
(1989) 12 AP CK 0017
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 102/1089

Kodali Nagaiah

APPELLANT

Vs

Sri Arani Kaniappa Maistry Choultry

RESPONDENT

Date of Decision : 28-12-1989

Acts Referred:

Andhra Pradesh Shops and Establishments Act, 1966 — Section 2(10), 41

Citation : (1990) 1 APLJ 245 : (1990) 2 LLJ 537

Hon'ble Judges : Syed Shah Mohammed Quadri, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Judgement

Syed Shah Mohammed Quadri, J.—In this writ appeal, preferred by the 3rd respondent in the writ petition against the order of the learned single judge allowing the writ petition, the question that arises for consideration is whether the 1st respondent herein, Sri Arani Kaniappa Maistry Choultry, Santhapet, Nellore, (for short the Choultry) is an establishment within the meaning of Section 2(10) of the Andhra Pradesh Shops and Establishments Act, 1966 (for short the Act,)

2. The facts are few and are not in dispute The writ petitioner, the Choultry, owns shops, rooms, which are leased out to different persons and land which is leased out to a petrol bunk, the saw mills and a cinema theatre. Besides this, it also owns a building which is leased out to Union Bank of India and another building consisting of 8 rooms which are being let out on daily rent basis. Under the Trust Deed it is feeding 12 Brahmins and 13 non-brahmins on every Dwadasi day. The appellant herein was appointed by the Choultry as a watchman on September 2, 1976. His duties include collection of rents from the lodgers of the rooms of the Choultry and serving the people who take rooms on daily rent. He was dismissed from service on 12th October, 1981, He challenged the validity of the order of the termination before the Assistant Commissioner of Labour Nellore, the 3rd respondent, u/s 41 of the Act. The 3rd respondent allowed the appeal on 29th January 1983 and directed the Choultry to reinstate the appellant with continuity

of service and with full back wages. This order of the 3rd respondent was assailed by the choultry in Second Appeal No. 14 of 1983 before the Labour Court, Guntur, the 2nd respondent. The Labour Court, Guntur, confirmed the order of the 3rd respondent by its judgment dated 10th May 1984. The said order of the Labour Court is assailed by the Choultry in W.P. No. 15026 of 1984, praying for a writ of certiorari to call for the records relating to the judgment in Second Appeal 14 of 1983 from the 2nd respondent confirming the order of the 3rd respondent and to quash the same. The learned single judge allowed the writ petition on 19th July, 1988.

3. In this writ appeal Sri Ravichander, the learned counsel for the appellant, contends that the Choultry is having rooms which are given to lodgers on rent and it also owns land which it leased out to a theatre, petrol bunk and saw-mills. Therefore, it is an establishment within the meaning of the Act. For purposes of "establishment", submits the learned counsel, it is not necessary that a business or trade should be carried on, and that the learned single Judge is in error in holding that the Choultry is not an establishment.

4. Sri Venugopala Reddy, the learned counsel for the Choultry, supports the order of the learned single judge and contends that the Choultry is feeding the poor; so it cannot be said to be carrying on any business and therefore, it cannot be said to be an establishment.

5. The short question that arises for consideration is whether the Choultry is "establishment" within the meaning of Section 2(10) of the Act which is in the following terms :

"Establishment" means a shop, restaurant, eating-house, residential hotel, lodging house, theatre or any place of public amusement or entertainment and includes commercial establishment and such other establishment as the Government may, by notification, declare to be an establishment for the purposes of this Act.

From a reading of the definition extracted above, it is clear that a shop, restaurant, eating house, residential hotel, lodging house, theatre or any place of public amusement or entertainment, per se falls within the meaning of "establishment". It is an inclusive definition which includes a commercial establishment and such other establishment as the Government may, by notification, declare to be an establishment for the purposes of this Act. Sub-section (5) of Section 2 of the Act defines "commercial establishment". In this case, admittedly the Choultry is owning a building of 12 rooms where the lodgers are staying on payment of rent on daily basis which is a lodging house. The appellant is collecting rents from the lodgers and providing them service. From these facts, it is clear that the Choultry is owning a lodging house which per se falls within the meaning of establishment."

6. Now we shall advert to the decisions cited at the bar.

7. In *Pappuchetti Raghavayya Chetti's Charities Vs. Commissioner of Labour and Another*, , the question was whether the office of the charities falls within the definition of "shop" under S. 2(16) of the Madras Shops and Establishments Act. Kailasam, J. (as he then was) held that the charities were engaged in the activities of collecting rents from immovable properties and interests on moneys lent, besides collecting hire charges on the vessels and electricity charges and that the charities had made a profit. Therefore, the office falls within the definition of "shop" u/s 2(16) of the Madras Shops and Establishments Act.

8. In *Bayer (India) Limited v. Commissioner of Labour* 1980 (1) A.P.L.J. 360, a Division Bench of our High Court had considered the question whether a defined premises is an essential requisite for an establishment so as to fall within the definition of "commercial establishment". This judgment is of no assistance in regard to the question we are concerned.

9. In *D. B. Khade v. Ramsingh Jaisingh* 1986 (52) F.L.R. 378, a learned single judge of the Bombay High Court held that the enterprise carried on by Khanna Construction House by providing accommodation and service to the residents of the house on payment of rent would amount to "commercial establishment".

10. In *G. Venkateswara Rao Vs. Sir Silk Ltd. and Others*, , a Division Bench of this Court, to which one of us (Syed Shah Md. Quadri, j.) was a member considered the question whether the research institute of the Sir Silk Limited., which was set up with the objects of improving, securing greater efficiency, rationalisation, reduction of cost of silk, was a commercial establishment within the meaning of Section 2(5) of the Act. Having taken into consideration the functions of the research institute which included investment in movable and immovable properties, growing of commercial crops and selling the same to industries etc., it was held that it was a commercial establishment within the meaning of the Act.

11. As noticed above, the Choultry in question is maintaining a lodging house which falls within the expression of "establishment" as defined in Section 2(10) of the Act. We do not consider it necessary to go into the question whether leasing out its land to a theatre and saw-mills and the other buildings to a Bank and other persons would constitute business or trade by the Choultry for purposes of satisfying the requirement of commercial establishment as on a reading of the definition of "establishment" and "commercial establishment", it is clear that for being an "establishment", it need not be a "commercial establishment" though every commercial establishment falls within the meaning of "establishment". The fact that the object of the Choultry is charitable or religious is not, in our view, relevant in construing the definition of establishment.

12. Further from the point of view of an employee, it makes very little difference for him whether the object of the employer is religious or charitable or commercial. So far as he is concerned, he does his work. In the instant case, the appellant was collecting rents from the lodgers of the lodging-house and

rendering service to them. How those rents are applied is not his concern and it should not be a relevant factor in determining whether the employer is an establishment within the meaning of the Act or not. The A.P. Shops and Establishments Act is beneficent social legislation intended to serve the cause of labour welfare and to regulate the conditions of employees in shops and commercial establishments, restaurants, theatres and other establishments. When the provisions of the Act are clear and unambiguous, they cannot be so construed as to defeat the very purpose of the legislation merely because the very establishment is a charitable institution. Under sub-section 4 of Section 64 of the Act (Section 73(4) of Act 20 of 1988), the Government have power to exempt any establishment or class of establishments from all or any of the provisions of the Act subject to such conditions as they may deem fit. The respondent choultry does not enjoy exemption from the Government. So long as an establishment, whether religious or charitable, is not exempted by the Government, the provisions of the Act will apply and they have to be given effect to.

13. The learned single judge observed as follows :

"The question, therefore, is whether the petitioner-choultry is doing business or commercial activity or profession or trade. It is an admitted fact that the choultry has been feeding the poor as per the object of the establishment of the choultry."

For the aforementioned reasons, we are of the view that the Choultry is having a lodging house wherein the appellant is working, which is, by definition, an establishment for the purposes of the Act. In this view of the matter, we set aside the order of the learned single judge and hold that the Choultry is an establishment within the meaning of the Act.

14. By interim order dated 23rd March, 1989 in W.A.M.P. No. 132 of 1989, the appellant was directed to be paid Rs. 75/- per month during the pendency of the writ appeal. We grant two months from today to the Choultry, the 1st respondent, to pay the balance of the amount to the appellant and to reinstate him pursuant to the order of the 3rd respondent.

15. In the result, we allow the writ appeal, but having regard to the facts and circumstances of the case, we make no order as to costs.