
(1983) 09 MAD CK 0031
In the Madras High Court

The Management of Pithavadian Partners APPELLANT
Vs

Controlling Authority under the Payment of Gratuity Act,
1972 and Others RESPONDENT

Date of Decision : 05-09-1983

Acts Referred:

Payment of Gratuity Act, 1972 — Section 2(3)(b)
Tamil Nadu Shops and Establishments Act, 1947 — Section 2(16)

Citation : (1984) ILR (Mad) 303 : (1984) 97 LW 162 : (1984) 2 MLJ 26

Hon'ble Judges : Mohan, J

Bench : Division Bench

Judgement

Mohan, J.—The short question that arises for consideration in this case, is whether a firm of Architects would be governed by the provisions of the Payment of Gratuity Act, 1972. u/s 1(3)(b) of the said Act, it is stated as follows-

It shall apply to-(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.

2. In this State it is the Tamil Nadu Shops and establishments Act that is in force in relation to the shops and establishments. There is a direct ruling of Srinivasan, J., in M/s. L.M. Chitale and Son by sole surviving partner L.M. Chitale and Son by Sole Surviving Partners, S.L. Chitale Vs. The Commissioner of Labour and Others, holding that the Shops and Establishments Act will not apply to the firm of Architects. That decision has been relied on by the learned Counsel for the petitioner in these writ petitions for certiorari, while the learned Counsel for the respondents would say that it cannot be contended that the ruling can any longer be held to be good law in view of the later rulings of the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, and the ruling of the Delhi High Court in Messrs. C.C. Sharma and Sons. v. Sri R.K. Bawaja Presiding Officer, Labour Court, and Ors. (1972) 2 L.L.J. 475. This is an

important point which requires to be decided by a Bench because I have my own doubt whether the ruling of Srinivasan, J., cited above could still be held to be good law in view of the later rulings of the Supreme Court. In this view, I direct that the papers may be placed before my Lord, the Chief Justice, for suitable orders as to the posting before a Bench.

(Pursuant to the above order of reference these cases coming on for hearing before the Division Bench, the Court delivered the following judgment):

The Chief Justice.

3. The petitioner in both the writ petitions is the Management of Pithavadian and Partners, Architects and Planners, and has prayed for quashing the order of the authorities under the Payment of Gratuity Act, 1972, directing the petitioner to pay gratuity to its erstwhile employees, under the said Act.

4. The facts leading to the filing of these writ petitions lie in a narrow compass. One C. Ramamurthi was employed in the petitioner-firm as a draughtsman and "served under the petitioner from 13th August, 1959 to 8th October, 1974. His wife and legal heir filed a claim application before the Controlling Authority under the Payment of Gratuity Act, 1972(hereinafter referred to as the Act) for payment of gratuity, and the Controlling Authority after notice to the petitioner, awarded a sum of Rs. 3,750. Another worker, G.M. Joseph claimed a sum of Rs. 4,675 as gratuity, for having served the petitioner-firm as a draughtsman for seventeen years and three months and the Controlling Authority after notice to the parties and after hearing them, allowed the said claim.

5. The Management filed an appeal against both the orders before the Appellate Authority under the Act and the Appellate Authority by a common order, upheld the order of the original authority, allowing the claim for gratuity. It is against both these orders that the management has filed the present writ petitions. Pending disposal of the writ petitions, G.M. Joseph died and his legal representatives have been brought on record by an order, dated 4th March, 1982 in W.M.P. No. 2469 of 1982.

6. The main contention raised in these writ petitions is that the petitioner firm, which is a firm of architects, will not come under the purview of the Payment of Gratuity Act, as it is not an establishment within the meaning of Section 1(3)(b) of the Act, as held by this Court in L.M. Chitale and Son by Sole Surviving Partners, S.L. Chitale Vs. The Commissioner of Labour and Others, . The claimants-respondents contested this position before the learned single Judge and contended that the said decision is no longer good law, in view of the later ruling of the Supreme Court in Bangalore Water Supply and Sewerage Board Vs. A. Rajappa and Others, . The learned Judge has therefore, referred the case for decision by a Division Bench and that is how the matter is before us.

7. The Act provides for a scheme for the payment of gratuity to employees engaged in factories, mines, oil fields, plantations, ports, railway companies,

shops or other establishments and for matters connected therewith or incidental thereto. Section 1(3) of the Act lays down that it shall apply to-

- (a) every factory, mine, oil field, 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 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.

8. It is an admitted position before us that the petitioner is a firm or architects. The firm also engages clerks and other workers, and their work is supervised by the firm and the firm employees more than ten persons as provided in Section 1(3)(b) of the Act. It is also admitted before us that the relationship of employer and employee existed between the petitioner and its employees.

9. L.M. Chitale and Son by Sole Surviving Partners, S.L. Chitale Vs. The Commissioner of Labour and Others, , was a case of registered firm of Chartered Architects. The firm terminated the services of an employee. Thereafter the employee applied for payment of gratuity. On a dispute being raised, the matter was referred to the Commissioner of Labour to decide whether the Madras Shops and Establishments Act would apply or not. The Commissioner held that the firm would come within the purview of the definition in Section 2(16) of the Act. Thereafter the application of the workman for payment of gratuity was allowed by the Additional Commissioner for Workmen's Compensation. Both these orders were challenged in the writ proceedings.

10. Section 2(16) of the Shops and Establishments Act 1947 reads as follows-

"Shop" means any premises where a trade or business is carried on or where services are rendered to customers and includes offices, store-rooms, godowns, and warehouses, whether in the same premises or otherwise, used in connection with such business but does not include a restaurant, eating house or commercial establishment.

The learned Judge who heard the case came to the conclusion that Section 2(16) defining a shop is restricted in its scope and envisages an activity which as commonly understood is associated with the carrying on of trade or commerce, and cannot take in establishments where professional services are rendered and finally held as follows-

The other part of the definition of "shop" that is, "shop" means any premise where services are rendered to customers" is to (sic) mind equally inapplicable to the case of a chartered architect. It is not denied by the other side that a Chartered Architect does carry on a learned profession and that it is his special

qualifications that are placed at the disposal of his clients.

It was on the above finding and the concession made in that case that the order of the Commissioner of Labour holding that the firm would come within the definition of "shop" under the said Act and the order of the Additional Commissioner of Workmen's Compensation directing payment of gratuity, were set aside.

11. The above decision proceeds on the footing that the amplitude of the definition in Section 1(3) of the Payment of Gratuity Act is confined in its application to the definition of "shop" in Section 2(16) of the Madras Shops and Establishments Act.

12. The question of interpretation of the provisions of Section 2(3)(b) of the Payment of Gratuity Act came up for consideration before the Supreme Court in *State of Punjab Vs. Labour Court Jullunder and Others*, and the Supreme Court came to the conclusion that the provisions of Section 1(3)(b) of the Payment of Gratuity Act were wide enough to include any law-Central or State-applicable to every shop or establishment and that a firm or architect such as the petitioner in this case, would come within the purview of "establishment" as defined in the Payment of Wages Act. Section 2(ii)(g) of the said Act reads as follows:

2(ii) "Industrial or other establishment" means (g) establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals or relating to operations connected with navigations, irrigation of the supply of water, or relating to the generation, transmission and distribution of electricity or any other form of power is being carried on.

The following observations of the Supreme Court from the above judgment may usefully be reproduced:

It is urged for the appellant that the Payment of Wages Act is not an enactment contemplated by Section 1(3)(b) of the Payment of Gratuity Act. The Payment of Gratuity Act, it is pointed out is a Central enactment and Section 1(3)(b), it is said, refers to a law enacted by the State legislature. We are unable to accept the contention. Section 1(3)(b) speaks of "any law for the time being in force in relation to shops and establishments in a State.

There can be no dispute that the Payment of Wages Act is in force in the State of Punjab. Then it is submitted that Payment of Wages Act is not a law in relation to "shops and establishments". As to that the Payment of Wages Act is a statute which, while it may not refer to shops, relates to a class of establishments that is to say, industrial establishments. But, it is contended, the law which relates to both shops and establishments, such as, the Punjab Shops and Commercial Establishments Act, 1958. It is difficult to accept that contention because there is no warrant for so limiting the meaning of the expression "law" in Section 1(3)(b). The expression is comprehensive in its scope, and can mean a law in relation to shops as well as separately, a L.M. Chitale and Son by Sole Surviving Partners,

S.L. Chitale Vs. The Commissioner of Labour and Others, law in relation to establishments, or a law in relation to shops and commercial establishments and a law in relation to non-commercial establishments. Had Section 1(3)(b) intended to refer to a single enactment, surely the appellant would have been able to point to such a statute, that is to say, a statute relating to shops and establishments, both commercial and noncommercial. The Punjab Shops and Commercial Establishments Act does not relate to all kinds of establishments. Besides shops, it relates to commercial establishments alone "Had the intention of Parliament been, when enacting Section 1(3)(b) to refer to a law relating to commercial establishments it would not have left the expression "establishments" unqualified. We have carefully the various provisions of the Payment of Gratuity Act, and we are unable to discern any reason for giving the limited meaning of Section 1(3)(b) urged before us on behalf of the appellant. Section 1(3)(b) applies to every establishment within the meaning of any law for the time being in force in relation to establishments in a State. Such an establishment would include an industrial establishment within the meaning of Section 2(ii)(g) of Payment of wages Act. Accordingly, we are of the opinion that the Payment of Gratuity Act applies to an establishment in which any work relating to the construction, development or maintenance of buildings, roads, bridges or canals, or relating to operations connected with navigation, irrigation or the supply of water, or relating to generation, transmission and distribution of electricity or any other form of power is being carried on. The Hydel Upper Beri Doab Construction Project is such an establishment and the Payment of Gratuity Act applies to it".

13. Learned counsel on behalf of the petitioner has next contended that the authorities under the Payment of Gratuity Act are not qualified as professional persons to determine a dispute u/s 7 of the Act, which in its purview may require a decision as to intricate question of title as to who is the legal heir of the employee, so as to claim payment of gratuity. There is no substance in this contention of the learned Counsel for the petitioner. The Supreme Court in the case referred to above, has held that the Payment of Gratuity Act is a complete and self-contained Code and has made provision for the decision of all disputed questions that may arise for consideration under the Act. Reference in this connection may be made to the following observations of the Supreme Court (at page 1983-1984)-

It is apparent that the Payment of Gratuity Act enacts a complete Code containing detailed provisions covering all the essential features of a scheme for payment of gratuity. ... Upon all these considerations, the conclusion is inescapable that Parliament intended that proceedings for payment of gratuity due under the Payment of Gratuity Act must be taken under that Act and not under any other.

We are therefore, of the opinion that, in view of the decision of the Supreme Court referred to above, the decision in L.M. Chitale and Son by Sole Surviving

Partners, S.L. Chitale Vs. The Commissioner of Labour and Others, must be held to have been wrongly rendered, and must be taken to have been overruled by the above decision of the Supreme Court.

14. In the result we do not find any merit in the writ petitions and they are accordingly dismissed. But in the circumstances we make no order as to costs.