

SUPREME COURT OF INDIA

Om Prakash

Vs.

State of U. P.

C.A.No.3270 of 1998

(Shivaraj V. Patil and D. M. Dharmadhikari, JJ.)

09.03.2004

JUDGEMENT

SHIVARAJ V. PATIL, J.:-

1. The appellants and two other persons filed a writ petition in the High Court challenging the Gazette Notifications prohibiting the sale of eggs within the municipal limits of Rishikesh on the ground that notifications issued imposed unreasonable restrictions affecting their rights under Article 19 (1) (g) of the Constitution, as they prohibited the sale of eggs within the municipal limits; the amended bye-laws including the 'eggs' prohibiting their sales within the municipal limits was not valid as 'eggs' is not covered by Section 298 (2) List I Heading F of The U. P. Municipalities Act, 1916 (for short 'the Act').

2. Admitted facts, as noticed by the High Court, are that District Rishikesh is by and large a place where many temples exist. In the counter affidavit filed by the respondents before the High Court it is stated that several citizens, societies and organizations made representations to the Municipal Board, Rishikesh requesting it to impose restrictions on the sale of 'eggs' also in public places.

Having regard to the said demand of citizens the municipality issued notification in question after getting the approval of the Government as per the provisions of the Act. It is also pointed out that the transportation of 'eggs' through municipal limits of Rishikesh is not prohibited in any way. A businessman, who wants to take 'eggs' through Rishikesh, is not prohibited and he may carry on his trade outside the municipal limits of Rishikesh. The relevant bye-laws prior to amendment was :-

"No person shall sell or expose for sale or cook or carry in a manner exposed to public gaze any kind of meat or fish in any public place, thorough fare, streets, lodging houses, hotels, dhabas, restaurants, dharamshalas, kshetras and shops situated within the limits of the Municipal Board."

The amended bye-law reads :-

"No person shall sell or expose for sale or cook or carry in a manner exposed to public gaze any kind of meat, fish or eggs in any public place, thorough fare, streets, lodging houses, hotels, dhabas, restaurants, dharamshalas, Kshetras and shops situated within the limits of Municipal Board."

3. As is evident, in amended bye-law only 'eggs' is added. There was already prohibition in regard to any kind of meat or fish. The High Court has noticed that under bye-laws before amendment prohibition of sale of meat and fish, which was existing for long time, was not challenged.

4. In the light of the rival contentions urged on behalf of the parties the question that arises for consideration is whether the Municipal Board could frame bye-laws prohibiting the sale of 'eggs' within its municipal limits, when the word 'eggs' is not covered by Section 298(2) List I Heading F of the Act.

5. Learned counsel for the appellants urged that total prohibition on sale of eggs in the municipal limits of Rishikesh is unreasonable and seriously affects rights of the appellants to carry on trade under Article 19(1)(g) of the Constitution; under Section 298 of the Act the respondent Board could not frame bye-law in relation to 'eggs' looking to Section 298(2) List I Heading F and Section 241 of the Act; eggs cannot be read as included in 'meat' or 'fish' since the eggs, which are being sold by the appellants, do not hatch and give birth to chicks and even otherwise if the respondent Board in the interest of promoting or maintaining the health, safety of the public can make bye-law, then the total prohibition would be unreasonable and arbitrary although the Board can take steps as it may deem necessary to regulate the sale of eggs.

6. Challenge made on behalf of the appellants was met by learned counsel on behalf of the respondents by contending that Section 241 of the Act deals with the requirement of obtaining a licence to use any place as market or shop for sale of animals, meat or fish intended for human food,

or as a market for the sale of fruits or vegetables and such right shall be subject to the bye-laws made under Section 298(2) List I Heading F of the Act; the words used in this Section as to 'animals', 'meat' or 'fish' are not followed with word 'only', which means that for other similar articles also there may be requirement for licence; none of the provisions of the Act including Sections 241 and 298 provide that municipality cannot make bye-laws for imposing a ban on the sale of eggs within municipal limits. The learned counsel further submitted that Section 298(1) of the Act has conferred general power on the Municipal Board to make bye-laws for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the municipal area and for the purpose of municipal administration under the Act; this general power of the municipality extends to even to those subjects, which have not been specifically enumerated under Section 298(2) List I Heading F of the Act.

7. The learned counsel for the appellants, when confronted with the position that under Section 298(1) the municipality has general power to frame bye-laws, made submission that in order to frame bye-laws under Section 298(1) a special resolution has to be passed by adopting a special procedure and it does not appear that any such procedure was adopted. Hence the amended bye-law cannot be sustained.

8. The High Court in the impugned order has dealt with the contentions advanced on behalf of the appellants and negated them keeping in view the provisions of the Act and the various decisions cited. The High Court has noticed that the welfare of the people is paramount consideration, which has to be kept in mind while deciding the validity of a law when it is said to be contravening the constitutional guarantees. The High Court, as can be seen from the impugned judgment, while dealing with the challenge to the notification on the ground it infringed the right of the appellants guaranteed under Article 19(1)(g) of the Constitution of India, after referring to various decisions of this Court and following them, has concluded that the impugned notification does not violate any right of the appellants as guaranteed under Article 19(1)(g) of the Constitution in the context of the facts of the case and keeping in view Section 298 of the Act and bye-laws framed thereunder. Hence it is not necessary to deal any further on this question. It is stated in the impugned judgment, "as noted in the earlier part of this judgment, it is not denied that several organizations, societies and residents of Rishikesh had approached the Municipal Board for such a ban on sale of eggs as it was already imposed concerning sale of meat and fish and that was the reason that by the amended law the aforesaid word "eggs" was added in the existing bye-laws."

9. Referring to various decisions of this Court the High Court concluded that the amended bye-laws prohibiting sale of eggs within the municipal limits was permissible to achieve the object of the Act in the interest of the welfare of the people. The High Court has also found that under Section 298(1) of the Act the municipality has the general power to frame a bye-law by special resolution for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the municipal area and for the furtherance of the municipal administration under the Act. It is also noticed that right of a person to use any place within the limits of municipal area under Section 241 of the Act is itself subject to bye-laws, if any, made under Section 298(2) List I Heading F of the Act. In this view the High Court did not find any illegality in the amended bye-law. Consequently

the writ petition was dismissed by the impugned order.

10. The two provisions of the Act, viz., Sections 241 and 298 to the extent they are relevant are to be noticed :-

"241. Licensing of markets and shops for sale of certain articles.- (1) The right of any person to use any place, within the limits of a municipal area, other than a municipal market, as a market or shop for the sale of animals, meat or fish intended for human food, or as a market for the sale of fruit or vegetables, shall be subject to bye-laws (if any) made under Heading F of Section 298.

(2)"

xxx xxx xxx xxx

"298. Power of municipality to make bye-laws.- (1) A municipality by special resolution may, and where required by the State Government shall, make bye-laws applicable to the whole or any part of the municipal area, consistent with this Act and with any rule, for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the municipal area and for the furtherance of municipal administration under this Act.

(2) In particular, and without prejudice to the generality of the power conferred by sub-section (1), the municipality, wherever situated, may in the exercise of the said power, make any bye-law described in List I below and the municipality, wholly or in part situated in a hilly tract may further make, in the exercise of the said power, any bye-law described in List II below.

LIST I

A-E

F.-Markets, Slaughter houses, sale of food, etc.

(a) Prohibiting, subject to the provision of Section 241, the use of any place as a slaughter-house, or as a market or shop for the sale of animals intended for human food or of meat or of fish, or as a market for the sale of fruit or vegetables, in default of a licence granted by the municipality or otherwise than in accordance with the conditions of a licence so granted;"

11. It is clear that under Section 298(1) a municipality has the power to make bye-laws consistent with the Act and Rules for the purpose of promoting or maintaining the health, safety and convenience of the inhabitants of the municipal area and for the furtherance of the municipal administration under the Act. Sub-section (2) of the same Section states in particular, and without prejudice to the generality of the power conferred by sub-section (1) the municipality can make any bye-law described in List I.

12. Assuming 'eggs' is not one of the specified items under Section 298(2) List I Heading F of the Act, the respondent Board has power under Section 298(1) of the Act to make a bye-law unless such a bye-law framed by the Board is inconsistent with the provisions of the Act or the Rules. No provision was pointed out to contend that the amended bye-law in question is inconsistent with the provisions of the Act or rules. Though under the Heading F of List I aforementioned 'eggs' is not an item which is totally a stranger with reference to sale of such item in the market for human consumption. The Constitution Bench of this Court in *Afzal Ullah v. The State of Uttar Pradesh*¹ dealing with a similar controversy under the very provision arising under Section 298 in relation to power of municipality to frame bye-laws, has held that even if a particular bye-law is not framed relating to any clauses expressly stated under Section 298(2) framing of such bye-laws could be justified by the general power conferred on the Boards by Section 298(1). In the said judgment it is stated thus:- Para 13

1 (1964) 4 SCR 991 AIR 1964 SC 264 : 1964 (1) Cri LJ 156

"Even if the said clauses did not justify the impugned bye-law, there can be little doubt that the said bye-laws would be justified by the general power conferred on the Boards by S. 298(1). It is now well-settled that the specific provisions such as are contained in the several clauses of S. 298(2) are merely illustrative and they cannot be read as restrictive of the generality of powers prescribed by S. 298(1) vide *Emperor v. Sibnath Banerji and others* (AIR 1945 PC 156). If the powers specified by S. 298(1) are very wide and they take in within their scope bye-laws like the ones with which we are concerned in the present appeal, it cannot be said that the powers enumerated under S. 298(2) control the general words used by S. 298(1). These latter clauses merely illustrates and do not exhaust all the powers conferred on the Board, so that any cases not falling within the powers specified by Section 298(2) may well be protected by S. 298(1), provided, of course, the impugned bye-laws can be justified by reference to the requirements of S. 298(1). There can be no doubt that the impugned bye-laws in regard to the markets framed by respondent No. 2 are for the furtherance of municipal administration under the Act, and so, would attract the provisions of S. 298(1). Therefore, we are satisfied that the High Court was right in coming to the conclusion that the

impugned bye-laws are valid."

The argument of the learned counsel for the appellants raised for the first time that if bye-law was to be framed by exercising power under Section 298(1) of the Act, a special procedure was required to be followed by passing a special resolution and the burden that such a special procedure was followed is on the respondents, also does not merit acceptance. Since the appellants questioned the validity of the amended law, it was for them to lay the foundation for challenge and substantiate the same. It is not their case that no special resolution was passed in amending the bye-law. It is too late to challenge the validity of bye-law on that ground. This apart mere wrong reference made to the provision in the preamble of the notification containing the amendment of the bye-law does not invalidate the bye-law itself so long as the respondent Board had power to frame a bye-law. This position is also made clear in the same Constitution Bench judgment, thus :-

"It is true that the preamble to the bye-laws refers to clauses A(a), (d) and (c) and J (d) of S. 298 and these clauses undoubtedly are inapplicable; but once it is shown that the impugned bye-laws are within the competence of respondent No. 2, the fact that preamble to the bye-laws mentions clauses which are not relevant, would not affect the validity of the bye-laws. The validity of the bye-laws must be tested by reference to the question as to whether the Board had the power to make those bye-laws. If the power is otherwise established, the fact that the source of the power has been incorrectly or inaccurately indicated in the preamble to the bye-laws would not make the bye-laws invalid (vide *P. Balakotaiah v. Union of India and other*) ((1958) SCR 1052)."

13. Further this Court in *H. C. Suman and another v. Rehabilitation Ministry Employees' Co-operative House Building Society Ltd., New Delhi and others*² has taken the view that Courts should be slow to interfere with the bye-laws made by public representative bodies unless it is manifestly partial, and unequal in operation or unjust, mala fide or effects unjustified interference with liberty. Paragraph 23 of the judgment reads :-

2 (1991) 4 SCC 485 AIR 1991 4 SCC 2160 : 1991 AIR SCW 2532

"23. In *Kruse v. Johnson* ((1898) 2 QB 91) it was held that in determining the validity of bye-laws made by public representatives bodies, such as country councils, the Court ought to be slow to hold that a bye-law is void for unreasonableness. A bye-law so made ought to be supported unless it is manifestly partial and unequal in its operation between different classes or unjust, or made in bad faith, or clearly involving an unjustifiable interference with the liberty of those subject to it. In view of this legal position the Notification dated October 27, 1987 deserves to be upheld as, in our opinion, it does not fall within any of the exceptions referred to in the case of *Kruse v. Johnson*."

14. Mere omission to mention 'eggs' either in Section 241 or Section 298(2) List I Heading F does not make the amended bye-law invalid. In my view, the High Court was right in holding that prohibition of sale of eggs within the municipal limits of Rishikesh was not an unreasonable restriction, the bye-law was in the larger interest of welfare of the people consistent with the provision of the Act and that the amended bye-law was not invalid having due regard to Sections 241 and 298 of the Act.

15. Thus viewed from any angle I do not find any merit in the appeal so as to interfere with the impugned judgment. Hence the appeal is dismissed. The parties to bear their own costs.

16. DHARMADHIKARI, J.:-

On the question of competence of the Municipal Board Rishikesh to amend the bye-law and validity of ban on sale of eggs in public within the municipal limits of Rishikesh, I have found myself in respectful agreement with the reasoning and conclusion of learned Brother Shivaraj V. Patil, J.

17. I, however, consider it necessary to deal with separately the ground urged to assail the bye-law as being violative of fundamental right of trade guaranteed to citizens under Article 19(1)(g) read with Article 19(6) of the Constitution of India.

18. Right to practice any profession or to carry on any occupation, trade or business being a very valuable right has been treated as fundamental and guaranteed under Article 19(1)(g) of the Constitution. This right can be restricted under Article 19(6) only by law and on such reasonable grounds which are found to be in the interest of general public. What should be considered a reasonable restriction within the meaning of clause (6) of Article 19 came up for consideration in a series of cases before this Court.

19. In *Chintaman Rao v. State of M. P.* (AIR 1951 SC 118), it was observed that there should be proper balance between the right of trade guaranteed under Article 19(1)(g) and the social control permitted under clause (6) of Article 19 :-

'The word 'reasonable' implies intelligent care and deliberation, that is the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality'.

(Emphasis added)

20. In the case of *State of Madras v. V. G. Row*, (AIR 1952 SC 196), this Court observed that there can be no general principles or standards to test reasonableness of a restriction on a particular trade. Each case has to be judged on the basis of facts and 1952 Cri LJ 966 circumstances brought to the notice of the Court.

'The test of reasonableness, wherever prescribed, should be applied to each individual statute impugned and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict'.

[Emphasis added]

21. The observations in the aforesaid two decisions have been quoted with approval in the *State of Maharashtra v. Himmatbhai Narbheram Rao* (AIR 1970 SC 1157) in which challenge to Section 385 of Bombay Municipal Corporation Act imposing restrictions on dealing with carcass or skin of animals within the municipal limits as affecting the trade of the people dealing in those obnoxious items was negated holding such restrictions to be in general public interest.

22. Reasonable restriction on certain trades in articles which are hazardous to public health such as liquor, it is held, can go to the extent of imposing complete prohibition on such trade. See *State of Andhra Pradesh v. McDowell and Co.* (1996 (3) SCC 709). AIR 1996 SC 1627 : 1996 AIR SCW 1679

23. Complete ban on slaughter of cow and its progeny has also been upheld to save cow as an animal species highly useful to human community. See *Mohd. Hanif Quareshi and others v. State of Bihar* (AIR 1958 SC 731) and *Hashmatullah v. State of Madhya Pradesh and others* (1996 (4) SCC 391). AIR 1996 SC 2076 : 1996 AIR SCW 2498

24. Learned counsel on behalf of appellants has argued that trade of eggs cannot be considered as objectionable or injurious to society. In fact, egg eating is encouraged as necessary for improvement of public health. Doctors recognise it as a nutritive supplement to other food. There are eggs which contain no chicks and, therefore, acceptable to many sections of the society including those who are

otherwise vegetarians.

25. The basic question, therefore, that arises is whether complete prohibition imposed on trade of eggs within the municipal limits of Rishikesh can be held to be reasonable and can pass the test of clause (6) of Article 19, as has been interpreted by this Court from case to case in various situations.

26. It is a matter of common knowledge that Haridwar, Rishikesh and adjoining town Muni Ki Reti situate on the bank of river Ganges are pilgrim centres with huge temple complexes, shrines, ashrams, yoga teaching institutions and other institutions engaged in religious activities and spiritual practices. The three towns attract pilgrims round the year and in greater numbers during auspicious days and annual fairs. Pilgrims congregate in the towns to take bath in river Ganga considered to be holy by them. They visit temples and stay in various religious places and institutions. There is, thus, a continuous inflow of pilgrims in these religious towns. Every 6th year a big religious fair is organised called as Purn Kumbh or Ardh Kumbh in which crores of people from all over the country congregate in the three towns.

27. Supporting the imposition of ban on trade of eggs along with ban on trade of meat and fish, which is already in existence, it has been stated by the State and the local authority that it was so imposed on constant demands of citizens, various organisations and institutions operating within Haridwar and Rishikesh areas. Copies of some of such representations in writing received from individuals and religious organisations have been placed on record of this case. A major section of the society in the three towns consider it desirable that vegetarian atmosphere is maintained in the three towns for the inhabitants and the pilgrims.

28. In municipal limits of Haridwar public dealing in meat, fish and eggs was banned by the Notification issued as far back as on 23rd July, 1956 and in Muni Ki Reti by Notification dated 18-12-1976. These restrictions imposed in Haridwar and Muni Ki Reti have not been challenged by any section of people in the Court and have continued as fully acceptable to all. The towns of Haridwar and Rishikesh have acquired religious importance as they are located on the heights of Himalayas.

29. As a justification for extension of ban on trade of eggs with ban on trade of meat and fish in municipal area of Rishikesh which adjoins Haridwar and Muni Ki Reti, it has been stated on behalf of Municipal Board and State that during the periodical Kumbh fairs, the areas which are notified for organizing Kumbh Mela comprise parts of municipal areas in Haridwar, Muni Ki Reti and Rishikesh. One such Notification earmarking the areas of Kumbh Mela held in the year 1992, issued under byclause (2) of United Province Mela Act of 1938 (UP Act No. 16 of 1938) has been annexed with counter affidavit of the State.

30. The High Court in upholding complete restriction on dealing and trading of eggs in Rishikesh has relied on several decisions of this Court. The High Court has come to the conclusion that such prohibition extended to the trade of eggs in municipal town of Rishikesh is a reasonable restriction and has been imposed in the interest of general public.

31. Whether a particular restriction on trade to the extent of its complete prohibition can be held to be 'reasonable' within the meaning of clause (6) of Article 19 depends upon the nature of the trade involved and the public interest that is intended to be served by such total restriction.

32. The concept of 'reasonableness' defies definition. Abstract definition like 'choice of a course which reason dictates' as propounded in the earliest case of this Court in Chintaman Rao (supra) is elastic. In the subsequent case of V. G. Row (supra), therefore, this Court has observed that 'no abstract standard or general pattern' of reasonableness can be laid down as applicable to all cases. Legal Author Friedmann in his book 'Legal Theory, 4th Ed., at pages 83-85', comments that reasonableness is an expression used to convey basically the Natural Law ideal of 'justice between man and man'. The concept of 'reasonable man' is also an application of the principles of natural justice to the standard of behaviour expected of the citizen. The functional and conceptual implication of the term 'reasonableness' is that it is essentially another word used for public policy. It means the application of the underlying principles of social policy and morality to an individual case. Friedmann further observes that the 'test of reasonableness is nothing substantially different from 'social engineering', 'balancing of interests', or any of the other formulas which modern sociological theories suggest as an answer to the problem of the judicial function'. AIR 1951 SC 118

AIR 1952 SC 196 : 1952 Cri LJ 966

33. The term 'reasonable restriction' as used in Article 19(6) is highly flexible and relative term which draws its colour from the context. One of the sources to understand it is natural law and in the sense of ideal, just, fair, moral or conscionable to the facts and circumstances brought before the Court.

34. The law regulating local administration of an urban or rural area affects the social and economic life of the community. As pointed out by another Legal Thinker Stone, in his book Social dimensions of Law and Justice 'reasonable restriction', if properly used, helps in 'adjustments of conflicting interests' such as in the present case where large number of people residing and visiting Rishikesh, believe in strict vegetarianism as a part of their religion and way of life. The appellants who are running hotels and restaurants and others like them constitute comparatively a very small section of the society engaged in carrying on trade of non-vegetarian food items in the town.

35. The reasonableness of complete restriction imposed on trade of non-vegetarian food items has, therefore, to be viewed from the cultural and religious background of the three municipal towns.

36. It is a matter of a common knowledge that members of several communities in India are strictly vegetarians and shun meat, fish and eggs. Such people in great number regularly and periodically visit Haridwar, Rishikesh and Muni Ki Reti on pilgrimage.

37. In the three towns people mostly assemble for spiritual attainment and religious practices. All citizens are enjoined by Fundamental Duties prescribed in Article 51-A to respect faith of each other and thereby 'promote harmony and spirit of common brotherhood' in a pluralistic society as India is.

Article 51-A- "It shall be the duty of every citizen of India-

(a) to (d).....

(e) to promote harmony and the spirit of common brotherhood amongst all people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture."

38. The Fundamental Duties enjoined on citizens under Article 51-A should also guide the legislative and executive actions of elected or non-elected institutions and organisations of the citizens including the municipal bodies.

39. The resolution by Municipal Board, Rishikesh to amend its bye-laws for banning public dealing and trade of non-vegetarian food items in municipal town of Rishikesh along with adjoining towns of Haridwar and Muni Ki Reti has been taken in deference to the religious and cultural demands of large number of residents and pilgrims who visit regularly and periodically on auspicious and festive days to the three towns. It is stated on behalf of the Municipal Board that major source of revenue and employment in the three towns is from the continuous inflow of tourists and floating population of pilgrims. Maintenance of clean and congenial atmosphere in all religious places which are spread over all the three towns is in common interest of the residents, pilgrims and visitors. Continuous floating population of pilgrims benefit the inhabitants of the towns by providing them various sources of earning livelihood and employment. Tourists and pilgrims are the major sources of revenue for the Local Municipal Boards and the inhabitants of the three towns. Geographical situation and peculiar culture of the three towns justify complete restriction on trade and public dealing in non-vegetarian food items including eggs within the municipal limits of the towns. The High Court rightly upheld it to be a reasonable restriction. Trade in all kinds of food items

vegetarian or non-vegetarian in adjoining towns and villages outside the municipal limits of three towns remains unrestricted and there is no substantial harm caused to those engaged in such trade.

40. For the aforesaid reasons, the impugned bye-law notified by Municipal Board, Rishikesh cannot be held to be violative of Article 19 (1)(g) of the Constitution. With this addition, I respectfully agree with the opinion of learned brother Shivaraj V. Patil, J. and with his conclusion that this appeal be dismissed.

Appeal dismissed.