

1965

*Present : Tambiah, J.*

V. T. RAMALINGAM (Labour Officer), Appellant,  
*and* S. SINNADURAI, Respondent

*S. C. 852/1964—M. C. Trincomalee, 5921*

*Shops—Closing orders—Applicability to an owner of a shop who has no employees—  
“Employer”—Shop and Office Employees Act (Cap. 129), ss. 2, 43, 51 (1),  
68.*

*Interpretation of statutes—Preamble of a statute—Effect on the main provisions.*

The owner of a shop, who has no employees, is an employer within the meaning of section 43 of the Shop and Office Employees Act and is bound to comply with “closing orders” made by the Minister under the provisions of the Act.

The preamble of a statute cannot control the clear and unambiguous provisions of the statute.

**A**PPEAL from a judgment of the Magistrate's Court, Trincomalee.

*Shiva Pasupati*, Crown Counsel, for Complainant-Appellant.

*Siva Rajaratnam*, for Accused-Respondent.

*Cur. adv. vult.*

January 27 1965, TAMBIAH, J.—

The respondent in this case<sup>v</sup> was charged under the provisions of the Shop and Office Employees Act No. 19 of 1954 (Cap. 129 of the Legislative Enactments of Ceylon), for having kept open his shop on June 30, 1963 at 5.30 p.m. and for not preventing a customer from entering the shop at this time in contravention of the Closing Order issued by the Honourable the Minister of Labour and approved by the Parliament and the Senate. The Minister's regulations were issued under section 2 of the Shop and Office Employees Act and are published in *Government Gazettes* No. 10,724 of October 15, 1954, No. 10,517 of April 10, 1953 and No. 13,187 of June 29, 1962 which are marked as P2, P3 and P4 respectively. Under these regulations no shop in the area in which the respondent's shop is situated can be opened for business on Sundays.

It was established by the prosecution in this case that the respondent kept his shop open at 5.30 p.m. on Sunday the 30th of June, 1963 and served a customer. The short point for decision is whether these orders apply to an owner of a shop who has no employees. The learned Magistrate took the view that for the accused to be liable under the Act, he must have an employee and acquitted the respondent. The Attorney-General has appealed from this order.

The preamble to the Shop and Office Employees Act, No. 19 of 1954 (Cap. 129 of the Legislative Enactments of Ceylon) states as follows: "An Act to provide for the regulation of employment, hours of work and remuneration of persons in shops and offices, and for matters connected therewith or incidental thereto." Counsel for the respondent contended that these provisions of the preamble to the Act, taken along with the other provisions, clearly indicate that the mischief the Legislature wanted to remedy was to safeguard employees from unscrupulous employers. On a consideration of the provisions of this Act, it is clear that this Act was intended to protect employees and to give them certain rights.

Section 43 of this Act enacts as follows:—

"(1) No shop shall be or remain open for the serving of customers in contravention of any provision of any closing order made under this Act.

(2) It shall be the duty of the employer to prevent any customer from entering the shop on any day or at any time when such shop is required by any closing order to be closed for the serving of customers.”

Section 51 (1) penalises any contravention of or failure to comply with any of the provisions of this Act or any regulations relating to any shop or office or to the employment of any person in or about the business thereof. The word employer is defined as follows :

“ employer—

(a) in relation to any shop, means the owner of the business of that shop, and includes any person having the charge or the general management and control of that shop, and

(b) in relation to any office, means the person carrying on, or for the time being responsible for the management of, the business for the purposes for which the office is maintained.”

The learned Crown Counsel contended that the preamble to an Act cannot be looked into when the words of the statute are clear. He urged that the word “ employer ” has been given a special meaning in the interpretation clause of this Act and any owner of a shop will be regarded as an employer for the purpose of the obligations cast on an employer by this Act and the regulations made thereunder.

It is a well known canon of construction that if the words of a statute are clear, a preamble to an Act cannot control its clear and unambiguous provisions. In *The Attorney-General, v. Prince Ernest Augustus of Hanover*<sup>1</sup>, Viscount Simonds succinctly stated this proposition as follows :—

“ I would suggest that it is better stated by saying that the context of the preamble is not to influence the meaning otherwise ascribable to the enacting part unless there is a compelling reason for it.”

In *re Wikes, Riddington v. Spencer and others*<sup>2</sup>, Buckley J. re-iterated the same rule of construction as follows :

“ It is well established that the language of a statute must primarily be construed according to its natural meaning. If the language is ambiguous the long title of the Act may be looked at to help resolve the ambiguity ; it may not be looked so as to modify the interpretation of plain language.”

In the Shop and Office Employees Act, the word “ employer ” is not given its natural meaning but is defined as a term of art and must be given the meaning found in the interpretation clause. Section 68 of the Act defines the word “ employer ” to mean the owner of a business of a shop. The counsel for the respondent contended that no harm could be done to an employee if an employer, who has no employee, keeps his shop open in contravention of the orders of the Minister. But it seems to me that the intention of the Legislature was not to leave any

<sup>1</sup>(1957) 2 W. L. R. p. 1 at p. 9,

<sup>2</sup>(1961) 2 W. L. R. 115 at 123.

loop-hole in the Act for any person to say that he is not bound by the regulations of the Minister because he has no employees. If there should be such a lacuna in the legislation, unscrupulous employers, who have employees can easily get over the provisions of the Act by providing some sort of proof that they have no employees when they are prosecuted under this Act. It is not necessary to speculate on the intention of the Legislature when it is clearly expressed in unambiguous language. I, therefore, hold that the owner of a shop, who has no employees, is an employer within the meaning of the Shop and Office Employees Act and is bound by the closing orders contained in the regulations made by the Minister under the provisions of the Act.

For these reasons, I allow the appeal, set aside the order of the learned Magistrate and convict the accused on the counts on which he was charged. Since this appeal is in the nature of a test case, I impose a fine of Rs. 25 on each count, i.e., Rs. 50 in all. The respondent is given time to pay the fine. He should pay it within a month of the record reaching the Magistrate. In default he will undergo a term of two weeks' simple imprisonment.

*Appeal allowed.*