
(1986) 05 PAT CK 0024
In the Patna High Court
Case No : C.W.J.C. No. 655 of 1986

Beldih Club

APPELLANT

Vs

Joint Commissioner of Labour and Others

RESPONDENT

Date of Decision : 14-05-1986

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1986) 34 BLJR 584

Hon'ble Judges : Satyeshwar Roy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Satyeshwar Roy, J.—The petitioner in this writ petition under Article 226 of the Constitution of India, has prayed for appropriate writ for quashing annexure 12, letter dated 13th August, 1978 issued by respondent No. 3 to the Secretary of the petitioner directing the club to get the registration of the club renewed under the Bihar Shops and Establishment Act, 1953 (the Act) as the provisions of the Act applied to the Club. Annexure 12 was issued in pursuance of the direction as contained in annexure 13. Prayer was also made for quashing annexure 13, dated 11th August, 1978 communication between respondent No. 4 (the Chief Inspecting Officer) and respondent No. 2 under the Act.

2. The question that is involved in this writ petition is whether a Club is an establishment within the meaning of the provisions of the Act. By annexure 3, respondent No. 4 directed respondent No. 2 to direct the Beldih Club (the petitioner herein) and the United Club, Jamshedpur to get their registration under the Act renewed. The grounds on which the prayer for exemption from the Act was refused to the United Club are also the grounds on which the prayer of the petitioner was refused. The communication between respondent No. 4 dated 11th August, 1972 (annexure 3 herein) was also challenged by the United Club in C.W.J.C No. 619 of 1979 (R) Reported in 1986 BLT 92. The grounds on which that communication was challenged which was also marked annexure 3 in that

writ petition, have been reiterated in this writ petition. Learned Single Judge by judgment dated 10th October, 1985 Reported in 1986 BLT 92 while disposing of that writ petition held that the United Club is an establishment within the meaning of the Act. When I pointed out to Mr. Chatterjee, who had appeared for the United Club in that writ petition also, that this application is covered by the judgment in C.W.J.C. No. 619 of 1979 (R), he submitted that the reasonings given in that judgment are falacious and, therefore, prayed for allow him to make more submissions in this writ petition.

From the judgment of the United Club, (supra) it appears that in that application submission was made that as the Club was run with no motive of making profit, it could not be held that the Club was an establishment within the meaning of Section 2(6) of the Act. That contention was repelled and it was held by the learned Judge with reference to the definition of business in Dr. Devendra M. Surti Vs. The State of Gujarat, , that for the purpose of business or commercial establishment the presence of profit motive cannot be given an undue importance.

3. In this writ petition, Mr. Chatterjee drew my attention to Section 2(6) of the Act which defines establishment and to Section 2(12) which defines residential Hotel. He urged that the word "Club" appears only in Section 2(12) of the Act and the "Club" in that sub-section means a Club is used for reception of guests and travellers desirous of dwelling or sleeping therein, and as in Beldih Club (the petitioner herein) there is no provision for the guests or travellers for dwelling or sleeping, the petitioner was not a Club within the meaning of Section 2(12) of the Act.

4. The Act was enacted for regulating conditions of work and employment in shops and other establishments and for certain other purposes. The Act is a beneficial legislation and the provisions of the Act must be interpreted in such a way which "will further the intention of the legislature. By this Act provision has been made for regulating the working hours of an employee which shall not be more than 9 hrs. a day, or more than 48 hrs. in a week, exclusive of interval allowed for rest, and for payment of over-time wages in case an employee is required to work beyond that period. Various kinds of leave with wages, fixation of wage period, time of payment of wages, procedure to be followed in certain cases for dismissal or discharging an employee etc. have been laid down. It is common knowledge that before this Act came into force an employee was made to work for indefinite hours, without payment of any over-time and the services of all the employees were at the mercy of the employer. The employees then were not entitled to any leave with wages, Those and other mischiefs have been remedied by this Act.

It is true that beneficial legislation should have liberal construction with a view to implementing the legislative intent, but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory

benefit to those who are not covered by the scheme Regional Director, Employees" State Insurance Corporation, Trichur Vs. Ramanuja Match Industries, .

It, therefore, shall have to be seen if employees of Club are included within the purview of the Act; and whether it can be said that by extending the Act to the employees of Club, it is being extended to persons who are not intended to be covered by the benefits of the Act.

5. The short title of the Act is "The Bihar Shops and Establishments Act". It will be seen that both shops and establishments have been mentioned in the short title. In Section 2(6) establishment has been defined as follows:

(6) "establishment" means an establishment which carries on any business, trade or profession or any work in connection with or incidental or ancillary to, any business, trade or profession, and includes--

(i) administrative or clerical services appertaining to such establishment:

(ii) a shop, restaurant, residential hotel, eating house, theatre or any other place of public amusement or entertainment, and

(iii) such other establishment as the State Government may, by notification, declare to be an establishment to which the Act applies";

but does not include a "motor transport undertaking" as defined in Clause (g) of Section 2 of the Motor Transport Workers Act 1961 (27 of 1961).

"Shop" has been included within the definition of "establishment". By way of illustration shops and some establishments have been given in Clause (ii). Mr. Chatterjee contended that in Clause (ii) club has not been included. Factually that is correct. But that cannot be a ground for excluding a club from the purview of the Act, because as stated above Clause (ii) only gives illustration of some establishments. What is important is whether an establishment carries on any business, trade or procession or any work in connection with or incidental or ancillary to, any business, trade or profession.

6. It is the admitted case of the petitioner that the club is carried on a systematic way having its own rules and constitution, time of opening and closing and there are employees of the club. From the definition of the words employee, employer and holiday in Section 2(4), (5) and (8) respectively of the Act it will be seen that the words have been defined with reference to "establishment". There is nothing to show that establishment must be run with motive of making profit. In the Act itself, provisions have been made for excluding certain types of employees, for instance, the workers within the meaning of the Factories Act, an establishment of motor transport undertaking and mine as defined in Mines Act. As noticed above, definition of "residential hotel" in Section 2(12) includes club. The petitioner-club caters drinks beverages, snacks and food to its members and guests of its members, and these are provided in the club premises. The

activities of the Club are, therefore to provide material benefits to its members and guests of its members. Admittedly, there are employees who serve drinks, beverages, snacks and food in the Club premises. This service is rendered by the petitioner with the help of its employees who are paid overtime as provided in the rules and constitution of the petitioner. In my opinion, the Act shall apply to all establishments except those specifically excluded by the Act and also those establishments where for giving material benefit or service, the co-operation of labour is not necessary for instance a lawyer's chamber, doctor's private clinic.

7. According to Mr. Chatterjee, merely because the word "Club" has been included in Section 2(12), it will not make the petitioner-Club a "residential hotel" because the premises of the Club is not used for reception of the guests and travellers desirous of dwelling or sleeping therein. The word "Club" is also mentioned in the schedule appended to the Act. This schedule is referable to Section 4(2) of the Act. In serial No. 2 of the schedule the word "Club" was not originally there, i.e. it was not there in the original serial No. 9. Serial No. 9 was substituted by the Bihar Act 2 of 1975. Before 1975 Serial No. 9 read as follows:

9. Restaurants, eating houses, dwelling houses, residential hotels and establishments, sweet-meats, milk and cooked food.

By Bihar Act 2 of 1975 Serial No. 9 was substituted thus:

9. Clubs, restaurants, eating houses, boarding houses, residential hotels dealing in meals, refreshments, sweet-meats milk and cooked food.

It is admitted case of the petitioner that the Club deals in refreshments and cooked foods for its members and guests of members. Serial No. 9 as it stands today, was inserted by the legislature and not by the State Government in exercise of the powers conferred under the proviso to Section 4(2). If serial No. 9 as it stands today was altered by notification issued by the State Government, i.e. by delegated legislation, there might have been scope for arguing that the delegate had no right to extend the operation of the Act to clubs which are not strictly residential hotel where premises are used for reception of the guests and travellers desirous of dwelling or sleeping therein. But the Legislature by an amending Act inserted "Club" in serial No. 9 to the schedule. That being the position, I am of the opinion that the petitioner is an establishment within the meaning of the Act. Even if there be any doubt, whether club which has been included in the definition of "residential hotel" must mean those clubs which provide amenities for dwelling, the benefit must go to the labour as held by the Supreme Court in *The K.C.P. Employees' Association, Madras Vs. The Management of K.C.P. Ltd., Madras and Others*, .

In industrial law, interpreted and applied in the perspective of Part IV of the Constitution, the benefit of reasonable doubt on law and facts, if there be such doubt, must go to the weaker section, labour

8. In the counter affidavit, the respondents stated that the petitioner provides

catering facilities to outsiders as well as the members on payment of service charges. In reply to the counter affidavit, the petitioner did not deny first part of the statement made in Paragraph-6 of the counter affidavit. It appears from the counter affidavit that the petitioner-club was registered under the Act. Since it failed to get the registration certificate renewed, the petitioner was called upon to get the certificate renewed.

In the writ petition the petitioner is completely silent about this. Nothing has been stated under what circumstances the petitioner had applied for registration and got it registered u/s 6 of the Act. Be that as it may, for all the reasons aforesaid and also in view of the decision in C.W.J.C. No. 619 of 1979 (R), the petitioner club is an establishment within the meaning of the Act.

9. In the result, this application is dismissed, but without costs.