
(1960) 07 MAD CK 0020
In the Madras High Court

Madras State Electricity Board

APPELLANT

Vs

Commissioner of Labour and Others

RESPONDENT

Date of Decision : 15-07-1960

Acts Referred:

Constitution of India, 1950 — Article 226, 336

Citation : (1960) 2 LLJ 357

Hon'ble Judges : Rajagopalan, J

Bench : Single Bench

Judgement

Rajagopalan, J.—The petitioner is the Madras State Electricity Board, constituted under the Electricity (Supply) Act (54 of 1948), to which I shall hereafter refer as the Electricity Act. When the Board was constituted with effect from 1 July 1957, it took over the employees who had up to then been in the employ of the Government of Madras in the Electricity Department. Some of the employees so taken over were clerks and typists who had been appointed wholly on a temporary basis under the statutory rules applicable to Government servants. Under these rules their services were liable to be terminated without notice and had to be terminated if candidates regularly recruited in accordance with the rules were available for appointment. Even after the typists and clerks had passed into the employ of the Electricity Board, they continued to be governed by the rules applicable to civil servants in the employ of the Government under the transitory regulations promulgated by the Board u/s 73(c) of the Electricity Act. In due course, after the Board had made arrangements to recruit its clerical personnel, many of those appointed under the emergency provisions to hold their appointments on a temporary basis were discharged with a month's notice. Some of them preferred appeal to the Commissioner for Workmen's Compensation, as the appellate authority, u/s 41 of the Madras Shops and Establishments Act (36 of 1947). The Board contended that the provisions of the Madras Shops and Establishments Act did not apply to the discharged clerical employees of the Board, and the Board applied to the Commissioner of Labour u/s 51 of that Act to determine the question in dispute, whether these employees

were governed by the provisions of the Madras Shops and Establishments Act. By his order dated 23 December 1959 the Commissioner negated the contentions of the Board, and he held that the provisions of the Madras Shops and Establishments Act applied to the discharged clerical employees. The Board applied under Article 226 of the Constitution for the issue of a writ of certiorari to set aside the order of the Commissioner of Labour dated 23 December 1969.

2. The Madras Shops and Establishments Act applies to persons employed in shops and commercial establishments, as those expressions have been defined by that Act. The relevant portion of the definition of "establishment" in Section 2(6) of the Act does not take us very far, because it says in effect that establishment means a commercial establishment. The relevant portion of the definition of commercial establishment in Section 2(3) of the Act is :

"Commercial establishment" means an establishment which is a clerical department of an industrial undertaking .

Section 2(12)(ii) defines a person employed to mean also a member of the clerical staff employed in an industrial undertaking. That the petitioner Board, constituted under the Electricity Act, entrusted with the right and duty of generating electricity and distributing it, is an industrial undertaking as that expression is normally understood, can admit of no doubt. The expression "industrial undertaking" itself has not been defined by the Madras Shops and Establishments Act, and it should therefore receive its normal meaning in English language. The learned Counsel for the respondent referred also to *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, , where the expressions "industry" and "undertaking" were construed with reference to the provisions of the Industrial Disputes Act.

3. The learned Counsel for the petitioner contended that the clerks employed under the Board could not be said to constitute a department of an industrial undertaking within the meaning of Section 2(3) of the Madras Shops and Establishments Act, because the word "department" signified a separate or separable portion of a building, and admittedly the clerks employed by the Board were scattered in various offices all over the State. Unity of premises of work, in my opinion, is not the criterion to decide whether the Board, as an Industrial undertaking, has a clerical department within the meaning of Section 3(3) of the Act. As the learned Additional Government Pleader pointed out, the expression used in Section 2(12)(ii) of the Act is " clerical staff." Neither the use of the expression " department" in Section 2(3) of the Act, nor the use of the expression " staff" in Section 2(12)(ii) of the Act, brings in the concept of the premises where the department or the staff works. That was emphasized by reference to Sections 20, 21 and 22, for example, which referred to the premises of an establishment, which in relation to the clerical department of an industrial undertaking could only mean premises where the members of the clerical staff of the industrial undertaking work. The statutory provisions that apply to premises where an establishment, that is, an establishment consisting of the members of

the clerical staff of an industrial undertaking works, left intact the concept of what constitutes an establishment or commercial establishment, that is, with reference to the clerical department of an industrial undertaking. Obviously, the fact that the Electricity Board functioned from a number of premises scattered all over the State did not make it any the less an industrial undertaking. Unity of the industrial undertaking was not impaired by the number of places where the Board carried on its industrial undertaking. Similarly the fact that the clerical staff of the Board was scattered in a number of buildings all over the State did not impair the unity of the concept of the Board as a commercial establishment. All that was required was that the Board should be an industrial undertaking, and that there should be a clerical department of that undertaking. That clerical department could then constitute a commercial establishment within the meaning of Section 2(3) of the Act.

4. The learned Counsel for the petitioner urged that several provisions of the Act would prove unworkable, if the entire clerical establishment of the Board was treated as one commercial establishment within the meaning of Section 2(3) of the Act. That argument really proceeded on mixing up references in the Act to premises of the establishment and references to the "establishment," in the sense of the clerical staff of the industrial undertaking. Besides, the question at issue, whether the clerks of the Board constitute a clerical department within the meaning of Section 2(3), has to be answered, as I have already pointed out, without any reference to the geographical location or locations where the clerical staff works. Since the members of the clerical staff of the Electricity Board are persons employed within the meaning of Section 2(12)(ii) of the Act, and they constitute the clerical department of the Board, and since the Board is undoubtedly an industrial undertaking, the members of the clerical staff who constitute the clerical department of the Board satisfied the requirements of the definition of Section 2(3) of the Act. They therefore constituted a commercial establishment as defined by Section 2(3).

5. The next question is, whether the commercial establishment in question, that is, the clerical staff or the clerical department of the Board, is exempted from the operation of the Act by any of the statutory provisions. It was certainly not a case where the Government exercised the power of exemption vested in it by Section 6 of the Act. The contention of the learned Counsel for the petitioner both before the Labour Commissioner and before me, that even if the clerical staff constituted a commercial establishment within the meaning of Section 2(3) of the Act, the provisions of the Act would still not apply to the persons employed in that establishment, was based upon Sections 4(i)(c) and 4(1)(f) of the Act.

Section 4(i)(c) provides:

Nothing contained in this Act shall apply to establishments under the Central and State Governments, local authorities, the Reserve Bank of India, a railway administration, operating any railway as defined in Clause (20) of Article 336 of the Constitution and cantonment authorities.

The contention of the learned Counsel for the petitioner was that clerks employed under the Board constituted an establishment under a Central and/or the State Government Within the meaning of Section 4(1)(c). Alternatively the contention was that the Board was a local authority, and the clerical staff was under that local authority.

6. In the absence of any definition in the Madras Shops and Establishments Act itself of what "local authority" means, that expression has to be given the meaning accorded to it by Section 3(17) of the Madras General Clauses Act I of 1891:

Local authority shall mean a municipal committee, district board, body of port commissioners or other authority legally entitled to or entrusted by the Government with the control or management of municipal or local fund".

7. The Board constituted under the Electricity Act did not satisfy any of these requirements, and it could not therefore fall within the scope of the statutory definition of local authority. The learned Counsel for the Board contended that the Board should be viewed as an authority entitled to or entrusted by the Government with the control or management of a municipal or local fund. The provisions of the Electricity Act constitute the Board an autonomous body, no doubt subject to the control of the Government, with powers of disposal over its assets and funds. But the assets of the Board cannot be viewed as a municipal local fund within the meaning of Section 3(17) of the General Clauses Act (I of 1891). The contention of the learned Counsel for the petitioner, that the Board constituted under the Electricity Act is a local authority within the meaning: of Section 4(1)(c) of the Shops and Establishments Act, fails.

8. The next question is, whether the clerical staff of the Board could be viewed as an establishment under the Central or State Government within the meaning of Section 4(1)(c) of the Shops and Establishments Act. That the Electricity Act gives the State Government a measure of control over the activities of the Board, which, subject to that control, is an autonomous body, did not admit of any doubt. I do not think it is necessary to discuss in detail the statutory provisions of the Electricity Act to examine the degree of control which the State Government could lawfully exercise. It was clear that the employees of the Board were not employees of the State Government. The clerical employees of the Board constituting an establishment and a commercial establishment within the meaning of Section 2(3) of the Shops and Establishments Act, were not the clerical employees of the State Government, and therefore the establishment cannot be viewed as an establishment under the State Government within the meaning of Section 4(1)(c) of the Act. That the Board was under the control of the State Government did not make the employees, employees of the Government, nor did it make the establishment consisting of the clerical employees, an establishment under the State Government. It is the direct relationship of master and servant between the State Government and the persons employed in the establishment or commercial establishment that is

necessary to take that establishment outside the scope of the Act u/s 4(1)(c). As I have said, that the State Government can exercise control over the activities of the Board is not enough to view the clerical staff of the Board as constituting an establishment under the State Government. Section 4(1)(c) therefore does not apply.

9. Section 4(1)(f) provides:

Nothing in this Act shall apply to establishments?Which?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. The learned Counsel for the petitioner contended that the requirements of Section 4(1)(f) were satisfied, because the service conditions of the clerks in the employ of the petitioner Board were governed by regulations promulgated by the Board u/s 79(c) of the Electricity Act, which constituted a "separate law" within the meaning of Section 4(1)(f) of the Shops and Establishments Act. Alternatively, the learned Counsel contended that the provisions of the Industrial Employment Standing Orders Act (20 of 1946) would have applied to the clerical personnel but for Section 13B of that Act, and that therefore this would be a case of an establishment governed by a separate law within the meaning of Section 4(1)(f).

11. What Section 4(1)(f) requires is that in respect of matters dealt with by the Madras Shops and Establishments Act, a given establishment should be governed by a separate law for the time being in force, in the State. As the preamble of the Shops and Establishments Act sets out, it is an Act to provide for the regulation of conditions of work in shops and commercial establishments, The Act regulates among others

- (1) the hours of work and the spreadover (Chap. III),
- (2) holidays and leave (Section 16 of Chap. III and Chap. VI);
- (3) prohibition of employment of children and employment of young persons only during prescribed hours and for shorter periods than adults;
- (4) the health and safety of the persons employed by regulating the cleanliness, safety and sanitation of the premises (Chap. V);
- (5) payment of wages and termination of services (Chap. VII).

The requirements of Section 4(1)(f) will be satisfied only if a separate law in force in the State, governs a given establishment with reference to all these matters. Even if absolute identity is not necessary, there must be a substantial identity of the field of legislation. Section 4(1)(f), it should be remembered, directs that nothing in the Shops and Establishments Act would apply if the requirements of Section 4(1)(f) are satisfied, that in respect of an establishment it is governed by separate law for the time being in force in the State in respect of the matters dealt with by the Shops and Establishments Act. Whether the

expression "law" should be construed to mean as one enactment or would include more enactments than one, need not be specifically answered in this case. Assuming without deciding it, that the expression " law " would take, within it more enactments than one, what has to be established is that the law, whether it consists of a single enactment like, for example, the Madras Beedi Industrial Premises (Regulation of Conditions of Work) Act (32 of 1958), or more enactments than one, is in respect of matters dealt with by the Madras Shops and Establishments Act. Section 4(1)(f), for example, does not direct that if there is any other provision of law dealing with any given topic dealt with by the Madras Shops and Establishments Act, that provision to that extent in the Shops and Establishments Act would give way to the other law. To illustrate the point, if there is an enactment governing the conditions of service of employees of the Electricity Board and that enactment did not deal with any of the other matters covered by the Madras Shops and Establishments Act, that would not be enough to satisfy the requirements of Section 4(1)(f) of the Act. The learned Counsel for the petitioner contended that the clerical staff of the Electricity Board would have been governed by the Industrial Employment Standing Orders Act (20 of 1946) but for the operation of Section 13B of the Act. The preamble of the Act 20 of 1946 sets out that the object of that enactment was to define with sufficient precision the conditions of employment in Industrial establishments. Apart from the preamble, an examination of the provisions of Act 20 of 1946 should suffice to show that the object and the scheme of that enactment are different from those of the Madras Shops and Establishments Act, and Act 20 of 1946 cannot be viewed as the law in force in respect of the matters dealt with by the Madras Shop a and Establishments Act within the meaning of Section 4(1)(f). In this view of the case, I do not consider it necessary to discuss whether the contention of the learned Counsel for the petitioner is well founded, that the Madras Electricity Board is outside the scope of Act 20 of 1946 by the operation of Section 13B of the Act.

12. The next contention of the learned Counsel for the petitioner was that the termination of the services of the temporary clerks employed under the petitioner Board was governed by the regulations promulgated by the Board u/s 73(c) of the Electricity Act, and that that constituted a law within the meaning of Section 4(1)(f) of the Madras Shops and Establishments Act, and therefore the requirements of Section 4(1)(f) were satisfied to secure the exemption claimed by the petitioner Board. It is no doubt true that transitory regulations have been issued by the Board u/s 73(c) of the Electricity Act, in effect applying to the employees under the Board the service rules and conditions of service applicable to the civil servants under the State Government. That, however, as I have already explained, is not enough. It is not enough if one of the matters dealt with by the Madras Shops and Establishments Act is dealt with by any other law for the time being in force in the State. What Section 4(1)(f) demands, as I have already pointed out, is that with reference to a given establishment there must be another law in force in respect of the matters dealt with by the Madras Shops

and Establishments Act. Obviously With two such laws operating on the same establishment, possibilities of conflict may arise and such conflict has to be avoided. That was the principle that underlay Section 4(1)(f) of the Act. Overlapping of legislation with reference to one or more of the matters dealt with by one Act, for example, the Madras Shops and Establishments Act, is not unfamiliar, but Section 4(1)(f) does not exclude a specific provision of the Madras Shops and Establishments Act where there is such overlapping. If there were to be such overlapping, it might well be a case for the exercise of the power of exemption granted by Section 6 of the Shops and. Establishments Act. The regulation promulgated by the Board, on which the learned Counsel for the petitioner, relied, could at best be viewed as covering one of the matters dealt with by the Madras Shops and Establishments Act, and that, I must, repeat, is not enough to satisfy the requirements of Section 4(1)(f) of the Act. In that view of the case I do not consider it necessary to pronounce any concluded opinion of mine on the question, whether the regulation promulgated by the Board u/s 73(c) of the Electricity Act is a law within the meaning of Section 4(1)(f) of the Madras Shops and Establishments Act.

13. The learned Counsel for the petitioner contended that the other matters dealt with by the Madras Shops and Establishments Act were also dealt with partly by other enactments and partly by executive instructions with reference to the clerical personnel employed by the Board. The hours of work for example, he explained, were regulated by the District Office Manual. Holidays, he contended, were regulated by the Negotiable Instruments Act. I do not propose to examine the details, because the Fundamental Rules applicable to Government employees and the executive instructions applicable to them can in no event be viewed as law within the meaning of Section 4(1)(f) of the Madras Shops and Establishments Act. The learned Counsel for the petitioner failed to establish that taking all the enactments, applicable to the clerical department of the Electricity Board, there is any other law in force with reference to the matters dealt with by the Madras Shops and Establishments Act.

14. In my opinion the Commissioner was right in holding that neither the requirements of Section 4(1)(c) nor those of Section 4(1)(f) were satisfied by the petitioner.

15. Thus the position is, the clerical staff of the petitioner Board, which is an industrial undertaking, is a commercial establishment as denned by the Madras Shops and Establishment Act. It has not been exempted from the operation of the Act u/s 6. The statutory exemption for which Section 4(1)(c) and Section 4(1)(f) provided did not come into play. The Commissioner was therefore right in holding that the clerical employees were persona who could claim the benefit of the Madras Shops and Establishments. Act.

16. The rule nisi is discharged and the petition is dismissed. No order as to costs.