

## APPELLATE CRIMINAL

Before Mr. Justice Gajendragadkar and Mr. Justice Gokhale:

STATE *v.* HIRALAL SURAJKARAN SARADA.\*

1956  
Feb. 17

*Bombay Shops and Establishments Act (Bom. LXXIX of 1948), ss. 18 (1), 52 (b), 2 (3), (18), 4, Sch. II, Entry No. 17—Employer of Commercial Establishment attending establishment on closed holiday—Whether such act punishable under s. 52 (b)—Whether the word ‘attendance’ in Sch. II, Entry No. 17 restricted to doing subsidiary or incidental work—Construction.*

Under entry No. 17 in Sch. II of the Bombay Shops and Establishments Act 1948, employers of commercial establishments are exempted from the operation of s. 18 (1) of the Act so far as their own attendance is concerned. Therefore, an employer attending to his establishment on a day named by him as a closed holiday, does not render himself liable under s. 52 (b) of the Act.

The word ‘attendance’ occurring in column 3 against the said entry is not restricted to doing subsidiary or incidental work only; it is open to the employer to transact any business or to offer service to his customers on a closed holiday.

APPEAL against an order of acquittal passed by R. N. Bhadre, Esquire, Judicial Magistrate, First Class, Kopergaon.

The facts are sufficiently set out in the Judgment.

H. M. Choksi, Government pleader, for the State.

G. P. Murdeshwar, for the Accused.

*Gajendragadkar J.*—This appeal raises an interesting point of law under the Bombay Shops and Establishments Act, 1948, (LXXIX of 1948). The respondent who owns a shop styled as Radhakisan Hiralal Shop at Kopergaon, was charged with having committed offences under ss. 18 (1) and 8 read with s. 52 of the Act. The prosecution case against him was that he had contravened the provisions of the first two sections and thereby rendered himself liable to be punished under the last section. The learned Magistrate held that the respondent had not rendered himself liable to be punished under s. 52 because he could legitimately claim exemption from the operation of s. 18 (1) and in fact he had not contravened s. 8. His finding that no contravention under s. 8 had been proved is a finding of fact. But his conclusion that the respondent was exempted from the compliance of the provisions of s. 18 (1) by virtue of the provision of entry No. 17, Schedule II, is a decision on a point of law and it is this point which is raised before us by the State in the present appeal.

The facts giving rise to the prosecution are not in dispute. The shop owned by the respondent is registered as a commercial establishment under the Act. It is situated within the Municipal limits of Kopergaon town. The accused had presented Form A duly filled in and on his application his shop had been registered as a commercial establishment. The accused intimated to the authorities in writing that Sunday would be

1956  
STATE  
V.  
HIRALAL  
SURAJKARAN  
Gajendra-  
gadkar J.

a closing day in his shop. On November 14, 1954, Vishvanath Teli, Shop Inspector under the Act, visited the godown of the accused. This godown is known as 'Sathi Patra' godown. He found that the accused was inside the godown and was arranging for the despatch of jaggery lumps through bullock-carts. The shop of the accused deals in jaggery and other goods. The Inspector noticed that though the accused had notified Sunday as a closing day in his shop he had opened the godown, which is a part of the shop, and was in fact doing business in the shop by arranging to despatch jaggery lumps to his constituents at Khangaon and Benapura through bullock-carts. That in substance gave rise to the charge under s. 18 (1) read with s. 52 of the Act.

On November 17, 1954, the same Inspector on visiting the shop of the respondent found Jayanarayan Badrinarayan, Shivprasad Hiralal and Hiralal Surajkaran working in the shop. Jayanarayan and Shivprasad were writing the accounts of the shop whereas Hiralal was sitting in the shop. Form F prescribed under the Act has to be maintained in respect of any commercial establishments governed by the Act and this form is required to show the names of all the employees in the shop. According to the Inspector, the names of Jayanarayan and Shivprasad had not been shown as employees in the shop in the said form. This in effect is the basis of the charge under s. 8 read with s. 52 of the Act.

It may be convenient to deal first with the charge based on the allegation that s. 8 has been contravened by the respondent. It is common ground that the names of the two persons were not shown in the form, and it is not disputed that the rules require these names to be submitted in the form prescribed. The defence raised was that under the relevant rule intimation about the employment of workmen in the shop had to be sent within 30 days of such employment, and the argument was that the two persons in question were not shown to have been employed more than 30 days before the Inspector visited the shop. In other words, the defence was that on November 17, 1954, when the Inspector visited the shop and saw the two persons in question working in the shop, time to notify their employment had still not expired. This argument has been accepted by the learned Magistrate and it has been fairly conceded before us by the learned Government Pleader that on this question of fact there is no material on the record which would justify the argument that the finding of the learned Magistrate is wrong. It must, therefore, follow that the learned Magistrate was right in holding that the contravention of s. 8 read with s. 52 of the Act is not established.

That however is a minor point. The appeal is mainly concerned with the point of law to which I have already referred and it is this point of law which falls for our decision in the present appeal. Section 18 (1) of the Act provides that every

shop and commercial establishment shall remain closed on one day of the week. The section then requires the employer to prepare a calendar or list of such closed days at the beginning of the year and to notify such calendar or list to the Inspector and specify it in a notice prominently displayed in a conspicuous place in the shop or commercial establishment. Section 52 penalises contravention of certain provisions under the Act. Section 52 (b) deals with the contravention of the provisions contained in s. 18 of the Act. The prosecution case is that since Sunday had been notified as a closed holiday by the respondent, it was not open to him to run his establishment on a Sunday and since he was found to be transacting business in his godown on Sunday he had contravened the provisions of s. 18 (1) and thereby incurred the penalty under s. 52 (b). The word 'closed' has been defined by s. 2, sub-s. (3), as meaning 'not open for the service of any customer or open to any business connected with the establishment'. In other words, when a closed holiday is notified it requires that the establishment should not be open for the service of any customer or for doing any business connected with the establishment. The word 'Opened' is also defined in the Act by s. 2, sub-s. (18), as meaning 'opened for the service of any customer'. It is thus clear that a shop is said to be opened when it deals with its customers and carries on its normal, usual business, and it is said to be closed when it is not opened for rendering any service to its customers or for doing any business connected with the shop. If we were concerned only with the two definitions of 'closed' and 'opened' and s. 18 (1), there would have been no answer to the charge framed against the respondent. Section 4 however provides for exemptions and it is on these exemptions that the respondent refers in answer to the charge. Section 4 lays down that notwithstanding anything contained in the Act, the provisions of the Act mentioned in the third column of Schedule II shall not apply to the establishments, employees and other persons mentioned against them in the second column of the said Schedule. The Proviso gives authority to the State Government by notification to make additions or alterations in the entries of the said Schedule. Entry No. 17 in Schedule II is the material entry on which the respondent relies. Column 2 of this Schedule refers to employers of commercial establishments and the provisions of the Act from which exemption is allowed, as indicated in column 3, are :

"Sections 13 and 19 (1) so far as concerns their own attendance and the attendance of the staff exempted from s. 18".

In other words, employers of commercial establishments are exempted from the operation of s. 18 (1) so far as their own attendance is concerned. Similarly the attendance of the staff, which is expressly exempted from s. 18, is also exempted from the operation of s. 18 (1). It would be relevant in this connection to refer to the definition of the words 'employer' and

1956  
STATE  
v.  
HIRALAL  
SURAJKARAN  
Gajendra-  
gadkar J.

1956

STATE  
v.  
HIRALAL  
SURAJKARANGajendra-  
gadkar J.

'employee' in s. 2 (7) and s. 2 (6) of the Act. 'Employer' means a person owning or having ultimate control over the affairs of an establishment, and 'employee' means a person wholly or principally employed in, and in connection with, any establishment and includes an apprentice but does not include a member of the employer's family. It is clear that the principal object of the Act is to regulate the conditions of work of employments in shops and commercial establishments. Legislature wanted to protect the interests of the employees and it is primarily with that object in view that the several beneficent provisions in the Act have been enacted. The distinction that is drawn between the employer and the members of his family on the one hand and the employees properly so called on the other emphasises that the protection which is intended to be afforded by the Act is to the employer far more than to the members of his family. That is the reason why though a day may be named as a closed holiday by the employer of any commercial establishment, entry No. 17 in Schedule II leaves it open to the employer himself to attend to his establishment even on a closed holiday. A similar exemption is given in favour of employees who are exempted from the operation of s. 18. It would thus be clear that the object of s. 4 was to grant exemption to certain establishments in respect of certain provisions of the Act, and so far as s. 18 (1) is concerned this object has been carried out by enabling the employers and exempted employees to attend to the establishments in question even on a closed holiday.

It is however urged that the exemption granted by entry No. 17 in Schedule II is a partial and not a complete exemption. What the employer and the exempted employees are allowed to do on a closed holiday is just to attend to the establishment and nothing more. The argument appears to be that the employer may attend his establishment on a closed holiday, but even so it is not open to him to transact any business or to offer any service to his customers. He may by attending his establishment on a closed holiday do subsidiary, incidental work, but he cannot transact his own business and thereby convert the closed holiday into a working day. The word 'attendance' is not defined in the Act, and no doubt theoretically it may be possible to construe this word in the narrow limited manner suggested by the State. But we are not satisfied that in the context of this entry such a narrow limited construction would be justified. The employers and the members of their families and the employees who are exempted from the operation of s. 18, in a sense, stand outside the protection of s. 18; and if the Legislature provided for the exemption in question in reference to the employers and exempted employees it does not appear reasonable to assume that even in respect of persons standing outside the purview of s. 18 only limited exemption was intended to be granted by the Legislature. If we compare the material

words used in column 3 against entry No. 17 with the corresponding words used against entry No. 18, the position would be clear. Entry No. 18 refers to Legal and Income-Tax Practitioners and column 3 provides for exemption in respect of ss. 13 and 18 (1) so far as concerns their own attendance and the attendance of the staff exempted from s. 18. If the word 'attendance' occurring in column 3 against entry No. 18 received the narrow and limited construction for which the State contends, it may lead to the anomalous result that a lawyer may be able to attend his office even on a closed holiday but may not be able to give notice on behalf of his client or do any act in connection with the pursuit of his profession. Besides, on such a narrow construction, the exemptions in question would be both unnecessary and illusory. Incidental work which is not connected with the business does not fall within the definition of 'a closed holiday' and so exemptions covering such work would appear to be superfluous; and, in a large majority of cases, exemption from such incidental work may mean no benefit at all. In our opinion, the word 'attendance' used in column 3 against entry No. 17 should receive its ordinary grammatical construction and on such construction it would follow that from the operation of s. 18 (1) employers and exempted employees are completely exempted. This construction would not lead to any hardship either. Even if the employer wants to attend to his business on a closed holiday, it would not be open to him to requisition the assistance or services of any employee to transact the business of his establishment, unless such employee himself is exempted from the operation of s. 18. Legislature appears to have thought that it should be open to commercial establishments to function even on closed holidays subject to the restriction that normal employees should not be required to work on closed holidays. The effect of the exemption is to allow the working of the commercial establishments even on closed holidays so long as the work in the establishments is carried on by the employers or members of their families or by employees who are exempted from the operation of s. 18 (1). We must, therefore, hold that the learned Magistrate was right in coming to the conclusion that by doing his business in his godown on a Sunday the respondent did not render himself liable to be punished under s. 52 (b) of the Act.

In the result, the order of acquittal passed in favour of the respondent is confirmed and the appeal is dismissed.

*Appeal dismissed.*

K. B. S.

1956  
STATE  
v.  
HIRALAL  
SURAJKARAN  
Gajendra-  
gadkar J.