

(1961) 09 MAD CK 0031
In the Madras High Court

The Catholic Centre Staff Union

APPELLANT

Vs

His Grace The Most Rev. Dr. L. Mathias, S.D.F., Archbishop of
Madras-Mylapore and Another

RESPONDENT

Date of Decision : 22-09-1961

Acts Referred:

Tamil Nadu Shops and Establishments Act, 1947 — Section 2(14)

Citation : (1962) 1 MLJ 451

Hon'ble Judges : Ganapatia Pillai, J

Bench : Division Bench

Judgement

Ganapatia Pillai, J.—This is an application under Article 226 of the Constitution preferred by the Catholic Centre Staff Union represented by its Secretary, for the issue of a writ of certiorari to quash the order of the Commissioner of Labour, dated 15th September, 1958 and passed in Application No. 6 of 1958 by the Archbishop of Madras, Mylapore. This application was made u/s 51 of the Madras Shops and Establishments Act, 1947, for a decision that the provisions of that Act would not apply to the staff employed in the Catholic Centre, Madras.

2. It is alleged in the affidavit filed along with the application that the following activities were carried on at the Catholic Centre situated in Armenian Street, George Town: (1) a club with billiards and other indoor games, (2) a reading room, (3) a library, (4) a hostel for about no students, (5) an auditorium for lectures, conferences, etc., (6) a theatre known as St. Mary's Hall maintained principally for dramatic performances, music concerts, dances, public meetings, film shows and other entertainments, (7) the Madras Cultural Academy providing amusement and entertainment to the members of the public by staging dramas and arranging musical concerts, and (8) printing press known as a Good Poster Press for doing printing work and publishing a weekly magazine called "New Leader." The staff employed by the Catholic Centre is said to be looking after all the clerical, maintenance, supervision work, connected with all the above mentioned activities of the Catholic Centre. Though the rules and objects of the

Catholic Centre do-not provide for the carrying on of any activities for profit, it is said that the actual receipts from the various activities carried on by the Centre are much in excess of the expenditure incurred and consequently a substantial surplus money is left in the hands of the Archbishop.

3. The Commissioner issued a notice to the Staff Union Secretary, and, it is alleged, passed the impugned order without giving a personal hearing to the Secretary of the Union and without allowing the Union an opportunity of adducing evidence.... The order passed by the Commissioner is therefore attacked as without jurisdiction: and opposed to principles of natural justice. Even on the merits, it is said, the order is vitiated by an error of law apparent on the face of the record; the hostel maintained by the Catholic Centre it is alleged provided food also for the residents and consequently the same should have been held to be a residential hotel coming, within the ambit of the Shops and Establishments Act.

4. In the counter affidavit filed by the Director of the Catholic Centre it is denied that any activities other than the club, the reading room, the library, the hostel¹ and the auditorium are carried on under the auspices of the Catholic Centre. It is specifically stated that the other activities, viz., the theatre known as St. Mary's Hall, the Cultural Academy and the printing press are unconnected with the Catholic Centre and the staff employed for the Catholic Centre are not required to do any duties in these other activities for which, it is stated, separate staff are employed. An affidavit has also been filed by one Miss. L. Termehr, General Secretary of the Catholic Centre, denying that any meals or refreshments were served to the boarders. in the Catholic Centre hostel at any time.

5. The first contention of Mr. Thiagarajan, counsel for the first respondent, was—that even assuming the decision of the Labour Commissioner was erroneous on the merits, this Court has no jurisdiction to issue a writ to vacate or quash that order merely on that ground. He relied upon the decision of the Supreme Court in *Parry and Co. Ltd. Vs. Commercial Employees' Association, Madras*, , for this contention. A Division Bench of this Court issued a writ of certiorari quashing a portion of an order made by the Labour Commissioner, Madras, in an enquiry u/s 51 of the Madras Shops and Establishments Act. A reference to the Labour Commissioner in that case was made by the Commercial Employee's Association, Madras, u/s 51 of the Shops and Establishments Act, 1947. The two questions referred to the Commissioner were, whether there had been an increase in working hours from 6 to 6½ hours on week days from 12th October, 1948 and whether the increase was permissible and whether overtime wages at twice the ordinary rates should not be paid for work done by the employees after the normal working hours. On both the questions the decision of the Commissioner went against the employees. The High Court quashed the order of the Commissioner in relation to overtime wages at twice the ordinary rates on the ground that the Commissioner was wrong in his view that the management was entitled to require the employees to work more than 64 hours a day and

overtime wages could be claimed only if the working hours-exceeded the statutory hours fixed under the Shops and Establishments Act, viz., 8 hours. Commenting on this aspect of the case the Supreme Court observed thus:

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. u/s 51 of the Madras Shops and Establishments Act, the Labour Commissioner is the only proper and competent authority to determine the questions referred to it in that section; and there is an express provision in it that the decision of the Labour Commissioner shall be final and not liable to be challenged in any Court of Law. It was the respondent who took the matter before the Labour Commissioner in the present case and invited his decision upon the questions raised in the petition. 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 effect his jurisdiction.

6. Holding that the records did not disclose any error apparent on the face of the proceeding or any irregularity in the procedure adopted by the Labour Commissioner, the Supreme Court held that there was no ground upon which this Court could issue a writ of certiorari quashing any part of the order. It also pointed out that what this Court had done actually amounted to exercising the power of the appellate Court to correct an error in the decision of the Labour Commissioner and this could not be done by this Court by the issue of a writ of certiorari.

7. True the principle of his decision would apply to this case if I am able to hold that in giving the decision upon the application of the Archbishop, the Commissioner was acting within his jurisdiction and without violating the principles of natural justice. Once both these postulates are established, the mere fact that the decision of the Commissioner may be wrong would not be sufficient to issue a writ of certiorari to quash it. I shall therefore straightaway go into the question whether the grievance of the petitioner that no oral hearing was given by the Commissioner and no evidence was recorded by him is correct, and, if true, whether it would be sufficient to constitute violation of the principles of natural justice.

8. The order of the Commissioner states that the parties were heard though counsel for the petitioner affirmed that no oral hearing was granted. Even assuming this assertion is true, none, of the rules framed under the Act provided for the giving of any oral hearing to any party concerned in a dispute on reference u/s 51 of the Act. The Secretary of the Staff Union was invited to state his objections by a notice issued by the Commissioner, and, as a matter of fact, an objection statement in writing was placed before the Commissioner by the Secretary. The principles of natural justice do not require that beyond this there

should be any oral hearing or that the enquiry should be conducted in any particular manner as regards disputed questions of fact. It is now apparent that unless in the hostel maintained by the Catholic Centre food was supplied to the inmates, none of the activities of the Catholic Centre would bring it into either a "shop" or an "establishment" as defined in the Shops and Establishments Act, 1947. I therefore pointedly asked the counsel for the Staff Union to show the allegation in the counter statement filed before the Commissioner asserting that food was supplied to the inmates of hostel. But counsel was unable to point out any such assertion in the counter statement. Instead, he referred me to the report of the Inspector of Labour where that officer has reported that a mess was attached to the hostel. The Commissioner has not referred to this point and we can only speculate as to what influenced his mind on this topic. However, it is now clear from the affidavits placed before me that except a portion of the premises let out for running a restaurant by Harrison and Company no mess was attached to the hostel and no food was prepared in such mess and supplied to the inmates. Possibly the Inspector confused this restaurant run by a private company as a mess attached to the hostel. Otherwise, I cannot believe that the counter statement filed by the Staff Union would not have mentioned this fact prominently or even incidentally. I am therefore satisfied that no mess was attached to the hostel at any time and there was no material before the Commissioner to show that the hostel fell within the definition of a "residential hotel" as defined in Section 2(14) of the Madras Shops and Establishments Act, 1947.

9. The allegation that no opportunity was given to the Staff Union to adduce evidence on this point cannot be relied upon as an infraction of the principles of natural justice. Neither the Act nor the Rules framed under the Act provide for the manner of enquiry to be conducted by the Commissioner in coming to a decision in a reference made to him u/s 51 of the Act. It is true the Commissioner of Labour is enjoined to decide disputes relation to the question whether the provisions of the Act would apply to an establishment or to the personnel employed therein if the matter is referred to him. This no doubt involves a decision after reviewing the material placed before the Commissioner for that purpose. When no allegation at all was made by the Staff Union that any food was being; supplied to the inmates of the hostel in the counter statement filed before the Commissioner I find no basis for the complaint that no opportunity was given by the Commissioner for leading evidence before him on this point. I have already indicated that the Rules framed do not provide for any oral hearing before the Commissioner, nor does the section provide for it. I therefore hold that there has been no infraction of any of the principles of natural justice in the conduct of the enquiry by the Commissioner before he gave his decision u/s 51 of the Act.

10. The learned Counsel for the petitioner contended that in the construction of the Act which the Commissioner adopted in his order there is an error of law apparent on the face of the record. The Commissioner ruled that the institution

known as the Catholic Centre was neither a shop, nor a commercial establishment, nor an establishment, nor a residential hotel or restaurant within the meaning of these terms as defined in Sections 2(3), (6), (14) and 15 of the Act. It is common ground that the membership of the Catholic Centre is restricted to persons who could be admitted to such membership by the management. It is also common ground that admission to the hostel is further restricted at the discretion of the management. The Rules of the Catholic Centre a copy of which had been placed in my hands, provide for such restricted admission. Even otherwise counsel for the petitioner was not able to point out any activity of the Catholic Centre which would make it a commercial establishment or a residential hotel. A commercial establishment is defined in Section 2(3) thus:

Commercial establishment means an establishment which is not a shop but which carried 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 includes such other establishment as the State Government may by notification declare to be a commercial establishment for the purposes of this Act.

11. In *The State of Bombay and Others Vs. The Hospital Mazdoor Sabha and Others*, , the Supreme Court held that a hospital run by the State Government of Bombay was an "Industry" within the meaning of that term in the Industrial Disputes Act, 1947. "Industry" is defined in the Industrial Disputes Act, 1947, thus:

"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.

12. This decision of the Supreme Court appears to me to have no relevance to the question which I have to decide in the present case. Simply because Industry is defined as a business or service, the activities of the Catholic Centre could not be brought within the ambit of the Shops and Establishments Act. It could not be a "Commercial establishment", nor could it be called an "Establishment" within the definition of that term in Section 2 (6) of the Madras Shops and Establishments Act. I have already indicated that the Catholic Centre does not run any residential hotel as defined in Section 2(14) of the Act. It will be entirely inappropriate to import into this Act, viz., the Shops and Establishments Act, 1947, the definition of an "industry" given in the Industrial Disputes Act though the counsel for petitioner strenuously urged that the policy behind the two Acts being the same, viz., betterment of the conditions of service of employees, the decision under one Act should be applicable to the matters arising under the other Act.

13. It is not enough to say that the policy underlying the two enactments is

identical for making applicable decisions under the one Act to disputes arising under other Act. The Preamble to the Madras Shops and Establishments Act reads, thus:

An Act to provide for the regulation of conditions of work in shops, commercial establishments, restaurants, theatres and other establishments and for certain other purposes.

14. The applicability of the Act is thus limited to certain types of institutions which may fall under the classifications shops, commercial establishments, restaurants and theatres. What would apply to an undertaking under the Industrial Disputes Act may not therefore automatically apply to an undertaking to which the Madras-Shops and Establishments Act would apply. I am not, therefore, satisfied that there is any error of law apparent on the face of the record in the order of the Commissioner in construing the provisions of the Madras Shops and Establishments. Act, and, consequently this writ petition fails and is dismissed. Rule nisi is discharged.

15. There will be no order as to costs.