

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).4613 OF 2013

P.B. NAYAK & ORS.

... APPELLANT(S)

VERSUS

MANAGING DIRECTOR, BHILAI STEEL
PLANT & ORS.

...RESPONDENT(S)

J U D G M E N T

K.M. JOSEPH, J.

1. The appellants impugn the Judgment of the High Court rendered in a Writ Petition filed, under Article 226 and 227, by respondents 1 and 2. By the impugned Order, the Order dated 18.01.2002, passed by the Appellate Authority, under Section 58(2) of the Madhya Pradesh Shops & Establishments Act, 1958 (for short, 'the Act'), came to be set aside. The appellants, along with certain others, invoked the jurisdiction of the

Appellate Authority under Section 58(2) complaining that their services were terminated illegally by the respondents which complaint was accepted by the Appellate Authority. The Appellate Authority directed the Respondent No. 1 and 2 to reinstate the appellants with full back wages from 15.04.1997 till the date of reinstatement. In the alternative the Respondent No. 1 and 2 were directed to pay compensation to each of the appellants as calculated in the order without reinstatement. It is this order which stands set aside by the High Court. The High Court has found that the Act cannot be made applicable in view of the exemption available under Section 3(j) of the Act.

THE FRAMEWORK OF THE ACT

2. Section 2(8) defines the word Establishment as: -

(8) "establishment" means a shop, commercial establishment, residential hotel, restaurant, eating-house, theatre, or other place of public amusement or entertainment to which this Act applies and includes such other establishment of like nature as the Government may, by notification, declare to be an establishment for the purposes of this Act;

3. As can be seen from the said definition, Establishment means the various places it includes. The word commercial establishment is defined in Section 2 (4) .

(4) "Commercial establishment" means an establishment which carries on any business, trade or profession or any work in connection with, or incidental or ancillary to, any business, trade or profession and includes:

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[(a) a society registered or deemed to have been registered under the [Madhya Pradesh Societies Registration Act, 1959 (1 of 1960)] and a charitable or other trust, whether registered or not, which carries on whether for gain or not, any business, trade or profession or work in connection with or incidental or ancillary to such business, trade or profession;]

(b) an establishment which carries on the business of advertising, commission agency, forwarding or commercial agency or which is a clerical department of a factory or of any industrial or commercial undertaking;

(c) an insurance company, joint stock company, bank, broker's office and exchange,

but does not include a factory, shop, residential hotel, restaurant, eating-house theatre or other place of public amusement or entertainment;

4. It further includes residential hotel. The said expression is defined in Section 2 (22).

(22) "residential hotel" means any premises in which a bona fide business is carried on of supplying for payment lodging or board and lodging to travellers and other members or class of members of the public and includes a residential club;

5. An establishment includes further a restaurant or eating-house and the said words are defined in Section 2 (23).

(23) "restaurant or eating-house" means any premises in which it is carried on wholly or principally the business of the supply of meals or refreshments to the public or a class of the public for consumption on the premises, and includes a Halwai's shop; but does not include a restaurant or a canteen attached to a factory if the persons employed therein are allowed the benefits provided for workers under the Factories Act, 1948 (63 of 1948);

6. Further the expression shop is defined in Section 2(24).

(24) "shop" means any premises where goods are sold, either by retail or wholesale or both or where services are rendered to customers, and includes an office, a store

room, godown, warehouse or workplace, whether in the same premises or otherwise 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 or a shop attached to a factory where the persons employed in the shop are allowed the benefits provided for workers under the Factories Act, 1948 (63 of 1948);

7. It is further necessary to notice the definition of the word employee. It is defined in Section 2 (6).

(6) "employee" means a person wholly or principally employed, whether directly or through any agency, and whether for wages or other consideration, in or in connection with any establishment, and include an apprentice, but does not include a member of the employer's family;

8. The word employer is defined in Section 2 (7).

(7) "employer" means a person owning or having ultimate control over the affairs of an establishment and includes the manager, agent or any other person acting in the general management or control of such establishment;

9. Under Section 3, the Act will not apply to certain persons or establishments. Since much turns on the

scope of this provision, we may refer to the same.

Section 3 reads as follows:

"3. Act not applicable to certain persons and establishments. - (1) Nothing in this Act shall apply to: -

[(a) persons occupying positions of management and declared as such under clause (a) of sub-section (2) of Section 6 or employed in a confidential capacity not exceeding ten percent of the total number of the employees in the establishment or three in number whichever is less;]

(b) persons whose work is inherently intermittent such as traveller, canvasser, a watchman or a caretaker;

(c) persons exclusively engaged in preparatory or complementary work, such as clearing or forwarding clerks, responsible for the despatch of goods by rail or other means of communication and for customs formalities or messengers;

(d) persons exclusively employed in the collection, delivery or conveyance of goods;

(e) offices of the Union or State Government or of Local Authorities and of the Reserve Bank of India, the State Bank of India and the Life Insurance Corporation;

(f) establishment for the treatment or the care of the sick, infirm, destitute or mentally unfit;

(g) bazars, fairs or exhibition for the sale of works for charitable or other purposes from which no profit is derived;

(h) stalls and refreshment rooms at Railway Stations, or railway dining cars;

[(i) x x x]

(j) clubs not being residential clubs; and

(k) any other class of establishments or class of persons which the Government may, by notification, exempt from the operation of this Act:

Provided that if in the opinion of the State Government the circumstances existing in any particular class of cases hereinbefore mentioned requires that all or any of the provisions of this Act should be extended thereto, the State Government may, by notification, extend to such class of cases all or any of the provisions of this Act and thereupon such provisions shall apply to such class of cases.

(2) The Government may, by notification, direct that any or all of the provisions of this Act shall, subject to such terms and conditions as may be specified in such direction, not apply to such classes of establishments or class of persons as may be specified therein."

(Emphasis supplied)

10. Section 6 provides that every establishment to which the Act applies shall be registered in accordance with the Act. Chapter III of the Act deals with SHOPS AND COMMERCIAL ESTBALISHMENTS. The various provisions contained in the said chapter provide for regulating conditions of employment in regard to Shops and Commercial Establishments. Chapter IV purports to regulate the conditions of employment in regard to RESIDENTIAL HOTELS, RESTUANRANTS AND EATING- HOUSES. Chapter V deals with THEATRES OR OTHER PLACES OF PUBLIC AMUSEMENT OR ENTERTAINMENT. Chapter VI applies to all establishments and it deals with EMPLOYMENT OF CHILDREN, YOUNG PERSONS AND WOMEN. Similarly, Chapter VII deals with provisions applicable to all establishments and it deals with LEAVE WITH PAY AND PAYMENT OF WAGES. Chapter VIII again contains provisions applicable to all establishments. It is in Chapter XI, that Section 58 under the section heading "Notice of dismissal" figures:

"58. Notice of dismissal. - (1) No employer shall dispense with the services of an employee who has been employed for a period of three months or more except for a

reasonable cause, and without giving such employee at least one month's notice or wages in lieu of such notice:

Provided that such notice shall not be necessary if the services of such employees are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an enquiry held by the employer for the purpose.

(2) (a) The employee discharged, dismissed or retrenched may appeal to such authority and within such time as may be prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer or on the ground that such punishment of discharge or dismissal was severe.

(b) The Appellate Authority may, after giving notice in the prescribed manner to the employer and the employee, dismiss the appeal or direct the reinstatement of the employee with or without wages for the period during which he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case.

(3) The decision of the Appellate Authority shall be final and binding in both the parties and be given effect to, within such time as may be specified in the order of the Appellate Authority."

11. Section 63 which also falls in Chapter XI provides that the provisions of the Workmen's Compensation Act, 1923 (VIII of 1923) and the rules made under the said Act will apply mutatis mutandis to every employee of an establishment.

12. We heard the learned Counsel for the appellants Shri Rajeev Kumar Bansal. We also heard learned Senior Counsel for the Respondent No. 1 and 2, Shri Dhruv Mehta assisted by Shri Santosh Kumar.

13. The learned counsel for the appellants would point out that the High Court ought not have interfered with the order of the Appellate Authority which was based on evidence. It is contended that the appellants were working as employees of the respondent. It is his contention that the activity which was being carried out in the club precincts amounted to supply of meals or refreshments. Since Section 2 (23) defines "restaurant or eating-house" and as a "restaurant or eating-house" is also an establishment and what is more even if the restaurant or eating-house in which the

appellants were employees catered for a class of the public, the Act stood attracted. In other words, the contention is that even if the Respondent No. 1 & 2 were running a club in so far as the persons who frequented the club represented a section of the public that sufficed to attract the Act. He elaborated by pointing out that under the bye-laws of the club the members of the club as also their guests and family members could avail of the services at the eating house in which the appellants were working as employees.

14. *Per Contra*, Shri Dhruv Mehta, learned Senior Counsel mainly points out that as held by the High Court in the impugned Judgment, the respondent-Club not being a residential club, it stood exempted from the Act under Section 3(j) of the Act. He would contend that there is clinching evidence of the fact that the respondent-club would fall within the purview of Section 3(j) in the form of the definition of the word 'residential hotel' in Section 2(22). In other words, he contended that Section 2 (22) defines 'residential hotel' as including a residential club. Therefore, the

core concept of the residential hotel is the service of lodging which is available in a residential hotel. In other words, the residential club would be providing facility for lodging. In a club, which is not a residential club, which falls under Section 3(j), there would not be lodging. This suffices, according to him, to cull out the true contours of a non-residential club. The respondents run a club, which is not a residential club.

15. The Bye-Laws of the club have been produced before us. We may notice the following:

"2. AIMS AND OBJECTIVES

The aims and objectives of the STEEL CLUB are:- to provide the members and their families with the facilities usually obtainable in club of this nature and including-

- a) Indoor games like 'fable Tennis, Billiards, cards. chess, carrom etc.
- b) Outdoor games like Tennis, Badminton, Squash etc.
- c) Library and reading room facilities.
- d) Social gatherings, and swimming,

ii) to provide the members and their families with necessary facilities for their cultural, social and intellectual advancement.

3. MEMBERSHIP

a) Members

All the officers of Bhilai steel plant, MECON, HSCL, BRP, and any other officer of SAIL posted at Bhilai shall be eligible to become member of monthly fees after prior approval of the Governing Body.

b) Associate Members

The Governing Body may, at its discretion, admit prominent citizens of the local areas, Government officers and officers of public Limited companies having local site office, as Associate Members of the club, subject to payment of the prescribed admission fee and monthly subscription. Ordinary members on their ceasing to be a member on retirement from B.S.P. can become Associate Members on his/her request. They will have no right for voting. Maximum, number of such membership shall not exceed 20% of the club membership.

c) Temporary Members

Foreigners connected with Bhilai steel plant as well as outstation guests, dependent brothers/sisters who are not resident of Bhilai/Durg, of members/ Associate Members, may be admitted to the club as temporary members for a maximum period of three months, at the discretion of Governing Body. Temporary members will have no voting right."

16. Bye-Law 4 provides for the admission fee and monthly subscription. Bye-Law 6 provides for entry into the club premise, which reads as follow:

"6. ENTRY INTO THE CLUB PREMISES

Family means spouse and children only. Children who are employed/married shall not constitute a part of the family. (Dependent children upto the age of 21 years are permitted.

i) The club premises are private premises and entry thereto is restricted to members and their families, guests of members and other persons as may be authorised by the Governing Body. The Governing Body or any office Bearer of the club as may be authorised by the Governing Body on his behalf, may refuse entry to any person to the club premises at their/his discretion.

ii) The members/ Associate members be allowed to bring to the club, their guests, subject to the following conditions:

a) Local guests who are residents of Bhilai are not allowed.

b) a member/associate member is allowed to bring out-station guests, at a time upto ten days in a month continuously. The charges per guest will be Rs 1 /- per day.

c) A guest register will be maintained at the entry of the club. A members must fill all the particulars regarding the guests must pay the charges as per above in advance.

d) For any other special functions, the charges will be made as decided by the governing body.

e) Governing body of the club reserves the right of admission to any guest."

17. The club is managed by a Governing Body.

18. It is necessary to notice the permission granted by the respondent-club to run catering service to one Shiv Caterers at the respondent-club dated 05.09.1996. Relevant provision to be noted are, as follows - Clause (I) provided that the caterer will run the services only for the members of the Steel Club and their families and guests. The club was to make available the premises and other facilities. The caterer was to pay rent of Rs.5,000/- per month with a discount of 15 per cent on the catering bill pertaining to the club account. The period of the catering service was from 27.08.1996 to 31.03.1997. It is further provided that caterer and its staff members were to observe strict discipline and Code of Conduct. Clause (VI) is relevant and it reads as follows:

"VI. All the staff members for running the canteen will be arranged by you only and wages and other statutory liabilities to be incurred in this regard will be borne by you only. The undersigned or steel club will not be responsible for the above payment. In case club is compelled to pay any sum on your behalf under any statutory liability, the amount to be paid by me or club will be

recovered from your security deposit and running bills etc."

19. All the staff to be employed were to be neatly dressed and they were to have a common uniform. As per Clause (X), the catering services was to be made throughout the working hours of the club and all days of the week, as decided by the club. Under Clause (XI), the catering facilities was to be strictly extended only to the bonafide club members, their families and guests. Clause (XIV) provided as follows:

"XIV. You will be responsible for the rules and regulation of employment in accordance with the government rules and regulation with regard to the staff engaged by you at your risk and responsibility."

THE FINDINGS OF THE APPELLATE AUTHORITY

20. The Appellate Authority notes the case of the appellants to be that the appellants worked in the establishment of the respondent-club or rather that they worked in the restaurant for different periods. The restaurant was being run by the respondents. Their work was satisfactory. The service of two of the

appellants were made permanent. The respondents appointed Shiva Catering but appellants have not been employed or paid their wages since April, 1997 and their termination of service is in violation of Section 58 of the Act.

21. The case of the respondent-club is noted to be that the appellants were not employed in their establishment. There was no master-servant relationship between them. The claim of exemption under Section 3(j) is noted. The Appellant Authority finds that the establishment is a club, ostensibly established for the service Officers of the Bhilai Steel Plant, MECON, HSCL, BRP and Officers of SAIL posted at Bhilai. It is found that the plain reading of the bye-laws would show that the club is definitely an establishment within the meaning of Section 3(j) of the Act. The Appellate Authority, however, proceeds to reason that the establishment is to be identified by its actual functioning and character and only such facts would contribute to decide, if such an establishment is an establishment attracting Section

3(j). Evidence was taken. The bye-laws, it was found went to show there was no mention of any eating house or catering to the extent of providing liquor and food, requiring considerable worker force. It was found that the existence of any restaurant could not be as per the bye-laws. The identity cards issued to the appellants were found to be under the seal and signature of the club. They were found to be designated as Waiter, Bearer, Cook. The date of issuance in the identity card was found to be 21.05.1996 in all cases, except two, where the dates are noted as 27.05.1996 and 28.05.1996. The existence of restaurant and bar selling food and liquor, was found established through the Bills. The bills were found to be issued by Bhilai Caterers, Steel Club. All the bills bore the seller's identity as Steel Club. It is found on the evidence that the club had control over the catering and its employees, as regard the discipline. The Appellant Authority found it to be established that in fact the establishment in question, has been doing everything what an eating house or a restaurant or a bar do individually. The word 'club', it is noted, was not defined in the Act.

The dictionary meaning of the word 'club' was found to be an association of persons for special purpose. The establishment provided indoor games like tennis, billiards, etc., and outdoor games like tennis, swimming and badminton. The meaning that may be assigned to the word 'club', under Section 3(j), would be what has been assigned to this word in dictionary wherein the word was defined as the place where association of persons takes place for special purposes. It was further found that in the case of the establishment in question, the facts show that establishment is actually an eating house, exclusively to serve the class of the members of the Steel Club, a place of amusement/entertainment provided at costs or payment, food, drink and along with facilities for entertainment like games, etc. The activities were found to be that of eating house supplying meals, refreshment to the members of the club and not the general public and not a club under Section 3(j). There existed an eating house/restaurant and bar to serve the members of the club. They existed in the club premises and run by the club exclusively for its members. As far

as the activity of the club is concerned, it was found that the Act did not apply to it but the establishment like bar and restaurant, though exclusively for the members, would definitely be not club in itself. Examining the arguments of the respondents that the Steel Club is neither a residential hotel nor restaurant or eating place, as defined in Section 2(22) and Section 2(23) of the Act, the Authority confined itself to Section 2(23). It was found that an establishment carrying on business of supply of meals or refreshment to a class of public would be an eating house, for the purpose of Section 2(23) of the Act. The members of the club were found to be the class of the public. An establishment of bar, restaurant and for service to the members of the club, would definitely not be a club within the meaning of Section 3(j) of the Act though such establishment may be under the management of the club. The Authority finds further that for example, there are many establishments under the management of Bhilai Steel Plant but all of them were not factories, manufacturing steel and such establishments are identified by their functioning and

nature subjecting them to respective applicable laws. Thereafter, the Authority proceeded to find that the appellants were employees and granted the relief, as already noted.

THE FINDINGS OF THE HIGH COURT

22. We notice the following findings:

"15. Halsbury, 4th Edn., Vol.6, para 201, P.56 defines club as "Except a proprietary club or an investment club, it may be defined as a society of persons associated together, not for the purpose of trade, but for social reasons, the promotion of politics, sport, art, science or literature, or for any other lawful purpose; but trading, activities will not destroy the nature of a club if they are merely incidental to the club's purposes. Therefore, a club cannot be held to be a place of public entertainment even if the club supplies the goods to its members at a fixed price.

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17. Section 3 exempts certain persons and establishments from application of the Act. Section 3 sub-section (j) exempts clubs not being a residential clubs from the application of the Act. There is no evidence available on record. that petitioner No.2 is a residential club. Even the Appellate

Tribunal has not held that petitioner No.2 is a residential club. It is neither a proprietary club nor any investment club. As per the bye-laws available on record, officers of the Bhilai Steel Plant, MECON, HSCL, BRP AND SAIL are eligible to be the members of the club on payment of prescribed admission and monthly fee. The discretion is reserved to the governing body to admit other class of persons to induct as associate members of the club subject to payment of prescribed fee. Apart from above 2 clauses, temporary membership can be granted to the foreigners connected with Bhilai Steel plant for a limited period. Entry in the club premises is restricted to its members and other persons authorized by the governing body. The aims and objectives as contained in clause-2 of the bye-laws are to provide the members and their families with facilities usually obtainable in clubs of this nature including indoor games, outdoor games, library, reading room, social gathering and to provide necessary facilities for their cultural, social and intellectual advancement. Learned Appellate Tribunal referring to Section 2 of the bye-laws of the establishment has observed that there is no mention of any eating house or catering to the extent of providing liquor or food requiring considerable work force, therefore, it has held that existence of restaurant is not in accordance with bye-laws.

18. In the considered opinion of this Court, the above finding of the appellate Tribunal is perverse, as in

sub-clause (1) of clause-2 of the bye-laws, it has been specifically mentioned that the aims and objectives of the Steel club are to provide to its members and their families with the facilities usually obtainable in clubs of this nature including other aims and objectives mentioned in subsequent part of clause 2. Existence of catering facilities in the club to members alone would not convert the establishment into restaurant or eating house. The Steel Club is entitled for exemption from the application of the Act of 1958, as per the provisions of Section 3(j) of the Act."

23. It was further found that Steel Club-second respondent, may be held to be an industry under Section 2(f) of the Industrial Disputes Act, 1947, as held by this Court in Bangalore Water Supply and Sewage Board v. A. Rajappa and others¹ and the appellants may be held to be its employees. However, the provisions of the Shops and Establishments Act, cannot be made applicable to such Steel Club, in view of the exemption available under Section 3(j) of the Act.

¹ AIR 1978 SC 548

ANALYSIS AND FINDINGS

24. A club would consist of its members. It is essentially a voluntary association. It would have its bye-laws. The bye-laws would, undoubtedly, constitute the contract, binding its members. There would be a Governing Body or Managing Committee to manage its affairs.

25. The Act recites that the Law-Giver enacted it to regulate the conditions of work and employment in shops, commercial establishments, residential hotels, restaurants, eating houses, theatres, other places of public amusement or entertainment and other establishments. As we have noted, the word 'establishment' has been defined to mean 'a shop, commercial establishment, a residential hotel, restaurant, eating house, theatre or other place of public amusement or entertainment, to which the Act applies'. At this juncture, that we must notice Section 3 of the Act. It provides that nothing in the Act will apply to certain persons and establishments. Among the establishments, to which the Act does not apply,

Section 3(j), provides for a club not being a residential club. We have noticed the definition of 'residential hotel' (Section 2(22) and 'restaurant or eating house' (Section 2(23)). These words have been defined to mean the premises where the activities, as defined, are carried out. Section 2(24) defines the word 'shop' again as the premises, where, goods or services are rendered, *inter alia*. The definition of the word 'establishment' as far as residential hotel, restaurant or eating house and a shop, is with reference to the premises and the activities, which are carried out therein. In Section 2(4), 'commercial establishment' is defined as an establishment, which carries on any business, trade or profession, or any work in connection with any business, trade or profession, *inter alia*, and includes a society under the Madhya Pradesh Societies Registration Act and a charitable or other trust and certain other establishments. However, a factory, shop, residential hotel, restaurant or eating house, theatre or other place of public amusement or entertainment, are not included in the definition of 'commercial

establishment'. As already noted, the word 'establishment' is defined to mean 'commercial establishment, shop, residential hotel, restaurant or eating house, theatre or place of public amusement or entertainment. The Act provides for this method of defining the word 'establishment' for the following reasons. Certain provisions of the Act have been made applicable to shops and establishments. Certain other provisions have been made specifically applicable to residential hotels, restaurants and eating houses. Still further, theatres or other places of public amusement or entertainment receive special treatment in Chapter V. There are, however, other provisions, as noticed, which apply to all establishments. As far as Section 58 of the Act is concerned, it taboos the dispensing with the services of an employee by an employer where the employee has been employed for a period of three months or more, except for a reasonable cause and after giving, such an employee, at least one month's notice or wages in lieu of such notice. The proviso dispenses with the notice, if there is a charge of misconduct, supported by satisfactory evidence

recorded in an enquiry. The employee, who is discharged, dismissed or retrenched, can appeal against the same, complaining that there was no reasonable cause, *inter alia*, for the dispensing of his services. The word 'employee' has been defined, as noticed, 'as a person, wholly or principally employed, whether directly or through any agency and whether for wages or for other consideration, in or in connection with any establishment'. An apprentice is also covered by the definition of the word 'employee'. The word 'employer' is defined as 'the person owning or having control over the affairs of an establishment and includes the manager, agent or any other person, acting in the general management or control of such establishment.

26. Therefore, the scheme of the Act is that the rights conferred on an employee to appeal against the action of the employer of an establishment, is fundamentally based on there being an establishment, to which, the Act applies. In other words, if the Act does not apply, the dismissal, termination or retrenchment of the

employee cannot attract Section 58 of the Act. This is despite the fact that but for the exemption, he is an employee in an establishment otherwise.

27. The argument of the Respondents No. 1 and 2 is essentially based on the second respondent-club not being a residential club and, consequently, the Act not being applicable to the establishment. As can be seen, Section 3 exempts certain persons and establishments from the purview of the Act. Section 3 [(a) to Section 3 (1) (d)] describes persons to whom the Act does not apply. Section 3 (1) e to Section 3 (1) j deals with establishments to which the Act does not apply. A club would be an establishment. It is not a person. Even though, it could also be treated as an association of persons or voluntary association of persons, however, in the context of Section 3, we would proceed on the basis that a club is an establishment. In this regard, the word 'establishment' has been defined as meaning also a residential hotel in Section 2(22). A residential hotel has been defined as meaning any premises, in which, a bonafide business is carried on

of supplying for payment, board or lodging, and lodging to travellers and other members or class of members of public and including a residential club. Therefore, a residential club, is treated as residential hotel, which in turn, is included in the definition of the word 'establishment'. A residential club would be an establishment under Section 2(8). It is clear that a club is treated as an establishment subject only to qualification that it is a residential club. A club, which is not a residential club, may have been within the ambit of the word 'establishment' but for the fact that the word 'residential hotel' takes within its sweep only residential club. More importantly, the Act specifically exempts clubs which are not residential clubs.

28. Thus, proceeding, indeed, on the basis that the second respondent-club is an establishment, the only question to be determined is whether it is a club, which is not a residential club. The Appellate Authority has found that the club is actually an eating house exclusively to serve the class of members of the

Steel Club. It has all the elements of the bar, restaurant and eating house. Even though, the Appellate Authority was called upon to deal with Section 2(22) of the Act, defining the words 'residential hotel', we find that the Appellate Authority confined itself only to the definition of the words 'restaurant or eating house' as defined in Section 2(23) of the Act. The Appellate Authority has proceeded to finally find that an establishment of bar, restaurant and for service to the members of the club, would definitely not be a club withing the meaning of Section 3(j) of the Act. Therefore, the finding of the Appellate Authority completely overlooked the invaluable input provided by the definition of the words 'residential hotel' as contained in Section 2(22) of the Act. We find clear illumination of the mind of the Legislature being provided by the definition of the words 'residential hotel' for the reason that it helps the Court to understand the ambit of Section 3(j), which provides for exemption of a club, which is not residential. This is for the reason that a residential club, in contradiction from a club which is not residential, is

treated as an establishment under Section 2(8) of the Act. In other words, a club, which is residential, would not be entitled to the exemption, provided in Section 3(j), whereas, a club which is non-residential is exempted.

29. It is, therefore, necessary to probe further as to what is the meaning of the expression 'residential club'. Words 'residential club' is found in the definition of the word 'residential hotel'. A residential hotel is defined as any premises, where lodging or board and lodging is provided. It is, undoubtedly, to be a bonafide business of supplying lodging or board and lodging. The service of lodging or board and lodging must be for payment. The aforesaid services may be provided to travellers and other members or class of members of the public. Thus, the recipients of the services are to be the travellers or members of the public or a class of members of the public. A perusal of Section 2(22) of the Act would reveal, the distinguishing feature, which is an indispensable requirement, to make any premises, a

residential hotel, is that lodging must be provided. It may be lodging and board or it may be lodging alone. This meaning does justice to the word 'residential' which qualifies hotel. In other words, there may be hotels which do not provide lodging. Such hotels may fall under Section 2(23). What is meant to be conveyed by the word 'residential hotel' is the element of service of lodging, being present which is provided in the hotel. It is in the company of such words, defining residential hotels that the word 'residential club' is 'included'. We would think that the word 'residential' qualifies the word 'club'. The expression 'residential', in the context of the Act, and particularly in contrast with a club not being a residential club, would mean that lodging is provided in such a club. In other words, the distinction between a residential club, which would be an establishment under Section 2(8), and, a club, which is not a residential club, which would be exempted under the Act, is that in the former, there would be lodging provided, whereas, in the latter, the facility of lodging is not, as such, made available. Undoubtedly,

but for the fact that the Legislature has included a residential club expressly in the definition of the word 'residential hotel', it may have been open to question in that a club is ordinarily understood as being distinct from a hotel.

30. The Appellate Authority has not found that the second respondent is a residential club. Appellate Authority did not even consider the said provision, that is, Section 2 (22), though Respondents No. 1 and 2 did invite its attention to the said provision. There is no material also placed before the Court to conclude that the second respondent-club was a residential club. If the second respondent-club is not found to be a residential club, then, it is clear that it would be a club, which is not a residential club. It would stand exempted under Section 3(j) of the Act.

31. The question however would arise as to whether the second respondent is a club? Is it a restaurant or eating house falling under Section 2(23) of the Act? The Appellate Authority has found it to be restaurant or eating house as defined in Section 2 (23), and

therefore, an establishment under Section 2(8) of the Act. We have already referred to the findings rendered by the Appellate Authority.

32. In *Daly's Club Law* by J.N. Martin, the word 'club' has been understood as follows:

"The word "club" means essentially an association of individuals in a way that involves to some degree the factors of free choice (which connotes a power of exclusion), permanence, corporate identity² and the pursuit as a common aim of some joint interest other than the acquisition of gain (or some mutual advantage directly connected with the acquisition of gain, such as those provided by membership of a professional society or trade union. It is the last-named qualification that distinguishes clubs from business or professional partnerships, and from trade unions and the like."

33. Clubs have been classified broadly into Members Clubs and Proprietorship Clubs. There are different classes of members clubs.

34. In the light of the scheme of the Act, it may not be sufficient to claim the benefit of the exemption

² Not to be confused with corporate status: a club may be a corporate body, but may also be an unincorporated association (See *Fleming v. Hector* (1836), 2 M. & W. 172.)

under Section 3 (j) for the respondents to flaunt the appellation of the organisation as a club. The club cannot become a cloak or made a front behind which what is done is as contained in Section 2(23) of the Act. In other words, if the activity which is carried out 'wholly or principally' is the business of supply of meals or refreshment to the public or to a class of public, then the employees working in connection would get the protection under the Act. At the same time, if there is genuinely a club where the members assemble not for the purpose of wholly or principally having their meals or refreshment but in connection with other activities and any meals, refreshment and drinks are also served then a distinction must indeed be drawn. This is inevitable as harmonizing of the provisions of Section 3 (j) under which legislature has carved out an exemption in favour of clubs not being residential by not applying the provisions of the Act must be given effect to.

35. It is, therefore, necessary to first ascertain whether the club exists only in name, and for all

intents and purposes it is a restaurant or eating house. Undoubtedly, the second respondent is a club. There are members. The members are defined as the members of the Bhilai Steel Plant, MECON, HSCL, BRP and any other officer of SAIL found eligible to become a member of the Club. The governing body may also grant rights as associate member to certain others. Similarly, there can be temporary members. Entry into the club premises is regulated by bye-law 6 of the Club. The club premises are described as private premises. Entry is restricted to the members, families of members and such other persons as are authorised by the governing body. There is a governing body which manages the affairs of the club. The aims and objectives of the club are provided in bye-law No.2, that is to provide the members and their families with the facilities obtainable in a club of this nature including indoor games like table tennis, billiards, cards, chess, carrom etc. Also, bye-laws contemplate providing of facilities of outdoor games like tennis, badminton, squash etc. The bye-laws also contemplate a library and reading room. So also, the members are to

be provided social gathering and swimming. The members and their families are to be provided facilities for their cultural and intellectual advancement.

36. The inquiry conducted by the Appellate Authority was predominantly based on the definition of the word 'restaurant or eating house' (Section 2(23)). The Appellate Authority glossed over the vital clue provided by the inclusion of the residential club as a residential hotel.

37. It must be noticed that the second respondent is, admittedly, a club under its bye-laws. The objective of the club was to provide various indoor or outdoor games, library and reading room facilities and social gatherings. It also contemplated providing members and their families with facilities for their cultural, social and intellectual advancement. The appellants are correct in contending that the authority and the court are not to be held hostage by the words used in the bye-laws. In other words, the bye-laws may unerringly point to activities which are associated with a club. However, in point of fact what actually goes on in the

premises, may be only activities as are described in Section 2(23) of the Act, namely, the premise of the club may be used wholly or principally only for the purpose of an eating place or restaurant. If that is the case the court would not be oblivious to the actual nature of activities and still clothe the organisation as a Club exempted under Section 3(j). However, in this regard there is unmistakable evidence to show that the objects in the bye-laws were actually realised and the members were indeed being provided with various facilities. The witness for the appellant has stated that the workmen were allotted duty separately by the Club Manager. He has said that he was working in the canteen which was run by the Club. Other people were working in the canteen, bar, billiard room, concert room and table tennis room. Members came there to play tennis, badminton and cards. The witness for the respondents have spoken about the club providing facilities like indoor games, outdoor games, social gathering and also about there being facility for social cultural development for the families of the club members. There are 1400 members of the Club. The

club has been working since 1982. The Appellate Authority has also found that the club does provide indoor and outdoor games. It goes on to find that as far as the activities of the club is concerned, the Act does not apply. But a bifurcation is made qua the catering service.

38. We can safely conclude that second respondent was a genuine club. There were three different class of members. The club was a private premise. Entry to the club premises was restricted to the members and their families and other persons permitted by the governing body. The club did indeed provide various facilities to be availed by the members and others permitted to come to the club. It is to cater to their needs by way of food that apparently the catering contract was entered into. The appellate authority finds that identity cards were issued to the appellants in the year 1996. No doubt the dates of issue as already noted precede the day 05.09.1996, the date on which the catering contract is seen issued. The witness for the appellants has stated in his evidence that "the club

invites Shiva Caters for party and give contract to him and like this every year any one comes on contract. They arrange parties and we used to work with them." No outsider come to the steel club for taking tea, whiskey or eating samosa but he can come as a guest of the member is the further deposition of the witness for the appellants.

39. In the light of this state of facts and the definition of the word 'restaurant and eating place' the conclusion appears to be inevitable that the respondent club cannot be characterized as premises which was 'wholly or principally' used for the business of supply of meals and refreshment to the public. In the first place as already noticed, the members of the Club and their guests and family members cannot be described as the 'public'. Even proceeding on the basis that the members of the club and their family members and the guests whom they would bring would constitute a class of the public, the fact remains that the Court must turn a blind eye to the multifarious activities which are both contemplated in the bye-laws and which

were admittedly being carried out in the premises by way of indoor or outdoor games, gatherings to find that the premises was being used 'wholly or principally' for the business of supply of meals or refreshment. The fact that by catering services, food and refreshment and even liquor as are permitted in Clubs under law was being provided would not make it a case where the club became premises in which the supply of meals and refreshments was 'wholly or principally' what was carried out.

40. The Appellate Authority proceeds on the basis that providing food, refreshment and drink are not contemplated in the bye-laws and therefore, it would attract Section 2(23) of the Act. We notice in this regard that bye-law No.2 (See para 15 of this judgment) does provide that the aims and objectives of the club was to provide to the members and their families the facilities usually obtainable in a club of this nature and 'including' the various facilities like indoor and outdoor games etc. Therefore, providing of food and refreshment cannot be described as falling outside the

scope of the bye-laws. In other words, a proper interpretation of bye-law No.2 would mean that the specifically enumerated facilities in bye-law No.2 are not exhaustive.

41. The bye-laws do not reveal provision for lodging. There is no finding also that the club was providing lodging. In such circumstances, the question that should have been asked was, whether, being a club, which was not residential in nature, it stood exempted. This was not done.

42. In such circumstances, we are of the view that appellants have not made out a case for interference with the impugned Judgment. The Appeal fails and it shall stand dismissed. There will be no order as to costs.

.....J.
(K.M JOSEPH)

.....J.
(PAMIDIGHANTAM SRI NARASIMHA)

NEW DELHI;
OCTOBER 26, 2021.