(1995) 11 RAJ CK 0063

In the Rajasthan High Court

Case No : C.W.P. No. 645 of 1985

Chief Executive Officer, Ganganagar Sugar Mills Ltd. and Another — APPELLANT

Vs

Madanlal Pasricha and Another — RESPONDENT

Date of Decision : 27-11-1995

Acts Referred:
Rajasthan Shops and Commercial Establishments Act, 1958 — Section 2(17), 2(3), 2(7), 28A, 3

Citation : (1997) 3 LLJ 445

Hon'ble Judges : V.G. Palshikar, J

Bench : Single Bench

Advocate : D.S. Shishodia, S.R. Singhi and Suresh Kumbhat, for the Appellant; M.R. Singhvi, M. Mridul, R.K. Singhal and D.R. Bhandari, for the Respondent

Final Decision : Allowed

Judgement

V.G. Palshikar, J.—In all these petitions, the petitioner i.e. The Sriganganagar Sugar Mills Ltd., Sriganganagar has challenged various orders made by the authorities under the Rajasthan Shops & Commercial Establishments Act, 1958. All petitions have been made u/s 28-A of that Act given by different employees for different reliefs. However, one common question arises in all these petitions and on the decision of that question the fate of all these cases lies. All these petitions are being decided by this common order as the question is common to all and the jurisdictional question comes to the root of all the matters.

2. The relationship of master and servant between the petitioner and the respondent is not disputed. That the respondents are employees of the petitioner Sugar Mills is not disputed. That particular ''workman'' as contemplated by the Industrial Disputes Act or some other beneficial Legislation cannot be disputed. The only question which arise in these cases for adjudication is whether under the provisions of the Rajasthan Shops & Commercial Establishments Act, 1958, the relief claimed by the respondents can be granted by the authorities u/s 28-A

of that Act when by reason of Section 3 the Establishment of the petitioner is exempted from the operation of the Act itself.

3. Mr. D.S. Shishodia, learned counsel appearing on behalf of the petitioner submitted that a bare perusal of the provisions of Section 3 would bear out the contention. He pointed out by relying on the definition of the words ''Commercial Establishments & Shops'' in the said Act, and claimed that the petitioner Mills is certainly an Establishment or Office or Undertaking of the Government entitled to the exemption contemplated by Section 3 of the Act.

4. Opposing these submissions, it was stated by the learned counsel appearing on behalf of the respondents that on the plain reading of Section 3 of the Act what is exempted from the operation of the Act is Offices of the Central or State Government and not a Commercial Establishment established by the State Government.

5. In order to appreciate the rival contentions, it would be better to take into consideration the several provisions of law quoted to this issue. Section 2(3) of the Rajasthan Shops & Commercial Establishments Act, 1958 hereinafter referred to as the Act reads thus:

"Section 2(3) "commercial establishment" means a commercial or trading or banking or insurance establishment, an establishment or administrative service in which the persons employed are mainly engaged in office work, a hotel, a restaurant, boarding or eating house, cafe or any other refreshment house, a theatre or any other place of public amusement or entertainment and includes every such establishment as the State Government may, by notification in the Official Gazette, declare to be a commercial establishment for the purposes of this Act;"

Section 2(7) defines "establishment" to mean an establishment or a commercial shop. A shop is defined in Section 2(17) to mean thus:

"2(17) "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 ware-houses, 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 the persons employed in the shop are allowed the benefits provided for workers under the Factories Act, 1948 (Central Act LXIII of 1948);

6. Provisions of Section 3 requires notice:

"3. Exemption, -- (1) Nothing in this Act shall apply to--

a) offices of or under the Central or any State Government or local authorities;

b) offices of the Reserve Bank of India;

c) establishments for the treatment of the care of the infirm, or the mentally unfit;

d) persons whose work is inherently intermittent such as travellers or caretakers;

e) fairs or bazars for sale of work for charitable or other purposes from which no private profit is derived; and

f) libraries at which the business of lending books or periodicals is not carried on for purposes of gain other than that of making profit for charitable, philanthropic, religious or educational objects.

2) The State Government may, by notification in the Official Gazette, exempt either permanently or for any specified period any establishment or class of establishments or person or class of persons, to which or to whom this Act applies, from all or any of its provisions subject to such conditions as the State Government may deem fit."

7. Relying on the definition of Section 3, it was contended on behalf of the respondents that nothing in the Act shall apply to Offices of any State Government or local authorities. The petitioner Ganganagar Sugar Mills Ltd. is not an office of the State of Rajasthan and is, therefore, not entitled to any exemption. Refuting this contention, it was urged on behalf of the petitioner that the definition of ''Commercial Establishment'' includes an establishment in which persons employed are mainly engaged in office work and every such establishment as the State Government, by notification in the Official Gazette, declare to be as a commercial establishment.'' The emphasis is on the words "engaged in office work". According to the learned counsel ''commercial establishment'' means an establishment in which persons employed are mainly engaged in office work and, therefore, means that an office is a commercial establishment for the purposes of the Act. What is meant by office of any State Government in Section 3 of necessity means ''Commercial establishment'' of the State Government. Had it not been the intention of the legislation to so include, there was no reason to exempt office of the Rajasthan Government from application of the Act. It was, taking into consideration the wide connotation given by the Act to the words ''commercial establishment'' that the establishments of the State Government were excluded from the operation of the Act or exempted from the operation of the Act and, therefore, the words ''offices of the State Government'' were used in Section 3.

8. Similarly, while defining ''shop'' in Section 2 (17) the following words are used, which merits attention, ''shop includes offices''. Therefore, if this is the definition of ''shop'' and it includes offices, the word ''shop'' can be read in Section 3(a). So read, it will mean, nothing in this Act shall apply to shops of the State Government. Section 2(7) defines ''establishment'' to mean a shop or a commercial establishment. Therefore, a shop or an office by reason of this clause is a shop and a commercial establishment is defined to mean an establishment or an administrative service in which the persons employed are mainly engaged in the office work. Consequently, even offices of the Government, are liable to be

called commercial establishments by reason of the definition clause and it is because of this definition that the exception in favour of the State is carved out by Section 3. The definition given in Section 2(3), (7) and (17) of the Act leave no room for the conclusion that they exclude the office of the State Government or offices of the State Government are not commercial establishments within the meaning of the Act. Any other interpretation of these provisions would be against the established principles of interpretation.

9. The decision of the Supreme Court of India relied on by the learned counsel for the petitioner is to the point that the Supreme Court has in Sri Ramayan Harijan Vs. State of West Bengal, held that the State Bank of India and other nationalised Banks are establishments under the Central Government and Shops Acts of Tamil Nadu and Kerala do not apply. The decisions so holding, rendered by the High Courts of Kerala and Andhra Pradesh under the respective Shops & Commercial Establishments Act, were reversed by the Supreme Court of India. It was observed in para 6 as under at Page 425-426:

"6. In view of the definition of the term " establishment" read with that of "commercial establishment" contained in the Acts referred to above it has not been disputed even by the learned counsel for the various banks that a bank is an establishment. Consequently unless exempted the provisions of the said Acts shall apply to the State Bank of India and the nationalised banks also. Tamil Nadu Shops Act which is of the year 1947 and which really seems to be the precursor and foundation of the Kerala Shops Act and the Andhra Pradesh Shops Act which are of the years 1960 and 1966 respectively contains exemptions in Section 4. Sub-section (1) of Section 4 starts with the words "Nothing contained in this Act shall apply to--". Thereafter it contains Clauses (a) to (f) which describe the persons and establishments who are exempted from the operation of the Act. Clauses (c) and (f) read as hereunder:--

"(c) establishments under the Central and State Governments, local authorities the Reserve Bank of India, a Railway administration operating any Railway as defined in Clause (2) of the Article 366 of the Constitution and cantonment authorities:

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

10. In view of this decision, the interpretation sought to be put on the provisions of Section 2(3), (7) and (17) of the Rajasthan Act, cannot be considered to be incorrect. I am, therefore, fortified in the views that I am taking by the aforesaid judgment of the Supreme Court. Reliance was also placed on a decision of the Andhra Pradesh High Court in 1993 Lab. I.C. 1207, where, relying on the Supreme Court decisions referred to above, it was held that the shops under the Central Government are not covered by the Act of Andhra Pradesh.

11. It was, however, submitted that even if the orders are without jurisdiction, as

the provisions of the Act are not applicable, no interference is called for in extraordinary jurisdiction of this Court under Article 226. Reliance was placed on two judgments of the Supreme Court where it has been observed that the jurisdiction under Article 226 has not been exercised in cases where the exercise thereof will have the result of restoring any illegality. According to the respondents, the effect of allowing this petition would be restoring illegality. However, I am unable to accept this contention for the reason that illegality can arise in several ways and does not refer to lack of jurisdiction. Where there is lack of jurisdiction, where there is no application of a given statute, an authority even under that statute cannot commence the proceedings and consequently the fact that the proceedings have commenced cannot be used for supporting the order and ultimately, such order may prove to be wrong or illegal. Jurisdictional error has to be distinguished from other errors and illegalities which need not be corrected in exercise of the extraordinary jurisdiction of this Court under Article 226. It is even possible to hold that the petition under Article 226 alone may, for such reasons, be dismissed. But the powers of this Court under Article 227 of the Constitution of India cannot be ignored. It is a solitary duty enjoined upon the Court to see and supervise the jurisdiction exercised by the authorities subordinate to it in the State of Rajasthan. It is, therefore, constitutional duty of this Court 10 correct improper and unwarranted exercise of jurisdiction by authorities who totally lack the jurisdiction under the statute under which they allege to perform the said functions, taking into consideration the provisions of Section 3 exempting the offices of the Government of Rajasthan from application of that Act. It is obvious that the authority under that Act committed jurisdictional error in entertaining the applications of the various respondents u/s 28-A of the Act. This Court, should, in exercise of its jurisdiction under Article 227, set aside such jurisdictional error.

12. I am also pointed out a judgment given by this Court under this very Act that the Act is not applicable in cases where the employees concerned are governed by the Factories Act of 1948. It is undisputed that Ganganagar Sugar Mills is covered by the provisions of Factories Act, 1948. In view of the decision of this Court, the petitioner is not governed by the provisions of this Act On this count also, there was no jurisdiction in the authority under the Act to entertain the applications of the respondents u/s 28-A of the Act Viewed from all points, therefore, it has to be held that the orders, impugned in these petitions are wholly without jurisdiction.

13. In the result, these petitions succeed and are allowed. There will be no order as to costs.

