

(1959) 11 AHC CK 0015
In the Allahabad High Court

Shambhu Prasad and Another

APPELLANT

Vs

State of Uttar Pradesh

RESPONDENT

Date of Decision : 11-11-1959

Acts Referred:

Uttar Pradesh Shops and Commercial Establishments Act, 1947 — Section 27

Citation : (1960) 1 LLJ 431

Hon'ble Judges : M.C. Desai, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.C. Desai, J.—The applicants, who are father and son and own a shop In which kerana business is carried on in the name "Shambhu Prasad Kerana Shop," have been convicted u/s 27 of the Uttar Pradesh Shops and Commercial Establishments Act, 1947, for not closing it on a Tuesday which Is the close day for it. There Is no dispute about the facts. It is admitted by the applicants that they are the owners of the shop, that Tuesday is a close day for it and that on the particular Tuesday they kept the shop open and carried on business. On these admissions they were convicted and were rightly convicted.

2. The conviction la challenged on the sole ground that the applicants do not employ any employee in the shop and that consequently they could not be convicted u/s 27. For this proposition they rely upon Abld Ali v. the State 1958 I L.L.J. 734 in which my brother Mulla observed on p. 736:

It is a misapprehension that any shopkeeper who opens his shop on a close day is per se guilty of an offence u/s 10 of this Act and that only that shopkeeper who is also an employer, as defined in the Act, can be held guilty for opening his shop on a close day.

In that case the accused was the owner of the shop and It was contended that he was an employer but my learned brother held the contention to be not maintainable and observed at p. 736:

Employer by itself indicates that someone is employed by him and where there is no evidence that the owner of a shop had employed any workman, he does not become an employer, merely because he is an owner of a shop.;

and referred to the preamble of the Act which is:

It is expedient to provide for holiday and to regulate hours of employment and certain other conditions of employees in shops and commercial establishments.

and to the provision of Section 4 of the Act laying down that nothing in it shall apply to persons occupying positions of a confidential, managerial or supervisory character, persons whose work is inherently intermittent, offices of Government or of local authorities, establishments for the treatment or the care of the sick, infirm, etc., and " members of the family of any employer."

3. With great respect to my learned brother I do not agree that one cannot be an employer of a shop unless there in an employee or that a person cannot be convicted u/s 27 of the Act unless he has employed employees in the shop.

4. The word "employer" used in the Act has a special meaning given to it for the purposes of the Act and not the popular meaning. It simply means a person having charge of or owning the business of a shop; there arises no question whether he has employed any person in the shop or not. All that is required to convert a person into an employer is that he has the charge of, or owns, the business of a shop. It is not open to a Court to add some words in the definition or to restrict its scope by laying down that he must not only have charge of, or own, the business of the shop, but also employ persons to work in it. Even if there is no employee working in the shop, the person having the charge of, or owning, the business of it is an employer within the meaning of the Act. Just as "employer" has a special meaning given to it in the Act, so also the word " employee"; any person wholly or mainly employed on wages in or in connexion with any trade or business usually carried on in a shop is an employee, though In popular language the words "employer" and " employee " are related to each other, the words as used in the Act are not so related to each other and the Act contemplates the existence of an employer without there being an employee. " Shop " simply means premises where any wholesale or retail trade or business is carried on; it requires neither an employer, nor an employee and premises where such business is carried on are a shop even though the business is carried on by the owner without the employment of any employee. Section 10 provides that every employer shall close his shop on the close day and Section 27 punishes any person who contravenes this provision. The provision of Section 10 is contravened by an employer by not closing his shop on the close day and if this happens, the employer is liable to be punished u/s 27. The applicants are the employers being the owners of the business carried on in the shop. They did not close the shop on the close day and thereby contravened the provision of Section 10; they were, therefore, bound to be convicted u/s 27 of the Act. I do not understand how any question arises whether they employed any employee in the

shop or not; such a question is, in my opinion, irrelevant.

5. The preamble is not the operative part of the statute and can be used at the most only as a guide for interpretation in the case of an ambiguity in the statute. I find no ambiguity, whatsoever, either in Section 10 or in Section 27 or in the definition in Section 2. The definition of " employer " is very clear and no assistance from the preamble is required for interpreting it. The main object behind the Act seems to be to provide for holidays and to regulate the hours of employment and other conditions of employment but it does not follow that the Act could not contain any provision regarding a shop or commercial establishment in which no employees are employed. The object of providing for holidays has nothing to do with the employment of employees; legislature could have intended to provide for holidays even in those shops or commercial establishments in which no employees are employed. Consequently the law that an employer can be punished for not closing his shop on the close day even though he does not employ any employees, cannot be said to be in con-Slot with the preamble and it cannot be said that the preamble does not contemplate providing for holidays in shops and commercial establishments in which no employees are employed. The Act Imposes certain rights upon employees (for instance, Sections 8, 9, 11, 15, 22, etc.), certain liabilities and duties upon employers (for instance, Sections 6, 8, 9, 11, 15, 16, 22, 32, etc.), certain rights upon persons who are neither employers nor employees (for instance, Section 32) and certain liabilities and duties upon persons who are neither employers nor employees (for instance, Sections 7, 28, etc.). It prohibits or enjoins certain acts in respect of shops. Section 4 is so unhappily worded as to leave It in doubt which of thesis provisions are not to apply to the persons and the institutions mentioned In it. It seems, however, that the provisions of Section 4(c) and (d) mean that the institutions mentioned in them are not to be treated as shops; it is difficult to see how otherwise the Act can be said not to apply to them. The provisions of Section 4(a) when considered along with the provisos shows that persons occupying position of a confidential, managerial or supervisory character are not to be treated an employees. A person occupying position of a managerial character or a supervisory character may come within the definition of "employer," but the intention of the legislature behind the provision does not seem to exempt him from the liabilities and the duties imposed upon employers. The persons described in Section 4(b) are more likely to be employees than to be employers and what Is meant by the provision seerna to be that persons, whose work is inherently Intermittent, shall not be treated as employees. The remaining provision in Sub-section (8), like the other provisions relating to persons, must be interpreted to mean that the members of the family of an employer are not to be treated as employees. They may come within the meaning of "employer" if they are put in charge of the business of the shop; but there was no reason or justification for the legislature's exempting them from the duties and liabilities imposed upon employers under Sections 6, 8, etc. If they are wholly or mainly employed in connexion with any trade or business carried on In the shop, they

would come within the definition of " employees," but the legislature could have reasonably intended to exclude them from the definition. In any case the provision of Section 4(e) has got absolutely no connexion with the question whether Sections 10 and 27 apply only when employees are employed In the shop. The provision that certain persons, such as a person occupying position of a confidential character, or a person whose work is inherently intermittent, or a member of the employer"s family are not to be treated as employees, does not mean that there must be employees in every shop; what it means is simply this that where there is a question of a right of an employee or of a duty towards on employee, these persons shall not be treated as employees.

6. No other authority was referred to me. I, however, find that in Grandhi Mangaraju, Manager, Brothers Shop and Branches, Rajam, Srikakulam District Vs. Assistant Labour Inspector, Srikakulam and Another, It was argued that the rule fixing a close day for a shop even though no employees are employed in it was unreasonable. The argument was rejected; but what is material is that it was not even contended that the rule does not apply to a shop in which no employees are employed.

7. Even on facts the challenge to the conviction must fail because there is no evidence that no employees are employed in the shop.

8. Both the applicants being employers (as they are the proprietors of the shop) neither of them is entitled to the benefit of Section 4(e) because neither of them can be said to be a member of the family of an employer. Had the shop been owned by only one applicant, the other would be a member of his family and it would have been possible to argue that Section 10 did not apply to him and he was not liable to be prosecuted u/s 27.

9. The applicant on account of his previous convictions fully deserved the heavy punishment inflicted upon him by the Courts below.

10. The application is dismissed.