

PETITIONER:
CHIEF COMMISSIONER, DELHI AND ORS.

Vs.

RESPONDENT:
FEDERATION OF INDIAN CHAMBERS OF COMMERCE AND INDUSTRY, NEW DELHI

DATE OF JUDGMENT 30/04/1974

BENCH:
SARKARIA, RANJIT SINGH
BENCH:
SARKARIA, RANJIT SINGH
CHANDRACHUD, Y.V.
GOSWAMI, P.K.

CITATION:
1974 AIR 1527 1975 SCR (1) 348
1975 SCC (3) 64
CITATOR INFO :
RF 1984 SC1700 (14)

ACT:
Delhi Shops and Establishments Act, (7 of 1954), s. 2 (5)
and (27)-'Shop' and 'Commercial establishment' scope of.

HEADNOTE:

The respondent was required by the Chief Inspector of Shops and Establishments to register its establishment' under the Delhi Shops and Establishments Act, 1954. The respondent contended that it was not an 'establishment' which is defined in s. 2(9) as meaning 'a shop or a commercial establishment' and did not comply with the direction. Proceedings for prosecution of its Secretary were instituted, where-upon the respondent filed a petition in the High Court for quashing the order of the appellant and for directing the Magistrate not to proceed with the complaint. Before the High Court the appellant contended that the respondent was a 'commercial establishment' because, the activity of the respondent amounted to a 'Profession', and alternatively, that the case fell within the latter part of the definition of 'commercial establishment' in s. 2(5), inasmuch as its activities were connected with trade and business generally, but, it was not urged that the activity of the respondent amounted to carrying on any 'business or trade' in its premises. The writ petition was allowed by the High Court, holding that premises of the respondent were not a 'commercial establishment'. In appeal to this Court it was contended that the activities of the respondent amounted to a 'trade or business', that therefore it was a 'commercial establishment' and that the matter was covered by Management of the Federation of Indian Chambers of Commerce and Industry v. Sri R. K. Mittal [1972] 2 S.C.R. 353. Allowing the appeal.

HELD :-(1) It is not proper to shut out the contentions of the appellant now raised about the activity of the respondent being a 'trade or business' merely on the ground that the point was not properly put before the High Court. The question is only one of drawing a correct inference about the point in issue from the material already on record

and will not require any additional material for decision. [354E-F]

(2) A place, in order to fall within the definition of 'commercial establishment' must, in the first instance, be 'premises'. and secondly, should be premises wherein, (a) any trade, business or profession is carried on, or (b) any work in connection with or incidental or ancillary thereto is carried on. [353C-D]

(3) The registered office of the respondent is 'premises'. [353D]

(4) All the activities of the respondent are business activities and are carried on systematically. Though the profit made by it is ploughed back for its purposes as set out in its Memorandum of Association and is not distributed among its members. Therefore, the decision in Mittal's case [1972] 2 S.C.R. 353 that the activity of the respondent is in the nature of 'business or trade' is correct and that case does not require reconsideration. [356A-E. 357D-E]

(5) A systematic activity can be a business activity even if no dividends are declared or profits shared. [356F-G]
In the matter of Incorporated Council of Law Reporting for England and Wales [1889] 2 Q.B.D. 279, applied.

(6) The premises of the respondent, therefore, are a 'commercial establishment'. [357E]

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(7) For the application of the Act to the respondent it is immaterial whether its activities bring its premises within the ambit of a 'shop' or 'commercial establishment, within the meaning of the Act. In Mittal's case it was held that the activities of the respondent are also in the nature of material services within the wider definition of 'industry' and, any premises where services are rendered to customers fall within the definition of a 'shop'. [356E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1604 of 1967. From the judgment and order dated the 8th February, 1967 of the Delhi High Court in Civil Writ No. 531-D of 1964. P.P. Rao and R. N. Sachthey, for the appellants.

G.P. Pai, P. C. Bhartari and O. C. Mathur, for respondents nos. 1 & 2.

The Judgment of the Court was delivered by-

SARKARIA J. Whether the Federation of Indian Chambers of Commerce and Industry, New Delhi (Respondent 1) is a "commercial establishment" within the meaning of s.2(5) of the Delhi Shops, and Establishments Act, 1954 (for short the Act) is the sole question that falls for determination in this appeal by certificate directed against the judgment dated February 8, 1967 of the High Court of Delhi.

The facts bearing on this question may now be stated:

Respondent 1 (hereinafter referred to as the Federation) is a Company registered under s. 26 of the Indian Companies Act, 1913. The primary objects of the Federation as given in the Memorandum of Association are

"(a) To promote Indian business in matters of inland and foreign trade, transport, industry and manufactures, finance and all other economic subjects and to encourage Indian banking, shipping and insurance.

(b) To encourage friendly feeling and unanimity among business community and association on all subjects connected with the common good of Indian business.

(c) To secure organised action on all subjects mentioned above.

(d) To collect and disseminate statistical and other information and to make effort for the spread of commercial and economic knowledge.

(e) To take all steps by lawful means which may be necessary for promoting supporting or opposing legislation or other action affecting the aforesaid economic interests and in general to take the initiative to assist and promote trade commerce and industry.

(f) To provide for arbitration in respect of disputes arising, in the course of trade, industry or transport or other business matters, and to secure the services

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of expert technical and other men to that end if necessary or desirable.

(g) To conduct, undertake the conduct of and participate in national and international exhibitions.

(h) To set up museums or show-rooms, to exhibit the products of India and other countries and to participate in such activities.

(i) To secure the interests and well-being of the Indian business communities abroad.

(k) To attain those advantages by united action which each member may not be able to accomplish in its separate capacity.

(m) To help in the Organisation of Chambers of Commerce or Commercial Associations in different commercial centres of the country.

(n)

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(y) To sell or dispose of the undertaking of the Federation or any part thereof for such consideration as the Federation may think fit and in particular for shares, debentures, or securities of any other association or company having objects altogether or in similar to those of the Federation.

(z) To take or otherwise acquire and hold shares in any other association or company having objects altogether or in part similar to those of the Federation.

(z1) To establish a Trust or Trusts and/or appoint Trustees thereof from time to time and vest the funds or the surplus income or any property of the Federation in the Trustees who shall hold and deal with the funds, surplus income or property in such manner as the Committee may decide.

(z2)

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(z3) To draw, make, accept, discount, execute

and issue bills of exchange, promissory notes, bills of lading, warrants, debentures and other negotiable instruments or securities.

(z4)

(4) The income and property of the Federation, whencesoever derived, shall be applied solely towards the promotion of the objects of the Federation as set forth in the Memorandum of Association; and no portion thereof shall be paid or transferred directly or indirectly, by way of dividend, bonus, or otherwise by way of profit to the members of the Federation.....

The Articles of Association inter alia provide that a Chamber or an Association can become an ordinary member of the Federation on payment of annual subscription of Rs. 1,000/- or such higher amount as may from time to time be fixed by the Federation in addition to the admission fee of Rs. 5001-. The scales of subscription on the basis of turnover, deposits or premia for associate members have also been prescribed.

The Chief Inspector of Shops and Establishments, Delhi (Appellant 2 herein) called upon the Federation to register its establishment 'he under the Act The Federation failed to comply with the direction and contended that it was not an "establishment" as defined in s. 2(9) of the Act. This contention did not find favour with the Chief Inspector who, in consequence, made a complaint under the Act for prosecution of the Secretary of the Federation (Respondent 2 herein) under the appropriate penal provisions of the Act in the Court of the Magistrate. 1st Class, Parliament Street, New Delhi. The Federation then moved the High Court under Article 226 of the Constitution for bringing up and quashing the order, dated February 4, 1964 passed by the Chief Inspector (Appellant 2). They further prayed for a writ of Prohibition directing the Magistrate not to proceed with the complaint.

Before the High Court, the contention of the Federation was that the premises in which the registered office of the Federation is located is not a "commercial establishment" within the meaning of s. 2(5) of the Act which, in consequence had no application.

From the side of the present appellant, at first a half-hearted attempt was made to show that the Federation is carrying on a profession as it is "tendering advice to all businessmen and traders". This contention was negatived in these terms :

" that contention overlooks the fact that the advice in question is not tendered for any consideration. It is done in the interest of trade and business of the country. The 1st petitioner is not tendering any advice or giving any assistance to any trader in particular. It deals with the trade or business in general to secure the interest of the country. it is predominantly a charitable organization and not a professional one."

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It was then contended that the activities of the Federation carried on in the premises in question amounted to "work in connection with, or incidental or ancillary" to trade or business in general within the latter part of the definition of "commercial establishment". This contention was also rejected with the observation that since the earlier part of the definition refers to "some particular business or trade

carried on in a premises" the words "any-work in connection with or incidental or necessary thereto" obviously refer to such particular business or trade and not to trade or business in general'. In the result, it was held that the premises of the Federation were not a commercial establishment, and the writ petition was allowed. A certificate, however, was granted under Article 133(1) (c) of the Constitution that the case was fit for appeal to this Court. Hence this appeal.

Before dealing with the contentions canvassed before us, it will be useful to notice briefly, the scheme and the relevant provisions of the Act.

The title of the Act is Delhi Shops and Establishments Act, 1954. The main object of the Act as stated in its preamble is "regulation of hours of work, payment of wages, leave, holiday, terms of service and other conditions of work of persons employed in shop, commercial establishment, establishments for, public entertainment or amusement and other establishments and to provide for certain matters connected therewith." Section 1(4) indicates its extent and application. It shall apply in the first instance, only to the municipal areas, notified areas of Delhi and New, Delhi etc., but Government may by notification extend or apply it to shops and establishments in the other local area or areas. The definitions of "commercial establishment", "establishment" and "shop" given in sub-sections (5), (9) and (27) of section 2 are material for our purpose. They read

"Commercial establishment" means any premises wherein any trade, business or profession or any work in connection with, or incidental or ancillary thereto is carried on and includes a society registered under the Societies Registration Act, 1860, and charitable or other trust, whether registered or not, which carries on any business, trade or profession or work in connection with or incidental or ancillary thereto, 'journalistic and printing establishments, quarries and mines not governed by the Mines Act 1952, educational or other Institutions run for private gain and premises in which business of banking, insurance, stocks and shares, brokerage or produce exchange is, carried on, but does not include a shop or a factory registered under the Factories Act, 1948, or theaters, cinemas, restaurants, eating houses residential hotels, clubs or other places of public amusement or entertainment."

"Establishment" means a shop, a commercial establishment, residential hotel, restaurant, eating house, theatre or other places of public amusement or entertainment to which this Act applies and includes such other establishment as Government may by notification in the Official Gazette,
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declare to be an establishment for the purposes of the Act. "

" 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 stoic-room, godown, warehouse or workhouse, or work place, whether in the same premises or otherwise, used in or

in connection with such trade or business but does not include a factory or commercial establishment."

It will be seen that while the definition of "establishment" includes, a 'shop' and 'commercial establishment', the definitions of 'shop' and 'commercial establishment' are mutually exclusive. Further, the definition of "commercial establishment" is wider than that of "shop". A place in order to fall within the definition of "commercial Establishment" must in the first instance be "premises". Secondly, it should be premises wherein (a) any trade, business or profession is carried on, or (b) any work in connection with or incidental or ancillary thereto is carried on. Sub-clause (b) is only ancillary to (a). There is no doubt that the registered office of the Federation is premises. The controversy centres round the questions whether the activity of the Federation carried on in these premises is a "trade, business or profession" within the meaning of pari (a) of the definition.

This question is not res integra. It came up for consideration before this Court in *Management of the Federation of Indian Chambers of Commerce and Industry v. Their workman, Shri R. K. Mittal*.⁽¹⁾ After considering its Memorandum of Association, Articles of Association and other material, which was more or less the same, as in the present case, it was held by this Court that the activity of this Federation is in the nature of a business or trade.

Mr. Rao, learned Counsel for the appellants strongly relies on the aforesaid decision.

Mr. Pai, learned Counsel for the Federation has firstly raised a preliminary objection that before the High Court, at no stage, it was urged on behalf of the Appellants that the activity of the Federation carried on in the premises was a business or trade. It is added that a half-hearted argument was advanced that its activity was a 'profession' and that, too, was soon given up. In these circumstances, it is submitted, the appellants should not be allowed to commit a volte-face and take up in this Court a stand which was either not taken or was given no in the High Court. In the alternative, learned Counsel contends that even if this plea is allowed to be raised, then also the primary activity of the Federation cannot, by any stretch of reasoning, be called a 'trade, business or profession' within the definition of "commercial establishment" given in the Act. According to Counsel, the activity of the Federation is one of general utility; the only source of its income is from subscriptions. The occasional exhibitions or museums organised by it are activities which are only incidental or ancillary to the primary charitable object of the Federation. No divi-

(1) [1972] 2 S.C.R. 353.

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dends are declared, no profits are shared or divided among the Individual members, and no goods are sold or exchanged. In support of his contentions, learned Counsel has referred to *Commissioner of Income-tax v. Andhra Chamber of Commerce*.(,)

Mr. Pai further maintains that the ratio in *R. K. Mittal's* case (supra) is not applicable to the instant case because the definition of "industry" in s. 2(j) of the Industrial Disputes Act, 1947 is far wider than that of "commercial establishment" in s. 2(5) of the Act.

Mr. Pai further doubts the correctness of the decision in *R. K. Mittal's* case (supra) inasmuch as it holds that the activity of the Federation partakes the character of trade

or business. This finding, it is urged, is based on a misapprehension of facts and requires reconsideration. It is pointed out that it was wrongly assumed in Mittal's case (supra) that the Federation, was systematically assisting not only its members but also other business-men and industrialists even if they were not its members. The fact of the matter is that the Respondent is a Federation of Federations and not an association of any individual traders, industrialists or businessmen.

As regards the preliminary objection, it is true that before the High Court, it was not argued that the activity of the Federation amounts to the carrying on of any business or trade in the premises in question. All that was attempted to argue there was, that its activity amounted to a 'profession'. Alternatively, it was contended that the case fell within part (b) of the definition of "commercial establishment" inasmuch as its activities were connected with trade and business, generally.

We do not think it proper to shut out the contentions now raised before us about the activity of the Federation being a trade or business, merely on the ground, that the point was not properly put before the High Court. This point will not require any additional material for its decision. The question is only of drawing a correct inference 'about the point in issue from the material already on record. We, therefore, overrule the preliminary objection.

This takes us to the merits of the case. In R. K. Mittal's case, this Court was considering the activity of this Federation in the context of 'industry' as defined in s.2(j) of the Industrial Disputes Act. That definition reads:

" "Industry" means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or evocation of workmen."

It will be seen that "any business, trade" is an element common to the definitions of "commercial establishment" and "industry" given in the respective statutes. That was why the question, whether the activity of the Federation is a business or trade activity, was directly

(1) [1965] 1 S.C.R. 565.

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and substantially in issue in R. K. Mittal's case. therein, the Memorandum of Association, Articles of Association and the other material placed before the court were closely examined. The entire case law was surveyed. The contentions now canvassed were also raised and considered in that case. Jagmohan Reddy J. speaking for the Court, posed the question for decision thus :

"In our view the linch-pin of the definition of 'industry' is to ascertain the systematic activity which the organization is discharging namely, whether it partakes the nature of a business or trade; or is an undertaking or manufacture or calling of employers".
(emphasis added)

The answer given to this question has been correctly summed up, in the head-note of the Report, as under:

"The above being the position in law the fact that the appellant Federation had charitable aims and objects would not take it out of the definition of industry. An examination of the activities of the Federation showed that the Federation carried on systematic activities to assist its members

and other businessmen and industrialists and even to non-members as for instance in giving them the right to subscribe to their bulletin; in taking up their cases and solving their difficulties and in obtaining concessions and facilities from them from the Government. These activities were business activities and material services rendered to businessmen, traders and industrialists who are members of the constituents of the Federation. There could be no doubt that the Federation was an industry within the meaning of s.2(j) of the Act."

(The crucial words are those that have been underlined).

The case under the Income-tax Act wherein the main object of the organization was charitable, were also considered and found of little assistance. It was observed that:

"the object of an Organisation may be charitable but nevertheless its activity may be commercial so as to satisfy the definition of an industry as explained and illustrated by this Court particularly in Safdarjang Hospital's case.(1) We could therefore envisage an institution having its aims and objects charitable and yet its activities could bring it within the definition of industry".

The above observations were made in the context of the definition of industry' but they are equally applicable in the present case. The very definition of "commercial establishment" indicates that the activity of a registered society, charitable or other trust will not take it out of the definition if the activity carried on by it amounts to a busi-

(1)[1971] 1, S.C.R. 177.

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ness, trade or profession or any work in connection therewith or incidental thereto.

No doubt, the effective membership-as distinguished from Honorary membership-of the Federation is open only to Chambers of Commerce or Commercial Associations of requisite strength and standing, but the fact remains that it carries on systematic activities not only to assist its members but also other traders or businessmen members of the constituents of the Federation. It has set up Tribunals for arbitration in disputes arising between individual traders or business concerns in the course of trade, industry or other business matters. It takes up with the concerned authorities the specific difficulties experienced by the trade in the day today business and endeavours to attain for the traders and industrialists those material advantages by unified action which they may not be able to achieve in their individual capacity. It helps businessmen and industrialists by securing for them the services of expert technical men (vide clauses (f) and (k) of the Memorandum of Association). It undertakes regular publication of periodicals, bulletins, Reviews etc. for the benefit of businessmen, big or small and- whether or not they are members of the Federation. These publications are available on payment of subscription or price even to individual businessmen or traders who are not members of the Federation. All these are business activities are carried on systematically. We therefore do not think that R. K. Mittal's case (supra) was incorrectly decided and needs

reconsideration.

It is true that in R. K. Mittal's case (supra) it was held that these activities of the Federation are also in the nature of material services within the wider definition of 'industry'. Though the rendering of services is not specifically mentioned as an element of the definition of "commercial establishment", yet this very element appears in the definition of 'shop' in s. 2(27) of the Act. Any premises where services are rendered to customers fall within the definition of a "shop". These services are material services. For the application of the Act to the Federation, it is immaterial whether its activities bring its premises within the ambit of a "shop" or a "commercial establishment".

It is well settled that a systematic activity can be a business activity even if no dividends are declared or profits shared.

In the matter of Incorporated Council of Law Reporting for England and Wales, (1) the Queens Bench was considering the interpretation of the expression "trade or business" in s. 11 of the English Customs and Inland Revenue Act 1885 with reference to the activity of the Incorporated Council of Law Reporting for England and Wales. The association was established for the objects of preparing and publishing under gratuitous professional control, reports of judicial decisions; of issuing digests and other publications relating to legal subjects. In carrying them out the association employed editors, reporters, printers, and publishers and supplied its publications to subscribers and others for payment. It was contended that the activity of the Association was not "a business or trade" because by the Memorandum of Associ-

(1) [1889] 2 Q. B. D. 279.

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ation all the property and income of the association were applicable solely to the promotion of the above objects, and no part thereof could be paid as dividend or otherwise, to any member.

Holding that the association was established for a "trade or business", Lord Coleridge C. J. repelled the contention in these terms:

"Though it may be true that in the great majority of cases the carrying on of a trade does, in fact, include the idea of profit, yet the definition of the mere word 'trade' does not necessarily mean something by which a profit is made. But putting aside the question whether they carry on a trade, how can it be denied that the Council carry on a business? They are incorporated; they have a secretary; they employ editors, reporters, and printers; they print books, they sell those books, they do all that is ordinarily done in carrying on the business of a bookseller."

The above observations apply mutatis mutandis to the activity of the Federation. It will bear repetition that the Federation also publishes periodicals, bulletins etc. and issues the same to member free of this Court in R. K. Mittal's case (supra) we would hold that the commercial or industrial exhibitions, runs museums and makes profits. Of course, that profit is ploughed back for the purposes of the Federation as set out in its Memorandum of Association, and is not distributed among its members. But that does not alter the 'fact that its activity is a trading or business activity.

For all the foregoing reasons, particularly in view of the decision of this Court in R. K. Mittals case, (supra) we would hold that the pre-premises of the Federation are a "commercial establishment" within the meaning of s. 2(5) of the Act.

In the result we allow this appeal, set aside the judgment of the High Court and dismiss the writ petition. In the circumstances of the case we make no order as to costs.

V.P.S.

Appeal allowed.

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JUDIS