

(1985) 10 PAT CK 0018
In the Patna High Court
Case No : C.W.J.C. No. 619 of 1979 (R)

United Club

APPELLANT

Vs

Joint Labour Commissioner and Others

RESPONDENT

Date of Decision : 10-10-1985

Acts Referred:

MOTOR TRANSPORT WORKERS ACT, 1961 — Section 2

Citation : (1986) 34 BLJR 580

Hon'ble Judges : S. Ali Ahmad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S. Ali Ahmad, J.—United Club, Jamshedpur, is the petitioner. The Assistant Labour Commissioner, Jamshedpur, by a letter dated 21-7-1979, a copy of which has been marked as Annexure 5, asked the petitioner to get the Club registration renewed for the year 1978-79 under the Bihar Shops and Establishments Act, 1953. Learned Counsel says that the petitioner is not an establishment within the meaning of the Bihar Shops and Establishments Act (for short "the Act") and, therefore, a prayer has been made that the direction to get renewal under the Act be quashed.

2. In order to appreciate the argument advanced at the Bar, it may be necessary to mention some facts. According to the petitioner, the Club has been established with a view to provide entertainment and relaxation to its members and keeping that end in view it has a reading room, library, swimming pool and provisions for playing tennis, badminton, etc. It is further said that the Club caters snacks, refreshment and beverages to its members. The purpose for providing the snacks, refreshment and drinks was to assist the members in carrying out their cultural activities. A counter-affidavit has been filed on behalf of the respondents wherein, inter alia, it has been stated that besides giving facilities to its members the Club occasionally gives on rent to the non-members its premises for holding conferences and other functions. It has also been said in the counter affidavit

that occasionally dinners and lunches are also arranged for non-members. Mr. Chatterji, learned Counsel appearing in support of the petition has challenged the statements made in the counter-affidavit and has said that the affidavit shows that the statement made therein are on the basis of record. But Mr. Chatterji says that there is no record to corroborate those statements. Be that as it may I assume in favor of the petitioner that the Club provides services only to its members and their guests. I shall also presume that if any conference is held in the premises of the Club then the booking is made in the name of one of the members of the Club. I propose to examine the case mainly on the statement made in the writ petition, the relevant portion of which I have already quoted above.

3. The only question, therefore, that arises for determination in this application is as to whether a Club comes within the purview of the Act or not? No case has been brought to my notice which directly covers the point. Is it, therefore, necessary to analyse the relevant provisions of the Act. But before that is done it has to be kept in mind that the Act is beneficial piece of legislation and was made with a view to regulate condition of works and employment in shop and other establishment. Therefore, while interpreting the provisions the object for which the Act was made has to be kept in mind.

4. Mr. Chatterji urged that a Club does not come within the meaning "establishment" as defined in Section 2(6) of the Act. It will be convenient to quote this sub-section:

(6) "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--

(i) administrative or electrical service appertaining to such establishment;

(ii) a shop, restaurant, residential hotel, eating house, theatre or any place of public amusement or entertainment; and

(iii) such other establishment as the State Government may, by notification, declare to be an establishment to which the Act applies; but does not include a "motor transport undertaking" as defined in Clause (g), Section 2 of the Motor Transport Workers Act, 1961.

According to Mr. Chatterji, since the Club is not engaged in any business, trade or profession or in any work connected with or incidental or ancillary to, any business, trade or profession, it cannot be said that it is an establishment within the meaning of Sub-section (6) of Section 2 of the Act. Mr. Government Pleader No. 1, on the other hand, says that in Serial No. 9 of Schedule 1 of the Act, besides restaurants, eating houses, etc., Club has also been mentioned indicating that Sections 7, 8 and 12(1) of the Act will not apply to establishment mentioned in Serial No. 9. He says that Serial No. 9 of Schedule I also is a part of the Act and according to him, therefore, even if there is any ambiguity in Sub-section (6)

of Section 2 of the Act, the same is completely removed by Serial No. 9 of Schedule I of the Act.

5. I have quoted Sub-section (6) of Section 2 of the Act which defines, "establishment." The earlier part of this sub-section, trade or profession is an establishment. It does not stop there. It goes on to say that the word "establishment" includes within its ambit places enumerated in Clauses (i), (ii) and (iii) of Sub-section (6) of Section 2 of the Act. That means that the definition of "establishment" is not exhaustive. I also find that the residential hotel which is included in Sub-section (6) of Section 2 of the Act has also been defined in Sub-section (12) of the Act. According to this definition, residential hotel includes a Club. Mr. Chatterji says that reference to a Club in this sub-section has been made while defining residential hotel and, therefore, according to him, only such Clubs will come under the purview of this sub-section which provides residential facility to its members or to their guests. It is true that Clubs have been included while defining residential hotel, but on that basis alone it cannot be said that only such Club are included which provide residential facilities. If it is held that like that then this Court will have to import some extra words to the section and that is not permissible. The Sub-section (13) defines "restaurant" which also finds mentioned in Clause (ii) of Sub-section (6) of Section 2 of Act. According to the definition "restaurant" means any premises in which the business of the supply of meal or refreshments to the public or a class of the public for consumption on the premises is carried on. Undisputedly this provides snacks, refreshment and beverages to its members and to their guests. Mr. Chatterji says that notwithstanding this, Club cannot be equated with a restaurant as the facilities are limited only to the members and not to the public. He also says that the supply of refreshment, etc. is not by way of business but is on "no profit no loss" basis with the sole purpose of providing recreation and relaxation to the members. It is difficult to accept this argument. It is true that the facilities in the Club are not extended to the public as a whole, but it is extended only to the members. The members in my opinion, certainly constitute a class of public and, therefore, the first part of the argument of Mr. Chatterji is not correct. This brings us to a more complex problem.

6. Sub-section (6) of Section 2 of the Act uses the word "business". This sub-section that an establishment, which carries on any business in an establishment. Mr. Chatterji says that the Club does not carries on any business for providing different facilities to its members. He says that the members make contributions and out of those contributions facilities and privileges are given to the members. He says that since there is no motive of making any profit, therefore, it cannot be said that the Club carries on any business and if it does not carry on any business then neither Sub-section (6) of Section 2 of the Act has any application nor the Club can come within the definition of "restaurant" as defined under Sub-section (13) of Section 2 of the Act. Business has not been defined in the Act. According to Halsbury's Laws of England, 3rd Ed. Vol. 10, page 38, "Business is a wider term than, and not synonymous with trade; and

means practically anything which is an occupation as distinguished from pleasure. Profit or the intention to make profit is not an essential part of the legal definition of a trade or business; and payment or profit does not constitute a trade of business that which would not otherwise be such." Again at page 461 of Vol. 16, 4th Ed. of Halsbury's Laws of England, it is mentioned that "business includes a trade or profession, and any activity carried on by a body of persons, whether corporate or incorporate." On the same page "activities" also have been explained. According to it "activities includes charitable or statutory operations which cannot be described as a business or profession: Dellow Industrial Properties Ltd. v. Else (1967) 2 Q.B. 449." In the case of Dr. Devendra M. Surti Vs. The State of Gujarat, , the Supreme Court had occasion to interpret certain provisions of the Bombay Shops and Establishment Act. While considering what is commercial establishment, it observed as follows:

...It is clear that the presence of the profit motive of the investment of capital tradition associated to the notion of trade and commerce cannot be given an undue importance in construing the definition of "commercial establishment" u/s 2(4) of the Act. In our opinion, the correct test of finding where a professional activity falls within Section 2(4) of the Act is whether the activity is systematically and habitually undertaken for production or distribution of goods or for rendering material services to the community or any part of the community with the help of employees in the manner of a trade or business is such an undertaking....

If it could be said about "commercial establishment" that the profit motive or the investment of capital tradition associated to the notion of trade and commerce cannot be given undue importance, then certainly this guideline will apply with greater force to such establishment which is not described as commercial as is the case in the Bihar Act. For these reasons, in my view, the petitioner-Club is an establishment under the Act.

7. In the result, the application is dismissed, but without costs.