

(1993) 02 BOM CK 0038

In the Bombay High Court

Case No : Appeal No. 1271 of 1990 in Writ Petition No. 3180 of 1986

Rasheed A. Maskati and Others

APPELLANT

Vs

Abbas Ali Hussaini M. and Others

RESPONDENT

Date of Decision : 09-02-1993

Acts Referred:

Bombay Shops and Establishments Act, 1948 — Section 2(4)
Minimum Wages Act, 1948 — Section 2(i), 3

Citation : (1999) 3 LLJ 331

Hon'ble Judges : S.H. Kapadia, J;M.L. Pendse, J

Bench : Division Bench

Advocate : R.L. Dalal, instructed by Desai and Diwanji, for the Appellant; N.M. Ganguli, for the Respondent

Final Decision : Dismissed

Judgement

S.H. Kapadia, J.—This Appeal has been filed by the Petitioners who seek to challenge the judgment of the learned Single Judge dated January 18/19, 1990, in the above Writ Petition No. 3180 of 1986.

2. The facts giving rise to this Appeal, briefly are as follows :

(a) The appellants are the trustees of Maskati Charitable Property Trust, registered under the Bombay Public Trust Act. The appellants, as trustees, are owners of immovable property known as Maskati Court situate at Churchgate, Bombay. The said building is occupied by tenants. In the said building, respondent No. 1 has been working as a liftman and as a motor pump operator from 1961. At the time of initial appointment, he was paid monthly salary of Rs. 70/- to Rs. 80/-.

(b) Respondent No. 1 filed application No. 28 of 1985 in the Court of Competent Authority appointed under the Minimum Wages Act, 1948. By the said application, respondent No. 1 claimed difference in minimum wages payable under Item 17 Part-I of the Schedule to the Minimum Wages Act, 1948, from

September 1, 1983 to July 31, 1985, at the rate of Rs. 600/- amounting to Rs. 9,825/-. Respondent No. 1 was paid Rs. 225/- per month at the time of Application which was not in consonance with the rate of minimum wages prevailing in the year 1985, and in the circumstances, he sought to claim the difference to the extent of Rs. 9,825/-. By the said Application he sought overtime and other benefits.

(c) The said application was opposed by the appellants, who filed their reply on March 20, 1986. By the said reply it was contended by the appellant that it was a charitable institution to which the provisions of Minimum Wages Act, 1948 did not apply; that respondent No. 1 was not an employee u/s 2(i) of the Minimum Wages Act, 1948; that appellants did not carry on any organised or systematic activity to bring appellants within the ambit of Section 2(4) of the Bombay Shops and Establishments Act, 1948 and in the circumstances, it was submitted that the application preferred by respondent No. 1 was misconceived and not maintainable under the provisions of the Minimum Wages Act, 1948.

(d) Before the Authority, the evidence of the first respondent clearly indicates that he was in the employment of the trust as a liftman and as a water pump operator from 1970; that the building Maskati Court was a five to six storeyed building; that about 17 to 20 tenants occupied the premises in the said building and that the rest of the tenements were in possession of the trustees; that in the year 1986, the respondent No. 1 was getting monthly wages of Rs. 225/- and he was required to work from 9.00 a.m. in the morning when he was required to clean the lift and attend to it and he was also required to operate the water pump from 11.00 a.m. to 12.00 noon in the morning and from 7.00 p.m. to 10.00 p.m. in the evening. Similarly, he used to operate the lift from 9.00 a.m. to 2.00 p.m. and from 4.00 p.m. to 11.00 p.m.

(e) The evidence of Shri Kajiji, one of the trustees of the appellants shows that the trust did employ, besides respondent No. 1, other workmen to do the work of the trust such as collection of rent, sweeping, pumping of water etc. The evidence on behalf of the appellants also shows that respondent No. 1 was appointed to do the work of operating the water pump and to attend to the lift. The said evidence also shows that in all, there were 23 tenants and apart from respondent No. 1, there were other workmen who used to do other works like collection of rent, payment of taxes to the various authorities etc.

(f) In view of the above pleadings and evidence led before the Competent Authority, the second respondent came to the conclusion by its order dated October 29, 1986, that respondent No. 1 was an employee within the meaning of Section 2(1) of the Minimum Wages Act, 1948, and that he was entitled to the difference in the minimum wages and the wages actually paid to him as claimed by him. Respondent No. 2 has given the above findings on the basis that respondent No. 1 was employed by the trust to do the above work, which was in the nature of semi-skilled work; that he was doing the work from 1960; that he was paid fixed amount every month which was less than the minimum wages u/s

3(1)(a) r/w Item 17, Part-I of the Schedule to the Minimum Wages Act; that the work carried out by the respondent No. 1 fell within the ambit of Item 17 of Part I of the Schedule to the Minimum Wages Act, 1948; that the building consisted of six storeys having 23 tenants and further that the appellant-trust was a "commercial establishment" within the meaning of Section 2(4) of the Bombay Shops and Establishments Act, 1948, and as such, the establishment of the appellants was scheduled employment under Item 17 of Part-I of the Schedule to the Minimum Wages Act, 1948. The respondent No. 2 also came to the conclusion that as per Item 17 of Part I of the Schedule of Employment, even "commercial establishment" as defined u/s 2(4) of the Bombay Shops and Establishments Act, 1948, included a charitable trust and in the circumstances, after considering the various authorities cited before the second respondent, the second respondent came to the conclusion that respondent No. 1 was entitled to be paid minimum wages.

(g) Being aggrieved by the said order of the second respondent dated October 29, 1986, the appellants preferred the above Writ Petition No. 3180 of 1986. Before the learned Single Judge, basically the same arguments were reiterated. The learned Single Judge, after considering the evidence, came to the conclusion that the appellant-trust was a "commercial establishment" as defined u/s 2(4) of the Bombay Shops and Establishments Act; that it carried on systematic activity which was organised with the co-operation between the employer and employee for the purpose of rendering services to satisfy human wants and wishes. The learned Single Judge also came to the conclusion that after the enactment of the Maharashtra Act 64 of 1977 which amended Section 2(4) of the Bombay Shops and Establishments Act, 1948, a charitable trust which carries on any business, trade, profession or work in connection thereto, whether for the purposes of gain or not, inter alia was included in the definition of the word "commercial establishment". The learned Single Judge also came to the conclusion that the appellant-trust were also owners of various buildings apart from the above mentioned Maskati Court and that besides respondent No. I the appellant-trust did employ other employees and in view of the said facts and circumstances, the learned Single Judge came to the conclusion that the appellant-trust would certainly fall within the definition of the expression "commercial establishment" as defined in Section 2(4) of the Bombay Shops and Establishments Act, 1948 and the work carried on by respondent No. 1 would fall within the category of scheduled employment under Item 17 of Part-I of the Schedule to the Minimum Wages Act. In the circumstances, the Writ Petition preferred by the appellant-trust was dismissed.

(h) Being aggrieved by the said judgment, the appellant-trust preferred the present Appeal.

3. On behalf of the appellant, Mr. Dalai, the learned counsel submitted in the instant case the appellant-trust would not be covered by the definition of the word "commercial establishment" as defined u/s 2(4) of the Bombay Shops and

Establishments Act, 1948, for the reason that it did not carry out any systematic activity which was organised with the co-operation between the employer and employee and nor was such an activity rendered for the purposes of any profession, trade or business or distribution of goods and services. Mr. Dalai further submitted that in the present case the trust, which was a charitable trust, did not carry on any commercial activity or a systematic activity inasmuch as there was no gain or profit involved and secondly, no other workman was employed by the trust to carry on the activity which would bring it within the definition of the word "commercial establishment" as defined u/s 2(4) of the Bombay Shops and Establishments Act, 1948. Mr. Dalai further submitted that in view of the provisions of the Bombay Shops and Establishments Act, no service would be said to have been rendered as the trust was not in a position to let out the premises time and again and in the circumstances, the activity of the trust cannot be called as an organised or systematic activity so as to attract provisions of the Bombay Shops and Establishments Act read with the provisions of Minimum Wages Act.

4. There is no merit in any of the above contentions of the learned counsel for the appellant. Firstly, the above facts clearly show that respondent No. 1 was employed in 1961 at a meagre salary of Rs. 70/- per month. Even in the year 1986, respondent No. 1 was paid a very meagre salary which was much less than the salary which is contemplated u/s 3(1)(a) read with Item 17 of Part-1 of the Schedule to the Minimum Wages Act, 1948. Even by reason of the impugned order of respondent No. 2, appellant-trust is directed to pay the difference of Rs. 2,254.50 ps. which is a very small amount and in the circumstances of the case, there is no warrant in any event, to interfere with the order of the Competent Authority under the Minimum Wages Act as well as with the judgment of the learned Single Judge under Article 226 of the Constitution. Secondly the evidence on record clearly indicates that appellant-trust are the owners of Maskati Court building having 23 tenants and, apart from the said building, are also owners of two or three other buildings. The evidence also shows that the nature of work carried on by respondent No. 1 was both as that of a liftman as well as a pump operator which squarely falls in the category of semi-skilled nature. Further, the evidence also indicates that besides respondent No. 11 there were other employees employed by the trust such as rent collector, sweepers etc. which also indicates that the activity of the trust was not only organised activity, but it was a systematic activity carried on by the trust with the co-operation of the employer and employee relationship. The said activity clearly shows that services were rendered by the said employees to the tenants of the building and in the circumstances, all the three tests of organised activity, systematic activity and rendering services to the tenants, which constitute a commercial activity as defined u/s 2(4) of the Bombay Shops and Establishments Act, stood clearly attracted to the facts of the present case. Thirdly, a bare reading of the said definition of "commercial activity" u/s 2(4) of the Bombay Shops and Establishments Act clearly indicates that gain, as a factor, is ruled out by the

Legislature and once it is established that the above organised systematic activity is carried on by the trust to which services are rendered by the employee, then the definition squarely applies to the facts of the case.

5. Mr. Dalai, on behalf of the appellants, heavily relied upon judgment of the Supreme Court in *The Commissioner of Income Tax, Bombay City Vs. Shri R.H. Pandi, Managing Trustees of Trust, Bombay*, in support of his contention that there is no "commercial establishment" run by the appellants as appellants are not carrying on any trade, business of profession and they are a charitable trust registered under the Bombay Public Trust Act. As indicated above, there is no merit in the said contention advanced on behalf of the appellants. Firstly, the expression "commercial establishment" u/s 2(4) of the Bombay Shops and Establishments Act expressly applies to the societies registered under the Society Registration Act and also a charitable or other trusts which carry on business, trade or profession or work in connection which are incidental thereto. The judgment of the Apex Court deals with the Bombay Shops and Establishments Act as it stood prior to Maharashtra Act 64 of 1977. Secondly, as indicated above, on the facts and circumstances of the case, it is clear that a systematic activity has been carried on by the trust and its employees and in the circumstances, the tests laid in the above judgment of the Apex Court to bring an activity within the ambit of the Act would squarely apply to the facts of the case.

6. We agree with the learned Single Judge that respondent No. 1 was an employee u/s 2(i) of the Minimum Wages Act and that the appellant-trust constituted "commercial establishment" as defined u/s 2(4) of the Bombay Shops and Establishments Act and, therefore, the provisions of the Minimum Wages Act would squarely apply, particularly vide Item 17 of Part-1 of the Schedule to the Minimum Wages Act, 1948.

7. In the circumstances, there is no merit in this Appeal. The Appeal fails and is accordingly, dismissed with costs.