

V. SASIDHARAN

v.

PETER &amp; KARUNAKAR &amp; ORS.

23rd August, 1984

[Y.V. CHANDRACHUD, C.J. AND V.D. TULZAPURKAR, J.]

*Shops & Establishments Act 1960 (Kerala Act), Sec. 2(4)—Firm of Lawyers—Whether a commercial establishment.*

The appellant preferred an appeal to the Appellate Authority under the Kerala Shops and Commercial Establishments Act, 1960 (For short, the Act) against his dismissal from service by respondent No. 1, a firm of Lawyers. Respondent No. 1 raised a preliminary objection that the appeal was not maintainable since Respondent No. 1 firm was not a commercial establishment under the Act. The Appellate Authority upheld the preliminary objection and dismissed the appeal. His writ Petition and Letters Patent Appeal in the High Court against the judgment of the Appellate Authority were also dismissed. Hence this appeal by special leave.

Dismissing the appeal,

HELD : (1) The question whether respondent No. 1—firm is a commercial establishment must naturally depend upon the definition of that expression and the definition of cognate expressions which are contained in the Act. The definition of “commercial establishment” contained in sec.2(4) of the Act may be simplified by restating it in separate clauses as follows : (1) Commercial Establishment means five different kinds of establishments ; commercial, industrial, trading, banking or insurance ; (2) Commercial Establishment means an establishment or administrative service in which the persons employed are mainly engaged in office work ; (3) 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 other establishment as the Government may, by notification in the Gazette, declare to be a commercial establishment for the purposes of the Act. Commercial Establishment does not include a factory to which any of the provisions of the Factories Act, 1948 apply. Section 2(8) defines ‘establishment’ to mean a shop or a commercial establishment. The definition of shop contained in sec. 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 the trade or business’ [30H ; 603H, 605A, D-G].

(2) A lawyer's office or the office of a firm of lawyers cannot obviously fall under clauses (3) and (4) of section 2(4). Nor has the Government issued any notification as contemplated by section 2(4). The question thus narrows itself into whether a lawyer's office falls under either of the first two clauses. 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. Whatever may be the popular conception regarding the role of today'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 inapposite in the case of a lawyer's office or the office of a firm of lawyers. Therefore, the office of a lawyer or of a firm of lawyers is not a shop within the meaning of sec. 2(15) of the Act. [605C, F-G]

(3) The argument, that a lawyer's office is a commercial establishment because, persons who are employed in that office are mainly engaged in office work, cannot be sustained. This argument overlooks that (i) under the second clause of the definition in section 2(4), 'commercial establishment' means "an establishment or administrative service in which the persons employed are mainly engaged in office work" and thus the same question arises again as to whether a lawyer's office is an "establishment" within the meaning of the Act; and (ii) that a lawyer's office is not an 'administrative service' and it will be doing violence to the language of the second clause of sec. 2(4) to hold that a lawyer's office is an 'administrative service'. The proposition is well established that words which occur in the same context must take their colour from each other. It is 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 various clauses of that definition would show that establishments, far apart from professional offices were within the contemplation of the legislature. [606B to D]

(4) Chapters I—A, II, III, IV, V and VI as also sections 6, 8, 10 and other cognate provisions of the Act also strengthen the conclusion that a lawyer's office cannot possibly be comprehended within the meaning of the expression 'Commercial establishment' as defined in section 2(4) of the Act.

[607A-B]

*Bangalore Water Supply and Sewage Board v. A. Rajappa* [1978] 3 SCR 297 and *Indian Chambers of Commerce and Industry* [1974] 2 LLJ. 271. distinguished.

# CIVIL APPELLATE JURISDICTION : CIVIL APPEAL

No. 2029 of 1980

Appeal by Special leave from the judgment and Order dated

the 26th July, 1970 of the Kerala High Court in W.A. No. 11 of 1978.

*K.R.R. Pillai* for the Appellant.

*P. Govindan Nair E.M.S. Anam, M.K. Dua and Miss Baby Krishnan* for Respondents No. 1, 3 & 4.

*For Applicant/Interveners :*

*K.M.K. Nair* for Bar Council, Kerala.

*R.C. Misra & Vimal Dave* for Supreme Court Bar Clerk's Association.

The Judgment of the Court was delivered by

CHANDRACHUD, C.J. The question which arises for consideration in this appeal is whether a firm of lawyers is a 'commercial establishment' within the meaning of the Kerala Shops and Commercial Establishments Act, 1960 (referred to herein as 'the Act').

The appellant, V. Sasidharan, was working as a clerk in a firm of lawyers which is respondent 1 to this appeal. Respondents 2, 3 and 4 are partners of the firm. The services of the appellant were terminated by the firm on February 3, 1977, whereupon he preferred an appeal to the Appellate Authority under the Act. A preliminary objection was raised in that appeal by the firm on the ground that it was not a commercial establishment. By a judgment dated August 11, 1977, the Appellate Authority upheld the preliminary objection and dismissed the appeal.

Being aggrieved by that judgment, the appellant filed a writ petition (O.P. No. 3380 of 1977-B) in the High Court of Kerala. A learned single Judge of the High Court dismissed that writ petition, against which the appellant filed Letters Patent appeal (W.A. No. 11 of 1978). That appeal was dismissed on July 26, 1978. This appeal by special leave is filed against the judgment of the Division Bench of the Kerala High Court.

The decision of the question whether respondent 1 firm is a commercial establishment, must naturally depend upon the definition of that expression and the definitions of cognate expressions

A which are contained in the Act.

Section 2 (4) of the Act defines "commercial establishment" as follows :

B "Commercial establishment", means a commercial or industrial or trading or banking or insurance establishment, an establishment or administrative service in which the persons employed are mainly engaged in office work, hotel, restaurant, or boarding or eating house, cafe or any other refreshment house, a theatre or any other place of public amusement or entertainment and includes such other establishment as the Government may, by notification in the Gazette declare to be a commercial establishment for the purposes of this Act, but does not include a factory to which all or any of the provisions of the Factories Act, 1948 (Central Act 63 of 1948) apply."

D Section 2 (8) defines "establishment" to mean a shop or a commercial establishment. Section 2 (15) defines "shop" as follows :

E "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)'"

F It is on the basis of these definitions that we shall have to decide whether the office of a lawyer or of a firm of lawyers is a commercial establishment within the meaning of the Act.

G The definition contained in section 2 (4) may be simplified by restating it in separate clauses as follows : (1) Commercial Establishment means five different kinds of establishments : commercial, industrial, trading, banking or insurance ; (2) Commercial Establishment means an establishment or administrative service in which the persons employed are mainly engaged in office work ; (3) 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 other establishment as the Government may, by notification in the Gazette, declare to be a commercial establishment for the purposes of the Act. Commercial Establishment does not include a factory to which any of the provisions of the Factories Act, 1948 apply.

A lawyer's office or the office of a firm of lawyers cannot obviously fall under clauses (3) and (4) above. Nor has the Government issued any notification as contemplated by section 2 (4). The question thus narrows itself into whether a lawyer's office falls under either of the first two clauses.

The expression 'establishment' is defined by section 2(8) 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 the trade or business. It does not require any strong argument to justify the conclusion that the office of a lawyer or of 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 the phraseology of the definition in section 2(15) is inapposite in the case of lawyer's office or the office of a firm of lawyers.

Learned counsel for the appellant argues that a lawyer's office is a commercial establishment because, persons who are employed in that office are mainly engaged in office work. This

**A** argument overlooks that, under the second clause of the definition in section 2(4), 'commercial establishment' means "an establishment or administrative service in which the persons employed are mainly engaged in office work". Partly, we go back to the same question as to whether a lawyer's office is an 'establishment' within the meaning of the Act. The other aspect which this argument fails to take note of is that a lawyer's office is not an 'administrative service'. **B** 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.

**C** The proposition is well-established that words which occur in the same context must take their colour from each other. It is 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 various clauses of that definition would show that establishment, far **D** apart from professional offices, were within the contemplation of the legislature.

For these reasons, we are of the opinion that the office of a lawyer or of a firm of lawyer is not a 'commercial establishment' within the meaning of the Act. This conclusion is strengthened by the other provisions of the Act. Chapter I-A of the Act provides for registration of establishments, Chapter II for hours of work, Chapter III for holidays and leave, Chapter IV for wages, Chapter V for employment of children and women and Chapter VI for health and safety measures. Section 6 of the Act provides that no employee **E** in any establishment shall be required or allowed to work for more than eight hours on any day or for more than 48 hours in any week. Section 8 requires that, the period of work of an employee in an establishment for each day shall be so fixed that no period shall exceed four hours and that no such person shall work for more than **F** four hours before he has had an interval for rest of at least one hour. Under section 10, no establishment shall, on any day, be opened earlier than and closed later than such hours as may be fixed by the Government, provided that any customer who is being served or is waiting to be served in any establishment at the hour **G** fixed for its closing may be served during a quarter of an hour **H**

immediately following such hour. These and other cognate provisions of the Act show that a lawyer's office cannot possibly be comprehended within the meaning of the expression 'commercial establishment' as defined in section 2(4) of the Act. We are quite solicitous about the welfare of those who work in the lawyers' offices. But, there are many other ways in which their welfare can be ensured. If the current trends are any indication and if old memories fail not, the earnings of lawyers' clerks cannot, in reality, bear reasonable comparison with the earnings of employees of commercial establishments, properly so called. They, undoubtedly, work hard but they do not go without their reward. They come early in the morning and go late at night, but that is implicit in the very nature of the duties which they are required to perform and the time they spend is not a profitless pastime.

An argument was strongly pressed upon us on the basis of the decision of this Court in *Bangalore Water supply and Sewage Board v. A. Rajappa*.<sup>(1)</sup> 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 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 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 commercial establishment. Considerations which were germane to the determination of the question in the *Bangalore Water Supply case* are foreign to the decision of the question before us.

In *Indian Chambers of Commerce and Industry*<sup>(2)</sup> case, the question was whether the Federation of Indian Chambers of Commerce and Industry is a commercial establishment within the meaning of the Delhi shops and Commercial Establishment Act, 1954. This Court pointed out that the definition of 'commercial establishment' in that Act is so wide that the activities of a registered society or a charitable trust would also fall within the purview of that definition.

1. [1978] 3 S.C.R. 207.

4. [1974] 2 L.L.J. 271

A        The learned single Judge and the Division Bench of the Kerala High Court have dealt with the questions arising in this appeal with care. We agree with their reasoning and hold that the office of a lawyer or of a firm of lawyers is not a 'commercial establishment' within the meaning of section 2(4) of the Act.

B        The Bar Council of Kerala and Clerks Association of the Supreme Court Bar had intervened in this matter. We must express our thankfulness to them for the assistance rendered by them.

         In the result, the appeal is dismissed but there will be no order as to costs.

C

D        M.L.A.

*Appeal dismissed.*