**N.E. Merchant and anr. Vs. State**

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**Court** : Mumbai

**Decided On :** Jul-31-1967

**Reported in** : AIR1968Bom283; (1967)69BOMLR758; ILR1967Bom1392

**Judge** : Chitale and ;Palekar, JJ.

**Acts** : Bombay Shops and Commercial Establishments Act, 1948 - Sections 2(4), 2(7), 2(9), 7(2), 7(2-A) and 52

**Appeal No.** : Criminal Revn. Appln. No. 1289 of 1966

**Appellant** : N.E. Merchant and anr.

**Respondent** : State

**Advocate for Def.** : M.A. Rane, Asst. Govt. Pleader

**Advocate for Pet/Ap.** : R.W. Adik and ;W.N. Yande, Advs.

**Judgement** :

**Palekar, J.**

(1) This is a revision from an order of conviction and sentence passed by the Honorary Presidency Magistrate (Municipal Bench), Bombay, under S. 52(a) read with S. 7(2)(2-A) of the Bombay Shops and Establishments Act, 1948. The applicants are chartered accountants carrying on their business in the name

Messrs. N. E. Merchant and Co. Both of them are qualified chartered accountants entitled to practise as such in their own right.

(2) One Narayan Mahadeo Malik who is the Inspector in the Shops and Establishments Department of the Bombay Municipal Corporation visited the establishment of the applicants on 15-7-1965 and found the following contraventions of the Act, viz., the Bombay Shops and Establishments Act, 1948.

(1) The registration Certificate was not displayed at a conspicuous place in the establishment.

(2) Application in Form 'B' together with the prescribed fee for the renewal of the Registration Certificate No. B-II-1831 for the year 1965 was not submitted.

The learned Magistrate held that the first contravention had not been proved but the second was proved. He, therefore, convicted the applicant under S. 52(a) read with Section 7(2)(2-A) of the Act.

(3) Section 7(2-A) of the Act provides

'A registration certificate granted under sub-section (2), shall be valid up to the end of the year for which it is granted. An application for the renewal of a registration certificate shall be submitted not less than fifteen days before the date of expiry of the registration certificate or of the renewed registration certificate, as the case may be, and shall be accompanied by such fees, and the renewed registration certificate shall be in such form, as may be prescribed.'

The form prescribed is form B. There is no dispute that the applicants had obtained a registration certificate under S. 7(1) and (2) of the Act for the year 1964 being Registration Certificate No. B-II-1831, but no application for the renewal of that certificate was made as required by Sub-section (2-A). In other words, the contravention is admitted. The contention which was put forward on behalf of the applicants was that the Act was not applicable to the establishment of the applicants, and therefore, there was no need to apply either for a registration certificate under S. 7 (1) and (2), for a renewal of that registration certificate under sub-sec (2-A). That contention, however, was negatived by the learned Honorary

Presidency Magistrate, and on conviction the applicants were ordered to pay a fine of Rs. 30 each or in default to suffer simple imprisonment for seven days.

(3) Section 7 of the Act is found in Chapter II dealing with Registration of Establishments and requires the employer of every establishment to send to the Inspector of the local area concerned a statement in a prescribed form together with a fee for obtaining a registration certificate. The applicants contend that they do not come within the definition of either the word 'employer' or 'establishment' as defined in the Act, and hence there could be no contravention of any of the provisions of S. 7.

(4) The Bombay Shops and Establishments Act, 1948, is an Act to consolidate and amend the law relating to the regulation of conditions of work and employment in shops, commercial establishments, residential hotels restaurants, eating houses, theatres, other places of public amusement or entertainment and other entertainments. Section 2 under its Clause (7) defines the word 'employer'. Employer means a person owning or having ultimate control over the affairs of an establishment. Under Clause (8) 'Establishments' 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 purpose of the Act. 'Commercial Establishment' is defined in Clause (4) of that section. It 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 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.

(5) In the submission of the State, the establishment of the applicants is an establishment of the applicants is an establishment which carries on a business, trade or profession of chartered accountants and is, therefore, a commercial

establishment, and since applicants are persons owning or having ultimate control over the affairs of the establishment, they are liable under S. 7 to apply for a registration certificate. On the other hand, it was contended on behalf of the applicants that as chartered accountants, the applicants are carrying on or practising a profession, and it would be a misnomer to say that their establishment is a commercial establishment. In a recent decision of this Court reported in Sakharam Narayan v. City of Nagpur Corporation . : AIR1964 Bom200 the relevant provisions of the present Act, viz., the Bombay Shops and Establishments Act, 1948, came for consideration in a case where an advocate or a legal practitioner was sought to be brought under the purview of the Act. It was contended in that case that advocate or a legal practitioner working in his office or appearing in Court cannot be said to be carrying on in any of those places, an activity which can be said to be of a commercial nature, and therefore, he was not liable to have any establishment registered under the Act. The contention was upheld. It was held that it was not every establishment in the sense of premises or buildings where business, trade or profession is carried on that is intended to be governed by the Act, but only those premises in which is carried on one or the other of these kinds of activities which are of a commercial nature. In other words, it was decided that in order to hold that the establishment of a lawyer who follows one of the learned professions is a commercial establishment, it must be shown that the activities carried on by that lawyer in his professional capacity were of a commercial nature. If those activities were not of a commercial nature, the establishment of the lawyer could not be regarded as a commercial establishment within the meaning of Clause (4) of S. 2 of the Act, and hence the lawyer is not an employer within the meaning of Clause (7) of S. 2.

(6) Now this decision which is directly on the points to be considered is binding on us. The prosecution, therefore, in order to succeed in this case will have to show that the owner of the establishment carried on a business, trade, or profession and such activity was of a commercial nature. The emphasis on behalf of the State seems to be that the applicants who are chartered accountants were carrying on a business and the business itself implied commercial profit, and, therefore, their establishment was a commercial establishment. On the other hand, the submission of the applicants is that they are practising a profession, and in the

practice of that profession, there is no element of commerce, and, therefore, their establishment is not a commercial establishment. We shall, therefore, have to see, in the first place, whether the applicants as chartered accountants were carrying on or practising a profession, and secondly whether in practising the profession their activity assumed a commercial character.

(7) The word 'profession' has not been defined, but the sense of the word has been brought out by Scrutton L. J. in Commissioners of Inland Revenue v. Maxse, (1919) 1 KB 647. It was observed in that case at page 657:

'.................. it seems to me as at present advised that a 'profession' in the present use of language involves the idea of an occupation requiring either purely intellectual skill, or of manual skill controlled, as in painting and sculpture, or surgery, by the intellectual skill of the operator, as distinguished from an occupation which is substantially the production or sale or arrangement for the production or sale of commodities. The line of demarcation may vary from time to time. The word 'profession' used to be confined to the three learned professions, the Church, Medicine and Law. It has now, I think, a wider meaning'.

The three learned professions referred to in the above quotation cannot be the only professions for all time. Times change. The sphere of human activity and endeavour is constantly expanding, giving rise to problems which require specialisation and expertise. In the course of last two centuries, trade, commerce and industry have vastly developed bringing in their wake problems which have to be tacked by experts. The old crystallised learned professions of the church, Medicine and Law were by the very nature of their training is unable to solve the problems of the new developments in trade, commerce and industry, which inter alia, throw, up a team of experts in the shape of chartered accountants having specialised knowledge. It was found necessary by the State to regulate this profession of chartered accountants, and that gave birth to the Chartered Accountants Act, 1949. The very preamble of this Act recognized that the chartered accountants are practising a profession and for the regulation of that profession and for the regulation of the profession it was necessary to establish an Institute of Chartered Accountants. In other words, it has now been statutorily recognized that the activities of a chartered accountant are not a mere business or trade, but a profession and this is clear from the various provisions that have been made in that Act to lay down the standard of qualifications for a chartered accountant and standards of conduct when practising as a chartered accountant. Section 19 of the Chartered Accountant Act, 1949, provides that a register of the members of the Institute, viz., The Institute of Chartered Accountants, shall be maintained showing therein certain particulars about every member of the Institute. Every member who is entered in this register is a chartered accountant. Section 3 shows that the Institute incorporated, to begin with, all those persons whose names had been entered in the register at the commencement of the Act, and provision was made that all persons whose names had been entered in the register after the commencement of the Act, would also become member of the Institute which was constituted a body corporate. Section 4 provides what persons would be entitled to have their names entered in that Register. Clause (iii) of sub-section (1) of S. 4 shows that any person who has passed the examination for the Government Diploma in Accountancy or an examination recognised as equivalent thereto by the rules for the award of the Government Diploma in Accountancy before the commencement of this Act, was entitled to be entered in the register. The members of the Institute are divided into two classes designated as associates and fellows depending upon the number of years one has been in practice as a chartered accountant. Section 6 provides that no member of the institute shall be entitled to practice unless he has obtained from the Council a certificate of practice. The expression 'to be in practice' has been defined in sub-section (2) of S. 2 of the Act. A member of the Institute shall be deemed 'to be in practice', when individually or in partnership with chartered accountants in practice, he in consideration of remuneration received or to be received, (i) engages himself in the practice of accountancy; or (ii) offers to perform or performs services involving the auditing or verification of financial transactions, books, accounts or records or the preparation, verification or certification of financial accounting and related statements or holds himself out to the public as an accountant; or (iii) renders professional services or assistance in or about matters or principle or detail relating to accounting procedure or the recording, presentation or certification of financial facts or data: or (iv) renders such other services as, in the opinion of the Council, are or may be rendered by a chartered accountant in practice, and every such member of the Institute in practice is known as a chartered accountant under S. 7. Section 8 deals with the disabilities which disqualify a person from being entered or borne on the register. He cannot be entered or borne on the register if he has not attained the age of twenty-one years, or is of unsound mind, or is an undischarged insolvent, or has been convicted by a competent Court of an offence involving moral turpitude and punishable with transportation or imprisonment or of an offence, not of a technical nature, committed by him in his professional capacity unless in respect of the offence committed he has either been granted a pardon or, on an application made by him in that behalf, the Central Government has, by an order in writing, removed the disability. Similarly, one more disability is that a member who has been removed from membership of the Institute on being found on enquiry to have been guilty of professional or other misconduct, shall not be member until after the expiry of the period for which he has been removed.

(8) The affairs of the Institute are managed by a Council constituted under Section 9 of the Act. It consists of not more than 24 members elected by members of the Institute and six persons nominated by the Central Government. It has a President and Vice-President and the duration of any Council constituted under the Act is for three years. The functions of the Council as laid down under S. 15 are important from our point of view. The duty of carrying out the provisions of the Act is vested in the Council, and these duties include, (a) the examination of candidates for enrolment and the prescribing of fees therefore: (b) the regulation of the engagement and training of articled and audit clerks: (c) the prescribing qualification for entry in the Register; (e) the granting or refusal of certificates of practice under this Act. (f) the maintenance and publication of a Register of persons qualified to practice as chartered accountants; (h) the removal of names from the Register and the restoration to the Register of names which have been removed; (i) the regulation and maintenance of the status and standard of professional qualifications of members of the Institute; and (j) the exercise of disciplinary powers conferred by this Act. Chapter V deals with misconduct. Elaborate provisions have been made to subject the members of the profession to a rigorous discipline. The two Schedules to the Act enumerate the various items of

professional misconduct in relation to chartered accountants in practice. Section 21 provides for inquiry being made into the misconduct of a chartered accountant on complaint. The complaint has to be referred to a Disciplinary Committee formed under S. 17 of the Act, and a suitable inquiry has got to be made. In particular instances the case of the delinquent is required to be forwarded to the High Court and the High Court under sub-section (6) of S. 21 may inter alia remove the chartered accountant from the membership of the Institute either permanently or for such period as the High Court thinks fit. Section 22-A also provides for an appeal to the High Court. Under S. 24, any person who, not being a member of the Institute, represents that he is a member of the Institute, or uses the designation of Chartered Accountant, commits an offence which is punishable with imprisonment or fine. It is similarly an offence under S. 24-A if any person uses unauthorisedly the name of the Council or awards degree of chartered accountant, etc. Section 30 gives the Council power to make regulations in respect of various matters and such regulations have been made by the Council and are known as 'the Chartered Accountant Regulation 1964'. Stringent provision is made as to what would amount to professional misconduct, and there is not the least doubt that the object is to maintain high standards of profession and integrity. One has only to go through the two Schedules to the Act to see how jealously the statute wants that the integrity of the profession should be maintained. A chartered Accountant cannot solicit clients or professional work either directly or indirectly by circular, advertisement, personal communication or interview or by any other means. He cannot accept a position as auditor previously held by another chartered accountant, nor can he engage in any business or occupation other than the profession of chartered accountant unless permitted by the Council so to engage. The stringent restrictions that have been placed on him are only a measure of the integrity that should be displayed by the chartered accountant in the practice of his profession. And all these matters help to consider whether the activity of the chartered accountant is a profession or not. In Currie v. Inland Revenue Commissioner, (1921) 2 KB 332, Scrutton L. J. dealing with a case of an Income-tax Practitioner observed.

'............ I myself am disposed to attach some importance in findings as to whether a profession is exercised or not to the fact that the particular man is a member of an organized professional body with a recognized standard or ability enforced before he can enter it and a recognized standard of conduct enforced while he is practising it'. Indeed, that would not be a conclusive test, but that is an important element to be considered when the question is whether a particular activity is a professional activity. We further think that in considering whether an activity is a profession or not, we may perhaps be guided by the fact that the Church, the Medicine and the Law have been for centuries regarded as learned professions. In each of these three, the individual activity is characterised by personal skill and intelligence and is dependent on personal study, character and integrity. These qualities displayed by the practitioners of these learned professions inspire confidence in persons approaching them for advice or guidance. The priest is approached for spiritual comfort and guidance, the doctor for physical or mental ailment, and the lawyer for legal advice. But in each case the person who approaches them chooses them according to his own conception of the skill, intelligence and integrity of the person approached, and since he approaches in entire confidence, the priest, the doctor and the lawyer have a corresponding obligation not to betray the confidence and advise his client as he can. The same element of trust and confidence must be a test in more or less degree in modern professions. A chartered accountant is approached by his client for advice and guidance in his problems with regard to trade, business or industry, and it is expected that the chartered accountant, to the best of his ability, would be in a position to help him in his difficulties and not betray the confidence that is placed in him. This, in our opinion, is one of the elements which should be sought when considering whether a particular person is practising a profession or is merely doing a business.

(9) A rapid survey of the general functions performed by a chartered accountant in practice will go to show that the functions are of a highly individualistic character requiring personal skill, intelligence, and integrity on the part of a chartered accountant. The company Law requires that the accounts of a company should be audited by auditors. Section 226 of the Companies Act 1956 lays down the qualifications and the disqualifications of auditors. Under that section, an auditor will not be qualified unless he is a chartered accountant within the meaning of the Chartered Accountants Act, 1949. Section 227 then prescribes the powers and the

duties of the auditors. Every auditor of a company has a right of access at all times to the books of accounts and vouchers of the Company and is entitled to require from the officers of the company such information and explanations as the auditor may think necessary for the performance of his duties as an auditor. In carrying out these duties, he cannot be cowed down either by the Managing Director of the company or the Managing Agents because his duties require that he shall faithfully carry out his duties as an auditor without fear or favour and audit the accounts of the company in such a manner that the shareholders get a correct picture of the financial position of the company. Punishment is also provided under S. 233 of the Indian Company Law if the auditor's report is made otherwise than in conformity with the requirements of Ss. 227 and 229 of the Act. In other affairs also relating to companies a chartered accountant plays a very vital role. Being trained to maintain costing records, he can ascertain the cost of production and of processes and different levels of operations in the manufacture of a product. He can by his expert knowledge help a manufacturing company. His services are also frequently sought in connection with the formation and the financial structure in liquidation of limited company. He is also called upon to carry out investigation to ascertain the financial position of a business in connection with matters such as new issue of share capital, the purchase or sale of a business, reconstructions and amalgamations. He is also fitted to undertake valuation of shares of public and private companies when amalgamations or reorganizations take place. In other words, the chartered accountant plays a very valuable role in relation to the financial aspects of the business of a company. He is also well equipped for advising the preparations of tax returns. Drastic forms of taxation are being introduced. The chartered accountant has to keep himself abreast of the current and continuing tax information. Section 228 of the Income-tax Act, 1961, shows that a chartered accountant is entitled to appear before the Income-tax authorities as the authorized representative of the assessee. That is also the position under the Bombay Sales Tax Act, 1948..........(See S. 70). Under the Co-operative Societies Act also he is entitled to be appointed an auditor of Co-operative Societies and Banks. All these multifarious functions call for the exercise of integrity, intelligence and personal skill by the chartered accountant in the service of his client, and therefore, when the Chartered Accountants Act. 1949, describes in its preamble that the avocation of a chartered accountant is a profession, it is not merely a figure of speech. In this connection we may usefully refer to a passage from the pamphlet issued by the Institute of Chartered Accountants of India in 1965 entitled 'General Information and Syllabus of Examinations' which fairly states the position. The passage referred to is at page 16 of that pamphlet. It is as follows:-

'The professional accountant performs what is essentially a personal service and, while discharging this function, he is at the same time engaged in a technical piece of work. Consequently, he must possess certain personal as well as technical qualifications, if he is to make a mark in the field. He must develop certain qualities of character and traits of personality like high objectivity, independence of thought and integrity. He must have the capacity to take decisions and gauge correctly the extent of work to be performed in order to arrive at an informed opinion, accuracy of observation thought and expression, he must possess in abundance. He must particularly be adept in communicating the significance of numerical data. He must be sufficiently equipped by natural endowment, education and training to undertake the analysis of voluminous and frequently complicated aspects of business transactions. The collection, collation and dissemination of the data from which opinions are reached, represent a large segment of his activities. In the course of his work, he is bound to come across many types of people and to work successfully with them he would require a constructive approach and a sufficiently broad understanding, not only in his own field of study, but in many others'

(10) The next question for our consideration is whether this profession of the applicants has any commercial element therein, because only then it can be held that the establishment of the applicants is a commercial establishment. We should like to guard ourselves against saying that in no conceivable circumstances could the profession of a chartered accountant be organized on a commercial basis, that is to say, as a commercial venture wherein capital is laid out and a risk run of profit or loss, as suggested by Lord Campbell in the course of arguments in Mckay v. Rutherford, (1948) 6 Moo PC 413. We are primarily concerned with the applicant, and we have to see whether there is any element of commerce in the profession which they are practising. Some evidence has been led in this case, and it goes to show that the applicants are qualified chartered accountants and they have an

office where there are three articled clerks and one ordinary salaried clerk. Articled clerks are not salaried servants. One of them examined in this case, Abdul Sattar, has said that he is not paid any wages. In fact, the regulations made in this connection under the Chartered Accountants Act in 1964 show that an articled clerk is engaged by a chartered accountant with the principal object of training, and the articled clerk himself is required to pay a premium not exceeding Rs. 2000. At the end of the training, this amount is to be returned to the articled clerk.......... (See Regulations 29 and 31 in this connection of the Chartered Accountants Regulations, 1964). Abdul Sattar has further stated what is the kind of work he and the other articled clerks are expected to do. He says that he undergoes the training with the chartered accountants in order to gain practical knowledge, and for that purpose, he has to check the arithmetical accuracy of receipts and payments and then submit his report to the chartered accountant. In his report he must draw attention to any mistakes he has found when he is checking the receipts of payments. Indeed if the articled clerks having an elementary knowledge of accountancy. The learned Honorary Presidency Magistrate has come to the conclusion that the work of the chartered accountant involves the joint labour of the chartered accountant and the three articled clerks, and, therefore, his establishment constitutes an 'industry' within the definition of the Industrial Disputes Act 1947. He has further argued that since every industry under the Act is a commercial establishment. In this connection he relied on a decision of the Calcutta High Court reported in Rabindra Nath v. First Industrial Tribunal West Bengal, : AIR1963 Cal310 . That was a case directly under the Industrial Disputes Act. There are firm of chartered accounts engaged nearly 280 clerks, and when a dispute between the management and the employees was raised, the question for consideration was whether the dispute fell within the provisions of the Industrial Disputes Act, 1947. The learned Judge held that it did. But in holding so, he made the following observations:

'I desire, however, to make one position clear. A Chartered Accountant doing audit work assisted by stenographers, personal clerks and menial servants, that is to say, doing the entire auditing work from examination of accounts to the making of the report, all by himself but only with such subsidiary and incidental help as may be rendered by his stenographers, typists personal clerks and servants may not be carrying out an industry'.

This decision, however, has been expressly dissented from by the Kerala High Court in T. K. Menon and Co. v. District Labour Officer, Kozhikode, AIR 1967 Ker 31. It was held in that case that a Chartered Accountant is a member of an organised professional body with a recognised standard of ability enforced before he enters it and a recognised standard of conduct enforce while he is practising it........There is no investment of any capital to practise as a chartered accountant except the qualification and experience he or the partners possess. It was further held in that case that since the work of the individual chartered accountant is a profession and not an industry, the mere fact that in view of the volume of work he has to maintain employees would not make it an industry within the meaning of S. 2(j) of the Act. It appears to us that so far as the present applicants are concerned, these decisions which have been primarily based upon a particularly wide definition of 'industry' under the Industrial Disputes Act 1947 cannot be of much guidance, and we have to see whether the establishment of the applicants is a 'commercial establishment' as defined in the Bombay Shops and Establishments Act, 1948. There is no evidence that any capital has been invested or that the applicants are running their establishment as a commercial concern. Could it, therefore, be said that because the applicants receive some little co-operation from the articled clerks in checking receipts and payments, an element of commerce is introduced in the professional practice by the applicants? We think, some of the observations made by the Supreme Court in the case of National Union of Commercial Employees v. M. R. Meher, : (1962)ILLJ241SC , are apposite. In that case, it was sought to apply the industrial Disputes Act to solicitors and their establishments, but the Supreme Court rejected that contention observing that the solicitors were practising a profession and were not carrying on an industry. Referring to the work done by clerks and accountants in the solicitors' office, their Lordships observed that there could be no doubt that for carrying on the work of a solicitor efficiently, accounts have to be kept and correspondence carried on and this work would need the employment of clerks and accountants. But the crucial question was, 'Has the work of the clerk who types correspondence or that of the accountant who keeps accounts any direct or essential nexus or connection with the advice which it is the duty of the solicitor to give to his client? The answer to this question must, in our opinion, be in the negative. There is, no doubt, a kind of co-operation between the solicitor and his employees, but that co-operation has no direct or immediate relation to the professional service which the solicitor renders to his client. Therefore, in our opinion, it is difficult to accept the plea that the solicitor's firm carrying on the work of an Attorney is an industry within the meaning of S. 2(j)......................'

In the case with which we are concerned, there is undoubtedly some amount of co-operation between the articled clerks and the chartered accountant. We have already pointed out that the articled clerk is not a salaried employee. He is there to learn methods of accountancy. The work done by him is of a very routine character. Every profession involves a good deal of mechanical or routine work. Notes are required to be prepared, summaries taken, and precedents collected. This work though, no doubt, necessary for a practitioner of a profession, is best left to assistants who play no part whatsoever in the individual judgment formed by the professional man and the advice he is prepared to offer. In that part of work of the profession which entirely depends upon the personal intelligence and skill of the professional practitioner, these assistants have really little to offer. The work done by the assistants merely eliminates drudgery part of the profession. The priest has his acolyte, the doctor his nurse and the lawyer his devil. These respective pairs undoubtedly co-operate in the work they do for their clients or customers. But in the essential part of the professional business, the individual judgment or advice of the priest, the doctor and the lawyer alone is supreme, and in the formation of that judgment their assistants hardly play a recognizable part. That applies equally to the chartered accountant who has under him for training articled clerks. In the formation of the judgment and advice, the articled clerks have no place. Therefore, their co-operation with the chartered accountant in checking receipts and payments is not the sort of co-operation which will reduce what is essentially a profession to a commercial venture.

(11) Mr. Rane for the State invited our attention to the preamble of the Act. The Bombay Shops and Establishments Act, 1948, is an Act to consolidate and amend the law relating to the regulation of conditions of work and employment in shops, commercial establishments residential hotels, restaurants, eating houses, theatres, other places of public amusement of entertainment and other establishments. He contended that this is a piece of social legislation, if it is made applicable to residential hotels or restaurants or theatres, there is no good reason why it should not be made applicable to an office of any professional. Cases are not rare where employees are huddled together in a small room, and it is to protect the health and well being of these employees that this law is enacted, and, therefore, neither a solicitor's, nor a chartered accountant's office should be exempted from the application of the Act. However, good a piece of legislation from the social point of view may be we are merely concerned to see whether the applicants' establishment comes within the definition of 'commercial establishment' give, in the Act. For reasons given above we have to come to the conclusion that the applicants' establishment is not covered by the definition of commercial establishment, and, therefore, the applicants were right in their contention before the Honorary Presidency Magistrate that they were not liable for any alleged contravention of Section 7 of the Act.

(12) Mr. Yande on behalf of the applicants has produced before us a copy of a judgment delivered by the same 'Honorary Presidency Magistrate in which he held that the accused in that case, one Mr. Joshi, who was a chartered accountant was not liable under the Act in view of this Court's decision in : AIR1964 Bom200 to which we have already referred above. In that case also the accused Joshi was helped by three articled clerks. The decision in that case was given on the same day, that in that case was given on the same day, that is, on 22-6-1966 as the decision now under revision. We do not see why the learned Magistrate should have taken contrary views in these two judgments given on the same day. In one, he held that the establishment of a chartered accountant is not a commercial establishment, in the other, he held that it was. It is regrettable that such contrary decisions should have been given on the same day.

(13) In the result, the rule is made absolute, the conviction and sentence are set aside and the applicants are acquitted. Fine, if paid shall be refunded.

(14) Rule made absolute; conviction and sentence set aside.