

(1967) 06 OHC CK 0005
In the Orissa High Court

Niroj Kumar Sen and Another

APPELLANT

Vs

Inspector under the Orissa Shops and Commercial
Establishments Act

RESPONDENT

Date of Decision : 27-06-1967

Acts Referred:

Orissa Shops and Commercial Establishments Act, 1956 — Section 4, 4(4)

Citation : (1967) 33 CLT 858 : (1967) 2 LLJ 417

Hon'ble Judges : G.K. Misra, J

Bench : Single Bench

Judgement

G.K. Misra, J.—Petitioners have been convicted under Rule 29 of the Orissa Shops and Commercial Establishments Rules, 1958 (hereinafter referred to as the rules), and sentenced to pay a fine of Rs. 5 each, in default to undergo simple imprisonment for two days each.

2. It is the common case that the registration certificate of the petitioners' establishment was valid till 31 December 1964. An application for renewal of the registration certificate was filed on 4 November 1964. By a letter dated 17 June 1965 the inspector intimated the petitioners that their registration certificate had been duly renewed for the year 1965. The petitioners were convicted for not having renewed their registration certificate in time.

3. The main defence of the petitioners was that Rule 4 of the rules providing for an application for renewal of registration is ultra vires the Act and contravention of such rule could entail no punishment and that when a renewed registration certificate was Issued as per letter dated 17 June 1965, It was valid for the entire year. This contention requires close examination of some of the provisions of the Orissa Shops and Commercial Establishments Act, 1956 (hereinafter referred to as the Act), and the rules. Section 4 of the Act occurs In Chap. II dealing with registration of establishments. Under Sub-section (1) the employer of every establishment shall send to the inspector of the area concerned a statement in the prescribed form together with such fees as may be prescribed.

On receipt of the statement and the fees the Inspector shall, on being satisfied about the correctness of the statement, register the establishment; In the register of establishments in such manner as may be prescribed and shall Issue, in a prescribed form, a registration certificate to the employer see Sub-section (2).

4. Section 35 prescribes punishment for contravention of the provisions of Section 4.

5. Section 42 empowers the State Government to make rules. Sub-section (1) lays down that the State Government may make rules for the purposes of carrying Into effect the provisions of this Act and also with reference to all matters expressly required or allowed by this Act to be prescribed.

6. One of the provisions, as appears from Chap. II, is regarding registration of establishments and issue of registration certificate which shall be prominently displayed at the establishment. The certificate so Issued is not a permanent one. It is to be renewed. Renewal of registration certificate thus directly comes within the scope and ambit of the rule-making power u/s 42 (1) of the Act.

7. Sub-section (3) of Section 42 also authorizes the State Government to make provision by rules for Imposing punishment for contravention of the rules.

8. Under the rule-making power, the relevant Rules 4, 6 and 29 have been framed.

9. Rules 4 and 6 run thus:

Rule 4: "Within the period specified in Sub-section (4) of Section 4 of the Act, the employer of every establishment shall submit to the inspector of the area concerned an application in form 1 together with the treasury chalan in token of payment of the prescribed fee, for registration or renewal of registration of the establishment:

Provided that an application for the renewal of the registration shall be made so as to reach the Inspector not less than two months before the date on which the current registration expire?, and If the application is so made, the premises shall be held to be duly registered until such date as the Inspector renews or, otherwise disposes of the application.

Rule 6: "Every certificate granted under Rule 5 shall remain In force till the end of 31 December of the year in which it is so granted.

Rule 5 refers to issue of registration certificate in form 3,

10. Rules 4 and 6 thus read together make it clear that the establishment must have registration certificate which remains in force till the end of 31 December of the year in which it is so granted. The employer shall have to renew his certificate. If he makes the application not less than two months before the date on which the current registration expires, the premises shall be recorded to have

been duly registered even though no registration certificate was actually Issued.

11. In this case, the application for renewal was made on 4 November 1964 which fell within two months from 31 December 1964 when the registration certificate for that year expired. The registration certificate for 1965 was renewed on 17 June 1965. From 1 January 1965 till the date when the certificate was renewed, petitioners cannot be said to have possessed a registration certificate and the premises should be deemed not to have been registered. That amounts to a clear contravention of Rule 4.

12. Rule 29 prescribes the penalty. It Says that any person who contravenes any of the provisions of the rules shall, on conviction, If no other penalty is already provided in the Act for such contravention, be punishable with fine which may extend to fifty rupees. In the Act there is no provision for imposition of penalty for non-renewal of registration certificate. Rule 29 in terms applies. The conviction is well-founded. The sentence is not heavy.

13. As has already been discussed, Rules 4, 6 and 20 come within the ambit of the rule making power provided In Section 42 of the Act.

14. The revision falls and is dismissed.