

SUPREME COURT OF INDIA

Paul Enterprises

Vs.

Rajib Chatterjee & Co.

C.A.Nos.101-102 of 2009 arising out of SLP (Civil) Nos. 24293-24294 of 2005

(S.B. Sinha and J.M. Panchal JJ.)

13.01.2009

JUDGMENT

S.B. SINHA, J :

1. Leave granted.
2. What would be the meaning of the term 'unemployed youth' stated in an advertisement issued pursuant to an 'excise policy' of the State of West Bengal is involved in these appeals which arise out of a judgment and order dated 8.06.2005 passed by the Calcutta High Court reversing the judgment and order dated 11.06.2004 passed by a learned Single Judge of the said Court in Writ Petition No. 14945 (W) of 2003.
3. The basic fact of the matter is not in dispute.

An advertisement was issued on or about 18.01.2001 by the State of West Bengal inviting applications from companies/firms/societies formed by unemployed youth for the purpose of grant of excise licence for country spirit shops in certain locations. Appellant No. 1, a partnership firm of the appellant Nos. 2 and 3 herein applied therefor. In terms of the said advertisement, respondent No. 1, which is also a partnership firm of which respondent Nos. 2 and 3 are partners as also several others, applied for allotment of the said country spirit shop?

4. In the select list, the appellant No. 1 was placed at Sl. No. 3 whereas the respondent No. 1 was placed at Sl. No. 1. The candidature of the respondent No. 1 was objected to by the appellants inter alia contending that the respondent Nos. 2 and 3 were not 'unemployed youth' within the meaning of the said advertisement and two locations of the liquor shops proposed by them were not conducive therefor.

5. The District Magistrate, Bankura being a licencing authority directed an enquiry to be held. The Enquiry Officer, in his report, inter alia opined that whereas the respondent No. 2 carried on seasonal business in paddy, Til, potatoes, etc.; the respondent No. 1 carried on business with his brother.

As regards, location, it was stated:

"...The proposed site of the country spirit shop is situated within the market place of Chatramore where ladies also frequently visit the spot for shopping. The drunken people will disturb ladies and other public if license for a country spirit shop is granted with in the market place."

It was noticed:

"Rajib Chattopadhyay has stated that he is unemployed and lives with his brother, Sanjib Chattopadhyay in a joint family. His brother, Sanjib Chbattopadhyay is the owner of the "Light House" shop at Gelia More. Rajib Chattopadhyay has admitted that he sells electrical goods of the said shop. Rajib Chattopadhyay submitted a

Xerox copy of a challan showing deposit of profession Tax by Sanjib Chattopadhyay, as a token of Sanjib's shop. Rajib Chattopadhyay has admitted that there are decorators' shop and tailoring shop by the side of the proposed country spirit shop and the proposed shop is within 30/40 feet from the Bishnupur, Kotulpur metalled Road.

Another partner, Sri Subhendu Chatterjee has admitted that he was a businessman and dealt in potato till March, 2001. They signed the application form for grant of license for country spirit shop on 12.2.2001 and mentioned in column 4 seasonal business - paddy, Til potatoes etc. against business or sales experience, if any, Subhendu Chatterjee has further admitted that he took loan of Rs. 25,000/- (Rupees Twenty five thousand) for business from Chatramore co- operative Bank but he could not repay the same till 4.1.2002. Subhendu Chatterjee has admitted that his partner's name for potato business has been registered with Chatramore Kshudra Babsayee Samiti. From the above, it transpires that Subhendu Chatterjee, as on the date of application, was self-employed, at least, partially and the site for the proposed country spirit shop is situated within the market place of Chatramore."

6. The Additional District Magistrate (Excise), Bankura, however, disagreed with the said view of the Enquiry Officer, opining:

"I think, this is not any point for rejecting them because all these points of objection were mentioned in the application form and these are not matters for discarding their candidature for the business in Country Spirit"

7. Admittedly, allotment of the country liquor shop in question was made in favour of the respondent No. 1 herein.

8. Aggrieved by and dissatisfied therewith, appellants filed a writ application before the Calcutta High Court. By reason of a judgment and order dated 11.06.2004, a learned Single Judge of the said Court allowed the said writ application opining that only a person who was sitting idle would come within the purview of the term 'unemployed youth' and as the respondents had been carrying on business, they did not satisfy the conditions for allotment of country spirit shop. It was directed:

"I accordingly allow this writ application and set aside the order dated December 9, 2002 issued by the District Magistrate and Collector, Bankura granting licence in favour of the Private respondents as well as the order passed by the Appellate Authority dated July 25, 2003 which affirmed the said order. The licence granted in favour of the Private respondents is hereby quashed. The respondents are directed to take consequential steps for setting the licence for setting up the country spirit shop at Chatramore strictly in accordance with law. Such steps must be completed within one month from the date of communication of this order to Collector and District Magistrate, Bankura.

In view of the disposal of the main Writ Petition, the application filed by the respondent Nos. 7 and 8 for vacating the ad-interim order passed in this writ petition, becomes infructuous. The said application is also disposed of as infructuous."

9. An intra court appeal was preferred thereagainst. By reason of the impugned judgment, the writ appeal was allowed by a Division Bench of the said Court, opining:

"11. It cannot be assumed from the nature of the advertisement that by 'unemployed youth' the authorities have meant a person who shall be totally without any income in order to sustain himself. There is no basis for such assumption. In fact, in order to get; the licence the candidates will have to furnish an objection free site, normally such a site has to be obtained either by taking it on rent or by offering such a site which is part of one's property. Apart from that such unemployed youths are supposed to show some financial strength by way of furnishing of bank balance and so on. It is not expected that a person who has no income even to sustain himself will be able to satisfy these requirements.

12. In the instant case it may be noted that the appellants are earning some money in order to sustain themselves but it is nobody's case that they have got any permanent employment or they are serving in any institution as regularly paid employees. In fact the registration of persons' name in Employment Exchange will show that the persons concerned have registered themselves as unemployed youth for an employment but have not got the employment. The same is true of the appellants also. It is not disputed by anybody that they are registered with the Employment Exchange. But even after such registration they are not getting any employment in order to sustain themselves. But they are doing some work may be by way of seasonal business or by working in family business which cannot be called an employment. Therefore on this ground alone the licence which has been granted to the appellants cannot be rejected. In this connection this Court is also constrained to observe that since the expression 'unemployed youth' has been explained in the advertisement with the help of expression 'mean', there is no scope for further interpreting the said expression 'unemployed youth' with the help of Black's Law Dictionary or an ordinary dictionary."

It was held:

"17. In view of such authoritative pronouncement of law on the subject it is difficult for this Court to accept the interpretation of 'unemployed youth' given by the learned Judge by relying on Black's Law Dictionary. The learned Judge possibly fell into an error by not holding that, here the expression 'unemployed youth' must receive a contextual interpretation namely it would mean a person who has not been substantially employed or has not been in any service even though lie is registered as an unemployed youth with the Employment Exchange and as has been so declared by the authorities and also must be within a certain age group. Apart from that there is no other requirement. If the person concerned earns some money for subsistence, he does not go out of the category of unemployed youth if he otherwise fulfils the prescribed conditions. Going by this reasoning, as we must, this Court cannot accept the interpretation given to 'unemployed youth' by the Id. Judge of the Writ Court. As such we feel constrained to take a different view and, set aside the judgment under appeal."

10. Mr. Joydeep Mazumdar, learned counsel appearing on behalf of the appellants, would contend that the Division Bench of the High Court committed a serious error insofar as it failed to take into consideration that the definition of the term 'unemployed youth' as contained in the aforementioned advertisement dated 18.01.2001 was decisive inasmuch as not only a person who was to apply for allotment of country liquor shop was to be registered with the employment exchange, but also a certificate was required to be obtained from the persons specified therein. It was urged that grant of such certificate having an impact on the factual aspect in regard to the person being employed or not and having an element of subjectivity wherefor no parameter or guidelines having been laid down, the impugned judgment cannot be sustained.

11. Mr. Tara Chandra Sharma, learned counsel appearing on behalf of the State of West Bengal, on the other hand, would draw our attention to Clause 5(3) of the West Bengal Excise (Selection of Person for grant of License at New Sites for Retail Sale of Spirit and Certain other intoxicants other than Foreign Liquor on categories of licensee and licenses for Denatured Spirit) Order, 2000 [For short "the said Order"] to contend that some income or some property at the hands of the applicants was necessary as otherwise they would not be in a position to carry out any business in liquor.

12. Mr. Rana Mukherjee, learned counsel appearing on behalf of the respondent Nos. 1 to 3, submitted:

(i) Appellants themselves having obtained a certificate granted by the persons specified in the advertisement cannot now question the correctness or otherwise of the certificate (s) granted in favour of the partners of the respondent No. 1.

(ii) In any event, no such contention having been raised before the High Court, this Court should not permit the appellant to raise such contention for the first time before this Court.

(iii) Validity and/or legality of the advertisement and/ or the said Order having not been challenged by the appellants, the contentions of the appellants in that behalf are wholly misplaced.

13. The matter relating to grant of licence is governed by the provisions of the West Bengal Excise (Selection of New Sites and Grant of license for Retail Sale of Spirit and certain other Intoxicants) Rules, 1993 (for short "the Rules").

In the said Order, it is stated that "unless there is anything repugnant in the subject or context, words and expressions used in this Order and not defined, shall have the meaning respectively assigned to them in the West Bengal Excise (Selection of New Sites and Grant of License for Retail Sale of Spirit and Certain Other Intoxicants) Rules, 1993".

Clause 3 of the said Order provides that "the State Government may reserve any new site or sites for settlement amongst firms or societies formed by unemployed youths under the provisions of any law for the time being in force" Explanation appended thereto reads as under:

"Unemployed youth' shall mean any person of or above the age of 21 years but not above 37 years, registered as unemployed in any Employment Exchange in the State of West Bengal and certified to be unemployed by any of the authorities mentioned hereunder in whose jurisdiction such person resides:-

- a) Member of Parliament
- b) Member of Legislative Assembly
- c) Sabhadhipati of a Zilia Parishad
- d) Sabhadhipati, Siliguri Mahakuma Parishad;
- e) Chairman, Darjeeling Gorkha Hill Council,
- f) Chief Executive Officer of a notified area;
- g) Mayor or Commissioner of a Municipal Corporation;
- h) Chairman of a Municipality"

The relevant portion of Clause 5(3) of the said Order reads as under:

"(3) To be eligible for a license, an applicant-

- i) must have sufficient education to enable him to make and follow the calculation necessary for conducting the business and writing accounts appertaining thereto correctly. Knowledge of English is essential only in the case of a foreign liquor shop;

ii) must be in a position to invest the capital necessary for financing the shop properly without borrowing from others;"

14. The question posed before us must be answered inter alia keeping in view the aforementioned rule.

15. There are three criteria attached thereto, viz., (i) the age of the applicant, (ii) they have to be registered as unemployed in any employment exchange in the State of West Bengal and (iii) they have to be certified to be unemployed by any of the authorities specified therein.

16. The meaning of the term 'unemployed youth' must be culled out from the text and context in which the same appeared.

17. In Black's Law Dictionary, 5th edition, 'Unemployment' is defined as 'state of being not employed; lack of employment'. The word 'unemployed' has been explained in the New Shorter Oxford English Dictionary, 1993 as 'not made use of, use for a particular purpose, not engaged in any occupation, idle, out of paid employment, redundant'.

18. The main thrust in this case, however, appears to be on the registration of a person as unemployed in the employment exchange. Certificate is required to be given by the authorities specified therein as despite such registration and/ or continuation thereof, a person may be employed with a private person or in some other districts or in some other states.

19. In a case of this nature, a person cannot be said to be employed only because he earns his bare subsistence livelihood by engaging himself in some work. In this case, one of the respondents was helping his brother who was owner of the shop. He was not the owner of the shop. The other respondent used to carry on business which is of seasonal nature. He was, therefore, also not a full fledged businessman. Nothing has been brought on record to show that they were income tax payees or were otherwise established in their life. It may be true that the authorities specified in the Explanation appended to Clause 3 of the said Order were required to issue certificate on the basis of their own concept in regard thereto. It is true that no guideline had been issued, but, probably no guideline was required to be issued, as the said authorities concerned, keeping in view the legal position, would be presumed to be aware of the financial status as also the fact as to whether they remained unemployed. Furthermore, the said Order does not contemplate that the applicants would be absolutely poor or they would not have any property at all. They were required to establish a business in liquor. They were required to make substantial investment. Their financial capacity was required to be such so as to enable them to carry out the business and furthermore fulfill their obligations both contractual and statutory in terms of the provisions of the Excise Act, the Rules

framed thereunder as also the conditions of licence.

20. In the instant case, the Division Bench satisfied itself that the respondents were to be considered as 'unemployed youth' in terms of the aforementioned advertisement.

21. In a situation of this nature, the interpretation clause should be given a contextual meaning. It is not exhaustive. It is trite that when a statutory enactment defines its terms, the same should govern what is proved, authorized or done under or by reference to that enactment. It is also trite that all statutory definitions have to be read subject to the qualification variously expressed in the interpretation clause, which created them.

In *Feroze N. Dotivala v. P.M. Wadhvani and Others* [(2003) 1 SCC 433], this Court held:

"11. It appears that the legislature only intended that in cases where the landlord residing in a premises, parts with possession of a part of it, it would always be open to him to regain the possession of the whole as and when the licensor may so deem necessary. The question of acquiring common lease right by a person not a member of the family may not arise. This is a plain and simple meaning flowing from the definition of the words "paying guest" under the Act. Introducing any other element or ingredient to give meaning to the words "paying guest" as may be prevalent under any other law or under English law will be doing violence to the definition of the words "paying guest" as defined under the Act."

In *State of Maharashtra v. B.E. Billimoria* [(2003) 7 SCC 336], this Court observed:

"32. It is well settled that the provisions of the statute are to be read in the text and context in which they have been enacted. It is well settled that in construction of a statute an effort should be made to give effect to all the provisions contained therein. It is equally well settled that a statute should be interpreted equitably so as to avoid hardship..."

In *P. Kasilingam v. P.S.G. College of Technology* [1995 Supp (2) SCC 348], this Court held:

"A particular expression is often defined by the Legislature by using the word 'means' or the word 'includes'. Sometimes the words 'means and includes' are used. The use of the word 'means' indicates that "definition is a hard-and-fast definition, and no other meaning can be assigned to the

expression than is put down in definition".

(See : Gough v. Gough; Punjab Land Development and Reclamation Corpn. Ltd. v. Presiding Officer, Labour Court) The word 'includes' when used, enlarges the meaning of the expression defined so as to comprehend not only such things as they signify according to their natural import but also those things which the clause declares that they shall include. The words "means and includes", on the other hand, indicate 'an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions'."

In *K.V. Muthu v. Angamuthu Ammal* [(1997) 2 SCC 53], this Court held:

"10. Apparently, it appears that the definition is conclusive as the word "means" has been used to specify the members, namely, spouse, son, daughter, grandchild or dependant parent, who would constitute the family. Section 2 of the Act in which various terms have been defined, opens with the words "in this Act, unless the context otherwise requires" which indicates that the definitions, as for example, that of "family", which are indicated to be conclusive may not be treated to be conclusive if it was otherwise required by the context. This implies that a definition, like any other word in a statute, has to be read in the light of the context and scheme of the Act as also the object for which the Act was made by the legislature.

11. While interpreting a definition, it has to be borne in mind that the interpretation placed on it should not only be not repugnant to the context, it should also be such as would aid the achievement of the purpose which is sought to be served by the Act. A construction which would defeat or was likely to defeat the purpose of the Act has to be ignored and not accepted.

12. Where the definition or expression, as in the instant case, is preceded by the words "unless the context otherwise requires", the said definition set out in the section is to be applied and given effect to but this rule, which is the normal rule may be departed from if there be something in the context to show that the definition could not be applied."

In *Bharat Coop. Bank (Mumbai) Ltd. v. Coop. Bank Employees Union* [(2007) 4 SCC 685], this Court held:

"23. Section 2(bb) of the ID Act as initially introduced by Act 54 of 1949 used the words "means ... and includes" and was confined to a "banking company" as defined in Section 5 of the Banking Companies Act, 1949, having branches or other establishments in more than one province and

includes Imperial Bank of India. Similarly, Section 2(kk), which was also introduced by Act 54 of 1949, defines insurance company as "an insurance company as defined in Section 2 of the Insurance Act, 1938 (4 of 1938), having branches or other establishments in more than one province". It is trite to say that when in the definition clause given in any statute the word "means" is used, what follows is intended to speak exhaustively. When the word "means" is used in the definition, to borrow the words of Lord Esher, M.R. in *Gough v. Gough* it is a "hard-and-fast" definition and no meaning other than that which is put in the definition can be assigned to the same. (Also see *P. Kasilingam v. P.S.G. College of Technology*.) On the other hand, when the word "includes" is used in the definition, the legislature does not intend to restrict the definition: it makes the definition enumerative but not exhaustive. That is to say, the term defined will retain its ordinary meaning but its scope would be extended to bring within it matters, which in its ordinary meaning may or may not comprise. Therefore, the use of the word "means" followed by the word "includes" in Section 2(bb) of the ID Act is clearly indicative of the legislative intent to make the definition exhaustive and would cover only those banking companies which fall within the purview of the definition and no other."

22. Even if we apply the standards which are applicable in the industrial law meaning thereby Section 17B of the Industrial Disputes Act, 1947 as also a situation where the question arises as to grant of back wages for not being able to gainfully employed, a person living on mere subsistence earning as of necessity is not considered to be gainfully employed. [*See Novartis India Ltd. v. State of West Bengal and Ors.* [2008 (15) SCALE 470]

Keeping in view the interpretative tools required to be used in a case of this nature, we are of the opinion, despite the fact that the respondents had been earning some money, the same would not disentitle them to take part in the selection process for grant of a license in terms of the order.

The advertisement in question keeping in view the text and context in which it was issued clearly go to show that for the purpose of applying for grant of a liquor shop, the respondents were qualified having been continuing to be registered in the Employment Exchange and having been granted a certificate in that behalf by the person specified in the advertisement.

It is not a case where the word 'unemployed' should be given a literal or even the dictionary meaning. In our view, it is required to be given a purposive meaning; a meaning which is capable of being translated in the action, a meaning which would not lead to an anomaly or absurdity; a meaning which satisfies the text and context in which the word has been used.

23. Furthermore, the appellant No. 1 applied for and was granted the similar certificate. It is, therefore, too late in the day for him to contend now that the provisions relating to grant of certificate being devoid of any guideline or objective criteria should be declared ultra vires.

In any event, even otherwise, the validity and/or legality of the said Order has not been challenged.

24. For the reasons aforementioned, the appeals are dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs.