(2001) 06 KL CK 0026

In the High Court Of Kerala

Case No : O.P.No. 16008 of 1993

Sree Narayana Educational and Cultural Trust — APPELLANT

Vs

Asst. Labour Officer — RESPONDENT

Date of Decision : 29-06-2001

Acts Referred:

Kerala Shops and Commercial Establishment Act, 1960 — Section 2(15), 2(4), 2(8), 29
Kerala Shops and Commercial Establishments Rules, 1961 — Rule 14
Minimum Wages Act, 1948 — Section 22A

Citation : (2001) 91 FLR 284 : (2001) 3 ILR (Ker) 358

Hon'ble Judges : M.R. Hariharan Nair, J

Bench : Single Bench

Advocate : Ranjith Thampan, for the Appellant; L.G. Suresh Babu, Government Pleader, for the Respondent

Judgement

M.R. Hariharan Nair, J.—Will a school affiliated to the Central Board of Secondary Educational come under the definition of ''Shop'' or ''Commercial Establishment''? This is the question arising for decision in this case.

2. Based on an NOC issued by the Government of Kerala and after getting due affiliation from the Central Board of Secondary Education, the petitioner Trust has been running the Sree Narayana Vidhya Bhavan, Chentrapinny. The petitioner Trust was served with Ext. P4 notice by the Assistant Labour Officer, Kodungallur, asking it to show cause why prosecution steps should not be taken fro violation of the provisions of the Shops and Commercial Establishments Act and the provisions of the Minimum Wages Act. The explanation given by the petitioner to the said officer did not satisfy him. The matter was pursued with Ext. P6 letter reminding the petitioner of the need to take immediate steps to get registration of its office under the Shops and Commercial Establishments Act and threatening legal steps under S. 29 of the Act and R. 14 of the Rules as also under S. 22A of the Minimum Wages Act. It is challenging these demands that the petitioner has approached this Court.

3. Learned counsel for the petitioner submits that a school can neither be a ''shop'' nor a ''commercial establishment'' and that the demands in Exts. P4 and P6 are totally unjustified. It is submitted that the only activity that is carried on in the school is imparting education to the pupils and presenting them for the C.B.S.E. examination and that no commercial activity is involved therein.

4. The learned Government Pleader, who was heard, submitted that though establishments in the State, whose activities in the school are mainly educational were exempted from the purview of the Act as per a Notification issued on 15.7.1950 (Ext. R(a)). the notification was superseded as per a fresh notification issued on 30.7.1981 (Ext. R(b) and that as such the petitioner is bound to comply with the demand in Exts. P4 and P6. It is also pointed out that unless effective steps are imposed buy the authorities against such schools, there is possibility of the teachers and the staff employed there being exploited and denied adequate salary. Yet another submission is that for admitting students in the school, besides heavy fees, donations are also demanded and obtained and that an element of commercial activity is involved in the running of such institutions.

5. This Court has already held in various decisions that running of an office of a Chartered Accountant, office of an Advocate, office of a Church and the like are beyond the purview of the Shops and Commercial Establishments Act. The question posed in the present case; ie. whether an Educational Institution come under the Shops and Commercial Establishments Act does not appear to be covered by any precedent. I, therefore, propose to deal with the matter at some length.

6. S. 2(8) of the Kerala Shops and Commercial Establishments Act, 1960 defines an ''establishment'' as a ''shop'' or ''commercial establishment''. A ''shop'' is defined in S. 2(15) of the same Act as follows:

"2(15) : "shop" means any premises where any trade or business is carried on or where services are rendered to customers, and includes offices, store rooms, godowns or warehouses, whether in the same premises or otherwise, used in connection with such trade or business but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop are allowed the benefits provided for workers under the Factories, Act 1948 (Central Act 63 of 1948)"

S. 2(4) of the Act defines commercial establishment as follows:

" "Commercial establishment" means a commercial or industrial or trading or banking or insurance establishment, an establishment or administrative service in which the persons employed are mainly engaged in office work, hotel, restaurant, boarding or eating house, cafe or any other refreshment house, a theatre or any other place of public amusement or entertainment and includes such other establishment as the Government may, by notification in the Gazette, declare to be a commercial establishment for the purposes of this Act, but does not include a factory to which all or any other provisions of the Factories Act, 1948 (Central Act 63 of 1948) apply".

Even a plain reading of the aforesaid section would make it clear that some sort of trading or commercial activity is necessary to render an office or other concern an establishment or shop under the Act. NO doubt, it is mentioned in S. 2(4), that even establishments which the Government may, by notification in the Gazette declare to be a commercial establishment would come within the scope of the section. But here again, to declare it as such, it should be an establishment where some sort of commercial or industrial or trading or allied activity is carried on. No such evidence is available with regard to the school in question.

7. While considering the question whether the office of a Chartered Accountant would be a commercial establishment this Court found in Ramanathan v. State of Kerala 1991 (1) KLT 89 as follows:

"It is clear that Government have the power to declare an establishment as commercial establishment for the purposes of the Act. The corollary is, Government cannot declare any office as commercial establishment unless the office is an establishment. S. 2(8) defines "establishment" as "a shop or a commercial establishment". An establishment is a commercial establishment if it is engaged in a commercial or industrial or trading or banking or insurance work. The idea conveyed by the use of the work "commercial" is that it should be understood with reference to commercial activity".

It was clarified that unless, trade, business or profession carried on also partake activities commercial in nature, the premises where such activities are carried out will not fall under the provisions of the Shops and Commercial Establishments Act. Of course, some service may be rendered in a school, but that part of the definition cannot be read in isolation. Those words must be understood as an explanation or addition to the preceding words "any premises where any trade or business is carried on".

8. What was considered in Augustine Mathai v. Appelate Authority (1991 (2) KLT 549) which decision was confirmed in Augustine Mathai v. Appellate Authority (1998 (2) KLT 784) was whether office of a Church would fall under the coverage of the Act. It was held that eventhough an administrative service in which persons employed are mainly engaged in office work is included within the definition, an element of trade or commerce including such service is essential to bring it under the provisions of the Act. All Administrative services in which person employed are mainly engaged in office work cannot come within its scope. It was re-iterated that the definition has to be taken as a whole and viewed from that perspective a Church cannot be a commercial establishment.

9. Emphasis was laid by the learned Government Pleader on the withdrawal of Ext. R(a) notification vide the notification produced along with Ext. R(b) dt. 30.7.1981. In fact this notification itself was struck down by this Court in

Ramanathan''s case (supra) albeit in part. As regards the contention that as per clarification dt. 30.8.1990 (Ext. R(b) staff working in the office of Parallel College will come within the definition of commercial establishment, it is not established that the work in a school which is affiliated to the Central Board of Secondary Education can be called work in a parallel college.

10. As a condition precedent for grant of affiliation the Board has insisted in Ext. P2 that the appointment of teachers, their service conditions and salaries should conform to the provisions given in the relevant clause of the affiliation bye-laws. Likewise, it is also mentioned in clause 3(vii) that the fee and other charges should be paid as provided in the relevant affiliation bye-laws. These show that the running of the school is subject to effective control by the Central Board or Secondary Education. Of course teachers and staff would be employed in the school; but it cannot be said that they are engaged in office work involving commercial or industrial activity or office in which trade or business is carried on. In these circumstances it is abundantly clear that the petitioner''s running of the school is not an activity falling within the scope and definition in the Kerala Shops and Commercial Establishments Act, 1960. Exts. P4 and P6 are therefore illegal and accordingly they are struck down.

11. The Original Petition is disposed of as above.

