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**Phillipos and Co. Vs. State**

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**SooperKanoon Citation** : sooperkanoon.com/374427

**Court** : Karnataka

**Decided On :** Sep-11-1989

**Reported in** : [1990]67CompCas453a(Kar); 1989(3)KarLJ473; (1990)ILLJ227Kant

**Judge** : K.B. Navadgi, J.

**Acts** : Industrial Disputes Act, 1947 - Sections 2

**Appeal No.** : Crl. Petition No. 915/1987

**Appellant** : Phillipos and Co.

**Respondent** : State

**Judgement** :
ORDER

1. The question which arises for consideration in this petition filed under Section 482 of the Code of Criminal Procedure ('the Code' for short) is : Whether a 'Firm of Chartered Accountants' is an 'Establishment' within the meaning of the expression in Section 2(e) of the Karnataka Shops and Commercial Establishments Act, 1961 (Act No. 8 of 1962). (hereinafter referred to as the Act of 1961).

2. The facts of the case, briefly stated, are as below.

Phillipos & Company is a registered Partnership Firm of Chartered Accountants, having its office at No. 12, Davis Road, Bangalore-560084, Post Box No. 8401.

The Partnership Firm of Chartered Accountants (hereinafter referred to as the Firm) is also registered under the Chartered Accountants Act, 1949 (hereinafter referred to as the Act of 1949).

Wg. Cdr. A. Phillipos (petitioner No. 2), Ashok Kumar (petitioner No. 3), B. Satyanaryan (petitioner No. 4) and Joseph Phillipos (petitioner No. 5) - the Chartered Accountants - are the partners of the Firm.

On 3rd February, 1987 at about 12-45 P.M. Sri Srinivasa, the Senior Labour Inspector, V. Circle, Bangalore-2 (respondent herein) inspected the Office of the Firm. He noticed several contraventions of the provisions of the Act of 1961 and of the Karnataka Shops and Commercial Establishments Rules, 1963 ('the Rules' for short) by the Firm during the course of inspection. The particulars and details of the contraventions are stated in the Inspection Report.

It appears from the record that a notice was issued by the Senior Labour Inspector, V Circle, Bangalore-2, to the Firm and its partners (petitioners Nos. 1 to 5 herein) asking the Firm and its partners to show cause as to why a prosecution should not be launched against the Firm and its partners for having contravened the provisions of the Act of 1961 and the Rules. The Firm and its partners were asked under the notice to show cause in writing within three days of the receipt of the notice.

It is clear from the record that the partners of the Firm refused to receive the show cause notice. Hence, the respondent directed the despatch of the show cause notice to the firm and its partners by post.

Petitioner No. 2, on behalf of the Firm petitioners Nos. 3 to 5 and on his own behalf, wrote to the respondent on 15th April, 1987 stating therein that the notice dated 25th March, 1987 had been received together with the Inspection Report dated 3rd February, 1987 and sought four weeks' time to submit the explanation.

On 27th May, 1987, on behalf of the Firm, petitioners Nos. 3 to 5 and on his own behalf, petitioner No. 2 sent reply stating therein that the Firm was a registered firm of Chartered Accountants; that there were four partners in the Firm; and that

the Firm employs six clerical staff

Petitioner No. 2 contended that the Office of Chartered Accountant is analogous to the office of Lawyers and that the Office of the Chartered Accountants would not come within the expressions either of 'shop' or of 'commercial establishment' as defined under Sections 2(u) and 2(e) of the Act of 1961.

Thereafter the respondent lodged a complaint against the Firm and petitioners Nos. 2 to 5 in the Court of the Metropolitan Magistrate, Traffic Court-1, Bangalore. The Inspection Report, the Show Cause Notice, the letter written by petitioner No. 2 on behalf of the firm, petitioners Nos. 3 to 5 and on his own behalf dated 15th April, 1987 and the reply give by him on 27th May, 1987 were produced along with the complaint. The other document produced along with the complaint is the sanction accorded by the Additional Labour Commissioner, II Division, Bangalore, to prosecute the Firm and its partners under Sections 4(1), 12(1), 29 and 34 of the Act of 1961, and under Rules 8(1), 9(1), 24(1), 24(2), 24(4), 24(5), 24(8) and 24(11) of the Rules.

3. The learned Trial Magistrate took the complaint on his file on 22nd July, 1987 and directed its registration in Case No. 21469/87. He issued summons to the Firm and petitioners Nos. 2 to 5 making it returnable by 21st August, 1987. It appears from the record maintained by the learned Trial Magistrate that two among the petitioners (petitioners Nos. 2 and 4) appeared before the learned Trial Magistrate in response to the summons and secured bail. When the proceedings before the learned Trial Magistrate were pending awaiting the service of summons on petitioners Nos. 3 to 5, the Firm and petitioners Nos. 2 to 5 approached this Court with this petition and obtained stay of further proceedings.

4. Before proceeding to decide the question as to whether the office of a Chartered Accountant or the Office of the Firm of Chartered Accountants is an establishment within the meaning of the expression given in Section 2(i) of the Act of 1961, it appears necessary to have a look at the Objects and Reasons that led to the enactment of the Act of 1949 and the provisions contained therein.

5. At the time of the enactment of the Act of 1949, the accountancy profession was regulated by the Auditors Certificates Rules framed in the year 1932 in exercise of the powers conferred on the Government of India by Section 144 of the Indian Companies Act, 1913. The Indian Accountancy Board was advising the Government in all matters relating to the profession and was assisting it in maintaining the standards of the professional qualifications and conduct required of the members of the profession. The majority of the members of the Indian Accountancy Board used to be elected by Registered Accountants, and members of the profession from all parts of the Country. These arrangement were intended to be only transitional to lead up to a system in which such accountants would in autonomous association of themselves, largely assume the responsibilities involved in the discharge of their public duties by securing maintenance of the requisite standard of professional qualifications, discipline and conduct, the control of the Central Government being confined to a very few specified matters.

6. The Bill which became law in the form of Act of 1949 sought to authorise the incorporation by statute of an autonomous professional body as contemplated and embodied a scheme which was largely the result of a detailed examination of the whole position by a body of experts constituted for the purpose, after taking into account the views expressed by the various Provincial Governments and public bodies concerned. (Vide the Statement of Objects and Reasons published in the Gazette of India, dated 11th September, 1948, Part-V, Page 709).

The title of the Act of 1949 reads :

'An Act to make provision for the regulation of the (profession of Chartered Accountants).'

The words in bracket were substituted for 'profession of accountants' by Section 2 of the Chartered Accountants (Amendment) Act, 1959 with effect from 1st July, 1959.

The Preamble to the Act of 1949 reads :

'Whereas it is expedient to make provision for the regulation of the (profession of Chartered Accountants) and for that purpose to establish an Institute of Chartered Accountants'.

In the Preamble too, the words in bracket were substituted for 'profession of accountants' by Section 2 of the Chartered Accountants (Amendment) Act, 1959 with effect 1st July, 1959.

7. The Act of 1949 is an Act framed for the regulation of the profession of Chartered Accountants-the regulation is exercised through the Institute of Chartered Accountants. It is a self-contained Code of Conduct of the Chartered Accountants. The Institute of Chartered Accountants of India is a Body Corporate and all the Chartered Accountants are its members.

8. There is a Council of the Institute constituted under Section 9. Under Section 15, the Council is entrusted with the management of the affairs and for discharging the functions assigned to it by the Act of 1949. The duty of carrying out the provisions of the Act of 1949 is vested in it. The Council is invested, among others, with the power to take disciplinary action against the Chartered Accountants. It is responsible to guide is members in the discharge of their professional duties and to maintain a high standard. The Act of 1949 is a measure intended to protect the public from undesirable activities of Chartered Accountants who are entrusted with the safety of the interest of the public. The Chartered Accountants Regulations ('Regulations' for short) provide detailed mechanism for the conduct of Chartered Accountants while they are in practice. They cannot do anything which the Act of 1949 forbids or their profession disapproves. A perusal of the provisions of the Act of 1949 and the Regulations would show that the Act of 1949 is intended for the benefit of the public. As observed earlier, the accountancy profession in our Country until 1949 when autonomy was conferred on it, was controlled by the Government.

9. Under Section 2(b) of the Act of 1949, 'Chartered Accountant' means 'a Person who is a member of the Institute'. Every member of the Institute is entitled to designate himself as a Chartered Accountant. There are two classes of members, those who are in practice and those who are otherwise occupied. The members

are divided into two classes - Associates and Fellows. Section 2(2) of the Act of 1949 defines the terms 'to be in practice'. These words have an extended meaning given to them by sub-section (2) clause (iv). It may be necessary to note that a person is deemed to be in practice not only when he is actually engaged in the practice of accountancy, but also when he offers to give accounting services whether or not he in fact does so. Thus, the act of setting up of an establishment offering to give accounting services would tantamount to being in practice even though no client has been served.

10. Regulation 167 of the Regulations defines the other services which if rendered by a Chartered Accountant for which he would be deemed to be in practice. A Charactered Accountant in practice under the said Regulation may accept part-time employments, and notwithstanding anything contained in Regulation 166, subject to the control of the Council, he may act as liquidator, trustee, executor, administrator, arbitrator, receiver, adviser or representative for costing, financial or taxation matter. He may take up an appointment that may be made by the Central Government or the State Government or a Court of Law or any other legal authority. He may act as Secretary in his professional capacity, provided his employment is not on a salary-cum-full-time basis.

11. According to the learned Counsel for the petitioners, a Chartered Accountant in practice, on behalf of his client may appear before a Company Law Board, Commissioners of Income-Tax, Appellate Tribunals, Central Board of Direct Taxes. Central and State Sales Tax Authorities, Central and State Excise Authorities, Monopolies and Restrictive Trade Practices Commission and the authorities under the Foreign Exchange Regulation Act. According to him, a Chartered Accountant in practice is required, among other things, in the discharge of his duties as an Auditor or in any other capacity, to issue certificates in respect of Statutory Audit Report under Section 227 of the Companies Act, 1956, as amended from time to time, and Tax Audit Report under Section 44AB of the Income-Tax Act, 1961, as amended from time to time. He has to issue certificate under the Excise/Customs Law, Import/Export Certifications under Import Licensing Procedures to be submitted to the Joint Chief Controller of Imports and Exports, Certificates of Remittances in foreign currency under the Reserve Bank of

India Regulations, Certificates under the Payment of Bonus Act, Certificates under the Acceptance of Deposit Rules under the Non-Banking Financial Companies; and Certificates of Financial Institutions for the purpose of release of loan funds in respect of setting up of a new project. The learned Counsel further submitted that a Chartered Accountant in practice can make audit of foreign contributions received by Charitable Institutions to be certified and submitted to Home Ministry, and as stated in Regulation 126, even if he is a qualified Law Graduate eligible to practice Law, he cannot practice both Law and Accountancy. He further submitted that a chartered Accountant in practice can make audit of the accounts of Charitable Institutions under Sections 11, 12 and 13 of the Income-Tax Act, 1961 and that Chartered Accountants from India discharge audit functions all over the Middle-East and most of the African Countries.

12. Under Section 7, a Chartered Accountant in practice cannot use any designation other than that of a Chartered Accountant nor can he use any other description, whether in addition thereto or in substitution therefore.

13. A member on ceasing to be in practice as defined in Section 2(2) is precluded from accepting engagement to render service of any of the types rendered by a Chartered Accountant, even though for doing so, the law does not prescribe any special qualification. Section 8 mentions different circumstances under which a person is debarred from having his name entered in or borne on the Register of Members.

14. The provisions in the Act of 1949 in general, the issuance of a Certificate of Practice as provided under Section 6 and the investment of powers with the Council empowering it to inquire into the conduct of a Member of the Institute, in particular, would show that assurance required to a client before engaging the services of a professional man, (i) that he has required competence; and (ii) that he is a man of character and integrity, is made available to him.

15. The instill public trust and confidence, to implement the motto 'pride of service in preference to personal gain'. the noble traditions set up by the learned professions such as Law and Medicine have been incorporated in the Act of 1949.

16. The two Schedules to the Act of 1949 mention the different types of behaviour on the part of a Member of the Institute which would be deemed to be professional misconduct within the meaning of the Act. The First Schedule is divided into three parts and the Second Schedule into two parts. Part-1 of the First Schedule deals with the misconduct of the Chartered Accountant in practice which would have the effect generally of compromising his position as an independent person. Part-2 deals with misconduct of members in service while Part-3 deals with the misconduct of the members generally. The indictments covered by any of the Clauses in the first part of the Schedule have to be adjudicated upon by the Council exclusively except in certain circumstances. The Second Schedule deals with misconduct in relation to Chartered Accountant in practice and members generally requiring action by a High Court.

17. A reading of the provisions of the Act of 1949 and the Regulations would make it amply clear that a Chartered Accountant in practice has manifold functions and duties to perform and discharge with the professional conduct to be observed by him and that apart from possessing required qualifications, he requires special skill, learning and experience in the discharge of his duties.

18. A profession is a vocation or occupation requiring special usually advanced education and skill. The work and skill involved in a profession is predominately mental or intellectual rather than physical or manual.

19. 'Profession', Scrutton L.J., observed in IRC v. Maxse (1919) 1 KB 647' involves the idea of an occupation requiring either purely intellectual skill or of manual skill controlled, as in painting and sculpture, or of surgery, by the intellectual skill of the operator, as distinguished from an occupation which is substantially the production or sale or arrangements for the production or sale of commodities'.

20. The Title and the Preamble to the Act of 1949 refer to the work of Chartered Accountants as profession of Chartered Accountants.

21. The learned Counsel for the petitioners submitted that having regard to the nature, volume and complexity of work, the manifold functions and duties, a Chartered Accountant in practice has to perform and discharge with strict and

scrupulous observance to the norms of the code of professional conduct (professional ethics) and the qualifications, special skill, learning and experience required of him, the status of a person carrying on the profession of accountancy has to be equated to that of a Lawyer or a Doctor. I find the contention full of merit and substance. The profession of accountancy is, indeed, learned and noble, as rightly submitted by the learned Counsel for the petitioners. The Chartered Accountants practice the profession of accountancy by virtue of the qualifications acquired by them through intellectual skill and it is the individual skill that matters.

22. We may now refer to the object of the Act of 1961 though it is not strictly relevant for the inquiry of the controversy.

23. The Act of 1961 is an Act providing for the regulation of conditions of work and employment in shops and commercial establishments. A detailed examination of the provisions of the Act of 1961 would show that it came to be enacted to regulate the conditions of work and employment in shops and commercial establishments and for other incidental matters. The rationale behind the legislation is social interest in the health of the workers who form a substantial segment of the community and in whose welfare the community is essentially and vitally interested. Amelioration of the conditions of work would be the main reason for any measure providing for the regulation of the contracts of labour. Amelioration of the conditions of work is essentially a problem of human relationship and social control. The public and social interest in the health, welfare and efficiency of the worker is beyond challenge. In the absence of protection or guarantee of any fundamental right, the only test of constitutional validity is whether the provision in the law under challenge is enacted to avoid physical over-strain of the worker and so as to afford him better conditions of work and more regulated hours thus giving to him a reasonable amount of leisure. (vide the decision in Ramdhandas v. State of Punjab) (1961-II-LLJ-102). It is because of these reasons, the judicial consensus emerged as a result of scrutiny of the enactments in this area, is that the restrictions mandated are reasonable restrictions. The Act of 1961 is a beneficial legislation, aimed to secure and intended to ensure welfare of the worker - an urgent social need.

24. The decision of the question whether the Office of a Chartered Accountant or the Office of a Firm of Chartered Accountants is an establishment under Section 2(i) of the Act 1961 naturally depends upon the definition of that expression and the definitions of the expressions 'shop' and 'commercial establishment' in Sections 2(u) and 2(e) respectively. Under Section 2(i) 'establishment' means a 'shop' or a 'commercial establishment'. The expression is the general one which takes in both shop and commercial establishment. Section 2(u) defines 'shop' as follows :

'Shop' means any premises where any trade or business is carried on or where services are rendered to customers, and includes offices, store rooms, godowns, or warehouses, whether in the same premises or otherwise, used in connection with such trade or business, but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop fall within the scope of the Factories Act, 1948.'

25. Section 2(e) defines 'commercial establishment' as under :

'Commercial establishment' means a commercial or trading or banking or insurance establishment, an establishment or administrative service in which persons employed or mainly engaged in office work, a hotel, restaurant, boarding or eating house, a cafe or any other place of public amusement or entertainment and includes such establishments as the State Government may by Notification declare to be a commercial establishment for the purposes of this Act.'

26. It is on the basis of these definitions that we have to decide whether the Office of a Chartered Accountant or of a firm of Chartered Accountants is an 'establishment' within the meaning of the Act of 1961.

27. The meaning of the word 'shop' can no longer be confined to the traditional activity. A shop in the modern context needs to be liberally interpreted. It must be interpreted to mean any place where sale and purchase, not only of goods, but also of services take place. With the considerable advance of civilization and the increase in the complexity of modern Rules of economics, the concept of shop has to be given its contemporary connotation. The shop has to mean 'a place where

not only goods, but also services are bought and sold'.

28. But, in the present case, we are concerned with the meaning of the words of defined in Section 2(u) of the Act of 1961.

29. The first point for consideration is, whether the Office of a Chartered Accountant or of a Firm of Chartered Accountants can be said to be premises where any trade or business is carried on.

30. Trade is not a technical word, and is used in three senses, (i) in that of extending commodities by barter or by buying and selling for money; (ii) in that of an occupation generally; and (iii) in that of a mechanical employment in contra-distinction to the learned professions, agriculture or the liberal arts.

31. The term 'business' implies employment, occupation, profession or commercial activity engaged in for gain or livelihood.

32. There is certainly a fundamental distinction between a profession and a trade or business. Such a distinction is implicit in the reference to 'profession, occupation, trade or business', found in Article 19 of the Constitution of India. It is ordinarily understood that trade or business is carried on with a profit motive. When we come to the question relating to a profession or occupation, though they are carried on for purposes of earning a livelihood, it may not be correct to say that a profit motive underlies the carrying on of these activities. Under Article 19(6) of the Constitution, the State has power to make laws imposing reasonable restrictions on the exercise of the fundamental right guaranteed by Article 19(1)(g). This sub-clause in the Article makes a distinction between the carrying on of a profession on the one hand and the carrying on of a trade or business on the other. It would be difficult to hold that the carrying on of a profession is the same thing as the carrying on of a trade or business.

33. In the Commissioners of Inland Revenue v. Maxse, (supra) a person was the sole proprietor, editor and publisher of a monthly magazine. He used to contribute a large part of each number. He had been assessed to excess profits duty. It was his contention that the profits were earned by reason of his personal qualifications

and that, therefore, he cannot be asked to pay duty by virtue of the relevant provisions of the Finance Act. The Court of Appeal ruled that he was carrying on both the profession of a journalist, author or man of letters and also a business of publishing his own periodical. The Court distinguished between the two capacities and held that the exemption in so far as the profits arose from his personal qualifications was governed by the relevant provisions of the Finance Act. The distinction between the carrying on of a profession and the carrying on of a trade or business stands established by the decision of the Court of Appeal in the case of Commissioners of Inland Revenue, referred to supra.

34. In the State of Bombay v. Hospital Mazdoor Sabha (1960-I-LLJ-251) the question relating to the construction of 'industry' defined in Section 2(j) of the Industrial Disputes Act, as it stood before its substitution by Act 46 of 1982, came up for consideration. The meaning of the expression 'business or trade' appearing in Section 2(j) of the Industrial Disputes Act was examined and the Court, referring to the secondary meaning of the expression 'trade', observed : (p. 256) :

'any business carried on with a view to profit, whether manual or mercantile, as distinguished from the liberal arts or learned professions and from agriculture.'

35. Indeed, as observed earlier, the term 'business' is a wider one and means practically anything which is an occupation as distinguished from a pleasure. The Court in the case of State of Bombay referred to earlier, was required to consider what meaning had to be ascribed by the various expression found in the definition by reason of their juxtaposition in Section 2(j) of the Industrial Disputes Act. The observations are (p. 256) :

'The argument is that certain essential features or attributes are invariably associated with the words 'business and trade' as under stood in the popular and conventional sense, and it is the colour of these attributes which is taken by the other words used in the definition, though their normal import may be much wider. We are not impressed by this argument ..... It is only where the intention of the legislature in associating wider words with words of narrower significance is doubtful or otherwise not clear that the present rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is

doubtful; but where the object of the legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service.'

36. Their Lordships proceeded to hold that in so far as the expression 'trade or business' as conventionally understood is concerned, it would not be appropriate to adopt that conventional interpretation for the purpose of an industrial adjudication. Their Lordships observed further (p. 257) :

'It is clear, however, that though Section 2(j) uses words of very wide denotation, a line would have to be drawn in a fair and just manner so as to exclude some callings, services or undertakings. If all the words used are given their widest meaning, all services and all callings would come within the purview of the definition; even service rendered by a servant purely in a personal or domestic matter or even in a casual way would fall within the definition. It is not, and cannot be, suggested that in its wide sweep the word 'service' is intended to include service however rendered in whatsoever capacity and for whatsoever reason. We must, therefore, consider where the line should be drawn and what limitations can and should be reasonably implied in interpreting the wide words used in Section 2(j) ...'

37. The decision, with which I am in respectful agreement, shows that despite the fact that the words of a very wide significance are used in a Section, it is permissible to limit the scope of a provision.

38. There is authoritative pronouncement made by the Supreme Court on the point in National Union of Commercial Employees and Another v. Meher (Industrial Tribunal). Bombay, and others (1962-I-LLJ-241). The question that arose for consideration in the said case was whether the solicitor's firm carrying on the work of an attorney would satisfy the definition of an 'industry' within the meaning of Section 2(j) of the Industrial Disputes Act. The Supreme Court pointed out that the distinguishing feature of an industry is that for the production of goods or for rendering of service, co-operation between capital and labour, of between employers and employees must be direct and essential. The Supreme Court ruled that the service rendered by a solicitor functioning either individually or working

together with a partner is service which is essentially individual and depends upon the professional equipment, knowledge and efficiency of the solicitor concerned. The observations made by the Supreme Court bear all importance in the present context (p. 246) :

'The very concept of the liberal professions has its own special and distinctive features which do not readily permit the inclusion of the liberal professions into the four corners of industrial law. The essential basis of an industrial dispute is that it is a dispute arising between capital and labour in enterprises where capital and labour combine to produce commodities or to render service. This essential basis would be absent in the case of liberal professions. A person following a liberal profession does not carry on his profession in any intelligible sense with the active co-operation of his employees, and the principal, if not sole, capital which he brings into his profession is his special or peculiar intellectual and educational equipment. That is why on broad and general considerations which cannot be ignored, a liberal profession like that of an attorney must, we think, be deemed to be outside the definition of 'industry' under Section 2(j).'

39. In my considered view, the definition of the term 'shop' in Section 2(u) has to be restricted in its scope. It clearly envisages an activity which is understood as associated with the carrying on the trade or commerce and cannot take in premises where professional services are rendered.

40. I, therefore, hold that the Office of a Chartered Accountant or of a firm of Chartered Accountants cannot be construed as premises where any trade or business is carried on.

41. The other part of the definition of a 'shop' i.e. a 'shop means any premises where services are rendered to customers' appears to be not applicable to the case of a Chartered Accountant. The Chartered Accountant carries on a learned profession and that it is his special qualifications, professional equipment and knowledge that are placed at the disposal of his clients. The nature of the work of a Chartered Accountant in practice, the character of the work be can do as a Chartered Accountant with the restrictions and the obligation to conform to the norms of professional conduct would show that the performance of his functions

and duties is analogous to the functions and duties of a Lawyer or a Solicitor. The requirements of learning, skill and integrity for the carrying on of a profession would make it clear that the Office of a Chartered Accountant or of a Firm of Chartered Accountants cannot be regarded as premises where services are rendered to customers.

42. The context as well as the phraseology in which this part of the definition appears associated as it is with the expressions 'trade or business' on the one hand and with Offices. Store-rooms, Godowns or Warehouse on the other, if the ordinary principles of construction are applied, it appears to me that this part of the definition will have to be construed as services rendered to customers in the carrying on of trade or business.

43. In V. Sasidharan v. M/s. Peter and Karunakar and others (1984-II-LLJ-385) the question for decision before the Supreme Court was whether the Office of a Lawyer or of a Firm of Lawyers is or is not a commercial establishment within the meaning of the Kerala Shops and Commercial Establishments Act (34 of 1960). Section 2(15) of the said Act defines 'shop' as follows :

'Shop' means any premises where any trade or business is carried on or where services are rendered to customers and includes offices, store rooms, godowns or warehouses, whether in the same premises or otherwise, used in connection with such trade or business but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop are allowed the benefits provided for workers under the Factories Act, 1948 (Central Act 63 of 1948).'

44. The definitions is almost identical, may the same, with the definition of the term 'shop' in Section 2(u) of the Act of 1961.

45. Dealing with the question as to whether the Office of Lawyer or of a Firm of Lawyers is or is not a shop within the meaning of Section 2(15) of the Kerala Shops and Commercial Establishments Act (34 of 1960). The Supreme Court observed (p. 387) :

'9. The expression 'establishment' is defined by Section 2(8) to mean a shop or a commercial establishment. Since by the definition contained in the first clause of Section 2(4), a commercial establishment means an establishment, a place of work cannot be regarded as a commercial establishment unless the activity is conducted in a 'shop' or in a commercial establishment which is really tautological. The definition of 'shop' which is contained in Section 2(15) shows that in order that an establishment can be regarded as a shop, it is necessary that some 'trade' or 'business' must be carried on there or some service must be rendered to 'customers'. The expression 'shop' also includes offices, warehouses, store rooms or godowns which are used in connection with trade or business. It does not require any strong argument to justify the conclusion that the office of a lawyer or a firm of lawyers is not a 'shop' within the meaning of Section 2(15). Whatever may be the popular conception or misconception regarding the role of to-day's lawyers and the alleged narrowing of the gap between a profession on one hand and a trade or business on the other, it is trite that, traditionally, lawyers do not carry on a trade or business, nor do they render services to 'customers'. The context as well as the phraseology of the definition in Section 2(15) is In opposite in the case of a lawyer's officer or the office of a firm of lawyers.'

46. In view of the fact that the profession of accountancy is not very much different from the profession of a Lawyer. I am clear in my mind that the law laid down by the Supreme Court in the case of V. Sasidharan, referred to earlier, is applicable to the facts of the petitioners' case.

47. For the reasons stated earlier and following the final word said by the Apex Court on the point, I hold that the Office of a Chartered Accountant or of a Firm of Chartered Accountants is not a 'shop' within the meaning of the definition of the term in Section 2(u) of the Act of 1961.

48. The next question for consideration is, whether the Office of a Chartered Accountant or of a Firm of Chartered Accountants comes within the expression 'commercial establishment' defined in Section 2(e) of the Act of 1961. The definition of the expression contained in Section 2(e), if simplified by re-stating it in separate clauses, would be as follows :

(1) 'Commercial establishment' means four different kinds of establishment : commercial, trading, banking or insurance;

(2) 'Commercial establishment' means an establishment or administrative service in which the persons employed are mainly engaged in office work :

(1) 'Commercial establishment' means a hotel, restaurant, boarding or eating house, a cafe or any other refreshment house;

(4) 'Commercial establishment' means a theatre or any other place of public amusement or entertainment; and

(5) 'Commercial establishment' includes such establishment as the State Government may, by Notification, declare to be a commercial establishment for the purposes of the Act of 1961.

49. The Office of a Chartered Accountant or the Officer of a Firm of Chartered Accountants, there is no denying of the fact, cannot and would not fall under Clauses (3) and (4) mentioned above. It is not the case of the respondent that the State Government has issued any Notification as contemplated by Section 2(e) declaring the Office of a Chartered Accountant or the Office of a Firm of Chartered Accountants to be a commercial establishment for the purpose of the Act of 1961. The learned Additional State Public Prosecutor did not bring to my notice any such notification during the course of his submissions.

50. The controversy, therefore, stands narrowed. The question for consideration would be, whether the Office of the Chartered Accountant or the Office of a Firm of Chartered Accountants falls under either of the first two clauses mentioned above.

51. The word 'commercial' as is commonly understood relates to or connected with 'trade' a profit or commerce in general. It is occupied with business and commerce. Where the exchange of goods, productions of property of any kind takes place or where the buying, selling and exchanging of articles happens, such a transaction is described as 'commerce'.

52. Having regard to the reasons which have persuaded me to hold that the Office of a Chartered Accountant or of a Firm of Chartered Accountants is not a 'shop' within the meaning of the definition of the term in Section 2(u), it is difficult to hold that the office of a Chartered Accountant or the Office of a Firm of Chartered Accountants would be a 'commercial establishment' within Clause (1) stated above.

53. That takes us to answer the question as to whether the Office of a Chartered Accountant or the Office of a Firm of Chartered Accountants can be stated to be an establishment or an administrative service in which persons employed are mainly engaged in office work. It needs no argument to hold that the Office of a Chartered Accountant or of a Firm of Chartered Accountants cannot be categorised or classified as an administrative service. The Supreme Court in the case of V. Sasidharan, referred to above, dealing with the question as to whether a Lawyer's Office is administrative service, observed :

'... It seems to us doing violence to the language of the second clause of Section 2(4) to hold that a lawyer's office is an 'administrative service'. This argument has therefore to be rejected.'

54. The observation is squarely applicable to the Office of a Chartered Accountant or of the Firm of Chartered Accountants as well.

55. Re-stating the well established proposition that words which occur in the same content must take their colour from each other, the Supreme Court in the case of V. Sasidharan (supra) held that it would be unrealistic to dissect the definition clause in Section 2(4) and to catch a word here or there in order to bring a lawyer's office within the four corners of the definition of 'commercial establishment'. The Supreme Court further observed that the various clauses of the definition 'commercial establishment' appearing in Section 2(4) of the Kerala Shops and Commercial Establishments Act (34 of 1960) (which is in pari materia with the definition of 'commercial establishment' given in Section 2(e) of the Act of 1961), would show that establishments far apart from professional offices, were within the contemplation of the legislature.

56. Following the law laid down by the Supreme Court in the case of V. Sasidharan. (supra) which is applicable to the Office of Chartered Accountant or of a Firm of Chartered Accountants, I am clearly of the opinion that the Office of the Chartered Accountants is not a 'commercial establishment' within the meaning of the Act of 1961.

57. A perusal of the other provisions of the Act of 1961 supports the conclusion reached by me. Chapter II provides for registration of establishments. Chapter III for hours of work. Chapter IV for annual leave with wages, Chapter V for wages and compensation, and Chapter VI for employment of children and women. Section 7 provides that no employee in any establishment shall be required or allowed to work for more than nine hours on any day and forty-eight hours in any week. The first proviso to the Section lays down that the total number of hours of work including overtime shall not exceed ten hours in any day except on days of stock-taking and preparation of accounts. The second proviso to the Section lays down that the total number of overtime hours worked by an employee does not exceed fifty in a period of three continuous months. Sub-section (2) provides that no young person between the age of twelve and fifteen shall be allowed to work in any establishment for more than five hours in a day. Section 9 requires that the periods of work of an employee in an establishment each day shall be so fixed that no period shall exceed five hours and that no such person shall work for more than five hours before he has had an interval of rest at least one hour. Section 11(1) provides that no establishment shall on any day, be opened earlier than and closed later than such hours as may be fixed by a notification issued by the State Government, provided that any customer who was being served or was waiting to be server in any establishment at the hour fixed for its closing may be served during the quarter of an hour immediately such hour.

58. These provisions and the other cognate provisions of the Act of 1961 show that the Office of a Chartered Accountant or of a Firm of Chartered Accountants cannot be comprehended within the meaning of the expression 'commercial establishment' as defined in Section 2(u) of the Act of 1961.

59. In Dipti Kumar Basu and others v. Chief Inspector (Shops and Establishments) and Anr. FIR Vol. 69. 100, the question for consideration was, whether the establishment of a legal practitioner was a 'commercial establishment' within the West Bengal Shops and Establishments Act, 1963 (Act XIII of 1963). The Bengal Shops and Establishments Act. 1940 (Act XVI of 1940) was in force since 1st April, 1941. The said Act which had been amended in 1950 by Act LXIV of 1950 was repealed and the West Bengal Shops and Establishments Act, 1963 was engrafted in the statute book with a view to ameliorate the conditions of weaker sections of the society and providing the employees with some additional benefits on the context of changed circumstances. The Act of 1963 came into force with effect from 15th August, 1964.

60. By amendment to the West Bengal Shops and Establishments Act, 1963, By Act XVI of 1981, the establishment of a legal practitioner was included. Dealing with the question raised for consideration adverted to earlier, the Calcutta High Court held that the legal profession cannot be equated or placed on par with any other shop or establishment and that the inclusion of the establishment of legal practitioners in the definition of 'commercial establishment' was an unreasonable restriction violative of Article 19(l)(g) of the Constitution of India.

61. When once it is held that the Office of a Chartered Accountant or of a Firm of Chartered Accountants does not come within the expression of 'shop' or 'commercial establishment' as defined in the Act of 1961. The corollary would be that the provisions of the Act of 1961 cannot be applied to the Office of a Chartered Accountant or of a Firm of Chartered Accountants.

62. In that view of the matter, the initiation of the proceedings by the respondent against the petitioners and the commencement of the proceedings by the learned Metropolitan Magistrate by issuing summons to the petitioners on the basis of the complaint lodged by the respondent would be abuse of the process of the Court. Add to that, quashing of the proceedings initiated and commenced against the petitioners appears necessary to secure the ends of justice.

63. In my view, the petitioners have made out a clear case for the exercise of the inherent jurisdiction of this Court under Section 482 of the Code. As observed

earlier, the continuance of the proceedings against the petitioners would amount to the abuse of the process of the Court, and quashing of the proceedings would secure the ends of justice.

64. For all the reasons aforesaid, the petition is allowed. The proceedings instituted against the petitioners and commenced by the learned Metropolitan Magistrate by directing summons to the petitioners in C.C.N. 21496/87, are hereby quashed.

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