
(1953) 07 MAD CK 0005

In the Madras High Court

Case No : Letters Patent Appeal No's. 247 to 249 of 1952

South India Bank Ltd., Tirunelveli

APPELLANT

Vs

T.D. Pichuthayappan and Another

RESPONDENT

Date of Decision : 31-07-1953

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Tamil Nadu Shops and Establishments Act, 1947 — Section 1, 2(3), 2(6), 41, 41(2)

Citation : AIR 1954 Mad 377 : (1954) 1 LLJ 289 : (1953) 66 LW 1038 : (1953) 2 MLJ 639

Hon'ble Judges : Rajamannar, C.J;Venkatarama Aiyar, J

Bench : Division Bench

Advocate : K.V. Venkatasubramania Aiyar and T.P. Goplakrishnan, for the Appellant; Govt. Pleader, S. Mohan Kumaramangalam, for Row and Reddy, for the Respondent

Final Decision : Dismissed

Judgement

Venkatarama Aiyar, J.—The South Indian Bank Ltd., Tirunelveli, is the appellant in these appeals; the respondents were employed as clerks

in the said bank. As a measure of retrenchment, the bank terminated the services of a number of employees including the respondents. Against this

order, they appealed u/s 41(2) of the Madras Shops and Establishments Act, XXXVI of 1947, hereinafter referred to as the Act, to the

Commissioner for Workmen's Compensation, who held by his order dated 23-7-1951 that their discharge was not for a reasonable cause. The

bank thereupon filed W. P. Nos. 296 to 298 of 1951 for a writ of certiorari to quash the aforesaid order dated 23-7-1951, firstly on the ground

that the provisions of the Act were discriminatory in character and, therefore, repugnant to Article 14 of the Constitution and void; and secondly,

on the ground that the order in question was erroneous and without jurisdiction. Subba Rao J. who heard the petitions held that the provisions of

the Act were valid and that the order in question was within the jurisdiction of the tribunal and not liable to be set aside in proceedings by way of

writ. Against this judgment, the bank has preferred the above appeals.

2. The first contention urged in support of the appeals is that banks are not ""establishments"" as defined in Section 2(6) of the Act and that the

Commissioner for Workmen's compensation had, therefore, no jurisdiction to entertain an appeal against the order of the appellant terminating the

services of the respondents. Section 2(6) defines ""establishment"" as follows:

"Establishment" means a shop, commercial establishment, restaurant, eating-house, residential hotel, theatre or any place of public amusement or

entertainment and includes such establishment as the Provincial Government may by Notification declare to be an establishment for the purpose of

this Act.

Section 2(3) defines ""commercial establishment"" as follows :

"Commercial Establishment" means an establishment which is not a shop but which carries on the business of advertising, commission, forwarding

or commercial agency or which is a clerical department of a factory or industrial undertaking or which is an insurance company, joint stock

company, bank, brokers' office or exchange and include such other establishment as the Provincial Government may by notification declare to be

a commercial establishment for the purpose of this Act.

3. The point for decision is whether banks are comprised within the definition of ""establishments"" in Section 2(6). Section 2(3) mentions bank as

within the definition of ""commercial establishment"" and Section 2(6) defines ""establishment"" as meaning a ""commercial establishment"". Therefore,

banks are clearly ""establishments"" as defined in Section 2(6). Mr. K. V. Venkatasubramania Aiyar the learned advocate for the appellant contends

that u/s 2(3) it is not all banks that are ""commercial establishments"", but only such of them as are also ""establishments"" and that as the appellant is a

bank, but not an ""establishment"" as defined in Section 2(6), it is outside the mischief of the Act. This argument involves that the definition of

establishment"" in Section 2(6) should bodily be imported into the definition of ""commercial establishment"" in Section 2(3) and that accordingly

when that definition enacts that a "commercial establishment" means "an establishment which is a clerical department of a factory or industrial undertaking or which is an insurance company, joint stock company, bank, brokers' office or exchange", it should be read as "commercial establishment" means restaurant, eating-house, residential hotel, theatre or any place of public amusement or entertainment, which is a clerical department of a factory or industrial undertaking or which is an insurance company, joint stock company, bank, brokers' office or exchange. To limit clerical department of a factory or industrial undertaking or an insurance company, joint stock company, bank, brokers' office or exchange to those which are restaurants and the like would yield no sense and would render the provision altogether nugatory. It is well settled that an interpretation clause of a comprehensive character is not to be taken as strictly defining what the meaning of a word must be under all circumstances but merely as declaring what things may be comprehended within the term, where the circumstances require that they should.

"Emperor v. B. H. Desouza", 35 Bom 412 at p. 417 (A). Vide also -- Devulapalli Ramamoorthy Sastri Vs. Jallu Ammanna, and -- Sishtla

Janakirama Sastri and Another Vs. Jagani Gopalam and Others, .

4. That the interpretation contended for by the appellant is not correct will be plain from Section 2(6) which defines "establishment" as including commercial establishment". That clearly shows that the definition of "commercial establishment" in Section 2(3) is not qualified by the word establishment". If it is construed otherwise, the result would be that while u/s 2(3) a "commercial establishment" is a species of the genus establishment, according to Section 2(6), which defines "establishment" as meaning a "commercial establishment", the genus would mean the species. The drafting of the statute is no doubt infelicitous, but there cannot be any doubt as to what the intention of the Legislature was. Its object was "to provide for the regulation of conditions of work" in commercial establishments and there is no reason why banks should be excluded from the purview of such a statute or why some of them should be included and not the others, as contended for by the appellant. We have no hesitation in holding that banks are "establishments" as defined in Section 2(6) of

the Act and I they are within the operation of the Act.

5. It is next argued that the Act is repugnant to Article 14 of the Constitution, in that it is directed not against all employers, but only some of them,

that it does not lay down any principle on which this differentiation is made and that it is therefore, discriminatory and void. The principles

underlying Article 14 are well settled and there is no need to elaborate them; This court had recently occasion to consider this question in -- V.M.

Syed Mohamed and Co. and Another Vs. The State of Madras and Another, and the result of the authorities is summed up in pages 112 to 113.

The substance of the matter is that while Article 14 enjoins on the State that it shall not deny any person equality before the law or the equal protection of the laws within the territory of India",

it does, not forbid legislative classification, provided such classification rests not on "fanciful grounds" vide -- "Mayflower Mills v. State of Madras",

(1936) 297 US 266 (E) and -- "Hartford Fire Insurance Co. v. Harrison", (1937) 301 US 459 (F), but on "some real and

substantial distinction bearing a reasonable and just relation to the object sought to be attained" per Fazl Ali J. in -- "State of Bombay v. F. N. Bal-

sara", AIR 1951 SC 318 (G). The question is, whether the provisions of the Act contravene these principles. Now, the policy underlying the

legislation is clear. It is to ensure that the terms under which labour is employed are fair and that there is no arbitrary dismissal of workmen. So far

as factories are concerned, there is special legislation dealing with the matter. With reference to business undertakings which are not factories, the

need was felt for a legislation which would safeguard the rights of the employees therein and it was with this object that the law in question was

enacted. A statute which has for its object the protection of employees cannot be said to be repugnant to Article 14 on the ground that it is a

discrimination against employers.

6. But it is argued for the appellant that whatever be the object of the legislation, the definition of "establishment" under the Act is vague and

indefinite and not based on any statable principle and that in particular, the power conferred on the Government to bring whatever they notified as

a "commercial establishment" or "establishment" u/s 2(3) and Section 2(6) within the operation of the Act is arbitrary as no standard is prescribed

for guiding or limiting the exercise of that power. But, it must be remembered that regulation of labour is a modern phase of social legislation and in

the absence of a word which would precisely convey the concept of employment of labour in business undertakings other than factories, the word

"establishment" has been adopted for expressing that notion. Whatever difficulty there might be in expressing that notion, having regard to the

limitations of language there can be none in comprehending whether a particular business undertaking is of the character contemplated by the Act.

As for the power which is conferred on the Government in Sections 2 (3) and 2 (6), it is only to notify such undertakings as are of the character of

establishment". We are not now called upon to decide whether a particular notification issued under Sections 2(3) and 2(6) of the Act is bad for

declaring as "establishment" what is not of the character contemplated by the Act. We are concerned in these appeals with banks. They form a

distinct and well-defined category and in its application to them, the Act cannot be held to contravene any of the principles of a valid classification.

As observed in -- V.M. Syed Mohamed and Co. and Another Vs. The State of Madras and Another,

there is a strong presumption in favour of the validity of legislative classification and it is for those who challenge it as arbitrary and unconstitutional

to establish it beyond all doubt";

and that, the appellant has failed to do.

7. It was further argued that Section 6 of the Act conferred on the Government an unlimited power to exempt either permanently or for any

specified period any establishment or class of establishments from all or any of the provisions of the Act, subject to such conditions as the

Provincial Government deem fit and that such a power was on the face of it arbitrary, discriminatory and unconstitutional. There is no need to

decide whether that is so or not because even if Section 6 were invalid, that would not affect the validity of the rest of the provisions in the Act and

the point for decision in these appeals is the validity of an order passed u/s 41 of the Act. It is unnecessary to deal at any great length with the

several contentions that were urged on the basis of Article 14 as they have been fully considered by Subba Rao J. and we are in entire agreement

with his conclusions.

8. The contention that has been most strongly pressed upon us is that on the merits the order of the Commissioner for Workmen's Compensation

dated 23-7-1951 is erroneous and liable to be set aside. To appreciate this contention, it is necessary to set out the facts bearing thereon. The

appellant is one of the scheduled banks with its head office in Tirunelveli. The All India Industrial Tribunal (Bank Disputes) pronounced an interim

award and the same was communicated by the Government to the appellant on 26-12-1949. The award classified the banks into three groups and

fixed scales of salaries to be paid to the several classes of employees according as the bank fell within one or the other of the three groups. The

appellant was placed in the C group and the scale of salary fixed therefore was, for clerks Rs. 55 salary and Rs. 20 dearness allowance per month,

and for subordinate Staff Rs. 20 salary and Rs. 15 dearness allowance per month. The award recognised that this scale of salaries might be

beyond the means of the C group banks and it was observed that they might either have to close down or to enter into schemes of amalgamation.

It was also suggested that in order to survive they might adopt a policy of what is called ""rationalisation"" which consists in retrenchment, closing

down of uneconomic units of business, more efficient management and curtailment of expenses at the top.

On 28th January 1950 the Standing Committee of the bank directed the Secretary to submit proposals for ""rationalisation"" as contemplated by the

interim award. By two reports dated 7th September 1950 and 12th September 1950 the Secretary submitted a comprehensive scheme

recommending the closing down of some branches and of the amalgamation of others; abolition of some posts; and retrenchment. The principles on

which the proposal's for retrenchment were made were, firstly that clerks who were inefficient or who had insufficient work should be sent out;

and secondly those who were not qualified for appointment as clerks should be discharged. It must be mentioned that the qualification prescribed

by the rules of the bank for appointment to the clerical staff was that the applicant should have passed the S. S. L. C. examination, Madras, or its

equivalent. But the Directors had the power to grant exemption from this rule. There were, at this time, in the service of the bank, 17 persons, who,

not having passed the S. S. L. C. examination, were not qualified to be appointed as clerks but had been exempted and taken into service. The

proposal was that these clerks should be discharged. The recommendations of the Secretary were substantially approved by the Board of

Directors by a resolution dated 17th September 1950 and in accordance therewith, a notice was issued to the respondent in L. P. A. No. 247 of

1952 -- the notices to the other respondents were also similar -- in these terms :

On account of retrenchment your services are dispensed with, with effect from 1-10-1950. A draft No. 07862 for Rs. 75 being one month's

salary and allowance in lieu of notice is enclosed.

9. The respondent took up the matter in appeal to the Commissioner for Workmen's Compensation u/s 41(2) of the Act. His contentions were in

substance, (1) that retrenchment could not be accepted as a proper ground for discharge because ""the management of the bank have dared to

appoint new raw fresh hands in Our places in the same office where we work""; and (2) that the management failed to observe any principle in

effecting retrenchment and that ""while it is said that only S. S. L. C. eligible are retained in service, they have retained uneligible S. S. L. C. in

service"". The appellant filed a written statement in which he controverted the above allegations and pleaded that in view of the Bank Tribunal

award, there was need for retrenchment and that the principle on which it was effected was that the less qualified persons should be discharged

and that in fact Yio person who had not qualified himself under the rules by passing the S. S. L. C. examination was retained in service. The

Commissioner who heard the appeal held that the discharge of the respondents was not for a reasonable cause and he thus stated the ground of his

decision :

The bank states that though the applicant was not the junior-most of the employees he was chosen for retrenchment as he was an unqualified

person. The Bank has no doubt prescribed a pass in the S. S. L. C. examination with eligibility for college course as qualification for appointment

as clerk. But it has reserved power to grant exemption in deserving cases and had exempted the applicant and appointed him as clerk some five

years ago. Having taken an unqualified man, confirmed him and kept him on for five years it is not reasonable to select him for discharge on the

ground of want of qualification.

It will be noticed that this order is not based on any of the grounds put forward

by the respondent in his petition of appeal. It does not proceed on the footing that there was no need for retrenchment, -- it assumes that there was; nor on the ground that the principle on which retrenchment was stated to have been effected, viz., that clerks who were not qualified under the rules should be discharged, was not uniformly observed. In fact it appears from the records that the employees retained in service in the clerical department had all of them the requisite qualification under the rules. The reasoning behind the order is that as between two clerks, one of whom had better qualifications and the other longer service, justice requires that it is the former that should be discharged and not the latter and that the notices discharging the respondents were unreasonable for failure to observe this principle.

10. Mr. K. V. Venkatasubramania Aiyar contends that this order is erroneous because it is based on a misconception as to the scope of an enquiry u/s 41(2); that under that section the authority conferred on the Commissioner is only to decide whether the order of discharge in question was or was not reasonable and that where that order is passed in accordance with a principle, which is not in itself open to exception, it is beyond his powers to set aside that order on the ground that it would be more just to adopt a different principle. We are in agreement with this contention.

When once it is found that there is need for retrenchment -- and that is not disputed -- the only question for decision u/s 41 (2) is whether that has been done reasonably and not arbitrarily and capriciously. If the management retrenches employees at random, it is conceivable that particular orders might be open to attack as unreasonable. But where, as here, retrenchment is effected in accordance with a policy laid down by the management, it is difficult to see how the order of discharge made pursuant thereto can be attacked as unreasonable, so long as the principle on which it is made is not extraneous to the subject matter.

The mode of effecting retrenchment is a matter on which it is possible to hold different views. There are those who support the principle that persons who came in last should be retrenched first; while others hold that the more equitable principle is to discharge the oldest in service and give the younger men a chance to continue. Then again when the question is one of choice between ""standing"" and ""qualification"", some would attach

greater importance to "standing", while others would prefer "qualifications." It is difficult to say that any one of these principles is more reasonable

than the other; at any rate, it cannot be said that any of them is unreasonable. Now the management of the appellant bank went into the question as

to what principle they would adopt in effecting retrenchment and decided that it should be on the basis of qualifications and in accordance

therewith they terminated the services of those clerks who were not qualified according to the rules of the bank, but had been taken in under

exemption. The order of discharge being in accordance with a principle not extraneous to the subject-matter and uniformly adopted by the

management, it would be beyond the province of the Commissioner in exercise of his powers u/s 41(2) of the Act to set aside those orders on the

ground that the principle on which they are based did not commend itself to him or that in his opinion some other principle would be more just. It

should be remembered that under the law it is the management that has the power to decide the principles on which it should regulate its own

business and Section 41(2) has not the effect of converting the Commissioner into a manager of the establishments or director of their policies. We

are accordingly of opinion that the order of the Commissioner dated 23-7-1951 is erroneous,

11. But, then the question is whether the order is liable to be set aside in these proceedings. It is strongly contended for the respondents that the

matter is governed by the decision of the Supreme Court in -- Parry and Co. Ltd. Vs. Commercial Employees' Association, Madras, , where in

dealing with the powers of this Court to issue writs with reference to an order made u/s 51 of the Act, Mukherjea J. observed as follows :

This decision may or may not be right, but it has not been and cannot be suggested that the Labour Commissioner acted without jurisdiction or in

excess of his powers. The Commissioner was certainly bound to decide the questions and he did decide them. At the worst, he may have come to

an erroneous conclusion, but the conclusion is in respect of a matter which lies entirely within the jurisdiction of the Labour Commissioner to decide

and it does not relate to anything collateral, an erroneous decision upon which might affect his jurisdiction. The records of the case do not disclose

any error apparent on the face of the proceeding or any irregularity in the procedure adopted by the Labour Commissioner which goes contrary to

the principles of natural justice.

These observations are applicable to the order of the Commissioner dated 23rd July 1951, Section 41(3) enacts that the decision of the appellate

authority under that section shall be final and such an order as that is open to challenge under Article 226 only on the grounds mentioned in Parry

and Co. Ltd. Vs. Commercial Employees' Association, Madras, . The subject-matter of the appeal was clearly within the exclusive jurisdiction of

the Commissioner u/s 41(2). There is no question of any irregularity. Nor has he left any matter undetermined in respect of which a writ of

mandamus might be issued; the application itself was one for the issue of a writ of certiorari. The only thing that could be said against the order is

that it is erroneous on the merits. But the jurisdiction of a court over a subject-matter does not depend upon whether its conclusions are correct or

not; the court has jurisdiction to decide wrong as well as right. Vide -- "Rajah Ami Hasan Khan v. Sheo Baksh Singh", 11 Cal (PC) (J); --

"Balakrishna Udayar v. Vasudev, Ayyar", AIR 1917 PC 71 (K) and -- "Venkata giri Ayyangar v. H. R. E. Board, Madras", All 1949 PC 156

(L). It is true that the court of appeal in England has held that certiorari will lie to quash the decision of a statutory tribunal on the ground of an error

of law apparent on the face of the record (vide -- "R. v. Northumberland Comp. App. Tribunal", 1952 1 All ER 122 (M) and it could be said of

the order of the Commissioner dated 23rd July 1951 that it is based on a misdirection and that that is an error of law. But the decision of the

Supreme Court settled the extent of the jurisdiction of this Court in proceedings under Article 226 and the present case is governed by that

decision.

12. In the result, these Letters Patent Appeals are dismissed with costs, Advocate's fee Rs. 50.