(1990) 01 BOM CK 0028

In the Bombay High Court

Case No : Writ Petition No. 3180 of 1986

Rasheed A. Maskati and others APPELLANT

Vs

M. Abbas Ali Hussaini and another RESPONDENT

Date of Decision : 18-01-1990

Acts Referred:
Minimum Wages Act, 1948 — Section 2, 20, 21, 22, 22A

Citation : (1990) 60 FLR 776 : (1991) 1 LLJ 78

Hon'ble Judges : D.N. Mehta, J

Bench : Single Bench

Judgement

1. The petitioners, who are the trustees of ''Maskati Charitable Property Trust'', have filed this writ petition praying for the issue of a writ of certiorari quashing the Judgment and Order dated 29th October 1986 passed by the Authority under the Minimum Wages Act, Bombay.

2. The petitioners herein are the trustees of Maskati Charitable Property Trust'' (hereinafter referred to as "the said Trust"), which owns a building known as ''Maskati Court'', situated at Maharshi Karve Road, Churchgate, Bombay. Apart from the Maskati Court Building, the petitioners are also the owners of a few other properties with tenanted flats. Respondents No. 1, M. Abbas Ali Hussaini was employed by the said Trust as a Liftman-cum-water pump operator.

Respondent No. 1 contended that the said Trust was a "commercial establishment" within the meaning of the Minimum Wages Act, 1948 and hence he was entitled to the minimum wages permissible under the said Act.

3. Respondent No. 1 filed an application in the Court of the Authority under the Minimum Wages Act, Bombay, being Application (M.W.A.) No. 28 of 1985, contending that the said Trust was an "employer"within the meaning of Section 2(e) of the Minimum Wages Act and that the applicant was an "employee" within the meaning of Section 2(i). The said Trust was, therefore, obliged to pay him the minimum wages fixed under the Minimum Wages Act.

4. After hearing both the parties, the Authority under the Minimum Wages Act, Bombay, by his Judgment and Order dated 29th October, 1986 came to the conclusion that the said Trust was a "commercial establishment" and direct the Opposite party in the Trial Court, who are the petitioners herein, to deposit a sum of Rs. 2,254.50 Ps. as difference in wages together with Court Fees and costs.

5. Being aggrieved by the said Judgment and Order of the Authority under the Minimum Wages Act, the petitioners have now moved this Court under Article 226 of the Constitution of India praying that the said Judgment and Order be quashed as the same was based on a misinterpretation of law.

6. The short issue which needs to be decided in this writ petition is whether the said Trust was a "commercial establishment" under item 17 of Part I of the Schedule annexed to the Minimum Wages Act, and whether Respondent No. 1 herein would fall within the definition of an "employee" u/s 2(i) of the said Act.

7. Shri Dalal, learned Counsel appearing on behalf of the Trustees, the petitioners herein, contended that the Authority under the Minimum Wages Act had erred in coming to the conclusion that Maskati Charitable Property Trust was a "commercial establishment". Shri Dalal contended that the three criteria laid down by the Supreme Court for an establishment to be termed as "commercial establishment" were not satisfied in the case of the Trust and, therefore, the provisions of the Minimum Wages Act would not apply in the instant case. Shri Dalal contended that, firstly, there was no systematic activity; secondly, there was no organisation run by the co-operation between the employer and the employee; and thirdly, there was no production and/or distribution of goods and services calculated to satisfy human wants and wishes. Hence the Trust could not be termed as a "commercial establishment" and would not fall within the purview of the Minimum Wages Act.

8. In support of his submission, Shri Dalal has cited various authorities of the Supreme Court, our Court and the other High Courts. I shall deal with these authorities at a later stage. It will be pertinent, firstly to cite the provisions of the Minimum Wages Act as also of the Bombay Shops and Establishments Act, 1948.

9. It will be pertinent, in the first instance, to set out the definition of "employer" as defined in Section 2(e)(iv) of the Minimum Wages Act. Section 2(e)(iv) is in the following terms :

"2(e) (iv) : in any other case where there is carried on any scheduled employment in respect of which minimum rates of wages have been fixed under this Act, any person responsible to the owner for the supervision and control of the employees or for the payment of wages;"

Expression " employee" has been defined u/s 2(i) of the Minimum Wages Act in the following terms :

"2(i) : "employee" means any person who is employed for hire or reward to do any work skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed, and includes an out-worker to whom any articles or materials are given out by another person, to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out-worker or in some other premises not being premises under the control (and management of that other person; and includes for the purposes of Sections 20, 21, 22, 22-A, 22-C and 22-D, any person who has been an employee and who has ceased to be so by reason of superannuation, retirement, dismissal, removal, discharge, termination of his service, or otherwise howsoever); and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the Union."

Section 3 of the Minimum Wages Act provided for fixing of minimum rates of wages. Section 3 is in the following terms :

"Section 3(1) : The appropriate Government shall, in the manner hereinafter provided, -

(a) fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification u/s 27 :"

In item 17 of the schedule annexued to the Minimum Wages Act, ''the scheduled employment'' consists of :

"17. Employment in any Shop or Commercial Establishment (not being an employment in any bank or an employment which is included) under any of the other entries in this Schedule."

10. Now, it is pertinent to point out that the expression "commercial establishment" has not been defined either under the Minimum Wages Act or the Rules made thereunder. That expression has been defined u/s 2(4) of the Bombay Shops and Establishments Act, 1948 in the following terms :

"(4) : "Commercial establishment" means an establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession (and includes establishment of any legal practitioner, medical practitioner, architect, engineer, accountant, tax consultant or any other technical or professional consultant and also includes) a society registered under the Societies Registration Act, 1966, and a charitable or other trust, whether registered or not, which carries on (whether for purposes of gain or not) any business, trade or profession or work in connection with or incidental or ancillary thereto but does not include a factory, shop, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment :"

Under this definition, therefore, a charitable or other trust, whether registered or not, which carried on, whether for purposes of gain or not, any business, trade or profession or work in connection with or incidental or ancillary thereto would be termed as a "commercial establishment".

11. Shri Dalal submitted that although a charitable or other trust was included in the definition of a "commercial establishment", the Trust in the instant case would not be covered for the reason that it did not carry out any systematic activity which was organized with the co-operation between the employer and the employee nor was such activity for the purpose of production and/or distribution of goods and services calculated to satisfy human wants and wishes. Shri Dalal contended that there was no commercial activity carried on by the said Trust, of which the Petitioners were the trustees

12. In support of his submission, Shri Dalal relied on the observations of the Supreme Court in the case of Dr. Devendra M. Surti Vs. The State of Gujarat, to the effect :-

"It is, therefore, clear that a professional activity must be an activity carried on by an individual by his personal skill and intelligence. There is a fundamental distinction, therefore, between a professional activity and an activity of a commercial character and unless the profession carried on by the appellant also partakes of the character of a commercial nature, the appellant cannot fall within the ambit of Section 2(4) of the Act."

13. Shri Dalal then relied on the observations of the Supreme Court in the case of V. Sasidharan Vs. Peter and Karunakar and Others, . This was a case under the Kerala Shops and Commercial Establishments Act and the issue before the Court was whether the office of a lawyer or a firm of lawyers was a "commercial establishment" under sub-section (4) of Section 2 of that Act. Their Lordships held (P. 387) :

"Learned counsel for the appellant argues that a lawyer''s office is a commercial establishment because, persons who are employed in that office are mainly engaged in office work. This argument overlooks that, under the second clause of the definition in Section 2(4), "commercial establishment" means an establishment or administrative service in which the persons employed are mainly engaged in office work." Partly, we go back to the same question as to whether a lawyer''s office is an ''establishment'' within the meaning of the Act. The other aspect which this argument fails to take note of is that a lawyer''s office is not an ''administrative service''. It seems to us doing violence to the language of the second clause of Section 2(4) to hold that a lawyer''s office is an ''administrative service''. This argument has therefore to be rejected.

The proposition is well-established that words which occur in the same context must take their colour from each other. It is unrealistic to dissect the definition clause in Section 2(4) and to catch a word here or there in order to bring a lawyer''s office within the four corners of the definition of ''commercial establishments. The various clauses of that definition would show that establishments, far apart from professional offices, were within the contemplation of the Legislature.

For these reasons, we are of the opinion that the office of a lawyer or of a firm of lawyers is not a "commercial establishment" within the meaning of the Act".

14. Shri Dalal also relied on two decisions of this Court where the issue related to the definition of the term "commercial establishment". In the case of Merchant (N.E.) Vs. Bombay Municipal Corporation, , the Court was faced with the issue whether a firm of Chartered Accountants could be termed as "commercial establishment" under the Bombay Shops and Commercial Establishments Act. The Court held (PP. 195-196) :

"In that part of work of the profession which entirely depends upon the personal intelligence and skill of the professional practitioner, these assistants have really little to offer. The work done by the assistants merely eliminates the drudgery part of the profession. The priest has his acolyte, the doctor his nurse and the laywer his devil. These respective pairs undoubtedly co-operate in the work they do for their clients or customers. But in the essential part of the professional business, the individual judgment or advice of the priest, the doctor and the lawyer alone is supreme, and in the formation of that judgment their assistants hardly play a recognisable part. That applies equally to the Chartered Accountant who has under him for training articled clerks. In the formation of the judgment and advice, the articled clerks have no place. Therefore, their co-operation with the Chartered Accountant in checking receipts and payments is not the sort of co-operation which will reduce what is essentially a profession to a commercial venture."

15. Shri Dalal also relied on the observation of this Court in the case of Narendra Keshrichand Fuladi and another Vs. State of Maharashtra, . The issue decided in this ruling related to the case of a lawyer''s office and whether it could be included within the definition of a "commercial establishment". Now, it appears that all the authorities cited and relied on by Shri Dalal related to establishments of professional persons, such as a lawyer, a doctor and a Chartered Accountant. None of these authorities dealt with the issue of a trust. After the enactment of the Maharashtra Act No.64 of 1977, which amended Section 2-A of the Bombay Shops and Establishments Act, 1948, a charitable or other trust which carried on, whether for purpose of gain or not, any business, trade or profession or work was included in the definition of a "commercial establishment"

16. In the instant case, the Trust, apart from the building Maskati Court, owned various other buildings, and the flats in these buildings were let out on rental basis. For the maintenance of these buildings, the petitioners employed several persons as liftman, watchman, sweepers, pump-attendant etc. With the help of this staff, the petitioners rendered service to the occupants of the flats. The question, therefore, is whether in these circumstances, it could be stated that the petitioners were trustees of a charitable trust which carried on, whether for the

purpose of gain or not, any business, trade or profession or work in connection with, or incidental or ancillary thereto.

17. Shri Ganguli, learned Counsel appearing on behalf of Respondent No. 1, has cited various authorities in support of his submission that the Trust was a "commercial establishment" and I shall consider these authorities at this stage. Shri Ganguli, firstly, relied on the observations of the Supreme Court in case of Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, , wherein it was observed (P. 388) :

"The image of industry or even quasi-industry is one of a plurality of workmen, not an isolated or single little assistant or attendant. The latter category is more or less like personal avocation for livelihood taking some paid or part-time from another. The whole purpose of the Industrial Disputes Act is to focus on resolution of industrial disputes and regulation of industrial relations and not to meddle with every little carpenter in a village or blacksmith in a town who sits with his son or assistant to work for the customers who trek in. The ordinary spectacle of a cobbler and his assistant or a cycle repairer with a helper we come across in the pavements of cities and towns, repeals the idea of industry and industrial dispute. For this reason, which applies all along with the line, to small professions, petty handicraftsmen, domestic servants and the like, the solicitor or doctor or rural engineer, even like the butcher, the baker and the candle-stick maker, with an assistant or without, does not fall within the definition of industry. In regular industries, of course, even a few employees are enough to bring them within Section 2(f). Otherwise automated industries will slip through the net." Dealing with the public trust for the benefit of the sick and ailing and sick animals, their Lordships further observed (P. 395) :

"Let there be no doubt that kindness to our dumb buffaloes, especially invalid, springs from the highest motives of fellow feeling. In the land of the Buddha and Gandhi no one dare argue to the contrary. So let there be no mistaking our compassionate attitude to suffering creatures. It is laudable and institutions dedicated to amelioration of conditions of animals deserve encouragement from the State and affluent philanthropists. But these considerations have no bearing on the crucial factors which invoke the application of the definition in the Act as already set out elaborately by us. The manner in which the activity in question is organised or arranged, the condition of the co-operation between the employer and the employee necessary for its success and its object to render material service to the community is a pivotal factor in the activity-oriented test of an ''industry''".

Relying on the observations cited above. Shri Ganguli submitted that, in the instant case, the Trust had employed organised labour for the beneficial working of the various buildings which the Trust owned and for the purpose of rendering service to the flat-owners. That being the case, petitioners Trust would be covered by the definition of "commercial establishment".

18. Shri Ganguli next cited a ruling of a learned Single Judge of this Court in the case of Shri Cutchi Visa Oswal Derawasi Jain Mahajan Vs. B.D. Borude, I.T. Maharashtra and others, , wherein the petitioners were a ''Public Trust'', the object of which was achieving unity amongst the members of the community, or development of social and educational life or to raise funds by acceptance of donations and subscriptions. The trust carried on its work with the help of forty-two workmen, like cashier, clerks, watchmen, sweepers, pujaris, Liftman, etc. In that judgment, the learned Single Judge observed (pp. 83-84) :

"Shri Cama then submitted that the Trust provides for spiritual benefits and not material benefits and, therefore, the petitioners could not be treated as an industry. The submission is that the petitioner Trust runs a temple and the people come to visit the temple to secure spiritual benefits and not material benefits, and, therefore, the workman like Pujari is not giving any material advantage to the devotees so as to consider the petitioner Trust as an industry. It is impossible to accede to the submission of the learned counsel whatever may be the aims and objects of the petitioner Trust, there is hardly any doubt that the petitioners are carrying out commercial activities by letting out godowns, halls, shops etc. It is futile to suggest that the petitioners merely provide spiritual benefits and not material benefits. It has come on record that the Pujari is engaged on a monthly salary and the Trust accepts donations and offerings before the deity. The Pujari is engaged for giving service to the devotees and the services are not necessarily spiritual in nature."

19. Shri Ganguli then relied on the decision of a learned Single Judge of this Court in the case of D. B. Khade v. Ramsingh Jaysingh 1986 (52) F.L.R. 378, which was the case of an establishment known as ''Khanna Construction House'', which owned certain buildings and rented out the flats of the building to various persons. The learned Judge held :-

"It is not possible to believe that the rental which the firm was receiving does not include profits. The very size of the establishment and quantum of the rent being recovered, implies that the Khanna Construction House is in the business of providing accommodation plus service to the residents, who, in consideration thereof, pay rent to the landlord. The question is whether this would amount to a "commercial establishment" within the meaning of Section 2(4) of the Shops Act ? In the said provision a "commercial establishment" includes an establishment which carries on any business. There is no reason why it should not be inferred that the owner of the building viz. The partnership, is in the business of providing accommodation and incidental services for a price. Having so found, I see no difficulty in holding that the enterprise amounts to a "commercial establishment" within the meaning of the expression in the Shops Act."

20. Now, the question is whether the Petitioners-trust would be covered by the definition of "commercial establishment". There is no doubt that the Petitioners have employed various workmen like the Liftman, watchmen, sweepers, pump-

attendant etc. and with their help the Trust provided service to the tenants of the flats. There is, therefore, organised labour employed by the Trust. Hence I have no hesitation in coming to the conclusion that in this case, the Petitioners-Trust would fall within the ambit of the definition of "commercial establishment" appearing in Section 2(4) of the Bombay Shops and Establishments Act, 1948.

21. Shri Dalal cited a ruling delivered by me in the case of Jagdish Amritlal Karia Vs. Madhusudan Nagindas Hundiwala and others, . That was a case wherein the State Government had issued a Notification, dated 7th February, 1951 under the Shops and Establishments Act, which was published in the Bombay Government Gazette, dated 15th February, 1951. Under the said Notification, an establishment engaged by landlord for the purpose of collection of rent of his property or for any other purpose in the management of his property would be an establishment u/s 2(B) of the Bombay Shops and Establishments Act, 1948. The petitioner was a landlord and carried on the work of collection of rent with the help of a single employee. The Petitioner-landlord was prosecuted under the provisions of Section 7(1) read with Section 5(1) of the Bombay Shops and Establishments Act. The question was whether the establishment of the landlord could be said to be a "commercial establishment" u/s 2(4) of the Bombay Shops and Establishments Act. Under the circumstances, it was held (P. 299) :

"I am of the view that in the instant case the petitioner cannot be called upon to register his office nor the estate of the petitioner as stated in the Inspection Notes, Exhibit ''C''. The petitioner as a landlord had not engaged an establishment for the collection of rents of his property or for any other purpose in the management of his property. That being the case, the petitioner''s office cannot be called "an establishment" which required registration under the provisions of the Notification, dated 7th February, 1951."

Now, the facts in the case of Jagdish v. Madhusudan (supra) were entirely different from the facts in the instant case. The issue involved was also entirely different. That being the case, the observations made in that judgment can be of no help to Shri Dalal in the present case.

22. As I have stated heretobefore, the Petitioners-Trust carried on organised activity with the help of several employees for the purpose of rendering service to the flat holders in the buildings owned by the Trust. That being the case, it must be held that the Petitioners-Trust is a "commercial establishment" u/s 2(4) of the Bombay Shops and Establishments Act. If that be the case, then the Petitioners-Trust would also be covered u/s 3(1)(a) of the Minimum Wages Act. The conclusion arrived at by the learned Authority under the Minimum Wages Act, Bombay, in his order, dated 29th October, 1986 is the correct conclusion and there is not reason for interference with the judgment.

23. In the result, the writ petition stands dismissed and the rule discharged. The petitioners will pay to Respondent No. 1 costs of the writ petition. Shri Dalal States that his clients had deposited a sum of Rs. 3,000/- towards the arrears of

Respondent No. 1. The Prothonotary and Senior Master. High Court, Bombay, will invest this amount in any nationalised bank for a period of six months in the first instance and thereafter for similar periods till further orders.

24. Shri Dalal applies for stay of my order for eight weeks. The order is stayed till 19th March, 1990.

