these cases is anything sold but still these places are referred to as "shops". Therefore, the word shop has a wider meaning than its popular sense. The Petitioner's counsel brought to my notice various dictionary meanings of the word shop. I am giving below the meaning of the word "shop" seen in these dictionaries:

In Shroud's Judicial Dictionary "shop" is defined as to mean a place where a retail trade is carried on. In Black's Law Dictionary, a shop is defined as a building in which goods and merchandise are sold in retail or where mechanics work and sometimes keep their products for sale. In Shorter Oxford English Dictionary, 3rd Edition, shop is defined as to mean (1) a house or building where goods are made or prepared for sale and stores, and (2) a building or room set apart for the sale of merchandise. In Marry's New English Dictionary shop is defined as a building or room set apart for the sale of merchandise. In the new Standard Dictionary of English, Funk and Wagnalls "shop" is defined as a fixed place or building for the regular sale of commodities in retail. In Valentine Law Dictionary "shop" is defined as a place where goods are sold by retail.

The Respondents' counsel gave me the meaning of the word "shop" from certain other dictionaries which are also extracted below:

Shorter Oxford English Dictionary Vol. II -- page 1878.

Shop: A house or building where goods are made or prepared for sale and sold, bankers shop a-Bank (2) A building or room set apart for sale of merchandise (3) A building or room set apart and fitted up for carrying on of some particular kind of handiwork or mechanical industries; a workshop now often a building or room in a factory appropriated to some particular department or stage of the work carried on there. A place where something is produced or elaborated or where some operation is performed. A place of business, the place where one's ordinary occupation is carried on. Matters pertaining to one's trade or profession stock exchange. The inside influences affecting or controlling a company by the exercise of special knowledge; also a name for the South African Gold Market". "The Reader's Digest Great Encyclopaedic Dictionary Volume-II, Page 821.

Shop: (n) Building, room, etc., for retail sale of some commodity, workshop of a joiner engineering works or yard; (slang) institution; establishment; one's profession, trade or business (esp. in talk); the S. (army slang), Royal Military Academy, wool which.

From the above it is clear that the word "shop" has several shades of meanings. Therefore, to construe the word "shop" literally would be to defeat the obvious

intention of the Government in issuing the notification in question. There has been a definite trend for courts to stray away from a purely literal construction while interpreting a word or an expression in a statute enacted in the interest of workers and to uphold the object of such statutes. Therefore, a court should resort to that interpretation which satisfies its sense of justice and in consonance with the object with which the Act or notification before it was enacted. As Lord Denning observed in *Seaford Court Estates Ltd. v. Asher* (1949) 2 K.B. 481 .

The Judge should ask himself how if the makers of the act had come across this, ruck in the texture, they would have straightened it. He must then do as they would have done. Judge must not alter the material....he can and should iron the creases.

From the meanings of the word "shop" given above, I feel fortified to hold that a wider interpretation is possible so as to bring the Petitioner's establishment also within it. The Petitioner's counsel brought to my notice certain cases relating to sales tax and contended forcefully that the words in fiscal statutes should be construed in their popular sense and courts should not refer to the scientific or technical meaning of such words. (*Ramavator Budhaiprasad v. Asst. Sales Tax Officer* 12 S.T.C. 286 (S.C.) *K.K. Tea and Coffee Estates Co., Ltd. v. State of Kerala* 16 S.T.C. 467 (S.C.), *Sarin Chemical Laboratory v. Commissioner of Sales Tax* 26 S.T.C. 339 (S.C.) and *Coal Industries (Pvt.) Ltd. v. Commissioner of Sales Tax* 28 S.T.C. 729 (All.). These authorities were considering in the Sales Tax Act and the various words occurring in them for the purpose of taxation. According to me the yardstick should not be the same for these Acts and social security legislations like the Employees' State Insurance Act. Therefore, the principles laid down in the above decisions cannot be made applicable to the case on hand.

12. I may in passing refer to the cases which dealt with social security legislation in reinforcement of my conclusion that the case on hand needs a liberal approach.

13. In *The Buckingham and Carnatic Co.Ltd. Vs. Venkatiah and Another*, . the Supreme Court was considering the identical Act. I need only extract the first headnote to highlight the guideline laid down by the Supreme Court in interpreting a piece of social legislation:

Section 73 of the Employees' State Insurance Act is no doubt a piece of social legislation intended to confer certain benefits on workman and should receive a liberal and beneficent construction from the courts. But at the same time the courts cannot overlook the fact that the liberal construction must ultimately flow from the words used in the section. If the words used in the section are capable of two constructions one of which is shown patently to assist the achievement of the object of the Act, courts would be justified in preferring that construction to the other which may not be able to further the object of the Act. On the other hand, if the words used in the section are reasonably capable of only one construction, the doctrine of liberal construction can be of no assistance.

In *The Works Manager, Central Railway Workshop, Jhansi Vs. Vishwanath and*

Others, the Supreme Court was dealing with the case of Payment of Wages Act and after giving a liberal interpretation to the definition of the word "worker" included in the definition those entrusted with clerical duties.

14. That the Employees' State Insurance Act is a piece of social legislation cannot be gainsaid. The Government have, in issuing Ext. P-I notification, included shops among the establishments to come within the ambit of Section 1(5) of the Act. While items (i), (ii), (iv), (v) and (vi) are establishments of definite meaning the expression shop is capable of wider meaning. The dictionary meanings given above themselves lend support to the case that a wider meaning can be given to the expression "shop". The Petitioner's counsel admits that the Government can issue a notification specifically including establishments like the Petitioner's in it. The attempt in this submission is to take away from the employees the benefits available to them till now under the notification. To uphold this submission would be to put a narrow construction to the notification.

15. The Respondents counsel brought to my notice various passages from Cross's Statutory Interpretation. I do not think it necessary to refer to them individually. Suffice it to say that there are indications in several passages that the meaning to be attributed to a word or words should not be ossified on the date on which they were enacted. But where words can change their meaning to accord with the meaning of social attitudes, than the old archaic meaning should not bind the interpretation but should yield to some flexibility. I feel tempted to quote the following observations by Lord Reid in *Luke v. Inland Revenue Commissioners* (1963) A.C.C 557 .

To apply the words literally is to defeat the obvious intention of the legislation and to produce a wholly unreasonable result. To achieve the obvious intention and produce a reasonable result must do some violence to the words. This is not a new problem, though our standard of drafting is such that it rarely emerges. The general principle is well settled. It is only where the words are absolutely incapable of a construction which will accord with the apparent intention of the provision and will avoid a wholly unreasonable result that the words of the enactment must prevail.

16. From the foregoing discussion I hold that the Petitioner's case that his establishment does not come within the word "shop" has to fail.

In the result, the Original petition is dismissed and I direct the parties to bear their costs.