

(1979) 03 KL CK 0014
In the High Court Of Kerala

Brooke Bond India Limited

APPELLANT

Vs

E.S.I. Corporation

RESPONDENT

Date of Decision : 07-03-1979

Acts Referred:

Payment of Bonus Act, 1965 — Section 1, 2, 3

Citation : (1979) 2 ILR (Ker) 446

Hon'ble Judges : Narayana Pillai, J;Kader, J

Bench : Division Bench

Judgement

Kader, J.—Brooke Bond India Ltd., a Public Limited Company, registered under the Companies Act, is the appellant and the appeal is directed against the judgment of the Employees' Insurance Court, Calicut, dismissing an application filed by it praying for a declaration that their establishment at Willingdon Island is not a shop and therefore is not liable to be covered under the Employees' State Insurance Act, hereinafter referred to as, the Act. The appellant with its registered office at Calcutta has branch offices in different parts of the country. The application of the appellant before the Insurance Court was opposed by the Employees' State Insurance Corporation contending that there were more than 20 persons employed for wages in the office of the appellant at Willingdon Island and that the establishment therein is a shop coming within the Notification issued by the Government in this respect.

2. The Employees Insurance Court, on a consideration of the evidence on record found that the appellant's establishment at Willingdon Island is a shop liable to be covered under the Act.

3. The only question that arises for determination in this appeal is whether the office of the appellant at Willingdon Island is a shop coming within the ambit of the Notification.

4. It was argued on behalf of the appellant that the word "shop" should be understood in its ordinary meaning and should not be given a liberal

interpretation and that "shop" is a place where goods are purchased and sold. While the counsel appearing for the Corporation submitted that a liberal interpretation consistent with the object of the Act should be adopted and placed reliance on decisions of the Supreme Court in support of his contentions. The counsel for the appellant cited *The State of Mysore Vs. The Manager, Brooke Bond India Private Ltd.*, to support his contentions.

5. In *K.C.P. Employees' Association, Madras v. K.C.P. Ltd.* AIR 1978 S.C. 474 the Supreme Court, while interpreting the proviso to Section 3 of the Payment of Bonus Act (Act 21 of 1965) observed that in Industrial law, interpreted and applied in the perspective of Part IV of the Constitution, the benefit of reasonable doubt on law and facts must go to the labour. The scope and ambit of the definition of "employee" in Section 2(9) of the Act was recently considered by the Supreme Court in *Royal Talkies, Hyderabad and Others Vs. Employees State Insurance Corporation*, . Speaking for the Bench, Krishna Iyer, J., observed that law is essentially the formal expression of the regulation of economic relations in society, that punctilious sense of grammar and minute precision of language may sometimes lend unwitting support to narrow interpretation and that salvatory effort, when the welfare of the weaker sections of society is the statutory object and is faced with stultifying effect, is permissible judicial exercise. In *The State Bank of India Vs. Shri N. Sundara Money*, the Supreme Court has stated the following guidelines in the matter of interpretation of statutes relating to welfare legislation:

Statutory construction, when. Courts consider welfare legislation with an economic justice bias, cannot turn on cold print glorified as grammatical construction but on teleological purpose and protective intendment....

* * * While canons of traditional sanctity cannot wholly govern, Courts cannot go haywire in interpreting provisions, ignoring the text and context.

In *Massachusetts B. & Ins. Co. v. United States* (352 U.S. 128) Justice Frankfurter observed:

There is no surer way to misread any document than to read it literally.

In *Board of Mining Examination v. Ramjee* AIR 1977 S.C. 865 the Supreme Court stressed the necessity of understanding and application of the jurisprudence of remedies from the perspective of social efficaciousness while interpreting Regulation 26 of Coal Mines Regulations (1957) and observed:

Law is meant to serve the living and does not beat its abstract wings in the jural void. Its functional fulfilment as social engineering depends on its sensitised response to situation, subject-matter and the complex of realities which require ordered control. A holistic understanding is the simple justice to the meaning of all legislations. Fragmentary group of rules can misfire or even backfire.

6. Bearing in mind the contentions raised on either side and the principles stated in the decisions of the Supreme Court, we will now endeavour to find out

whether the appellant's establishment at Willingdon Island is a shop coming within the Notification referred to above.

7. The Employees State Insurance Act is undoubtedly a labour welfare legislation enacted with the intention to benefit the workers of all categories as far as feasible. It was at first extended to all the workers in the factories and the definition of employee u/s 2(9) of the Act was subsequently amended to give as wide a meaning as feasible to that term. This was to include and bring in under the Act as far as possible workers belonging to all categories. Powers have been conferred on appropriate governments u/s 1(5) of the Act to extend the provisions of the Act to certain classes of establishments other than factories, if such establishments were industrial, commercial, agricultural or otherwise. Government of Kerala in exercise of its powers u/s 1(5) of the Act issued a Notification No. 22877/E2/73/LBR dated 22-3-1975 extending the provisions of the Act to the establishments like, hotels, restaurants, shops, Road Motor Transport establishment, Cinemas including pre-view theatres, newspaper establishments, etc. The decision on the point in dispute depends upon the correct understanding and interpretation of the meaning of the word "shop" appearing in the above Notification. The word "shop" has not been defined either in the Act or in the Notification. The Employees' State Insurance Act being a social welfare legislation, intended to benefit as far as possible workers belonging to all categories, one has to be liberal in interpreting the words in such a social welfare legislation. It is not expedient or desirable to lay down any hard and fast rule in the interpretation of a statute whether it is a social document or not. The relevant word or the phrase has to be interpreted consistent with the modern trend in the field of jurisprudence and the object of the Act. There should not be much emphasis on the words; what is important is that the interpretation must be consistent with the object, the general purpose and policy of the statute. In construing a beneficial legislation, the Court has a duty to make such construction as to suppress the mischief and advance the remedy. The word "shop" occurring in the Notification is used in a larger sense than its ordinary meaning. It is not always necessary that there should be a building or land for conducting a shop. Where the usual meaning of the language falls short of the whole object of the Legislature, a more extended meaning may be attributed to the words, if that is fairly susceptible. In *Barlow v. Ross* [1890] 24 QBD 381, Lord Esher MR, observed:

But it is a familiar rule of construction that, although the Courts are prima facie bound to read the words of an Act according to their ordinary meaning in the language, if there are other circumstances which show that the words must have been used by the Legislature in a sense larger than their ordinary meaning, the Court is bound to read them in that sense.

8. There is the evidence of P.W. 1 which clearly discloses that the appellant takes part in the tea auctions held at Cochin, that they purchase tea at the auction in bulk, that a substantial portion of it is exported and that the remaining is

processed within the country and ultimately sold. It is not disputed that more than 20 persons are employed on wages in the office in question. Thus it is seen that activities of buying, expiriting and processing are carried out by the appellant. All these activities are integral part of sale. These activities are sufficient to bring the establishment of the appellant at Willingdon Island within the meaning of the word "shop" appearing in the Notification.

9. A similar question came up for consideration recently before a single Judge and a Division Bench of this Court *George Mathew v. Regional Director, Employees'" Insurance Corporation* (1978) KLT 686, I.L.R.1978 Ker. 660, the question which arose fur consideration was whether the establishment of the appellants therein who were distributors of cinematograph films was a shop coming within, the meaning of the notification issued u/s 1(5) of the Act. It was held in that case that in the popular sense places where trade or business is carried on are also shops even if no sale of commodities takes place there, that a sale need not necessarily be of goods and that it can be of resource services also. It was also observed that:

At the two ends of any industry, whether it is manufacturing" like motion-picture, textile and leather or non-manufacturing " like agriculture, forestry and fishing are production and consumption. In between comes distribution. That is the economic activity by which goods and services are readily made available to the consumers.

Khalid, J. in *Beeyems Construction Co. v. Govt. of Kerala* ILR (1978) Ker. 1 while construing the word " shop" appearing in the Notification rejecting the contention that there should always be an element of sale and purchase of goods along with the concept of shop held that the word "shop" has a wider meaning than its popular sense, that it has several shades of meaning and that to construe the word "shop" literally would be to defeat the obvious intention of the Government in issuing the Notification in question. There the establishment involved was a construction company, which was engaged in the business of undertaking civil contract work. There was an office at a place different from the site of work to co-ordinate and supervise the work and the question was whether that was a shop when as a matter of fact no sale of goods took place there. It was held in that case that it was a shop coming within the meaning of the Notification. An appeal (W.A. No. 99/78) filed against this decision was dismissed by a Division Bench observing that hiving regard to the object of Section 1(5) there is difficulty to limit the meaning of the expression "shop" only to a place where sale and purchase of goods and merchandise is carried on.

10. The decision cited on behalf of the appellant have no application to the facts of the present case. In the Andhra case 1978 Lab. I.C. 367 the Corporation contended before the Employees" Insurance Court that the expression "shop" should be interpreted according to the definition given in the Andhra Pradesh Shops and Establishments Act. This contention was rejected by the Insurance Court and the High Court agreeing with the finding of the Insurance Court held

that the definition of "shop" in the Andhra Pradesh Shops and Establishments Act cannot govern the meaning of the word "shop" occurring in the impugned Government Notification. In that case, on the basis of the evidence on record the Employees' Insurance Court found as a fact that the establishments do not come within the meaning of "shop" occurring in the Government Notification and therefore, they are not liable to be covered under the Act. It was against that finding that the Corporation filed appeals before the Andhra Pradesh High Court. In the Punjab case 1963 I L.L.J. 620, the point of dispute was whether a "tea depot" was a shop or commercial establishment coming within the scope of the Punjab Shops and Establishments Act. Similarly the question that arose for determination in the Mysore reported in The State of Mysore Vs. The Manager, Brooke Bond India Private Ltd., was whether a godown where tea was stocked was a shop or commercial establishment as contemplated in the Mysore Shops and Establishments Act.

11. It follows from the above discussion and finding that this appeal has no merit and the same is hereby dismissed but, in the circumstances without costs.