

(1963) 08 BOM CK 0007

In the Bombay High Court

Case No : Misc. Petition No. 363 of 1962

Hotel Mazdoor Sabha and Another

APPELLANT

Vs

N.J. Alvares and Another

RESPONDENT

Date of Decision : 22-08-1963

Acts Referred:

Bombay shops and Establishments Act, 1948 — Section 2(25)

Citation : AIR 1965 Bom 13 : (1964) 66 BOMLR 332 : (1965) ILR (Bom) 87

Hon'ble Judges : K.K. Desai, J

Bench : Single Bench

Advocate : D.S. Nargolkar, for the Appellant; C.J. Shah and S.J. Sorabji, for the Respondent

Judgement

(1) In this Petition under Art. 226 of the Constitution, the Petitioners have claimed direction against Respondent 1, "Chief Inspector, Shops and Establishments", and the State Government to apply the provisions of the Bombay Shops and Establishments Act, 1948 (hereinafter referred to as "the Act" to (I) Central Railway Staff Canteen, Victoria Terminus, Bombay 1, (ii) Bombay Police Canteen at Crawford Market (Police Headquarters) and (iii) Government Law College Canteen, Churchgate, Bombay 1. The question has arisen in the following manner :

(2) Petitioner No. 1 is a trade union registered under the Indian Trade Unions Act. It claims to have a large number of employees of hotels; residential hotels, restaurants or eating houses as its members and that its activities are to safeguard the interests of the employees in the hotel industry as such in general and particularly in the City of Bombay. Petitioner No. 2 is an employee in the Central Railway Staff Canteen, Victoria Terminus. In connection with the Bombay Police Canteen, the 1st Petitioner made a grievance that the 1st Respondent was not implementing the provisions of the Act as regards the employees in that canteen. By letter dated February 24, 1961, copy whereof is annexed as Ex.A to the Petition, the 1st Respondent informed the 1st Petitioner union that the

canteen was meant only for the Police Staff and was not for the public and that the provisions of the Act were not applicable to that canteen. In connection with the Government Law College Canteen, the 1st respondent by his letter dated August 11, 1961, addressed to the 1st Petitioner union stated that the canteen was strictly open to the law college students and its staff and not for the general public and was not governed by the provisions of the Act. The 1st Respondent addressed a letter dated October 6, 1961, to the similar effect in connection with the Central Railway Staff Canteen at Victoria Terminus. The 1st Petitioner union by its letter dated August 28, 1962 made its representation to the 1st Respondent in connection with its submission that the provisions of the Act were applicable to staff canteens generally. As the Act was in spite of the above demand, not applied to the staff canteens referred to above, this petition has been filed.

(3) The Petitioners' case is that having regard to the provisions of the Act and particularly sub-sec (25) of S.2 of the Act, it is wrong for the Respondents not to apply the provisions of the act to staff canteens. It is incumbent on the Respondents to apply the provisions of the Act to staff canteens.

(4) In connection with the above contention of the Petitioners, it is necessary to refer to the Scheme of the Act and the relevant provisions thereof. It appears from the preamble to the Act that the purpose of the Act is to enact law relating to the regulation of conditions of work and employment in public places like shops, commercial establishments, residential hotels, restaurants, eating houses, theatres and other places of public amusement or entertainment. These places are divided into several sub-headings as (1) "Shops and Commercial Establishments", (2) "Residential Hotels, Restaurants and Eating Houses" and (3) "Theatres or other places of Public Amusement or entertainment". Sections 10 to 18 in Chapter 111 of the Act make provisions about opening and closing hours and daily and weekly hours of work, intervals for rest, holidays in a week and such matters as regards shops and commercial establishments. Section 19 to 25 of the Act make similar provisions regarding residential hotels, restaurants and eating houses. Section 26 to 31 of the Act make similar provisions relating to theatres or other places of public amusements or entertainments. Sections 32 to 42A are general sections applicable to all kinds of places above mentioned and provide for prohibition of employment of Children, working hours for young persons and women, leave, pay during leave, application of the payment of Wages Act, cleanliness, ventilation, lighting, precautions against fire first aid, etc.

(5) Mr.Nargolkar for the petitioner contends that the provisions in the Act are all for the benefit of the employees in the places referred to above as well as for the protection of visitors to these places. He, therefore, contends that the provisions of the Act should be construed so as to give them widest possible application in connection with the places referred to in the Act. In developing his argument, he has mainly relied upon the definition of the phrase " restaurant or eating house" as contained in sub-section (25) of S. 2 of the Act. The sub-section runs as

follows :

"Restaurant or eating house" means by premises in which is carried on wholly or principally the business of the supply of meals or refreshments to the public or a class of the public for consumption on the premises".

(6) The Petitioners' contention is that the Bombay Police canteen at Crawford Market, the Government Law College Canteen at Churchgate and the Central Railway Staff Canteen at Victoria Terminus are all restaurants or eating houses as mentioned in sub-section (25) of Section 2 of the Act. The contention is that at these canteens business of supply is made for consumption on the premises. It is made to a class of the public; in other words, to the members of the Bombay Police at the canteen at Crawford Market, to law students at the Government Law College canteen and to the members of the Central Railway staff at the canteen at Victoria Terminus. Mr. Nargolkar has with some emphasis submitted that each group of persons who is supplied meals or refreshments at the above canteens is a "a class of the public" within the meaning of the provisions in sub-section (25) of S. 2 of the Act. In that connection, he has further submitted that there is nothing show that in these canteens there is prohibition against persons not belonging to the above class of the public from entering upon the premises of these canteens for getting supplies of and consuming meals or refreshments. In developing his contention that the above groups of persons can be described as "a class of the public", Mr. Nargolkar has relied upon the meaning of the word "Public" as contained in Murrey's Oxford Dictionary at Page 1558, where the following appears:

"Public - In general, and in most of the senses, the opposite of Private."

"The varieties of sense are numerous and pass into each other by many intermediate shades of meaning. The exact shade often depends upon the substantive qualified, and in some expressions more than one sense is vaguely present; in others the use is traditional and it is difficult to determine in what sense precisely the thing in question was originally called public".

The fourth meaning of the word "public" in column 3 on the same page is :

"that is open to, may be used by, or may or must be shared by, all members of the Community; not restricted to the private use of any person or persons. Generally accessible or available;

Also (In narrow sense) that may be used, enjoyed, shared or competed for, by all persons legally or properly qualified."

(7) Relying upon the above discussion as contained in Murrey's Oxford Dictionary, Mr. Nargolkar has emphasised that in using the phrase "a class of the public" after using the word "Public" in general sense, the Legislature intended to use the word "public" in the latter phrase in a narrower sense. He has therefore, contended that whenever even a smaller group of persons legally, or properly qualified is supplied meals or refreshments for consumption on the premises

where the business of supply of meals or refreshment is carried on, the place would be "restaurant or eating house" as mention in sub-section (25) of S.2 of the Act. He developed this contention by arguing that at the Bombay Police Canteen mentioned above, all persons employed in the Police Department would be legally or properly qualified and entitled to supply of meals or refreshments. Similarly, law students as such would be the persons legally or properly qualified to supply of meals or refreshments. Similarly, law students as such would be the persons legally or properly qualified to supply of meals or refreshments at the Law College Canteen. Members of the Railway staff would be legally or properly qualified to supply of meals or refreshments at the Central Railway Canteen mentioned above. The above qualification or characteristic common to each group of persons mentioned above, according to him, makes them "a class of the Public" as mentioned in sub-section (25) of Section 2.

(8) The first thing that strikes as important in regard to the true construction of sub-section (25) of S.2 of the Act is that it was not intended that all premises where business of the supply of meals or refreshments is carried on were meant to be included in the phrase "restaurant or eating house". If that was the intention of the Legislature, it was entirely unnecessary to include in sub-section the phrase "the public or a class of the public". The sub-section cannot be read to mean that "restaurant or eating house" means "any premises in which is carried on wholly or principally the business of the supply of meals or refreshments for consumption on the premises". The question that at once arises is as to what premises in which business of supply of meals or refreshment for consumption on the premises is carried on were intended to be excluded from being "Restaurant of eating house" within the meaning of sub-section (25) of S.2 by including in that sub-section the phrase "the public or a class of the public". I asked Mr. Nargolkar as to what is the line that he indicates could be drawn for excluding certain restaurants and eating houses from the application of sub-section (25) by reason of the use therein of the phrase "the public or a class of the public". He has found it very difficult and failed to answer the question.

(9) Mr. Sorabji and Mr. C.J.Shah for Respondents 2 and 1, respectively, have, in this connection, emphasised that the true intent and purpose of sub-sec.(25) of S.2 of the Act was to exclude from the application of the Act such restaurants or eating houses where members of the public were not entitled to a free or unrestricted entry. The Restaurants and eating houses which were not in public places and where the public as of right had no free entry could not, according to them, be considered to be included in the definition of the phrase "restaurant or eating house" as contained in sub-section (25) of section 2.

(10) It is clear that premises where supply of meals or refreshments for consumption on the premises is made, but the supply is not for carrying on business can never be held to be "restaurant or eating house" within the meaning of sub-section (25) of Section 2 of the Act. The carrying on of the business of supply of meals or refreshments is the first essential of the premises

being "restaurant or eating house" under this sub-section. In the result, staff canteens where an employer makes arrangements for supply of meals or refreshments without intending to carry on business thereof cannot be held to be "restaurant or eating house" within the meaning of the Act. It is also obvious that the premises, where the employer makes arrangements for supply of meals or refreshments neither for the general public nor for any one other than its own employees, were not meant to be "restaurant or eating house" within the meaning of the Act. The obvious intention of the Act was to make provisions for regulating conditions of work and employment in restaurants and eating houses, the owners whereof carried on wholly or principally the business of supply of meals or refreshments. These restaurants and eating houses were meant to be establishments, which openly invited the public or a class of the public for the purposes of carrying on the business that is mentioned in sub-section (25). If the Railway administration made arrangements for running its own staff canteen for Railway servants, it is difficult to say that the railway administration carried on the business of supply of meals or refreshments. Similarly, if the Government Law College made arrangements for the supply of meals or refreshments to law students, it is difficult to say that the canteen run at the Government Law College is run for the business of supply of meals or refreshments. Similarly, if the Department of police ran a canteen at the Police Headquarters for supply of meals or refreshments, it is difficult to find that the Department carried on the business of supply of meals or refreshments. It appears to me that wherever an employer makes merely arrangements for supply of meals or refreshments. It appears to me that wherever an employer makes merely arrangements for supply of meals or refreshments to its employees and does not carry on wholly or principally the business of supply of meals or refreshments, the premises would not be "restaurant or eating house" within the meaning of the Act. The provisions of the Act would not be applicable to such establishments.

(11) In this connection, counsel for the Respondents have relied upon the cases of *Oppenheim v. Tobacco Securities Trust Co. Ltd.* 1951 AC 297; and *Emperor Vs. Ramji Vala*, ; and certain other cases.

(12) It appears that the Courts have found it difficult to arrive at correct interpretation of the phrase "a class of the Public". It is, however, clear that for finding out whether a certain group of people can be described as "a class of the Public", two ingredients must be considered; (1) The group of persons must possess certain degree of numerical importance and must be a substantial body of the public. The persons constituting this body must have a common attribute or characteristic. "A class of the public" is to be distinguished from a mere group of persons. (2) The group of persons claiming to be "a class of the public" must not for its classification as such depend on any relationship with a third party.

(13) In the case of 1951 AC 297 by a settlement trustees were directed to apply certain income "in providing for the education of children of employees or former employees" of a limited company or any of its subsidiary or allied companies.

When the question arose, the employees so indicated numbered over 1,10,000. The relevant observations at pages 305 and 306 are as follows :

"It is a clearly established principle of the law of charity that a trust is not charitable unless it is directed to the public benefit. This is sometimes stated in the proposition that it must benefit the community or a section of the community. Negatively it is said that a trust is not charitable if it confers only private benefits. The difficulty lies in determining what is sufficient to satisfy the test (as to whether the trust is for public benefit), and there is little to help. The difficulty arises where the trust is not for the benefit of any institution either then existing or by the terms of the trust to be brought into existence, but for the benefit of a class of persons at large. Then the question is whether that class of persons can be regarded as such a "section of the Community" as to satisfy the test of public benefit. These words "section of the Community" have no special sanctity, but they conveniently indicate first, that the possible beneficiaries must not be numerically negligible, and secondly, that the quality which distinguishes them from other members of the community, so that they form by themselves a section of it, must be a quality which does not depend on their relationship to a particular individual. A group of persons may be numerous but, if the nexus between them is their personal relationship to a single propositus or to several propositi, they are neither the community nor a section of the community for charitable purposes." In further discussing the matter before it, the Court came to the conclusion that the common quality for the beneficiaries mentioned in the trust was found in employment by particular employers. The court found that there was no justification in principle or authority to regard common employment as a quality which constituted those employed a section of the Community.

(14) In the case of 42 Bom LR 861 : AIR 1940 Bom 379, the accused was charged, inter alia u/s 153-A of the Indian Penal Code. The charge was that the accused had attacked in the course of his speech the landlords, money-lenders, and the Government, saying that the landlords and money-lenders were oppressing the peasants, that Government was behind the landlords and money-lenders, and that they could not get rid of the money-lenders and landlords unless they got rid of the Government. Section 153-A of the Indian Penal Code provides:-

"Whoever by words, either spoken or written, or by signs, or by visible representations, or otherwise, promotes or attempts to promote feelings of enmity or hatred between different classes of the citizens of India,".

The Court was called upon to ascertain if the landlords and money-lenders were "different classes of the Citizens of India". In that connection, the Court negated the contention that these persons were "different classes of the citizens of India" and observed that the "Section is not always easy to apply. It is difficult in many cases to say what constitutes a class of His Majesty's subjects. So far as sackers are concerned, it is, I think, impossible to say that they constitute a class". The Court further observed:

"But I think to bring any body of persons within the description of a class of His Majesty's subjects within the meaning of Section 153-A, the body of persons must possess certain degree of importance numerically. One cannot say that every group of persons is properly designated a class of His Majesty's subjects. For example, I should say that any one who attempted to promote feelings of enmity between members of the Appellant Side Bar of this Court, and members of the Original Side Bar could not be said to be infringing. Section 153-A, because I should say that two sides of the Bar in a particular Court could not be designated as classes of His Majesty's subjects; they are mere groups. XXXXX".

(15) It is clear that a large group of numerous persons cannot be a class of the public unless it has a common attribute or characteristic. Having regard to the purpose of the Act, it also appears to me that the canteens which are run by employers for the purposes of supplying meals or refreshments to their employees only were never meant to be included in the phrase "restaurant or eating house" as defined in sub-section (25) of Sec.2 of the Act. Where these canteens are run by employers not as business but only by way of arrangements for supply of meals or refreshments to their employees, it is impossible to hold that the canteens are restaurants or eating houses as defined in the Act.

(16) Counsel for the Respondents have submitted that the establishments which are excluded from being restaurants or eating houses within the meaning of the Act by reason of the use of the phrase "the public or a class of the public" are "premises where meals are supplied not to any or every member of the public, but to a group of persons only by reason of some relationship existing between the persons receiving supplies and running the establishments". It is sufficient to say that in all cases in which restaurants or eating houses are run by employees for supply of meals or refreshments to employees, it is impossible to hold that their establishments are restaurants or eating houses within the meaning of the Act. It is also clear that where institutions like the Government Law College run establishments for supply of meals or refreshments not as a matter of business but only for the facilities of the students visiting the College, it is impossible to hold that the establishments run are restaurant or eating houses within the meaning of the Act.

(17) Mr. Sorabji for the 2nd Respondents has also pointed out by relying upon Schedule II of the Act that the canteens referred to in the Petition are exempted from all provisions of the Act. For this reason alone, the Petition must fail. Section 4 of the Act provides:

"Notwithstanding anything contained in this Act the provisions of this Act mentioned in the third column of Schedule II shall not apply to the establishments, employees, and other persons mentioned against them in the second column of the said Schedule:".

Items 2, 5 and 6-F in the Schedule II to the Act run as follows :-

"2. Establishments of the State Government All provisions."

5. Establishments of any Railway Administration All provisions."

6F. Establishments pertaining to any kind of educational activities All provisions."

In the third column it is mentioned that these establishments are exempted from all provisions of the Act. Obviously, the Police Canteen referred to in the Petition is Victoria Terminus Railway Station is establishment of the Railway Administration. The Law College Canteen is establishment pertaining to "any kind of educational activities" as mentioned in item 6-F in the Schedule above stated.

(18) Mr. Nargolkar has contended that the Canteens at the Government Law College and at Bori Bunder are run by independent Contractors. This allegation is not admitted on behalf of the Respondents. It is difficult to make any finding on this question of fact which is now raised by Mr. Nargolkar. In so far as these canteens are establishments of the State Government and of the Railway administration they must be held to be exempted from the provisions of the Act. The canteen run at the Government Law College even by an independent contractor will be establishment pertaining to educational activities and must be held to be exempted from the provisions of the Act.

(19) The Petition is accordingly dismissed with costs. The Petitioners will pay one set of costs.

(20) Petition dismissed.