

(1996) 08 KL CK 0016
In the High Court Of Kerala
Case No : O.P. No. 11089 of 1991

Corporate Manager

APPELLANT

Vs

Thressia and Another

RESPONDENT

Date of Decision : 01-08-1996

Acts Referred:

Kerala Shops and Commercial Establishment Act, 1960 — Section 10, 18, 2(4), 3, 3(2)
Travancore-Cochin Interpretation and General Clauses Act, 1125 — Section 23

Citation : (1996) 2 KLJ 303

Hon'ble Judges : S. Sankarasubban, J

Bench : Single Bench

Advocate : K.C. John and K.K. John, for the Appellant; M. Ramachandran, for 1st Respondent and E. Thankappan, for 2nd Respondent, for the Respondent

Final Decision : Allowed

Judgement

S. Sankarasubban, J.—Original Petition filed by Corporate Manager, C.M.S. Schools, Kottayam challenging Ext. P-2 order passed by the second Respondent, u/s 18 of the Kerala Shops and Commercial Establishments Act, 1960 (hereinafter referred to as "the Act"). An appeal was filed by the first Respondent and by Ext. P-2 order, second Respondent directed reinstatement of the first Respondent. Short facts leading to the filing of the appeal are as follows:

2. First Respondent was employed as cook in the hostel attached to Backer Memorial High School, Kottayam, which is one of the schools under the Corporate Management of the Petitioner. According to the first Respondent, she was cook in the hostel for nearly 25 years and was under treatment on medical advice from 20th June 1987 to 16th August 1987. After her illness she came back on 17th August 1987, but she was denied employment. According to the first Respondent, she filed petition before the Corporate Manager on 9th October 1987. But she did not receive any reply. Hence she filed appeal u/s 18 of the Act before the second Respondent. On getting notice, Petitioner appeared before the second Respondent and contended that the appeal was barred by limitation and

that in any event, second Respondent has no jurisdiction to try the issue as hostels are exempted from the purview of the Act. Regarding the question of condonation of delay, appellate authority condoned the delay. Appellate authority took note of the fact that the first Respondent received salary up to April, 1987 and since the appeal was filed on 29th October 1987, it is within six months, which is the outer limit prescribed under the Act. Hence I don't find any ground to interfere with the order of the appellate authority regarding condonation of delay.

3. Second contention urged by learned senior Counsel for the Petitioner is that hostels are exempted from the purview of the Act. According to Counsel, notification was issued by the Travancore-Cochin Government exempting hostels from the purview of the (Travancore-Cochin) Shops and Establishments Act, 1125 (hereinafter referred to as "the 1125 Act"). That notification has not been cancelled so far and hence according to Counsel, that notification is even now continuing. Learned Counsel referred me to the decision reported in *Sherthallai Sreenarayana Medical Mission General Hospital v. Damodaran Krishnan Unni* 1975 KLT 572 where a similar question arose with regard to nursing home. Viswanatha Iyer, J. relying on Section 23 of the Interpretation and General Clauses Act held that the notification issued under the 1125 Act continues to be in force by virtue of the above provision till it is cancelled. Learned Counsel also relied on Section 36 of the Act by which the (Travancore-Cochin) Shops and Establishments Act was repealed and is provided that anything done under the previous Act shall be deemed to have been done under the present Act.

4. Learned Counsel for the first Respondent contended that the notification cannot have any force after coming into force of the Act. Learned Counsel invited my attention to the definition of commercial establishment, u/s 2(4) of the Act and contended that hostels are coming under the Act. He further referred me to Section 3 of the Act. u/s 3 of the Act, the provision of Section 10 of the Act is exempted so far as hostels, clubs, etc. On the basis of this, learned Counsel submitted that the legislature was aware of the exemption granted to the hostels by virtue of 1125 Act and in spite of this, u/s 3 of the Act exemption has been limited only to the applicability of Section 10. Hence, according to learned Counsel for the 1st Respondent, hostels come within the purview of the Act and they are not exempted by any notification.

5. In this context, it is necessary to refer to 1125 Act. Section 4 of 1125 Act deals with hostels also. As a matter of fact, Section 4(2)(c) of 1125 Act says that nothing contained in Section 7 or Section 13 shall apply to clubs and residential hostels, hotels, etc. Section 7 of 1125 Act deals with hours of working and Section 13 also deals with opening and closing hours. Section 6 of 1125 Act enables the Government to issue notification to exempt either permanently or for any specified period, any establishment or class of establishments. It is by virtue of the power vested u/s 6 of 1125 Act that the hostels were exempted from the operation of the 1125 Act.

6. Thus, it cannot be said that the inclusion of hostels u/s 3(2) of the Act is a fresh introduction of the hostels. As a matter of fact under the 1125 Act hostels were treated as establishments, but were exempted by the notification. Thus, according to me, the mere fact that u/s 3(2)(c) of the Act the Legislature made a provision that Section 10 of the Act will not be applicable to hostels does not efface the force of the notification issued under the 1125 Act. Further, u/s 3 of the Act, exemption can be granted only to an establishment. Since hostels came within the definition of establishment u/s 3(2) it was stated that Section 10 was not applicable.

7. Next question to be considered is that whether the notification issued under the 1125 Act continues even after the enactment of new Act. With great respect, I agree with the judgment of Viswanatha Iyer, J. reported in 1975 KLT 572. His Lordship has relied on Section 23 of the Interpretation and General Clauses Act under which where any Act is repealed and re-enacted, the notification issued under the earlier Act will continue so long as the said notification has not been cancelled. Further, Section 36 of the Act adds strength to the contention that the notification issued under the earlier Act continues. Proviso to Section 36 of the Act reads as follows:

Provided that anything done under the said enactments which could have been done under this Act if it had then been in force shall be deemed to have been done under this Act.

Under Section 5 of the Act, Government has got power to exempt any establishment from the purview of the Act. The same power was available u/s 6 of the earlier Act. Hence, there is no inconsistency between the powers of exemption exercised under the previous Act and the present Act and the notification issued under the previous Act can be deemed to be the notification issued under the present Act, till new notification is issued canceling the earlier notification.

In the light of the above, I quash Ext. P-2 and allow the Original Petition.