

Manohar Lal

Vs

The State of Punjab

Criminal Appeal No. 173/1956

(Syed Jafar Imam, J.L. Kapur, K.C. Das Gupta, Raghuvar Dayal, N. Rajgopala Ayyangar JJ)

11.11.1960

JUDGMENT

AYYANGAR J. -

This appeal on a certificate under Arts. 132 and 134(1) of the Constitution granted by the High Court of Punjab raises for consideration the constitutionality of Section 7(1) of the Punjab Trade Employees Act, 1940.

The appellant - Manohar Lal - has a shop at Ferozepore Cantt. in which business is carried on under the name and style of 'Imperial Book Depot'. Section 7 of the Punjab Trade Employees Act, 1940 (hereinafter called the Act), enacts :

"7. (1) Save as otherwise provided by this Act, every shop or commercial establishment shall remain closed on a close day.

(2)(i). The choice of a close day shall rest with the occupier of a shop or commercial establishment and shall be intimated to the prescribed authority within two months of the date on which this Act comes into force."

to extract the provision relevant to this appeal. The appellant had chosen Friday as "the close day", i.e., the date of the week on which his shop should remain closed. The Inspector of the Shops and Commercial Establishments, Ferozepore Circle, visited the appellant's shop on Friday, 29th January 1954, and found the shop open and the appellant's son selling articles. Obviously, if Section 7(1) were valid, the appellant was guilty of a contravention of its terms and he was accordingly prosecuted in the Court of the Additional District Magistrate, Ferozepore, for an offence under Section 16 of the Act which ran :

"Subject to the other provisions of this Act, whoever contravenes any of the provisions of this Act..... shall be liable on conviction to a fine not exceeding twenty-five rupees for the first offence, and one hundred rupees for every subsequent offence."

The appellant admitted the facts but he pleaded that the Act would not apply to his shop of establishments for the reason that he had engaged no strangers as employees but that the entire work in the shop was being done by himself and by the members of the family, and that to hold that Section 7(1) of the Act would apply to his shop would be unconstitutional as violative of the fundamental rights guaranteed by Arts. 14, 19(1)(f) and (g) of the Constitution. The additional

District Magistrate rejected the plea raised by the appellant regarding the constitutionality of Section 7(1) in its application to shops where no "employees" were engaged and sentenced him to a fine of Rs. 100 and simple imprisonment in default of payment of the fine (since the appellant had been convicted once before). The appellant applied to the High Court of Punjab to revise this order, but the revision was dismissed. The learned Judges, however, granted a certificate of fitness which has enabled the appellant to file the appeal to this Court.

Though the validity of Section 7(1) of the Act was challenged in the High Court of various grounds, learned Counsel who appeared before us rested his attack on one point. He urged that the provision violated the appellant's right to carry on his trade or business guaranteed by Art. 19(1)(g) and that the restriction imposed was not reasonable within Art. 19(6) because it was not in the interest of the general public. Learned counsel drew our attention to the long title of the Act reading "An Act to limit the hours of work of Shop Assistants and Commercial Employees and to make certain regulation concerning their holidays, wages and terms of service" and pointed out that the insistence on the appellant to close his shop, in which there were no "employees," was really outside the purview of the legislation and could not be said to subserve the purposes for which the Act was enacted. In short, the submission of the learned Counsel was that the provision for the compulsory closure of his shop for one day in the week served no interests of the general public and that it was unduly and unnecessarily restrictive of his freedom to carry on a lawful trade or business, otherwise in accordance with law, as he thought best and in manner or mode most convenient or profitable.

We are clearly of the opinion that the submissions of the learned counsel should be repelled. The long title of the Act extracted earlier and on which learned Counsel placed considerable reliance as a guide for the determination of the scope of the Act and the policy underlying the legislation, no doubt, indicates the main purposes of the enactment but cannot, obviously, control the express operative provisions of the Act, such as for example the terms of Section 7(1). Nor is the learned counsel right in his argument that the terms of Section 7(1) are irrelevant to secure the purposes or to subserve the underlying policy of the Act. The ratio of the legislation is social interest in the health of the worker who forms an essential part of the community and in whose welfare, therefore, the community is vitally interested.

It is in the light of this purpose that the provisions of the Act have to be scrutinized. Thus, Section 3 which lays down the restrictions subject to which alone "young persons," defined as those under the age of 14, could be employed in any shop or commercial establishment, is obviously with a view to ensuring the health of the rising generation of citizens. Section 4 is concerned with imposing restrictions regarding the hours of work which might be extracted from workers other than "young persons." Section 4(1) enacts :

"Subject to the provisions of this Act, no person shall be employed about the business of a shop or commercial establishment for more than the normal maximum working hours, that is to say, fifty-four hours in any one week and ten hours in any one day."

bringing the law in India as respects maximum working hours in line with the norms suggested by the International Labour Convention. Sub-clauses (4) and (5) of this section are of some relevance to the matter now under consideration :

"(4) No person who has to the knowledge of the occupier of a shop or commercial establishment been previously employed on any day in a factory shall be employed

on that day about the business of the shop or commercial establishment for a longer period than will, together with the time during which he has been previously employed on that day in the factory, complete the number of hours permitted by this Act.

(5) No person shall work about the business of a shop or commercial establishment or two or more shops or commercial establishments or a shop or commercial establishment and a factory in excess of the period during which he may be lawfully employed under this Act."

It will be seen that while under sub-cl. (4) employers are enjoined from employing persons who had already worked for the maximum number of permitted hours in another establishment, Sub-cl. (5) lays an embargo on the worker himself from injuring his health by overwork in an endeavour to earn more. From this it would be apparent that the Act is concerned - and properly concerned - with the welfare of the worker and seeks to prevent injury to it, not merely from the action of the employer but from his own. In other words, the worker is prevented from attempting to earn more wages by working longer hours than is good for him. If such a condition is necessary or proper in the case of a worker, there does not seem to be anything unreasonable in applying the same or similar principles to the employer who works on his own business. The learned Judges of the High Court have rested their decision on this part of the case on the reasoning that the terms of the impugned section might be justified on the ground that it is designed in the interest of the owner of the shop or establishment himself and that his health and welfare is a matter of interest not only to himself but to the general public. The legislation is in effect the exercise of social control over the manner in which business should be carried on - regulated in the interests of the health and welfare not merely of those employed in it but of all those engaged in it. A restriction imposed with a view to secure this purpose would, in our opinion, be clearly save by Art. 19(6).

Apart from this, the constitutionality of the impugned provision might be sustained on another ground also, viz., with a view to avoid evasion of provisions specifically designed for the protection of workmen employed. It may be pointed out that acts innocent in themselves may be prohibited and the restrictions in that regard would be reasonable, if the same were necessary to secure the efficient enforcement of valid provisions. The inclusion of a reasonable margin to ensure effective enforcement will not stamp a law otherwise valid as within legislative competence with the character of unconstitutionality as being unreasonable. The provisions could, therefore, be justified as for securing administrative convenience and for the proper enforcement of it without evasion. As pointed out by this Court in *Manohar Lal v. The State* ([1951] S.C.R. 671, 675.) (when the appellant challenged the validity of this identical provision but on other grounds) :

"The legislature may have felt it necessary, in order to reduce the possibilities of evasion to a minimum, to encroach upon the liberties of those who would not otherwise have been affected..... to require a shopkeeper, who employs one of two men, to close and permit his rival, who employs perhaps a dozen members of his family, to remain open, clearly places the former at a grave commercial disadvantage. To permit such a distinction might well engender discontent and in the end react upon the relations between employer and employed."

We have, therefore, no hesitation in repelling the attack on the constitutionality of Section 7(1) of the Act. The appeal fails and is dismissed.

Appeal dismissed.

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