

Dipti Kumar Basu and ors. Vs. Chief Inspector (Shops and Establishments) and anr.

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Court : Kolkata

Decided On : Sep-20-1985

Reported in : (1987)ILLJ45Cal,[1987]65STC177(Cal)

Judge : Umesh Chandra Banerjee, J.

Appeal No. : Matter No. 1476 of 1983

Appellant : Dipti Kumar Basu and ors.

Respondent : Chief Inspector (Shops and Establishments) and anr.

Advocate for Pet/Ap. : Arun Prakash Chatterjee, Standing Counsel;D.P. Gupta, Adv. for Bar Library Club (Intervenor)

Judgement :

Umesh Chandra Banerjee, J.

1. The issue for consideration in this writ petition is a short but an interesting one. The inclusion of the 'establishment of legal practitioners' within the definition of 'commercial establishment' as introduced by the West Bengal Shops and Establishment (Amendment) Act, 1981 (W.B. Act 16 of 1981), is under challenge in this petition, as violative of the constitutional safeguards.

2. The Bengal Shops and Establishment Act, 1940 (Act 16 of 1940), came into force with effect from April 1, 1941. Subsequently the Act of 1940, though amended in 1950 by Act 64 of 1950, was repealed and the West Bengal Shops and Establishment Act was engrafted in the Statute Book in 1963 (Act 13 of 1963), with a view to ameliorate the conditions of weaker sections of the society and providing the employees with some additional benefits in the context of changed circumstances. The Act of 1963 came into force from August 15, 1964 (vide Gazette notification dated August 3, 1964). The Act of 1963, a social welfare legislation, aims to regulate certain conditions of service of the employees.

3. The petitioners are the partners who carry on the profession of Solicitors and Advocates under the name and style of Messrs. Orr, Dignam & Company. Each of the petitioners are enrolled Advocates of this Court. In the normal course Messrs. Orr, Dignam & Co. acts on behalf of its clients in regard to litigation in this Honourable Court and in various other High Courts including the Supreme Court of India. In connection with such work, circumstances often arise when it is necessary for the firm to keep its office open far beyond the ordinary working hours, so that urgent pleadings may be made ready and other urgent work done. Apart from the said partners there are assistants in the said firm of Solicitors who often attend conferences with counsel which are fixed and continued well beyond the ordinary working hours. According to the petitioners such urgent work and attending the conferences are normal mode of working amongst all advocates and it is not effectively possible to carry on the profession without doing so.

4. In order to appreciate contentions raised in this application it is relevant to advert to different provisions of the Act of 1963 prior to the amendment.

5. Section 2(2) as it stood prior to the enactment of the West Bengal Shops and Establishment (Amendment) Act, 1981 defined 'commercial establishment' as advertisement, commission, forwarding or commercial agency, or a clerical department of a factory or of any industrial or commercial undertaking and an insurance company, joint stock company, bank, brokers' office or exchange and includes such other class or classes, concerns or undertakings as the State Government, after taking into consideration the nature of their work, by notification,

declare to be commercial establishments for the purposes of this Act, but does not include a shop or an establishment for public entertainment or amusement.

6. The expression 'closed' has been defined under Section 2(1) of the Act means not open for the service of any customs or for any other purposes whatsoever relating to business.

7. Section 5 provides that every shop or commercial establishment shall remain entirely closed in each week and at least one day and a half day next preceding or next following such day.

8. Section 7 provides that no person employed in an establishment, shall be required or permitted to work in such establishment for more than eight hours and a half in any one day or more than eight hours and half in any one day or for more than forty-eight hours in any one week or after the hour of closing of such establishment. The proviso to Section 7, however, contains that a person employed in an establishment may be required or permitted to work overtime in such establishment so however, that-

(i) the total number of hours of his work including overtime work shall not exceed ten hours in any one day, and

(ii) the total number of hours worked overtime by him shall not exceed one hundred and twenty hours in any one year.

9. Section 10 puts restrictions on employment of young persons or women.

10. Section 21 of the said Act provides for penalties which may extend to imprisonment in addition to fine in the matter of contravention of any of the provisions of the said Act of 1963.

11. The State Legislature enacted Act 16 of 1981, being an Amendment Act to the Act of 1963, wherein the definition of 'commercial establishment' has undergone a change and now includes 'the establishment of legal practitioner'. Section 2 of the Act of 1981 reads as follows :

Commercial establishment' means an advertising, commission, forwarding or commercial agency, or a clerical department of a factory or of any industrial or commercial undertaking, an insurance company, joint stock company, bank, brokers' office or exchange, 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 an establishment of any legal practitioner, medical practitioner, architect, engineer, accountant, tax-consultant or any other technical or professional consultant, a society registered under any enactment in force for the time being, charitable or other trust, whether registered or not, which carries on, whether for purposes of gain or not, any business, trade or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession and such other class or classes of concerns or undertakings as the State Government may, after taking into consideration the nature of their work, by notification, declare to be commercial establishments for the purposes of this Act, but does not include a shop or an establishment for public entertainment or amusement.

12. Mr. Ginwalla, counsel for the petitioner, submitted that Section 6 read with Section 2(1) restricts the legal practitioners from doing any work whatsoever in their establishment for at least one day and a half day next preceding or next following such day.

13. Mr. Ginwalla submitted that considering the nature of work with which the legal practitioners are connected it would be well-nigh impossible to carry on the profession and as such inclusion of 'establishment of legal practitioners' within the definition of 'commercial establishment' so as to attract the provisions of the Act of 1963, is violative of the constitutional safeguard guaranteed under Article 19(1)(g) of the Constitution.

14. Mr. Arun Prakash Chatterjee, Standing Counsel appearing on behalf of the State Government, however, contended that the expression 'closed' mean and imply closed for the employees only and not for the employers and as such question of imposing any restriction on the legal practitioner does not and cannot arise.

15. It is a well-recognised principle of construction of statute that plain and ordinary meaning of the language should be attributed to the language used by the legislature. In my view Section 5 read with Section 2(1) does not cover the cases of only the employees and the restriction is also on the employer, it is now well-settled that courts ought not to read something which the legislature has not in its wisdom thought it fit to incorporate.

16. Lord Loreburn in *Vickers, Sons & Maxim Ltd. v. Evans* [1910] AC 444 at 445 observed 'we are not entitled to read words into an Act of Parliament unless clear reason for it is to be found within the four corners of the Act itself.'

17. Where the language is plain and admits of but one meaning, the task of interpretation can hardly be said to arise. However, interpretation of a statute is not to be collected from any notions which may be entertained by the court as to what is just and expedient. Words are not to be construed, contrary to their meaning, as embracing or excluding cases merely because no good reason appears why they should be embraced or excluded. The duty of the court is to expound the law as it stands and to leave the remedy to others. This view finds support from the decision in *Sutters v. Briggs* reported in [1922] 1 AC 1.

18. The language used in Section 7(2), viz., 'no person employed in an establishment...' goes to show that whenever the legislature intended to apply particular provision to the employees 'only', it has expressed so in clear and unambiguous language.

19. The omission of the legislature to restrict it to the employees 'only', must be presumed to have been done deliberately.

20. While it is correct to say that if two meanings could be attributed to a particular provision of the statute, the meaning which is more viable and save the legislation, that ought to be accepted by the law courts, but in this case in my view no two meanings can be attributed to the provision of Section 5(a) read with Section 2(1) except what has been stated above.

21. On a plain reading of Section 5(1) read with Section 2(1) the legislative intent is categorical and in my view is a clear restriction on the lawyer's profession. To say that a legal practitioner would not be able to attend his establishment for a period of one and half days cannot but be said to be a restriction. The question therefore is whether the restriction is reasonable or unreasonable.

22. Mr. Chatterjee however submitted that the restrictions are in any event quite reasonable and cannot be said to be an unreasonable one.

23. Before entering into a discussion on the restrictions imposed, the effect of Section 4 of the Act of 1963 is to be considered. Section 4 exempts various categories of establishments either in its entirety or in regard to some of the provisions of the Act 1 of 1963. The exemption was granted obviously after due consideration of the nature of the business activities. The ratio of the legislation is social interest in the health of the workers who form an essential part of the community and in whose welfare the community is vitally interested. It is in the light of this purpose that the provisions of the Act have to be scrutinised. The regulation of contracts of labour so as to ameliorate their conditions of work is in reality a problem of human relationship and social control for the advancement of the community. The public and social interest in the health and efficiency of the worker is, at the present day, beyond challenge. Our Constitution does not protect or guarantee fundamental right in the nature of the provision in Article 1, Section 10(1), of the U.S. Constitution against impairment of the obligation of contracts. The only test of constitutional validity, therefore, is whether the provision in the impugned law, which is enacted to avoid physical overstrain of the workers and so as to afford him better conditions of work and more regulated hours, thus ensuring to him a reasonable amount of leisure (see in this connection *Ramdhandas v. State of Punjab* AIR 1961 SC 1559).

24. Detailed analysis of the diverse provisions of the Act would go to show that this beneficial legislation has been enacted to regulate the conditions of work of the employees. Welfare of the employee is a social need which cannot be denied. It is now well-settled that the restrictions imposed under the Shop Act of even different States including West Bengal are reasonable and cannot be termed as

unreasonable.

25. The fact that shops and establishments are not involved in any intellectual skill but a mere buying and selling of commodities ought not to be lost sight. A firm of Solicitors practice the profession of law by virtue of special qualification acquired by them through intellectual skill and it is the individual skill that matters.

26. There is no comprehensive definition of 'profession' but as Scrutton, L.J., observed that 'profession' 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 (see *Commissioners of Inland Revenue v. Maxse* [1919] 1 KB 647). Legal practitioners practise the profession of law by virtue of the qualification acquired by them.

27. The learned Standing Counsel placed strong reliance on the decision of the Supreme Court in *Bangalore Water Supply and Sewerage Board v. A. Rajappa* reported in [1978] 3 SCR 207. The Kerala High Court while considering an allied matter observed that Bangalore Water Supply case does not have any direct impact on the subject-matter of the concerned writ petition. The Supreme Court in appeal from the judgment of the Kerala High Court approved the observations of the Kerala High Court in the case of *Sasidharan v. Peter and Karunakar* reported in AIR 1984 SC 1700. In that decision the Supreme Court observed : 'An argument was strongly pressed upon us on the basis of the decision of this Court in *Bangalore Water Supply and Sewerage Board v. A. Rajappa* [1978] 3 SCR 207. The High Court has rightly observed that the question which arose in that case was entirely different, namely, the sweep of, the meaning of the word 'industry'. The ratio of that decision is that the term 'industry' covers any activity which is systematically or habitually undertaken for the production or distribution of goods or for rendering material services to the community at large with the help of the employees. The question which arises in this appeal is basically different, namely, whether a lawyer's office or the office of a firm of lawyers is a commercial establishment. Considerations which were germane to the determination of the

question in the Bangalore Water Supply case [1978] 3 SCR 207 are foreign to the decision of the question before us.'

28. While it is true that the observations of the Supreme Court was made in the context of the Kerala Shop Act but in my view the observations of the Supreme Court is apposite in the present context as well.

29. Inclusion of the establishment of the legal practitioners in the definition section has in my view to be judged by the test noted above, which in fact put an embargo on to the legal practitioners. A legal practitioner will have to have his chamber or establishment closed or not open for any purpose whatsoever for one and a half days even for exercise of intellectual skill by reason of the meaning attributed to the expression 'closed' in my view, is a restriction which cannot be termed to be an unreasonable one and as such violative of the constitutional safeguard guaranteed under Article 19(1)(g) of the Constitution.

30. Mr. D.P. Gupta appearing for the intervenor-Bar Library Club, (with the leave of the court) and supporting the contentions of the writ petitioner, however, submitted that the amended definition under the 1981 Act also suffers from the vice of violating the provisions under Article 14 of the Constitution. It was contended that dissimilar objects, situations and circumstances cannot be lumped together as the legislature has a duty to classify if it is so needed and lack of classification creates inequality. In support of his submission Mr. Gupta placed reliance on the decision reported in AIR 1961 SC 552, (K.T. Moopil Nair v. State of Kerala) wherein the Supreme Court, has observed that lack of classification creates inequality when there is a duty to classify as it is clearly hit by the prohibition to deny equality before the law as contained in Article 14 of the Constitution.

31. The same issue came up for consideration before the Supreme Court in a later decision in the case of State of Kerala v. Haji K. Kutty, reported in AIR 1969 SC 378 wherein the Supreme Court laid down that refusal to make a rational classification may itself in cases operate as denial of equality. The same view was also reiterated by the Supreme Court in the case of Murthy Match Works v. Assistant Collector of Central Excise AIR 1974 SC 497.

32. While it is true that the concept about the legal profession as laid down by the Supreme Court, in the solicitors' case (National Union of Commercial Employees v. M.R. Meher, Industrial Tribunal, Bombay) reported in AIR 1962 SC 1080, has undergone a change, but the fact still remains that legal profession as such cannot be equated or placed at par with any other shop or establishment under the Shop Act. A meat shop or sweetmeat shop cannot in my view be placed at equal footing and be treated equally by the legislature. Vice as pronounced by the Supreme Court in Kutty's case AIR 1969 SC 378 is more pronounced in this case and as such violates the safeguard under Article 14 of the Constitution.

33. The only question that is now left for consideration is whether the amendment is in public interest or not as enshrined in Article 19(6) of the Constitution. To have a lawyers' establishment closed for all purposes would, in my view, denude the litigating public of its opportunity to meet the lawyer or explain the matter in detail. Can it be said to be of public interest when a lawyer would not be able to assist a person detained in prison on a Saturday or Sunday. In my view, the answer ought always to be in the negative.

34. In that view of the matter I am of the opinion that the inclusion of the establishment of legal practitioners within the definition of 'commercial establishments' is violative of the constitutional safeguards as noted above.

35. In the premises I therefore declare that inclusion of the 'establishment of legal practitioners' in the definition section as appears in Section 2(2) of the Amendment Act of 1981; contravenes the constitutional safeguards and the case is hereby declared to be ultra vires and I restrain the respondent-authorities from enforcing the provisions of the Shops and Establishment Act, 1963, as amended by Act of 1981 in so far as 'the establishment of legal practitioners' are concerned.

36. The rule is thus ends absolute. There will, however, be no order as to costs.