APPELLATE CRIMINAL

Before Mr. Justice Shah and Mr. Justice Vyas.

1955 Dec. 5

STATE v. BHAISHANKAR UTTAMRAI AND ANOTHER.*

†*Bombay Harijan (Removal of Social Disabilities) Act, 1946. (Bom. X of 1947), ss. 2 (c), (f), 3, 4, 7 (6)—'Canteen' in a Mill whether a 'shop' under the Act—Object and scope of the Act explained.*

A canteen provided in a factory and reserved for the use of employees in the factory is a 'shop' within the meaning of s. 2 (*f*) of the Bombay Harijan (Removal of Social Disabilities) Act, 1946.

Simmonds Aerocessories (Western) Limited v. *Pontypridd Area Assessment Committee and another,*[1] Re *Mayfair Property Co.,*[2] *R.* v. *Hall,*[3] *River Wear Commissioners* v. *Adamson,*[4] referred to.

CRIMINAL appeal against the order of acquittal passed by M. K. Thakore, Esquire, Third Extra Additional Sessions Judge, Ahmedabad, setting aside the conviction and sentence passed by R. C. Mehta, Esquire, Judicial Magistrate, First Class, Sixth Court, Ahmedabad.

Charge under s. 7 (*b*) read with s. 4 of the Bombay Harijans (Removal of Social Disabilities) Act, 1946.

The relevant facts are fully set forth in the Judgment of Vyas J.

A. A. Mandagi, Assistant Government Pleader, for the State of Bombay.

Purushottam Tricumdas, with *Kanga & Co.,* for the Respondents-accused.

Vyas J.—This is an appeal from acquittal and it raises a short but interesting question under the Bombay Harijan (Removal of Social Disabilities) Act, 1946, viz. the question of construction of s. 2, cl. (*f*), which defines 'shop'. The definition of 'shop' is preceded by the definition of 'place of public entertainment' which is contained in s. 2, cl. (*e*). 'Place of public entertainment' is defined as meaning "any place, whether enclosed or open, to which the public are admitted, and where any kind of food or drink is supplied for consumption on the premises for the profit or gain of any person owing or having an interest in or managing such place; and includes a refreshment-room, eating house coffee-house, boarding-house, lodging-house and hotel." 'Shop' is defined as meaning "any premises where goods are sold either by retail or wholesale or both and includes a laundry, a hair-cutting saloon or such other place where services are rendered to customers." Now, the question whether the

*Criminal Appeal No. 1166 of 1955.

†*Note.*—The Act is repeated by the Untouchability (Offences Act XXII of 1955) but relevant provisions are *in pari materia* with the provisions of the Bombay Act.

1. (1944) 1 K. B. 231.
2. (1898) 2 Ch. 28, at p. 35.
3. (1882) 1 B. & C. 136.
4. (1877) 2 All. Cas. 743.

1955

State
v.
Bhai-
shankar
Uttamrai

Vyas J.

particular premises are a 'shop' under the Act depends upon the construction of the words 'goods' and 'sold' in the above-mentioned definition of 'shop'. Does the word 'goods' include any kind of food or drink supplied for consumption on the premises or is it referable only to an article supplied otherwise than for consumption on the premises? Does the word 'sold' connote that a person who pays the price for an article and takes delivery thereof must take away the article with himself and leave the premises with it or does it also connote that a person who purchases an article, say an article of food or drink, may consume it on the premises? Upon the answers to these questions depends the decision of this appeal.

The learned trial Magistrate took the view that the 'goods' referred to in the definition of 'shop' in s. 2, cl. (*f*) were inclusive of any kind of food or drink supplied for consumption on the premises and that the principal work done by the canteen was "the sale of the food stuffs in retail to its customers." On the other hand, the learned Additional Sessions Judge, who heard the appeal from the learned Magistrate's judgment, took a contrary view and held that 'goods' in s. 2, cl. (*f*) did not include any kind of food or drink supplied for consumption on the premises. He observed that the "food supplied for consumption on the premises of a place must be excluded from the 'goods' and to that extent the word 'goods' must be given a limited meaning." As the learned Judge held that the articles of food or drink supplied in the canteen for consumption on the premises were not 'goods' under the Act, the supply thereof did not amount to sale of goods within the meaning of s. 2, cl. (*f*).

The question as to the construction of the expression 'shop' has arisen in this case in this way. The respondents Bhaishankar Uttamrai and Bhika Punja are the canteen manager and the canteen boy respectively of the Anant Mills in Ahmedabad. They were accused No. 2 and accused No. 3 in the case which was tried by the learned Magistrate. Accused No. 1 who was tried but acquitted by the learned Magistrate is the General Manager of the Anant Mills. The complainant Uka Pancha, a Harijan Mill-hand, is an employee in these Mills. Now, the prosecution case is that, although the Harijans are allowed to sit wherever they like in the canteen of these Mills, they are served only by a Harijan boy who is not permitted to serve other Hindus. Harijans are not permitted to avail themselves of the services rendered by the non-Harijan bearers. On September 15, 1954, at 9 p. m. Uka Pancha went to the canteen and took water from a glass which was set apart for the other Hindus. Thereupon the respondent Bhika Punja, who was a canteen boy, abused Uka Pancha and asked him why he drank water from a glass set apart for the other Hindus.

Uka asked for forgiveness and called for tea. Tea was served to him by the Harijan boy in a cup and saucer which were set apart for the Harijans only. Uka took tea and left the canteen. On the next day, at 2-30 p. m. Uka was going to the Mills. The respondent Bhika Punja was standing near the gate of the Mills. He saw Uka and pointed him out to his friends. Bhika and his friends assaulted Uka and the prosecution contention is that Uka was assaulted, because on the previous day he had taken water from a glass which was set apart for the other Hindus. Uka reported the incident of the assault upon him to a Majur Mahajan representative of the Mills and filed a complaint. His complaint was that a discrimination was made against Harijans in the canteen of the Mills, and the discrimination alleged was that the Harijans were not permitted to take service from the canteen boys who were not Harijans, but were required to be served by a Harijan boy only, that the Harijans were not allowed to use utensils which were set apart for the other Hindus and that the Harijan canteen boy was not allowed to serve the non-Harijan Hindus. It was conceded that no discrimination was made between Harijans and other Hindus in the matter of the quality of food or the quality of utensils. The prosecution contention is that the abovementioned disabilities imposed in the canteen against the Harijans in the matter of service and setting apart of utensils offend against the provisions of the Bombay Harijan (Removal of Social Disabilities) Act, 1946, and the charge against the respondents is that they had committed an offence under s. 7 (*b*) read with s. 4 of the Act by practising discrimination against the Harijans.

The learned Magistrate held that the canteen was not a 'place of public entertainment', but was a 'shop' within the meaning of cl. (*f*) of s. 2 of the Act and, therefore, the act was applicable to the facts of this case. On merits, the learned Magistrate came to the conclusion that the abovementioned restrictions against the Harijans constituted a discrimination against them and that the respondents as the canteen manager and the canteen boy respectively were responsible for it. Accordingly, he convicted the respondents under s. 7 (*b*) read with s. 4 of the Act and sentenced respondent Bhaishankar Uttamrai to suffer one day's rigorous imprisonment and to pay a fine of Rs. 150 or in default to suffer three weeks' rigorous imprisonment and respondent Bhika Punja to suffer one day's rigorous imprisonment and to pay a fine of Rs. 25 or in default to suffer one week's rigorous imprisonment. On the respondents appealing to the Court of Session at Ahmedabad, the learned Additional Sessions Judge held that canteen was neither a 'place of public entertainment' nor a 'shop' under the Act and that, therefore, the Act was not applicable and accordingly no offence under the Act was committed by the respondents, although

1955
STATE
v.
BHAI-
SHANKAR
UTTAMRAI
Vyas J.

on merits the learned Judge also came to the conclusion that in this canteen a discrimination was made against the Harijans. Accordingly, the learned Judge ordered the acquittal of the respondents. The State of Bombay has come in appeal from that order of acquittal.

Now, the learned Additional Sessions Judge is right in our view in holding that a canteen of a mill is not a place of public entertainment, since only the employees of the Mill concerned and not all the members of the public are entitled as a matter of right to the services rendered by the canteen; but the learned Judge is in error when he says that the canteen of a Mill is not a shop under the Bombay Harijan (Removal of Social Disabilities) Act, 1946. In dealing with the point whether a canteen is a shop or not under the Act, the learned Judge has observed in the course of his judgment :

> "It is true that in the definition of 'shop', the word 'goods' is used and the meaning of the word 'goods' is wide enough to include even any kind of food. But in the present case a place where food and drink are supplied for consumption on the premises, has been given a specific and an exclusive meaning and when this is taken into consideration it becomes evident that food supplied for consumption on the premises of a place must be excluded from the 'goods' and to that extent the word 'goods' must be given a limited meaning."

In other words, the learned Judge has taken the view that the word 'goods' in the definition of 'shop' in cl. (*f*) of s. 2 does not include any kind of food or drink supplied for consumption on the premises and, therefore, the canteen where food or drink is supplied for consumption on the premises is not a shop.

It would appear that the line of thought which the learned Judge adopted was that since the place where any kind of food or drink is supplied for consumption on the premises thereof would be a 'place of entertainment', the shop would also be a place of public entertainment if the word 'goods' in the definition of 'shop' were so construed as to include any kind of food or drink supplied for consumption on the premises. In the view of the learned Judge, such a position, viz. a place being both a shop and a place of public entertainment at the same time could not have been intended by the Legislature who has specifically defined the two terms 'place of public entertainment' and 'shop' differently in cl. (*e*) and cl. (*f*) of s. 2. In other words, it would appear that the learned Judge thought that a place of public entertainment and a shop as envisaged by the Act were totally distinct things. It was this view which was responsible for his further view that an overlapping between the definitions of these expressions as contained in cls. (*e*) and (*f*) of s. 2 was to be avoided. Now, in our, opinion, the learned Judge's approach to this case was basically wrong. He approached the case on the basis that if the word 'goods' in cl. (*f*) of s. 2 of the Act were to include any kind of food or

drink supplied for consumption on the premises, the place would at the same time be both a place of public entertainment and a shop, that in such a case there would be an overlapping between the definitions of the expressions 'place of public entertainment' and 'shop' and that the Legislature could not have intended to enact such an overlapping piece of Legislation. Therefore, thought the learned Judge, the word 'goods' in the definition of 'shop' must be so construed that a place of public entertainment would be a place invariably distinct from shop and *vice versa.* In other words, the basis of his approach was that, so far as the Bombay Harijan (Removal of Social Disabilities) Act, 1946, is concerned, there could not be a place simultaneously capable of bearing both the denominations, viz., a place of public entertainment and a shop. According to the learned Judge's thinking, the definitions contained in cls. (*e*) and (*f*) of s. 2 were mutually exclusive. In our opinion, the definitions in cls. (*e*) and (*f*) of s. 2 are not mutually exclusive and we think that the learned Judge's basis of appoach to the case is erroneous.

Often an overlapping occurs between the definitions of two terms and it is indeed natural and inevitable that sometimes it must occur; for it is a matter of an ordinary experience in the realm of reality that we come across a place which is both a 'place of public entertainment' and a 'shop' at the same time. Take the instance of big stores where numerous articles of different descriptions are sold and where there are several departments, for example, a gentlemen's department where men's wear is sold; a ladies' department where women's necessaries are sold; a children's department where things in which children would be interested are sold; and a general department where jewellery, cutlery, crockery, stationery, watches, fountain-pens, perfumes, etc., are sold. Now, in the case of such stores, we often find that upon a portion of the premises there is a refreshment room where articles of food and drink are supplied on payment for consumption on the premises themselves. Now, such stores would be appropriately called both places of public entertainment and shops. Shops undoubtedly they are, since customers go there and purchase goods from them. They are also places of public entertainment since articles of food and drink are supplied for consumption on the premises thereof to the members of the public visiting the stores. This is a notable example of a shop being also a place of public entertainment. It is clear that this is not a hypothetical instance, but is one which we come across in daily experience.

Take another instance, an instance of a restaurant where food and drink are served for consumption on the premises. Again, it is a matter of ordinary experience that in a portion of the

1955

STATE
v.
BHAI-
SHANKAR
UTTAMRAI

Vyas J.

same room where food and drink are served for consumption on the premises, there may be a counter where articles of food, such as sweets, chocolates, cakes, biscuits, nuts, etc., are purchased otherwise than for consumption on the premises. Such a place also would be correctly called both a place of public entertainment and a shop. It is futile to contend that sweets, chocolates, cakes, biscuits, nuts, etc., would be goods only if they are purchased otherwise than for consumption on the premises and would cease to be goods if the customer purchases them for consumption on the premises. It would also be futile to contend that a sale of these articles to a purchaser takes place within the meaning of s. 2, cl. (*f*) of the Act only if a customer leaves the premises with those articles, but not if he consumes those articles on the premises themselves. Such a distinction would be wholly arbitrary and unjustified. The above instance of restaurant is an example of a place of public entertainment being also a shop at the same time.

It is inconceivable that in enacting cls. (*e*) and (*f*) of s. 2, the Legislature would have intended to make the definitions contained in these clauses mutually exclusive and thereby ignore what is a matter of daily experience in big departmental stores and restaurants. If the definitions of a 'place of public entertainment' and a 'shop' are to be construed as being mutually exclusive and if, therefore, the word 'goods' in the definition of 'shop' is to be so interpreted as to exclude any kind of food or drink supplied for consumption on the premises and if the meaning of the word 'sold' is to be limited to the supply of an article otherwise than for consumption on the premises, we shall have to attribute to the Legislature an intention to deny to the Harijan employees of the industrial concerns, business houses, educational institutions and other concerns and corporations a benefit of the removal of social disabilities so far as the canteens attached to these institutions are concerned. A canteen is a place where the tired employees of a concern, who are drawn from all sections of the public including the Harijans, go to refresh themselves and sustain themselves and if that place is to be excluded from the purview of the Act which is a piece of social legislation, the very object of the Act, which seeks to remove the scourge of untouchability to which Harijans as a class are the victims, would be substantially defeated. We cannot attribute such an intention to the Legislature as would be repugnant to the subject-matter of the Act itself and would strike at the very roots of the legislation which lay in a growing realisation in the conscience of the society that untouchability was a social evil and that such disabilities as were imposed by the other Hindus against the Harijans were a scar on the fair name of social justice and must be removed. It is clear that the intention of the Legislature in enacting the

Bombay Harijan (Removal of Social Disabilities) Act, 1946, was to wage a crusade against an evil which amounted to denial of equal rights of citizenship to the Harijans who are no less the citizens of this country than the other Hindus, and this object of the Act must not be lost sight of when we are construing a section of the Act, since it is a well-settled rule of construction that the expressions and words used in the Act must be construed in the context of the object of the Act. A plain and generally accepted connotation of the words must be assigned to the words. There should be no departure from this rule except when justified by cogent reasons, such as avoidance of repugnancy to the Act or promotion of conformity with the object of the Act. Now, there is no doubt that the generally accepted connotation of the word 'goods' includes articles of food or drink irrespective of whether they are purchased for consumption on the premises or otherwise. A departure from this connotation would be justified only on strong grounds, for instance if a repugnancy to the rest of the provisions of the Act is to be averted, or if the object of the Act is to be furthered, by the departure. In this case, if the word 'goods' in the definition of 'shop' is construed so as to exclude any article of food or drink supplied for consumption on the premises and if the connotation of the word 'sold' is to be narrowed down and limited to the supply of an article otherwise than for consumption on the premises, not only will the object of the Act not be furthered, but it will be frustrated as the construction abovementioned would result in the perpetuation of discrimination against the Harijans in the canteens of the industrial concerns and other public organisations and institutions. On the other hand, if the expression 'goods' is interpreted so as to include any kind of food or drink supplied for consumption on the premises and if the word 'sold' is construed so as to include the supply of an article for consumption on the premises, there would be no repugnancy to any of the provisions of the Act and the construction will conduce to the carrying out of the object of the Act. Courts always lean towards a construction which would help in giving effect to the object underlying a statute. It may be noted that if the provisions of the definition of one expression or term in the Act overlap those of the definition of another expression or term it is no repugnancy. Overlapping is one thing; repugnancy is another thing. Repugnancy is to be avoided; overlapping is sometimes inevitable.

Mr. Purshottam for the respondents contends that the word 'sold' in the expression 'where goods are sold' in the definition of 'shop' in s. 2, cl. (*f*), means that a customer pays the price for the goods purchased, takes delivery thereof and walks out of the premises taking the goods with him. In other words

1955

STATE
v.
BHAI-
SHANKAR
UTTAMRAI

Vyas J.

according to Mr. Purshottam, an article of food, or drink, for instance a packet of sweets or chocolates or a bottle of orange squash, could be said to be 'goods sold' to a customer, only if the customer quitted the premises immediately after paying the price for the article and taking delivery thereof. If, after taking delivery, the customer continues to be on the premises and consumes the article purchased by him while still on the premises, the transaction ceases to be a sale. The logical extreme of this submission would be that the sale of an article takes place only in those cases where the article sold to a customer does not disappear from the palm of the customer so long as he is on the premises. It would not matter if it disappeared the moment the customer left the premises. In that case, it would still be a 'sale'. But if the disappearance of the article by reason of its consumption occurred while the customer was still on the premises, then the transaction would cease to be a 'sale' and would only amount to service rendered to the person to whom the article was given. Such a construction is manifestly artificial and unnatural. I do not understand why a particular stage at which the consumption of an article takes place subsequent to its sale should make any difference to or alteration in the nature of the transaction entered into by a customer with a shop. The effect of Mr. Purshottam's contention would be that if an employee of the Mills goes to a canteen, purchases an article of food or drink, say a packet of sweets or a cup of tea, takes delivery thereof, leaves the canteen taking away the said article with him and consumes the article outside the canteen while taking to his friends, there would be a 'sale' of the article and the premises would be a 'shop' within the meaning of s. 2, cl. (*f*) of the Act. But, if the employee after paying the price for the article and after taking delivery thereof sits down on the premises and consumes the article while still on the premises, then there is no sale of the said article to him and the premises are not a shop under the Act. In other words, according to the construction which Mr. Purshottam wishes us to put upon the expression 'where goods are sold', whether the premises are a 'shop' or not would not depend upon the nature of the transaction entered into with a person, but would depend upon what the person concerned would do to the article sold to him. Such a construction is too unreal to be accepted and could not have been intended by the Legislature.

I may state Mr. Purshottam's contention in a slightly different way. Mr. Purshottam says that a canteen is not a 'shop' because nobody could go to a canteen, purchase an article of food or drink at a counter and walk out of the premises taking away the said article of food or drink with himself. According to Mr. Purshottam, a person who pays for an article of food or

1955

STATE
v.
BHAI-
SHANKAR
UTTAMRAI

Vyas J.

drink in a canteen must sit down on the premises of the canteen and consume it there only. We cannot accept this submission. Why can a person who pays for a cup of tea or a glass of soda at a counter in a canteen not take it away with himself and consume it wherever he likes so long as he returns the empty cup or glass after consumption? Why can he not take a packet of chocolates or sweets paid for by him at a counter with himself and go out and consume the chocolates or sweets outside? We are not referred to any authority in support of Mr. Purshottam's contention that a customer to whom sweets or chocolates are sold by a shop cannot consume them on the premises themselves. In our view, there is no justification to hold that the expression 'where goods are sold' in cl. (*f*) of s. 2 must exclude the supply of an article of food or drink for consumption on the premises.

Mr. Purshottam says that in a canteen a person does not 'purchase' an article of food or drink, because he does not pay just the price for the article, but also pays for the service rendered to him. The payment made by him, says Mr. Purshottam, is not only towards the costs of the article consumed by him, but also goes towards the overhead charges which the owner of the canteen has to bear. But Mr. Purshottam overlooks the fact that this characteristic would be present even in the case of premises which, even according to him, would be shops. Take the instance of a draper's shop. Payment made by a customer in that shop for the cloth purchased by him would go not only towards the cost of the cloth sold to him, but would also go towards the overhead charges which the proprietor of the shop has to bear in the shape of rent of the premises, salary of servants engaged by him etc. Therefore, this characteristic viz. that the payment made by a customer to a canteen would be a payment not only for the goods supplied to him, but also for the service rendered to him, would not detract from the nature of the premises being a shop. In our view, therefore, there is no justification for departing from the generally accepted connotations of the words 'goods' and 'sold' which occur in s. 2, cl. (*f*) of the Act. In our opinion, the articles of food or drink which are given to a person in a canteen on payment of price by the said person are goods within the meaning of s. 2, cl. (*f*), and they are sold to the person to whom they are delivered upon the acceptance of price from him, irrespective of where he consumes them. Consequently, a canteen would be a 'shop' within the meaning of s. 2, cl. (*f*) of the Act and, therefore, the provisions of the Act would apply to this case.

Mr. Purshottam says that a canteen is not a 'shop' because the principal characteristic of a shop is conspicuous by its absence in a canteen. Mr. Purshottam contends that the dominant characteristic of a shop is that the members of the

1955

STATE
v.
BHAI-
SHANKAR
UTTAMRAI

Vyas J.

public as such have a right to enter the premises for having their particular wants supplied and services rendered. On the premises of a shop, goods are offered to the public or can be bought by the public. In other words, Mr. Purshottam says that the essential feature of a shop is its appeal to the public or some section of the public. According to Mr. Purshottam, the feature of a canteen on the other hand is its exclusiveness in the sense that admission to it is not open to the public as such, but is restricted to the employees of a particular concern. The members of the public cannot resort to a canteen for having their wants supplied. It caters to the wants of only the employees of a particular Mill or concern. Therefore, says Mr. Purshottam, a canteen is not a shop. For this submission, Mr. Purshottam has relied on an English decision in the case of *Simmonds Aerocessories (Western) Limited* v. *Pontypridd Area Assessment Committee and another*,[5]. In that case, the appellants, who were manufacturers of air-craft accessories, had occupied a canteen situated on a plot of land which at its nearest point was 260 feet distant from the main factory. The main factory was admittedly an industrial hereditament within the meaning of s. 3, sub-s. (*1*), of the Rating and Valuation (Apportionment) Act, 1928. The canteen was restricted to the use of the appellants' employees and comprised two large dining-rooms, in which hot and cold meals were served, cloak-rooms and other accommodation. Meals were provided at a price which covered their cost without profit, and on the average 1,850 out of 2,000 employees were present at each meal. The canteen was regularly inspected by the inspectors of factories and complied with the requirements of the Factories (Canteens) Order, 1940. It was held in that case that the canteen was a factory or workshop within the meaning of s. 149, sub-s. (*1*) of the Factory and Workshop Act, 1901; and that it was not primarily occupied and used either for the purpose of a retail shop or for any other purposes not those of a factory or workshop. Now, it is well-settled that to arrive at the real meaning of the words used in the Act, it is always necessary to get a precise conception of the aim, scope and object of the whole Act. As Lindley M. R. observed in *Re Mayfair Property Co.*[6].

"In order properly to interpret any statute, it is necessary to consider how the law stood when the statute to be construed was passed, what the mischief was for which the old law did not provide, and the remedy provided by the statute to cure that mischief."

A perusal of the Bombay Harijan (Removal of Social Disabilities) Act, 1946, would show that its aim is the removal of social disabilities against Harijans and its scope extends to the elimination of discrimination against Harijans in all its forms and shapes, since the removal of disabilities intended by the

5. [1944] 1 K. B. D. 231.

6. (1898) 2 Ch. 28 at p. 35.

Act is not a partial removal, but removal unqualified. The mischief, for the cure of which the Act was enacted and against which the law as it stood before the Act was passed made no provision, was the mischief of various restrictions against Harijans from which the social conscience recoiled. It is in the context of this aim and scope of the Act that the true meaning of the word 'shop' is to be found. As the Court observed in *R.* v. *Hall*,[7] the meaning of the words of a statute is found not so much in a strictly grammatical or etymological propriety of language, nor even in its popular use, as in the subject or in the occasion on which they are used and the object to be attained. The same rule of construction was adopted in the case of *River Wear Commissioners* v. *Adamson*,[8] when Lord Blackburn said that the true meaning of any passage was to be found not merely in the words of that passage, but in comparing it with other parts of the law, ascertaining also what were the circumstances with reference to which the words were used and what was the object appearing from those circumstances which the Legislature had in view. It is a well-known canon of construction that, whenever a statute or document is to be construed, it must be construed not according to the mere ordinary general meaning of the words, but according to the ordinary meaning of the words, as applied to the subject-matter with regard to which they are used. (Maxwell on Interpretation of Statutes, 10th Edn. p. 52). The same learned author has said that the words of a statute are to be understood in the sense in which they best harmonise with the subject of the enactment and the object which the Legislature has in view. It is clear, therefore, that, although according to the ordinary concept of the word 'shop', the appeal of the said premises lies to the public and the admission thereto is not restricted to any particular class of people, it would be justifiable to depart from the ordinary meaning to the extent that it may be necessary to do so to promote the object of the Act, and we know that the underlying object of the Act is furtherance of social justice which requires that the rights of citizenship—there is only one kind of citizenship in this country, namely the citizenship of India—which are enjoyed by other Hindus shall not be denied to Harijans simply because of the incidence of their birth. When the Legislature said that it was expedient to enact this legislation for the removal of social disabilities on Harijans, it clearly intended that the social status of Harijans must grow and develop. Bearing this aim of the Legislature and the abovementioned rule of construction in mind, we must remember that the English decision on which Mr. Purshottam relies is a decision under the Rating and Valuation (Apportionment) Act, 1928, a Taxing Statute of England where any such class of

7. (1882) 1 B. & Co. 136. 8. (1877) 2 A. C. 743.

1955
STATE
v.
BHAI-
SHANKAR
UTTAMRAI
Vyas J.

people corresponding to Harijans is non-existent and where untouchability is unknown. On the other hand, the Bombay Harijan (Removal of Social Disabilities) Act, 1946, is a piece of social legislation of this country, specially enacted to mitigate social disabilities to which Harijans in this Country are subjected by other Hindus. The Act contains a legislative sanction for combating the evil of untouchability in all its aspects and shades. This subject-matter of the Act must be kept pre-eminently in view and its furtherance must be a governing consideration while construing phrases and words used in the Act. Therefore, although the ordinary meaning of the word 'shop' may be as stated in the English case cited by Mr. Purshottam, we would in the context of the subject-matter of the Act which we are construing extend its connotation to a canteen, a place which, though not open to the members of the public as such, is visited by the employees of a Mill who are drawn from all sections of the public including Harijans. In our view, to construe a canteen as being a place beyond the purview of the Act would be to put a construction which the Legislature, having the removal of Harijans' social disabilities at heart, did not intend and which would defeat the directive embodied in art. 46 of the Constitution of India which says that the State shall promote with special care educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.

As I have stated earlier in the course of this judgment, the definitions in cls. (*e*) and (*f*) of s. 2 of the Act are not mutually exclusive. In this connection, to ascertain the intention of the Legislature we may usefully turn to the definition of 'shop' in the Bombay Shops and Establishments Act, 1948. The word 'shop' under the said Act is defined in s. 2, sub-s. (27) thereof and the definition runs thus:

> "'shop' means any premises where goods are sold, either by retail or wholesale or where services are rendered to customers, and includes an office, a store room, godown, warehouse or workplace, where in the same premises or otherwise, mainly used in connection with such trade or business *but does not include* a factory, a commercial establishment, residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment."

Comparing the abovementioned definition of 'shop' in sub-s. (27) of s. 2 of the Bombay Shops and Establishments Act, 1948, with the definition of 'shop' in cl. (*f*) of s. 2 of the Bombay Harijan (Removal of Social Disabilities) Act, 1946, we have no doubt that, if the intention of the Legislature had been to exclude a place of public entertainment from the purview of the definition of 'shop' as contained in cl. (*f*) of s. 2 of the Bombay

Harijan (Removal of Social Disabilities) Act, 1946, the Legislature would have used language similar to the language used by them in sub-s. (27) of s. 2 of the Bombay Shops and Establishment Act, 1948, and would have in terms provided in the definition of 'shop' in s. 2, cl. (*f*), that the expression 'shop' would not include a 'place of public entertainment.' But the Legislature did not say so. This, in our view, would be an indication and a good indication to suggest as to what the intention of the Legislature must have been while defining 'shop' in cl. (*f*) of s. 2 of the Bombay Harijan (Removal of Social Disabilities) Act, 1946. In our opinion, the Legislature did not intend to make the definitions of 'place of public entertainment' and 'shop' mutually exclusive.

Mr. Purshottam has contended that, if the Legislature had intended that the expression 'where goods are sold' should include the supply of articles for consumption on the premises, they would have included a canteen amongst the places mentioned in the latter part of cl. (*e*) of s. 2. In our view, however, the reason for not including a canteen amongst the places such as a refreshment-room, eating-house, coffee-house, boarding-house etc. which are mentioned in cl. (*e*) is obvious. Those are places to which the public have a right of access, whereas in the case of a canteen, the admission is restricted to the employees of a particular concern, organisation or institution. The public as such have no right of access thereto. Next Mr. Purshottam has argued that, if the Legislature had intended to include a canteen in the definition of 'shop', they would in terms have done so as they expressly included a laundry and a hair-cutting saloon in the definition. We are unable to see substance in this submission. A laundry and a hair-cutting saloon are specifically included in the definition, because if they had not been so included, they would not have fallen within the purview of 'shop' as they are not places where any goods are sold. They are premises where only services are rendered without the sale of any goods. The case of a canteen is quite different. In a canteen, the goods are sold and therefore the earlier part of the definition of 'shop' would cover a canteen even without an express reference to it.

Next Mr. Purshottam says that even if a canteen be held to be a shop under the Act, the provisions of the Act forbidding discrimination against Harijans in a shop are not violated in the canteen of the Anant Mills. Mr. Purshottam has invited our attention to ss. 3 and 4 of the Act and contended that the provisions of s. 4 must be construed in relation to those of s. 3. In particular, he has referred us to sub-cl. (*v*) of cl. (*b*) of s. 3 which provides:

"Notwithstanding anything contained in any instrument or any law, custom or usage or the contrary, no Harijan shall merely on the ground

1955

STATE
v.
BHAI-
SHANKAR
UTTAMRAI

Vyas J.

that he is a Harijan be prevented from having access to a shop to which the members of all other castes and classes of Hindus are ordinarily admitted."

Then s. 4 says:

"No person in charge of any of the places referred to in sub-cls. (*i*), (*iii*), (*iv*), (*v*) and (*vi*) or any conveyance referred to in sub-cl. (*ii*) of cl. (*b*) of s. 3 shall impose any restriction on a Harijan or act in a manner as to result in discrimination against him merely on the ground that he is a Harijan."

Correlating the provisions of s. 4 with the provisions of s. 3, Mr. Purshottam has contended that, so far as shops are concerned, the discrimination which the Act has provided against is only in the matter of access to the shops and does not relate to what happens in the shops after the access is obtained thereto. Mr. Purshottam says that even on the prosecution case itself, no discrimination is practised against Harijans so far as the access to the canteen of the Anant Mills is concerned. Therefore, says Mr. Purshottam, the provisions of the Act are not offended against by the authorities of this canteen. In our view, this is not a correct construction of ss. 3 and 4. The provisions of s. 3, cl. (*b*), sub-cl. (*v*) are limited to a ban on the prevention of Harijans from having an access to a shop. The ban imposed by s. 3, cl. (*b*), sub-cl. (5) does not extend to a stage beyond the stage of an access to a shop. The ban on restrictions or discrimination against Harijans, which is referred to in s. 4, is a much wider ban, is not limited or confined merely to the stage of an access to a shop, but relates even to the stages beyond the stage of an access to a shop. In other words, s. 4 forbids the practice of any discrimination against Harijans, not only in the matter of their entry into a shop, but even while they are in a shop after having entered it. Therefore, the discrimination practised in this canteen against the Harijans in the matter of setting apart of utensils and service on the premises of the canteen is an offence under the Act.

Lastly Mr. Purshottam has contended before us that, even on merits, there has been no discrimination against the Harijans in this canteen. Now, in this connection, both the Courts below have held that in this canteen a discrimination was practised against the Harijans. On the evidence before them the learned Magistrate and also the learned Additional Sessions Judge held that Harijans were not permitted to avail themselves of the services rendered to the customers by non-Harijan boys. They were not permitted to use the utensils which were set apart for the non-Harijan Hindus and a Harijan boy was not permitted to serve the non-Harijan Hindus. In view of these facts, which both the Courts below held proved, they came to the conclusion that in this canteen a discrimination was practised against the Harijans. Mr. Purshottam challenges this finding of fact arrived at by both the Courts below by

referring us to the evidence of witnesses Uka Pancha, Amthabhai Mangabhai, Ramavtar and Nabhubha. It may be noted that out of the abovementioned witnesses, Ramavtar and Nabhubha have been examined as defence witnesses. We have been carefully taken through the evidence of Uka Pancha and Amthabhai Mangabhai and on a careful reading of that evidence, and also the evidence of the defence witnesses, we cannot accept Mr. Purshottam's contention that there was no discrimination practised against the Harijans in this canteen. For instance, Uka Pancha has said in his evidence that in this canteen there are separate arrangement for other Hindus and Harijans; for instance, separate utensils are kept for the Harijans and also a discrimination is made in the matter of service. Then Uka has said that he had taken water in a glass which had been kept apart for other Hindus, and the result was that he was abused by respondent Bhika Punja. It is true that in cross-examination this witness has said that the utensils for the other Hindus as well as for Harijans were brought from the same place and were sent to the same place for the purpose of cleaning. That of course is true. It is not the case of the prosecution that there is any difference in the quality of utensils so far as the Harijans and the non-Harijans are concerned. The quality of utensils in which food or drink is served to the employees who are Harijans and non-Harijans is the same. But the discrimination contended by the prosecution is that certain utensils are kept apart for other Hindus and certain others for the Harijans. On this particular point, Uka Pancha's evidence does not help the respondents. On the contrary, Uka has said that white cups are kept for the Harijans whereas cups with borders are kept for the non-Harijan Hindus. Presumably, Uka means that cups without borders are meant for the Harijans and those with borders are set apart for other Hindus. Again, on the cups for drinking water which are meant for the Harijans, there are grooves upto half the height of the cups; and in the case of other cups which are set apart for other Hindus, there are grooves upto the whole height of the cups. It is thus clear that the evidence of Uka Pancha does not make out the contention of Mr. Purshottam, viz. that the discrimination practised in this canteen is not between Harijans and other Hindus, but it is a discrimination between a certain section of the Hindus, viz. the bhayyas hailing from Upper India and other Hindus including Harijans. This contention is not borne out by the evidence of Uka. Amthabhai also has deposed that Uka was abused, because he had taken water from a glass which was set apart for other Hindus. There is nothing in the evidence either of Amthabhai or of Uka to suggest that whatever discrimination there is in this canteen, it is made between the bhayyas on the one hand and the remaining Hindus including

1955

STATE
v.
BHAI-
SHANKAR
UTTAMRAI

Vyas J.

the Harijans on the other hand. It is true that Ramavtar and Nabhubha, the defence witnesses, have supported the submmission which Mr. Purshottam has advanced before us. Nabhubha has deposed that some orthodox Hindus from the United Provinces had taken objection and, therefore, separate cups and saucers had been set apart for them. Defence witness Karsan is a Harijan himself and he has deposed that whoever required his services in the canteen, he would render service to them, whether the said persons were Harijans or non-Harijans. These witnesses were seen by the learned trial Magistrate who had an opportunity of marking their demeanour. After seeing their demeanour, the learned Magistrate did not think it fit to act upon the evidence of the defence witnesses. The learned Additional Sessions Judge thought that the appreciation of evidence of witnesses as made by the learned trial Magistrate was correct. We do not see any reason why we should substantially differ from the appreciation of the evidence as made by the two Courts below. Therefore, in the end we must hold that the conclusion of both the Courts below on merits, viz. on the point of discrimination against the Harijans in this canteen, is correct.

Accordingly we allow the appeal filed by the State of Bombay, set aside the order of acquittal passed in favour of the respondents by the learned Extra Additional Sessions Judge, Ahmedabad, convict the respondents Bhaishankar Uttamrai and Bhika Punja of an offence under s. 7, cl. (b) read with s. 4 of the Bombay Harijan (Removal of Social Disabilities) Act, 1946, and restore the sentence imposed upon them by the learned trial Magistrate. There is no question arising now of carrying out the sentence of one day's rigorous imprisonment. The sentence of fine imposed in the case of each of the respondents by the trial Magistrate is restored by us. Default sentence in case of failure to pay the fine is also restored by us.

Shah J.—I agree with the order proposed by my learned brother. The question which arises in this appeal is whether a 'canteen' provided in a factory and reserved for the use of employees of the factory is a 'shop' within the meaning of s. 2(*f*) of the Bombay Harijan (Removal of Social Disabilities) Act, 1946. The learned trial Magistrate held that a canteen provided in a factory, access to which was reserved only to employees of the factory, was a 'shop' and as the respondents were proved to have discriminated against the complainant Uka who is a Harijan, they were guilty of committing an offence punishable under s. 4 read with s. 7 (*b*) of the Act. The learned Sessions Judge in appeal reversed the order of conviction and acquitted the accused.

It was the case of the complainant Uka that contrary to the provisions of s. 4 of the Bombay Harijan (Removal of Social Disabilities) Act, 1946, he had been discriminated against in that in the canteen separate utensils were provided for use by Harijans and by caste Hindus and that a Harijan waiter was employed who waited upon Harijans only and upon no others. The learned trial Magistrate held that this was discrimination against Harijans. In that view of the trial Court, the learned Sessions Judge has concurred.

Section 7 of the Act *inter alia* penalises contravention of s. 4 of the Act or abetment of contravention thereof. By s. 4, it is provided that no person in charge of any of the place referred to in sub-clauses, *inter alia* cl. (*v*), of s. 3 (*b*) shall impose any restriction on a Harijan or act in a manner discriminating against a Harijan merely on the ground that he is a Harijan; and by s. 3(*b*), cl. (*v*), it is provided that a Harijan shall not, merely on the ground that he is a Harijan, be prevented from having access to a shop to which the members of all other castes and classes of Hindus are ordinarily admitted. Evidently, to the canteen of the Anant Mills all employees, Harijan Hindus and non-Harijan Hindus, and belonging to other communities, are admitted. It has not been suggested on behalf of the respondents that the complainant Uka or any other Harijan was not entitled to have access to the canteen. By making provision for separate utensils for the use of Harijans attending the canteen and by employing a waiter belonging to the Harijan community who was to wait upon Harijans only and upon no others evidently discrimination has been practised against Harijans.

The learned trial Magistrate held that the canteen was a 'shop' within the meaning of the Bombay Harijan (Removal of Social Disabilities) Act, 1946. With that view, the learned Sessions Judge has disagreed. The expression 'shop' has been defined in s. 2 (*f*) of the Act as meaning any premises where goods are sold either by retail or wholesale or both and includes a laundry, a hair-cutting saloon or such other place where services are rendered to customers. In the view of the trial Court, a canteen is premises where food stuff is sold by retail. He was also of the view that a canteen is a place where service is rendered to customers, such services being similar to service rendered in a laundry or a hair-cutting saloon. The learned Sessions Judge held that the plain grammatical meaning of the definition of 'goods' in the Act was controlled by an unexpressed limitation in view of the definition of 'place of public entertainment' in s. 2 (*e*) of the Act. The learned Sessions Judge thought that, because a place to which public are admit-

ted and where food or drink is supplied for consumption on the premises for the profit or gain of any person owing or having an interest in or managing the place is a 'place of public entertainment', the Legislature could not have intended to include places wherein food and drink are sold in the definition of 'shop' in s. 2(*f*) of the Act. He observed that, in view of the definition of a 'place of public entertainment', "food supplied for consumption on the premises" must be excluded from the meaning of 'goods' and to that extent the word 'goods' must be given a limited meaning in the definition of 'shop' in s. 2(*f*) of the Act. In the view of the learned Judge, such a limitation was necessary to harmonise the provisions of s. 3 (*b*) (*iv*) and 3 (*b*) (*v*) of the Act. In substance, the learned Sessions Judge assumed that the definitions of 'place of public entertainment' and 'shop' in s. 2 were mutually exclusive, and if a place could be regarded as a place of entertainment, public or private, it could not be regarded as a 'shop' within the meaning of the Act. The learned Sessions Judge, therefore, held that a canteen of a factory being a place of private entertainment, it was not a 'shop' within the meaning of s. 2 (*f*) read with s. 3 (*b*) (*v*) and by practising discrimination in the canteen upon the complainant Uka, no offence within the meaning of s. 7 was committed.

Even though the view taken by the learned Sessions Judge proceeded upon this limited ground, Mr. Purshottam on behalf of the respondents has sought to found his argument on a much wider ground. It was urged that a canteen could not be regarded as a 'shop' within the meaning of s. 2(*f*) of the Act because the public are not entitled as such to have access to the canteen. Mr. Purshottam contends that the very connotation of the expression 'shop' postulates that it must be open to the public generally. Evidently no member of the public as such has any right to enter the premises of the canteen. Also there is no evidence that the public did as a matter of fact resort to the canteen. There are no goods on offer to the public and none can be bought by the public in the canteen. The essential feature of a shop in its appeal to the public or some section of the public is also absent. Whereas the essential feature of a shop is its invitation to the public, an important feature of the canteen is its privacy. It cannot be denied that the canteen is not open to the public. It has been reserved for employees of the factory. But, in our view, the prohibition contained in ss. 3 and 4 of the Bombay Harijan (Removal of Social Disabilities) Act, 1946, is not in respect of a shop in its normal or popular connotation, but it is in respect of a shop as defined in the Act. There is nothing either expressed or implicit in the definition or any other provision of the Act which supports the submission made by counsel for the respondents that, before premises can

be regarded as a 'shop', it must be open to the public. The definition in terms requires that the premises must be used for sale of goods, either by retail or wholesale. There is a further extension of the definition which includes in the definition premises where there is no sale of goods, but mere services are rendered. It is an elementary rule of construction of statutes that expressions used therein must be interpreted in the setting and context in which they are used, and having regard to the object which the statute is intended to effectuate. The Legislature has enacted the Bombay Harijan (Removal of Social Disabilities) Act, 1946, for 'the removal of social disabilities of Harijans'. The Court in interpreting the Act cannot lose sight of the fact that the practice of untouchability in its varied ramifications is regarded as a serious blot upon society in this country. Under the Constitution, equality of citizens is recognised as one of the important pillars of social progress and provision has been made in the Directive Principles of State Policy that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, in particular, of the Scheduled Castes and shall protect them from social injustice and all forms of exploitation. Similarly, by art. 17, untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability is made an offence punishable in accordance with law. Prohibition of Harijans from entering places of resort where either the public are permitted or where Hindus are generally permitted to have access and the practice of discrimination in those places have been penalised by the Bombay Harijan (Removal of Social Disabilities) Act, 1946, in recognition of the growing social consciousness against the continuance of untouchability. It is in the context of this growing social consciousness that the provisions of the Act have to be viewed. It is open to all employees who belong to the Hindu community, Harijans and non-Harijans, to visit the canteen of the Anant Mills. It is conceded that there is no prohibition against Harijan employees entering the canteen. Discrimination practised upon the Harijans in the canteen is evidently a manifestation of untouchability, the practice of which the Constitution forbids and the State Legislature desires to abolish. Even though the canteen is a place to which the employees of the factory only may resort, in our judgment, having regard to the definition in s. 2 (*f*) and the object of the Legislature and the general scheme of the Act, it must be regarded as a 'shop'.

It was also urged that even if, under the definition in s. 2 (*f*) of the Act the premises need not be open to the public generally, the canteen of the Anant Mills cannot be regarded as a 'shop'

1955
STATE
v.
BHAI-
SHANKAR
UTTAMRAI
Shah J.

within the meaning of the definition because there is in the canteen no sale of goods. It was submitted that in the canteen only service is rendered and the supply of food stuffs is merely an incident of service. It was further urged that the legislature having in the definition of 'shop' included places where certain services in the nature of services rendered in a laundry and a hair-cutting saloon and similar are rendered and having expressly included services such as providing refreshment or food or drink in the definition of the expression 'place of public entertainment', it was not the intention of the Legislature that the places in which services such as supplying food and drink to a definite section or class were to be regarded as 'shops' within the meaning of the definition. This contention also we are unable to accept. The primary purpose of maintaining a canteen is to provide food and drink to the employees of a factory or institution. For maintaining an effective supply of articles of food and drink, service must be rendered; but that service is incidental to the supply of food and drink. It is undisputed that the supply of food is for price. It is not gratuitous. The canteen having been maintained for supplying food, it must be held that goods are supplied in the premises of the canteen. The articles of food having been supplied for price, they must be regarded as sold in the canteen. The canteen, therefore, satisfies the requirements of the definition in s. 2 (f) because it is premises where goods are sold by retail.

It was then urged that where goods are delivered to customers for consumption on the premises and not for being removed for consumption or use out of the premises, the premises are not meant for sale of goods. By this argument, the contention which appealed to the learned Sessions Judge was sought to be reiterated before us. Now, this argument postulates that the definition of the expression 'shop' is subject to an unexpressed limitation that goods which are sold in the canteen must be intended to be consumed outside the premises and not on the premises. We are unable again to find anything in the definition of the word 'shop' as found in the Act or in the context in which the expression 'goods' is used which supports this contention. When goods are sold on the premises, it is immaterial whether the goods are intended to be consumed on the premises or intended to be taken out of the premises. We have not been pointed out anything in the Act which even indirectly supports the contention that premises where goods are sold can be regarded as a shop only if they are removed out of the premises and are not consumed on the premises. It is conceded before us that in its normal or popular connotation, a shop includes premises where goods are sold for consumption on the premises. It is true that the Legislature

has by the definition of 'place of public entertainment' included therein places like refreshment rooms, eating rooms, coffee houses, boarding houses, lodging houses and hotels. Such places are places in which normally food stuffs or drinks are, consumed on the premises. But there is no warrant for the assumption that, because the Legislature intended to include in the definition of the expression 'place of public entertainment' a place of public resort where food or drink may be consumed on the premises, it was intended by that definition to exclude from the definition of the word 'shop' places where food stuffs may be consumed on the premises. In our judgment, the two definitions to some extent overlap. The fact that the Legislature has by s. 3 (*b*) (*iv*) prohibited prevention of Harijans from having access to and discrimination in places of public entertainment, is not a sufficient ground for holding that that provision was exhaustive of all cases in which it was intended to penalise discrimination in or contravention of prohibition of access to places of entertainment.

It was finally contended that the Legislature only intended to penalise restrictions against access to places of entertainment and not discrimination in places of entertainment, public or private. In our view, a bare perusal of ss. 3, 4 and 7 of the Act is sufficient to reject that contention. The Legislature has prohibited the practice of denying access to Harijans to places of public entertainment, and shops described in cl. (*iv*) and (*v*) of s. 3 (*b*). Similarly, the Legislature has prohibited the practice of discrimination in places of public entertainment and in shops, and by s. 7, contravention of the provisions of both ss. 3 and 4 is penalised. If the contention raised on behalf of the respondents has any substance, the whole of s. 4 would be meaningless.

We are, therefore, unable to accept the view taken by the learned Sessions Judge that the canteen cannot be regarded as a 'shop'. I, therefore, agree with the view of my learned brother and concur in the order proposed.

Appeal allowed.
G. N. V.