

**(1980) 08 GUJ CK 0034**  
**In the Gujarat High Court**

Sunni Muslim Walf Committee

APPELLANT

Vs

Abbasali Gulamali

RESPONDENT

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**Date of Decision :** 22-08-1980

**Acts Referred:**

Bombay Shops and Establishments Act, 1948 — Section 2(4), 2(4), 2(8)

**Citation :** (1980) 2 GLR 253

**Hon'ble Judges :** S.H. Sheth, J;G.T. Nanavati, J

**Bench :** Division Bench

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**Judgement**

S.H. Sheth, J.—Sunni Muslim Wakf Committee which is a trust registered under the Bombay Public Trusts Act. 1950, has, through its members, filed all these petitions which arise out of the applications made by its employees under the Payment of Gratuity Act, 1972. Respondent in Special Civil Application No. 3618 of 1979 was the accountant appointed by the committee. He joined service on 1st September 1967 and left it on 30th September 1973. Respondent in Special Civil Application No. 3619 of 1979 was the Secretary of the committee. He joined service on 6th November 1969 and left it on 31st January 1977. Respondent in Special Civil Application No. 3620 of 1979 was a peon employed by the committee on 26th April 1970 and left it on 30th April 1977. Respondent in Special Civil Application No. 3621 of 1979 was the Superintendent employed by the committee for a Hostel which it is running. He joined service on 4th October 1967 and left it on 1st June 1976. All these respondents are hereinafter referred to as "workmen. The workmen made applications to the Controlling Authority under the Act claiming gratuity from the petitioner. The petitioner resisted the claims made by the workmen. The principal contention which was raised by the petitioner was that the provisions of the Payment of Gratuity Act, 1972, were not applicable to it and that, therefore, it was under no liability to pay gratuity to the workmen. The Controlling Authority recorded its finding against the petitioner and allowed the claims made by the workmen. The petitioner appealed against the orders made by the Controlling Authority to the Appellate Authority. The Appellate Authority relying upon the decision of the Supreme Court in Bangalore

Water Supply and Sewerage Board Vs. A. Rajappa and Others, , dismissed the appeals. It is those four appellate orders which have given rise to these four petitions.

2. The only contention which Mr. Nanavaty has raised before us is this: Whether the provisions of the Payment of Gratuity Act, 1972, apply to The petitioner committee. It is running Sultan Ahmed Technical Institute which has a strength of 331 students. They learn there tailoring and cutting, tailoring and cutting of women's and children's garments, embroidery and fancy work, master tailor's work, wiremen's work and apprentice course. The second activity of the petitioner committee is to run a training institute for imparting practical education to women. About 50 lady students are taking advantage of that institution. The petitioner committee also runs hostels and about 80 students are taking advantage of the hostel accommodation. Next, the committee runs orphanages. About 100 orphans take advantage of those orphanages. The committee next manages Nawab Sujat Hall. Lastly it disburses every year scholarships to students amounting to about Rs. 50, 000. The total strength of the staff employed by the petitioner committee is in the neighbourhood of 175 persons. Its annual income is about Rs. 7, 00, 000/-. The principal source of income is rent.

3. Bearing these activities of the petitioner committee in mind, let us now examine whether the provisions of the Payment of Gratuity Act, 1972, apply to the petitioner committee. Section 1(3) provides for application of the Act. It reads as under:

It shall apply to:

- (a) every factory, mine, oilfield, plantation, port and railway company;
- (b) every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed, or were employed, on any day of the preceding twelve months;
- (c) such other establishments or class of establishments in which ten or more employees are employed, or were employed, on any day of the preceding twelve months, as the Central Government may, by notification, specify in this behalf.

So far as Clauses (a) and (c) are concerned, they indisputably do not apply to the facts of the present case. The question which has been raised before us is whether Clause (b) is attracted to the petitioner committee. Clause (b) of Sub-section (3) of Section 1 provides for the application of the provisions of the Act to a shop or establishment within the meaning of any law which may be in force in a State in relation to shops and establishments. In this State, the Bombay Shops and Establishments. Act, 1948, is in force. Section 2(27) of that Act defines "shop" in the following terms:

"Shop" means any premises where goods are sold, either by retail or wholesale

or where services are rendered to customers, and includes an office, a store room, godown, warehouse or work place, whether in the same premises or otherwise, mainly used in connection with such trade or business but does not include a factory, a commercial establishment, residential hotel, restaurant, eating house, theatre, or other place of public amusement or entertainment.

The respondents do not appear before us though they have been served. However, it was not the case of the respondents before the authorities below that the activities of the petitioner committee fell within the definition of the expression "shop" given in Section 2(27).

4. Let us now turn to the definition of the "establishment" given in Section 2(8):

"Establishment" means a shop, commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment to which this Act applies and includes such other establishment as the State Government may, by notification in the Official Gazette, declare to be an establishment for the purposes of this Act.

It is significant to note that the definition of "establishment" brings within its sweep a commercial establishment. It was not in dispute before the authorities below that except in the context of commercial establishment, the definition of "establishment" given in Section 2(8) would not be applicable to the petitioner committee. Let us, therefore, turn to the definition of "commercial establishment" given in sub-sec. of Section 2:

"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 a society registered under the Societies Registration Act, 1860 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.

This definition is in two parts. The second part expressly includes within the compass of the definition of "commercial establishment" a charitable or other trust which may be carrying on business, trade or profession either for the purpose of gain or without that purpose.

5. There is no doubt or dispute about the fact that the petitioner-committee is a charitable trust. Therefore, the first ingredient of the second part of the definition of "commercial establishment" is satisfied. The only question which we are, therefore, called upon to decide is whether the activities of the committee which we have enumerated above amount to "business not for the purpose of gain".

6. Mr. Nanavaty who appears on behalf of the petitioner has invited our attention to the decision of the Supreme Court in *Dr. Devendra M. Surti Vs. The State of*

Gujarat, . In that case, the Supreme Court was called upon to decide whether a doctor's dispensary fell within the definition of a "commercial establishment" inasmuch as the definition used the expression "profession". The Supreme Court examined in that case the connotation and amplitude of the first part of the definition of the expression "commercial establishment" given in Section 2(4). We may emphasise at this stage that the first part of the definition of "commercial establishment" given in Section 2(4) uses the expression "profession" and does not amplify it so as to suggest that it may be profession for gain or other wise. The second part of the definition of the "commercial establishment" also uses the expression "profession" and enlarges its connotation so as to mean professions which are carried on for the purposes of gain as well as the professions which are not carried on for the purpose of gain. Bearing this distinction in mind between two parts of the definition of "commercial establishment" given in Section 2(4), let us now turn to the decision of the Supreme Court in Dr. Surti's case (supra) in order to find out what the Supreme Court has held. The observations made by the Supreme Court to the following effect are material for the purpose of appreciating the principle laid down therein: Section 2(4) has used words of very wide import and grammatically it may include even a consulting room where a doctor examines his patients with the help of a solitary nurse or attendant. However, in the matter of construing the language of Section 2(4) the principle of *noscitur a sociis* should be borne in mind. Applying that principle, it has been observed: "when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. The words take as it were their colour from each other that is, the more general is restricted to a sense analogous to a less general." This principle is broader than the maxim "*Ejusdem Generis*". Having laid down the principle that a word used in company of some other words should take its colour from the companion words, the Supreme Court has held that the professional establishment of a doctor would not fall within the definition of Section 2(4) of the Act unless the activities carried on by the doctor were also of a commercial character. That a professional activity within the meaning of Section 2(4) should be commercial in character was the view expressed by the Supreme Court because the word "profession" was used in the context of the words "trade" and "business" which had commercial element in them.

7. The Supreme Court has next observed in that case that the dispensary of a doctor would fall within the definition of Section 2(4) of the Act if the activity is carried on in such a manner that the condition of the co-operation between the employer and the employees is necessary for its success and its object is to render material service to the community and these can be regarded as some of the features which render the carrying on of a professional activity. On the facts of that case, the Supreme Court held that the dispensary of the appellant in that case did not fall within the definition of Section 2(4) of the Act.

8. Mr. Nanavaty has argued that this decision of the Supreme Court clinches the

issue and answers in his favour the contention which he has raised. We are unable to uphold this argument raised by Mr. Nanavaty. Firstly, we are not concerned with the first part of the definition of the expression "commercial establishment" with which the Supreme Court was concerned in Dr. Surti's case (supra). We are concerned with the second part. The second part does not use the word "profession" only in the company of the words "trade" and "business" but amplifies it so as to say that it may be carried on for the purpose of gain or not. Therefore, in the first instance, the connotation of the expression "profession" used in the second part of the definition of "commercial establishment" should necessarily be different from the connotation and amplitude of "profession" used in the first part of the definition. The connotation and amplitude of the word "profession" used in the first part would not be wider than those of that word as used in the second part. However, we are not in the instant case concerned with the use of the word "profession" because this is not a case where activities based on the professional skill of an employee are carried on. The activities of the petitioner-committee also do not require the exercise of the professional skill. Therefore, this is not a case in respect of which it can be said that it would be a "profession". In that view of the matter, can we say that the activities carried on by the petitioner committee are business activities carried on not for the purpose of gain?

9. In Bangalore Water Supply case (supra), the Supreme Court was concerned with examining the import of the word "industry" as defined in Section 2(j) of the Industrial Disputes Act, 1947. The definition of "industry" given in Section 2(j) is in the following terms:

"industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen.

According to this definition, "business" indeed falls within the meaning of the expression "industry". The Supreme Court after having considered the case law on the subject has laid down three tests to determine whether a particular activity amounts to an "industry." They are as follows: (i) there must be a systematic activity, (ii) there must be cooperation between the employer and his employee and (iii) there must be production of goods or services. If these three tests are answered in the affirmative in respect of a particular activity, it would amount to an "industry." Can we say that if these three tests are answered in the affirmative, an activity would amount to a "business". It would be necessary to remember that "industry" within the meaning of Section 2(j) of the Industrial Disputes Act, 1947, includes "business." Unless, therefore, there is something repugnant in the application of these testes for the purpose of determining whether a particular activity is business or not, we see no reason why those tests should not be applied. In our opinion, if an employer is carrying on a systematic activity, if there is cooperation between the employer and his employees and if there is production of goods or services, it would amount to business. Applying

these triple tests, we are of the opinion that inasmuch as the committee runs hostels, a technical institute and a training institute, it carries on a systematic activity. For the purpose of carrying on those activities, it employs a number of persons. Therefore, those activities are carried on by the petitioner committee on account of the cooperation between it and its employees. The second test is, therefore, satisfied. The third test relates to the production of goods or services. There is no doubt about the fact that with the aid and cooperation of its employees, the committee produces services which result in imparting training to women, providing residential accommodation to students and also running a vocational institute. Therefore, in our opinion, not only these triple tests can be applied to determine whether a particular activity amounts to business but they show that what the petitioner committee has been carrying on is a "business". Section 2(4) expressly includes within the meaning of a "commercial establishment" business carried on not for the purpose of gain. It is, therefore, immaterial whether the petitioner committee makes gain out of its activities or does not make gain. The presence of commercial element in its activities is not a sine qua non in order to label it as a "business".

10. We may appropriately note in this context that the Supreme Court held that the University of Delhi was not an "industry" (See *University of Delhi and Another Vs. Ram Nath*, . Overruling that decision, this is what the Supreme Court has said in *Bangalore Water Supply case* (supra):

But in *University of Delhi* it was held that the industrial Tribunal was wrong in regarding the University as an industry because it would be inappropriate to describe education as an industrial activity. Gajendragadkar J. agreed in his judgment that the employer-employee test was satisfied and co-operation between the two was also present. Undoubtedly, education is a sublime cultural service, technological training and personality-builder, A man without education is a brute and nobody can quarrel with the proposition that education, in its spectrum, is significant service to the community. We have already given extracts from Australian Judge Isaacs J. to substantiate the thesis that education is not merely industry but the mother of industries A philistine, illiterate society will be not merely uncivilised but incapable of industrialisation. Nevertheless Gajendragadkar J. observed (at pp. 1874-1875):

"It would, no doubt, so and some what strange that education should be described as industry and the teacher as workmen within the meaning of the Act, but if the literal construction for which the respondents contend is accepted, that consequence must follow.

After having made the above observations, the Supreme Court in *Bangalore Water Supply case* (supra) has observed as follows:

Why is it strange to regard education as an industry? Its respectability? Its lofty character? Its professional stamp? Its cloistered virtue which cannot be spoiled by the commercial implications and the raucous voices of workmen? Two reasons

are given to avoid the conclusion that imparting education is an industry. The first ground relied on by the Court is based upon the preliminary conclusion that teachers are not "workmen" by definition. Perhaps, they are not, because teachers do not do manual work or technical work. We are not too sure whether it is proper to disregard, with contempt, manual work and separate it from education, nor, are we too sure whether in our technological universe, education has to be excluded. However, that may be a battle to be waged on a later occasion by litigation and we do not propose to pronounce on it at present. The Court, in the University of Delhi, proceeded on that assumption, viz, that teachers are not workmen, which we will adopt to test the validity of the argument.

Thereafter extracts from the decision of Delhi University case (supra) have been quoted. After having done so, in paragraph 116 this is what the Supreme Court has stated:

We dissent, with utmost deference, these propositions and are inclined to hold, as *The Corporation of the City of Nagpur Vs. Its Employees*, held, that education is industry, and as Isaacs J. held, in the Australian case 1929)41 CLR 569 (Aus) (supra) that education is pre-eminently service.

11. In the instant case, the petitioner committee has been imparting education of a vocational and technical character in so far as it runs a technical institute and a training institute for imparting practical training to women. Applying the triple tests which the Supreme Court has laid down, the petitioner committee can be said to be running an "industry". We see no reason why it cannot be a "business" without gain within the meaning of the expression "commercial establishment" given in Section 2(4) of the Bombay Shops and Establishments Act, 1948.

12. In our opinion, therefore, the authorities below were correct in holding that the petitioner-committee fell within the definition of "commercial establishment" given in Section 2(4) of the Bombay Shops and Establishments Act, 1948, and was, therefore, governed by the Payment of Gratuity Act, 1972 by virtue of Section 1(3) of that Act.

13. In that view of the matter, we see no reason to interfere with the impugned orders.

Since this is the only contention which has been raised in these petitions, the petitions fail and are dismissed. Rule in each of them is discharged with no order as to costs.