SUPREME COURT OF INDIA

N.K. Bajpai

Vs.

Union of India

C.A.Nos.2851 of 2012

(A.K. Patnaik and Swatanter Kumar JJ.)

15.03.2012

JUDGMENT

SWATANTER KUMAR, J.

1. Leave granted.

2. This judgment shall dispose of all the above three appeals, as common questions of law arise therefrom, on somewhat similar -facts for consideration of this Court. In these appeals, the following questions have been raised :

> (i) Whether Section 129(6) of the Customs Act, 1962, which stipulates that on demitting office as Member of the Customs Excise and Service Tax Appellate Tribunal (hereinafter referred to as the CESTAT) a person shall not be entitled to appear before the CESTAT, is ultra vires the Constitution of India?
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> (ii) Whether the said provision applies to the petitioner, as it was introduced after the petitioner had not only joined as Member of the CESTAT but also demitted office as such Member?

3. We may notice the basic factual premise from which the above legal questions have arisen for consideration of this Court. Primarily, we would be referring to the facts of SLP (C) No.8482 of 2010 titled P.C. Jain v. Union of India Ors.

4. The appellant joined the Indian Customs and Central Excise Service, Class - I (later called Group `A'), in the year 1956, where he served for a number of years,

in different capacities. On 1st November, 1990, the appellant was selected as a Member (Technical) in the Customs, Excise and Gold (Control) Appellate - Tribunal (CEGAT). The appellant demitted his office as Member (Technical) of CEGAT on 7th March, 1993. As he was a law graduate, he was enrolled as an advocate with the Bar Council of India on 18th March, 1993. The CEGAT was replaced by the Central Excise and Service Tax Appellate Tribunal (for short, `the CESTAT/Tribunal'. Vide Finance Act, 2003, Section 129(6) was introduced to the Customs Act, 1962 (for short `Customs Act') in terms of which, the members of the Tribunal were debarred from appearing, acting or pleading before it. Aggrieved by this amendment, the appellant along with other appellants in other appeals claimed to have met the Finance Minister and submitted a detailed representation bringing out the inequities and arbitrariness claimed to be resulting from the insertion of Section 129(6) of the Customs Act. The Tribunal, on 9th July, 2007, passed an order holding that the appellant or the persons similarly situated, were not entitled to appear before it in view of the bar contained in Section 129(6) of the Customs Act. In the meanwhile, the Ministry also responded negatively to the representations submitted by the appellants. Faced with these circumstances, the appellants filed a writ petition before the High Court of Delhi at New Delhi being Writ -Petition No.6712 of 2007, which was heard by a Division Bench of the High Court and was dismissed vide judgment dated 13th April, 2009, hence, giving rise to the present appeals.

5. The Tribunal took the view that the word `appellate tribunal' as referred to in Section 129(6), is defined under Section 2(1B) of the Customs Act to mean the Customs, Excise and Service Tax Appellate Tribunal constituted under Section 129 of the Customs Act and any person ceasing to hold office as President, Vice-President or Member cannot appear before the Tribunal or its Benches anywhere in India in view of the bar in Section 129(6). One of the appellants, namely, N.K. Bajpai, was relieved from the case. The appellants had contended before the High Court that Section 129(6) of the Customs Act is ultra vires Articles 14, 19(1)(g) and 21 of the Constitution of India. It was further contended that, in any event, Section 129(6) has no applicability to the appellants, in view of the fact that the amendment was prospective, but when the appellants were appointed to the Tribunal as well as when they demitted office, the said provision was not a part of the Customs Act. Thus, they prayed for consequential relief. The High Court, -by a detailed judgment, rejected both these contentions. It was of the view that the predominant rationale for introduction of this provision was to strengthen the cause of administration of justice and to remove what the Legislature, in its wisdom, felt was a perceived class bias. It was further held that the restriction imposed could not be said to be unreasonable and was held to withstand the test of Article 19(6)

of the Constitution. It also held that once the right to appear, act or plead is taken away in respect of the Tribunal, since the same forum hears and adjudicates upon the matters concerning three streams of law, the persons concerned are automatically debarred from acting, appearing or pleading before such forum, i.e., the Tribunal in respect of all matters. The High Court even referred to some of the judgments of this Court, as well as to Article 220 of the Constitution, which places a prohibition or limitation on the right of a permanent Judge of the High Court to plead or act before the Court of which he had been a permanent Judge and/or before the Courts, Tribunals, Authorities over which the said Court had exercised supervisory jurisdiction.

6. Before we dwell upon the merits of the contentions raised or the correctness of the reasons given by the High Court, it will be appropriate for us to reproduce the provisions of Section 129 of the Customs Act, which read as follows:

> 129 - Appellate Tribunal—
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> > (1) The Central Government shall constitute an Appellate Tribunal to be called the Customs, Excise and Service Tax Appellate Tribunal consisting of as many judicial and technical members as it thinks fit to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.
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> > (2) A judicial member shall be a person who has for at least ten years held a judicial office in the territory of India or who has been a member of the Indian Legal Service and has held a post in Grade I of that service or any equivalent or higher post for at least three years, or who has been an advocate for at least ten years.
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> > Explanation.--For the purposes of this sub-section—
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> > > (i) in computing the period during which a person has held judicial office in the territory of India, there shall be included any period, after he has held any judicial office, during which the person has been an advocate or has held the office of a member of a Tribunal or any post, under the Union or a State, requiring special knowledge of law;-

(ii) in computing the period during which a person has been advocate, there shall be included any period during which the person has held a judicial office, or the office of a member of a Tribunal or any post, under the Union or a State, requiring special knowledge of law after he became an advocate.

(2A) A technical member shall be a person who has been a member of the Indian Customs and Central Excise Service, Group A, and has held the post of Commissioner of Customs or Central Excise or any equivalent or higher post for at least three years.

(3) The Central Government shall appoint--

(a) a person who is or has been a Judge of a High Court; or

(b) one of the members of the Appellate Tribunal, to be the President thereof.

(4) The Central Government may appoint one or more members of the Appellate Tribunal to be the Vice-President, or, as the case may be, Vice-Presidents, thereof.

(5) A Vice-President shall exercise such of the powers and perform such of the functions of the President as may be delegated to him by the President by a general or special order in writing.

(6) On ceasing to hold office, the President, Vice- President or other Member shall not be entitled to appear, act or plead before the Appellate Tribunal.

7. Part III of the Constitution is the soul of the Constitution. It is not only a charter of the rights that are available to Indian citizens, but is even completely in consonance with the basic norms of human rights, recognized and accepted all over the world. The fundamental rights are basic rights, but they are neither uncontrolled nor without restrictions. In fact, the framers of the Indian Constitution themselves spelt out the nature of restriction on such rights. Exceptions apart, normally the restriction or power to regulate the manner of exercise of a right would not frustrate the right. Take, for example, the most valuable right even from amongst the fundamental rights, i.e., the right to freedom of speech and expression.

This right is conferred by Article 19(1)(a) but in turn, the Constitution itself requires its regulation in the interest of the `public order' under Article 19(2). The State could impose reasonable restrictions on the exercise of the rights conferred, in the interest of the sovereignty and integrity of India, the security of the State, free relations with foreign States, public order, decency or morality or in relation to contempt of Court, defamation or incitement of an offence. Such restrictions are within the scope of -constitutionally permissible restriction. Exercise of legislative power in this respect by the State can be subjected to judicial review, of course, within a limited ambit. Firstly, the challenger must show that the restriction imposed, at least prima facie, is violative of the fundamental right. It is then that the burden lies upon the State to show that the restriction applied is by due process of law and is reasonable. If the restriction is not able to satisfy these tests or either of them, it will vitiate the law so enacted and the action taken in furtherance thereto is unconstitutional. It is difficult to anticipate the right to any freedom or liberty without any reasonable restriction. Besides this, the State has to function openly and in public interest. The width of the expression `public interest' cannot be restricted to a particular concept. It may relate to variety of matters including administration of justice.

8. Let us also examine the fundamental rights and their restrictions as a constitutional concept. In the case of S. Rangarajan v. P. Jagjivan Ram and Ors. [(1989) 2 SCC 574], while dealing with the censorship of a film, this Court observed :

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> `.....There does indeed have to be a compromise between the interest of freedom of expression and special interests. But we cannot simply balance the two interests as if they are of equal weight. Our commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the freedom are pressing and the community interest is endangered. The anticipated danger should not be remote, conjectural or far-fetched. It should have proximate and direct nexus with the expression.
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> The expression of thought should be intrinsically dangerous to the public interest. In other words, the expression should be inseparably locked up with the action contemplated like the equivalent of a `spark in a power keg'.'

9. Where the Court applies the test of `proximate and direct nexus with the expression', the Court also has to keep in mind that the restriction should be founded on the principle of least invasiveness, i.e., the restriction should be

imposed in a manner and to the extent which is unavoidable in a given situation. The Court would also take into consideration whether the anticipated event would or would not be intrinsically dangerous to public interest. –

10. Now, we have to examine the various tests that have been applied over a period of time to examine the validity and/or reasonability of the restrictions imposed upon the rights.

11. No person can be divested of his fundamental rights. They are incapable of being taken away or abridged. All that the State can do, by exercise of its legislative power, is to regulate these rights by imposition of reasonable restrictions on them. Upon an analysis of the law, the following tests emerge:-

a) The restriction can be imposed only by or under the authority of law. It cannot be imposed by exercise of executive power without any law to back it up.

b) Each restriction must be reasonable.

c) A restriction must be related to the purpose mentioned in Article 19(2).

12. The questions before us, thus, are whether the restriction imposed was reasonable and whether the purported purpose of the same squarely fell within the relevant clauses discussed above. The legislative determination of what restriction to impose on a freedom -is final and conclusive, as it is not open to judicial review. The judgments of this Court have been consistent in taking the view that it is difficult to define or explain the word reasonable with any precision. It will always be dependent on the facts of a given case with reference to the law which has been enacted to create a restriction on the right. It is neither possible nor advisable to state any abstract standard or general pattern of reasonableness as applicable uniformly to all cases.

13. A common thread runs through Parts III, IV and IVA of the Constitution of India. One Part enumerates the fundamental rights, the second declares the fundamental principles of governance and the third lays down the fundamental duties of the citizens. While interpreting any of these provisions, it shall always be advisable to examine the scope and impact of such interpretation on all the three constitutional aspects emerging from these Parts. It is necessary to be clear about the meaning of the word fundamental as used in the expression fundamental in the governance of the State to describe the directive principles which have not legally

been made enforceable. Thus, the word fundamental has been -used in two different senses under our Constitution of India. The essential character of the fundamental rights is secured by limiting the legislative power and by providing that any transgression of the limitation would render the offending law pretendo void. The word fundamental in Article 37 of the Constitution also means basic or essential, but it is used in the normative sense of setting, before the State, goals which it should try to achieve. As already noticed, the significance of the fundamental principles stated in the directive principles have attained greater significance through judicial pronouncements.

14. As difficult as it is to anticipate the right to any freedom or liberty without any reasonable restriction, equally difficult is it to imagine the existence of a right not coupled with a duty. The duty may be a direct or indirect consequence of a fair assertion of the right. Although Part III of the Constitution of India confers rights, still the duties and restrictions are inherent thereunder. These rights are basic in nature and are recognized and guaranteed as natural rights, inherent in the status of a citizen of a free country, but are not absolute in nature and uncontrolled in operation. Each -one of these rights is to be controlled, curtailed and regulated, to a certain extent, by laws made by the Parliament or the State Legislature. In spite of there being a general presumption in favour of the constitutionality of a legislation under challenge in case of allegations of alleging violation of the right to freedom guaranteed by clause (1) of Article 19 of the Constitution, on a prima facie case of such violation being made out, the onus shifts upon the State to show that the legislation comes within the permissible restrictions set out in clauses (2) to (6) of Article 19 and that the particular restriction is reasonable. It is for the State to place appropriate material justifying the restriction and its reasonability on record.

15. The Advocates Act, 1961 (hereinafter referred to as `the Advocates Act') itself was introduced to implement the recommendations of the All India Bar Committee made in 1953. It aimed at establishment of an All India Bar Council, a common rule for the advocates and integration of the Bar into a single class of practioners known as `advocates'. It was also to create autonomous Bar Councils, one for the whole of India and one for each State. The Advocates Act provides for various aspects of the legal -profession. Under Section 29 of the Advocates Act, only one class of persons is entitled to practice the profession of law, namely, advocates. Section 30 of the Advocates Act provides that subject to the provisions of the Act, every advocate whose name is entered in the State rolls shall, as a matter of right, be entitled to practice throughout the territories to which this Act applies, in all courts including the Supreme Court of India. Such an Advocate would also be entitled to practice before any tribunal or person legally authorized to take

evidence and before any other authority or person before whom such an advocate is, by or under any law for the time being in force, entitled to practice. Section 33 of the Advocates Act further states that except as otherwise provided in that Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practice in any court or before any authority or person unless he is enrolled as an advocate under the Advocates Act. A bare reading of these three provisions clearly shows that this is a statutory right given to an advocate to practice and an advocate alone is the person who can practice before the courts, tribunals, authorities and persons. But this right is statutorily regulated by two conditions - one, that a -person's name should be on the State rolls and second, that he should be permitted by the law for the time being in force, to practice before any authority or person. Where the advocate has a right to appear before an authority or a person, that right can be denied by a law that may be framed by the competent Legislature. Thus, the right to practice is not an absolute right which is free of restriction and is without any limitation. There are persons like Mukhtiars and others, who were earlier entitled to practice before the Courts, but the Advocates Act itself took away the right to practice which was available to them prior to its coming into force. Thus, the Advocates Act placed a complete prohibition upon the right to practice of those persons who were not advocates enrolled with the State Bar Council.

16. Therefore, the right to practice, which is not only a statutory right under the provisions of the Advocates Act but would also be a fundamental right under Article 19(1)(g) of the Constitution is subject to reasonable restrictions. An argument could be raised that a person who has obtained a degree of law is entitled to practice anywhere in India, his right, as enshrined in the -Constitution and under the Advocates Act cannot be restricted or regulated and also that it is not necessary for him to enroll himself on any of the State rolls. This argument would be fallacious in face of the provisions of the Advocates Act as well as the restrictions contemplated in Article 19(6) of the Constitution. The Legislature is entitled to make a law relating to the professional or technical qualifications necessary for carrying on that profession.

17. We may also refer to a recent development of law in relation to right of the advocates or former judicial officers, to practice the profession of law. The Bar Council of India has been vested with the general power to make rules under Section 49 of the Advocates Act. In furtherance to this power vested with it, the Bar Council of India has framed the Bar Council of India Rules. Chapter III of these Rules deals with the conditions for the right to practice. Rule 7 of Chapter III of the said Rules is quite in pari materia with Section 129(6) of the Act and it reads

as under : An officer after his retirement or otherwise ceasing to be in service for any reasons, if enrolled as an Advocate shall not practice in any of the Judicial, Administrative Courts/Tribunals/Authorities, which are -presided over by an officer equivalent or lower to the post which such officer last held.

18. Rules 7 and 7A of the Bar Council of India Rules, were introduced by the Bar Council of India on 14th October, 2007.

19. This Rule clearly mandates that upon his retirement or when otherwise ceasing to be in service for any reason, a person will not be able to practice in the administrative tribunal, other tribunals, authorities, courts etc. over which he had presided and which were headed by an officer in a post equivalent to or lower than the post which he had held. The definition in the explanation of what an officer shall mean and include further widened the scope of interpretation. Not only this, requiring adherence to professional standard and values, Rule 7A further makes it mandatory that a person who has been dismissed, retrenched, compulsorily retired, removed or otherwise retired from Government Service or service of the High Court or Supreme Court on the charges of corruption, dishonesty unbecoming of an employee, etc. would not even be enrolled as an advocate on the rolls of a State Bar Council. These provisions clearly demonstrate the intention of the Legislature to place restrictions for entry to the profession of law. These restrictions have to be decided only on the touchstone of reasonableness and legislative competency. The restriction which withstands such a test would be enforceable in accordance with law.

20. The contention raised on behalf of the appellants before us is that Section 129(6) of the Customs Act imposes a complete restriction upon the appellants and, therefore, is unconstitutional. While examining the merit of this contention, we must notice that there is no challenge to the legislative competence of the Legislature which enacted and inserted Section 129(6) of the Act. Once there is no challenge to the legislative competence and the provision remains as a valid piece of legislation on the statute book, then the only question left for this Court to examine is whether this provision is so unreasonable that it inflicts an absolute restriction upon carrying on of the profession by the appellants. For two different reasons, we are unable to hold that the restriction imposed under Section 129(6) of the Act is unreasonable or ultra vires. Firstly, it is not an absolute restriction. It is a partial restriction to the extent that the persons who have held the office of the President, Vice--- President or other Members of the Tribunal cannot appear, act or plead before that Tribunal. In modern times, there are so many courts and tribunals in the country and in every State, so that this restriction would hardly jeopardize

the interests of any hardworking and upright advocate. The right of such advocate to practice in the High Courts, District Courts and other Tribunals established by the State or the Central Government other than the CESTAT remains unaffected. Thus, the field of practice is wide open, in which there is no prohibition upon the practice by a person covered under the provisions of Section 129(6) of the Customs Act. Secondly, such a restriction is intended to serve a larger public interest and to uplift the professional values and standards of advocacy in the country. In fact, it would add further to public confidence in the administration of justice by the Tribunal, in discharge of its functions. Thus, it cannot be held that the restriction has been introduced without any purpose or object. In fact, one finds a clear nexus between the mischief sought to be avoided and the object aimed to be achieved. -

21. Now, we may deal with some of the judgments, where similar restrictions imposed by law were found to be valid and unexceptionable. In Sukumar Mukherjee v. State of West Bengal [(1993)3 SCC 723, the State of West Bengal had prohibited private practice by medical practioners who were also teaching in the medical institutions. This was provided under Section 9 of the West Bengal State Health Service Act, 1990. The argument raised was that this provision was repugnant to Section 27 of the Indian Medical Council Act, 1956 which, in turn, provides for the right of a registered medical practitioner to practice, as well as an argument that it ultra vires Articles 19(1)(g), 19(6) and 14 of the Constitution of India. This Court repelled both these contentions and held that the prohibition against the members of the West Bengal Medical Education Service (WBMES) from practicing privately was not unconstitutional or repugnant to the statutory provisions. It only regulated a class of persons, i.e., the persons who were members of that service and secondly, this was intended to maintain standards of the medical education which was the very object of enacting the Indian Medical Council Act. -

22. Similarly, while dealing with the question as to whether the closure of butcher houses on national holidays or on certain particular days was unconstitutional and violative of the fundamental right to carry on business in terms of Articles 19(1)(g), 19(6) and 14 of the Constitution, in the case of Municipal Corporation of the City of Ahmedabad Ors. v. Jan Mohammed Usmanbhai Anr. [(1986) 3 SCC 20], a Constitution Bench of this Court, while rejecting the challenge, held as under : 17. Clause (6) of Article 19 protects a law which imposes in the interest of general public reasonable restrictions on the exercise of the right conferred by sub-clause (g) of clause (1) of Article 19. Obviously it is left to the court in case of a dispute to determine the reasonableness of the restrictions imposed by the law. In determining that question the court cannot proceed on a general notion of what is reasonable in the abstract or even on a consideration of what is reasonable from the

point of view of the person or persons on whom the restrictions are imposed. The right conferred by sub-clause (g) is expressed in general language and if there had been no qualifying provision like clause (6) the right so conferred would have been an absolute one. To the persons who have this right any restriction will be irksome and may well be regarded by them as unreasonable. But the question cannot be decided on that basis. What the court has to do is to consider whether the -- restrictions imposed are reasonable in the interest of general public. In the State of Madras v. V.G. Row this Court laid down the test of reasonableness in the following terms:

> It is important in this context to bear in mind that 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.

19. The expression `in the interest of general public' is of wide import comprehending public order, public health, public security, morals, economic welfare of the community and the objects mentioned in Part IV of the Constitution. Nobody can dispute a law providing for basic amenities; for the dignity of human labour like provision for canteen, rest rooms, facilities for drinking water, latrines and urinals etc. as a social welfare measure in the interest of general public. Likewise in respect of legislations and notifications concerning the wages, working conditions or the other amenities for the working class, the courts have adopted a liberal attitude and the interest of the workers has been protected notwithstanding the hardship that might be caused to the employers. It was, therefore, open to the legislature or the authority -concerned, to ensure proper holidays for the municipal staff working in the municipal slaughterhouses and provide certain closed days in the year. Even according to the observations of the High Court nobody could have any objection to the standing orders issued by the Municipal Commissioner under Section 466(1)(D)(b) if municipal slaughterhouses were closed on certain days in order to ensure proper holidays for the municipal staff working in the municipal slaughterhouses. The only objection was that the standing orders direct closure of the slaughterhouses on Janmashtami, Jain Samvatsari, October 2 (Mahatma Gandhiji's birthday), February 12 (Shraddha day of Mahatma Gandhi), January 30 (Mahatma Gandhiji'sNirwan day), MahavirJayanti and Ram Navami. These days

were declared as holidays under the standing orders for the Municipal Corporation slaughterhouses.

20. The tests of reasonableness have to be viewed in the context of the issues which faced the legislature. In the construction of such laws and in judging their validity, courts must approach the problem from the point of view of furthering the social interest which it is the purpose of the legislation to promote. They are not in these matters functioning in vacuo but as part of society which is trying, by the enacted law, to solve its problems and furthering the moral and material progress of the community as a whole. (See Jyoti Persh adv. Union Territory of Delhi) If the expression `in the interest of general public' is of wide import comprising public order, public security and public morals, it cannot be said that the standing orders closing the slaughterhouses -on seven days is not in the interest of general public.

21. In view of the aforesaid discussion we are not prepared to hold that the closure of the slaughter house on seven days specified in the two standing orders in any way put an unreasonable restriction on the fundamental right guaranteed to the petitioner- respondent under Article 19(1)(g) of the Constitution.

22. This leads us to the second contention raised on behalf of the respondent, which is based on Article 14 of the Constitution. The High Court had repelled this contention for a valid reason with which we fully agree.

23. It is now well established that while Article 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation and that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) such differentia must have rational relation to the object sought to be achieved by the statute in question. The classification, may be founded on different basis, namely, geographical, or according to objects or occupations or the like and what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. There is always a presumption in favour of constitutionality of an enactment and the burden is upon him who attacks it, to show that there has been a clear violation of the constitutional principles. The courts must -presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed against problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the

need is deemed to be the clearest, and finally that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common rapport, the history of the times and may assume every state of facts which can be conceived to be existing at the time of legislation.

24. The objects sought to be achieved by the impugned standing orders are the preservation, protection and improvement of livestock. Cows, bulls, bullocks and calves of cows are no doubt the most important cattle for the agricultural economy of this country. Female buffaloes yield a large quantity of milk and are, therefore, well looked after and do not need as much protection as cows yielding a small quantity of milk require. As draught cattle male buffaloes are not half as useful as bullocks. Sheep and goat give very little milk compared to the cows and the female buffaloes, and have practically no utility as draught animals. These different categories of animals being susceptible of classification into separate groups on the basis of their usefulness to society, the butchers who kill each category of animals may also be placed in distinct classes according to the effect produced on society by the carrying on of their respective occupations. The butchers who -slaughter cattle formed the well defined class based on their occupation. That classification is based on intelligible differentia and distinguishes them from those who kill goats and sheep and this differentiation has a close connection with the object sought to be achieved by the impugned Act, namely the preservation, protection and the improvement of our livestock. The attainment of these objectives may well necessitate that the slaughterers of cattle should be dealt with differently than the slaughterers of say, goats and sheep. The standing orders, therefore, in our view, adopt a classification based on sound and intelligible basis and can quite clearly stand the test laid down above.

> 23. Another Constitution Bench of this Court, while dealing with the provisions of the Legal Practitioners Act, 1879, a pre- constitution law, considered the correctness or effect of restrictions on the rights of a Mukhtiar to act or plead before the Civil Court, under Rule 2 of the Rules, framed under the provisions of that Act by the High Court and held that Sections 9 and 11 of that Act would have to be read together. It would be wrong to treat the mere right to practice conferred by Section 9 of the Legal Practioners Act as disassociated from the functions, powers and duties of Mukhtiar referred to in Section 11 of that Act. The right to appear before a court is controlled by these provisions. Primarily holding that -Rule 2 as enacted by the High Court was not in excess of the rule- making power under Section 11 of that Act, this Court also held that the Mukhtiars cannot

complain of any violation of their fundamental right to practice the profession, to which they have been enrolled under the provisions of that Act. In other words, the challenge on the ground of inequality and unreasonableness, both, were repelled by this Court. {Ref. Devata Prasad Singh Chaudhuri Ors. v. The Hon'ble the Chief Justice and Judges of the Patna High Court [AIR 1962 SC 201]}.

24. There are certain legislations which restrict appearance of advocates before specialized or specific tribunals. These kinds of restrictions upon the right of the lawyers to appear before those tribunals have been challenged in the courts from time to time. The courts have consistently taken the view that limited restrictions are neither violative of the fundamental rights, nor do they tantamount to denying the equality before law in terms of Article 14 of the Constitution. In the case of H.S. Srinivasa Raghavachar Ors. v. State of Karnataka [(1987) 2 SCC 692], this Court was primarily concerned with the validity of Section 44(1) of the -Karnataka Land Reforms Amendment Act, 1974 which was challenged on the ground that it was ultra vires Articles 39(b) and 39(c) of the Constitution and was destructive of the basic structure of the Constitution. An ancillary question that fell for the consideration of this Court was where sub-section (8) of Section 48 of that Act, which prohibited legal practitioners from appearing in such proceedings before the Tribunals, was repugnant to Section 30 of the Advocates Act, and Section 14 of the Bar Council of India Act. The challenge was primarily accepted by this Court on the ground that it was a case of lack of legislative competence, inasmuch as the State Legislature was not competent to make a law repugnant to the laws made by the Parliament pursuant to Entries 77 and 78 of List I of the Seventh Schedule to the Constitution. This Court directed that Section 48(8) of that Act would not be enforced against the advocates to prevent them from appearing before the Tribunal. This case, relied upon by the learned counsel for the appellant, is completely different on facts and in law. In the case in hand, the consistent position is that there is no challenge to the legislative competence in amending Section 129(6) of the Customs Act. The challenge is limited to the ground of its being ultra vires Articles - 19(1)(g), 19(6) and 14 of the Constitution. Therefore, the counsel cannot draw any advantage from that case.

25. In the case of Paradip Port Trust, Paradip v. Their Workmen [AIR 1977 SC 36], this Court dealt with the right of the legal practitioners to represent employers before the Industrial Tribunal that too only with the consent of the opposite party and leave of the Tribunal. The restriction was limited in its scope and impact and

this Court held that it was not violative of the right of the legal practitioners as they will have to conform to the conditions laid down in Section 36(4) of the Industrial Disputes Act, 1947.

26. Refuting contentions that this provision would be repugnant to Section 30 of the Advocates Act, this Court held that the Industrial Disputes Act was a special piece of legislation with the aim of labour welfare and representation before the adjudicative authorities therein has been specifically provided for with a clear object in view.

27. In the case of Anr. [(1985) 1 SCC 479], in somewhat similar circumstances relating to the provisions of the Maharashtra -- Restoration of Lands to Scheduled Tribes Act, 1974, this Court clearly rejected the contention that an advocate enrolled under the Advocates Act, has an absolute right to appear before any of the courts and tribunals in the country. Though at that time Section 30 of the Advocates Act had not come into force, but still the Court felt that the right of an advocate to practice after being brought on the roll of the State Bar Council is, just what is conferred upon him under the Bar Councils Act, 1926 and therefore, Section 9(a) of the Maharashtra Restoration of Lands to Scheduled Tribes Act which placed that restriction was not unconstitutional or impinging on the rights of the advocates to practice. The Court also observed that it was well settled that apart from under the provisions of Article 22 of the Constitution, no litigant has a fundamental right to be represented by a lawyer in any Court.

28. In the case of Anr. [(1995) 1 SCC 732], this Court while holding that a prohibition against a person, more than 45 years of age being enrolled as an advocate was violative of Article 14 of the Constitution as being discriminatory and arbitrary, made some observations with regard to duties and functions of the advocates -and Bar Councils, for the dignity and purity of the profession, which are worthy of being noticed and are accordingly reproduced:

> 3. It will be seen from the above provisions that unless a person is enrolled as an advocate by a State Bar Council, he shall have no right to practise in a court of law or before any other Tribunal or authority. Once a person fulfils the requirements of Section 24 for enrolment, he becomes entitled to be enrolled as an advocate and on such enrolment he acquires a right to practise as stated above. Having thus acquired a right to practise he incurs certain obligations in regard to his conduct as a member of the noble profession. The Bar Councils are enjoined with the duty to act as sentinels of professional conduct and must ensure that the dignity and purity of the

> profession are in no way undermined. Its job is to uphold the standards of professional conduct and etiquette. Thus every State Bar Council and the Bar Council of India has a public duty to perform, namely, to ensure that the monopoly of practice granted under the Act is not misused or abused by a person who is enrolled as an advocate. The Bar Councils have been created at the State level as well as the Central level not only to protect the rights, interests and privileges of its members but also to protect the litigating public by ensuring that high and noble traditions are maintained so that the purity and dignity of the profession are not jeopardized. It is generally believed that members of the legal profession have certain social obligations, e.g., to render pro bono publico service to the poor and the underprivileged. Since the duty of a lawyer is to assist the court in the administration of justice, the practice of law has a public utility flavour -and, therefore, he must strictly and scrupulously abide by the Code of Conduct behaving the noble profession and must not indulge in any activity which may tend to lower the image of the profession in society. That is why the functions of the Bar Council include the laying down of standards of professional conduct and etiquette which advocates must follow to maintain the dignity and purity of the profession.

29. An objective analysis of the above principles makes it clear that except where the challenge is on the grounds of legislative incompetence or the restriction imposed was ex facie unreasonable, arbitrary and violative of Part III of the Constitution of India, the restriction would be held to be valid and enforceable.

30. The next contention raised on behalf of the appellants before us is that the entire restriction is based on an illogical presumption of likelihood of bias. The presumption of legal bias being without any basis and ill-founded, the amendment itself is liable to be declared ultra vires. This contention, again, does not carry any weight. This argument is misconceived on facts and law, both. It is not only the mischief of likelihood of bias which is sought to be prevented by the amendment but the amendment, has a definite -- purpose and object to achieve which is in the larger public interest. Such legislative attempt, not only to adhere to but to enhance the values and dignity of the legal profession, would add to the confidence of the common litigant in the administration of justice and the performance of duties by the Tribunal.

31. For example, a person who is otherwise qualified to be admitted as an advocate, but is either in full or part time service or employment, or is engaged in any trade, business or profession, shall not be admitted as an advocate, was a

restriction imposed by the Bar Council of State of Maharasthra and Goa. Upon challenge, this Court had taken the view that under Article 19(1)(g), all citizens have a right to practice any profession or carry on any occupation, trade or business. The term `any profession' may include even plurality of professions. However, this is not an absolute right and is subject to reasonable restrictions under Article 19(6). It cannot be gainsaid that litigants are also members of general public and if in their interest, any rule imposes a restriction on the entry to the legal profession and if such restriction is founded to be reasonable, Article 19(1)(g) would not get stultified { Goa [(1996) 3 SCC 342]}. -

32. In this very case, the Court also observed that these well- established connotations and contours of the requirements of the legal profession itself supply the necessary guidelines to the concerned Bar Councils or Legislatures to frame Rules for regulating the entry of the persons to the profession.

33. This judgment is relatable to the legal profession and we have already noticed the judgments of this Court relating to other professions. Imposition of restrictions is a concept inbuilt into the enjoyment of fundamental rights, as no right can exist without a corresponding reasonable restriction placed on it. When the restrictions are placed upon the carrying on of a profession or to ensure that the intent, object or purpose achieved thereby would be enhancing the purity of public life, such object would certainly be throttled if there arose a situation of conflict between private interest and public duty. The principle of private interest giving way to public interest is a settled cannon, not only of administrative jurisprudence, but of statutory interpretation as well. Having regard to the prevalent values and conditions of the profession, most of the legal practitioners would not stoop to unhealthy practices or tactics but the Legislature, in its wisdom, has considered it desirable to -- eliminate any possibility of conflict between the interest and duty and aimed at achieving this object or purpose by prescribing the requisite restrictions. With the development of law, the courts are expected to consider, in contradistinction to private and public interest, the institutional interest and expectations of the public at large from an institution. These are the balancing tests which are applied by the courts even in the process of interpretation or examining of the constitutional validity of a provision.

34. Under the English Law, the genesis of bias has been described as the perception that the court is free from bias, that it is objectively impartial stems from the overworked aphorism of Lord Hewart C.J. in R. v. Sussex Justices Ex. P. McCarthy [(1924) 1 KB 256 KBD at 259] wherein he said, It is not merely of some importance but is of fundamental importance that justice should not only be done

but should manifestly and undoubtedly be seen to be done. However, later the courts there felt that too heavy a reliance upon the Hewart aphorism in instances of alleged bias produces the danger that the appearance of bias or injustice becomes more important than the absence of actual bias, the doing of justice itself. It is, therefore, of importance that perceived bias is not too readily inferred, such as to negate the doing of justice. In Porter v. Magill [(2002) 2 AC 357], the House of Lords finally decided the proper test for finding perceived or apparent bias, after judicial debate for over two decades, which displayed the welcome interplay of judicial pronouncements within the jurisdictions of the English common law, Scotland and Strasbourg jurisprudence. The test is now whether the fair-minded observer, having considered the facts, would consider that there was a reasonable possibility that the tribunal was biased. [See Sir Louis Blom, Q.C., `Bias, Malfunction in Judicial Decision-making', (2009) Public Law 199].

35. Bias must be shown to be present. Probability of bias, possibility of bias and reasonable suspicion that bias might have affected the decision are terms of different connotations. They broadly fall under two categories, i.e., suspicion of bias and likelihood of bias. Likelihood of bias would be the possibility of bias and bias which can be shown to be present, while suspicion of bias would be the probability or reasonable suspicion of bias. The former lead to vitiation of action, while the latter could hardly be the foundation for further examination of action, with reference to -the facts and circumstances of a given case. The correct test would be to examine whether there appears to be a real danger of bias or whether there is only a probability or even a preponderance of probability of such bias, in the circumstances of a given case. If it falls in the prior category, the decision would attract judicial castecism but if it falls in the latter, it would hardly effect the decision, much less adversely.

36. Harry Woolf, Jeffey Jowell and Andrew Le Sueur, in their recent book De Smith's Judicial Review (Sixth Edition) have referred to the concept of `automatic disqualification', that is, where the element of bias is present and would lead to disqualification on its own. This rule was invoked to invalidate the composition of a disciplinary tribunal of the Council of the Inns of Court, since one of the members of the tribunal had been a member of the Professional Conduct and Complaints Committee of the Bar Council (PCCC) which was the body responsible for the decision to prosecute a member of the Bar before that Tribunal. It was held by the Visitors to the Inns of Court that each member of the PCCC had a common interest in the prosecution and, therefore, was acting as a judge in his or her own cause. The rule was not free of -exceptions. It could even be applied with certain flexibility. On the subject of judicial bias, a greater degree of flexibility has

to be applied in cases of automatic disqualification. For example, where the public became aware that a senior member of a firm was acting against one of the parties to the litigation, but, on another matter, it was held that automatic disqualification would not be necessary, as the connection between the firm's success in the case and its profits was tenuous and the party had effectively waived the right to challenge an adverse decision in the former litigation.

37. The element of bias by itself may not always necessarily vitiate an action. The Court would have to examine the facts of a given case. Reverting to the facts of the present case, despite their absence from the object and reasons for the amendment of Section 129(6) of the Customs Act it cannot be held that the element of bias was presumptuous or without any basis or object. It may be one of the relevant factors which probably would have weighed on the mind of the Legislature. When you have been a member of a Tribunal over a long period, and other members have been your co-members whether judicial or technical, it is difficult to hold that there would be no possibility of bias or no real danger of bias. Even -if we rule out this possibility, still, it will always be better advised and in the institutional interest that restrictions are enforced. Then alone will the mind of the litigant be free from a lurking doubt of likelihood of bias and this would enhance the image of the Tribunal. The restriction, as already discussed, leaves the entire field of legal profession wide open for the appellants and all persons situated alike except to practice before CESTAT.

38. Besides the possibility of bias, there is a legitimate expectation on the part of a litigant before the Tribunal that there shall not be any possibility of justice being denied or being not done fairly. These are the concepts which are very difficult to be defined and demarcated with precision. Some element of uncertainty would be prevalent. There can be removal of doubts to the facts of a given case that would help in determining matters with somewhat greater uncertainty. The contention of the petitioners that there has to be empirical data to suggest their practice before the Tribunal resulted in instances of misdemeanor which would have propelled the respondents to insert such a provision in the enactment, has rightly been rejected by the High Court. It may not even be proper to introduce such amendments with reference to any data. Suffice it -- to note that these amendments are primarily based upon public perception and normal behaviour of an ordinary human being. It is difficult to define cases where element of bias would affect the decision and where it would not, by a precise line of distinction. Even in a group, a person possessing a special knowledge may be in a position to influence the group and his bias may operate in a subtle manner.

39. The general principles of bias are equally applicable to our administrative and civil jurisprudence. Members of the Tribunals, called upon to try issues in judicial or quasi-judicial proceedings should act judicially. Reasonable apprehension is equitable to possible apprehension and, therefore, the test is whether the litigant reasonably apprehends that bias is attributable to a member of the Tribunal. Repelling the apprehension of bias in administrative action, the Courts have taken the view that in the case where a remote relationship existed, separated by six degrees, which was the foundation of challenge of selection to a post of clerk in the Gram Panchayat High School, the challenge was not sustainable. It is difficult to rule out the possibility of a reasonable apprehension in the minds of the litigants who approach the -Tribunal for justice, if the reasonable restriction introduced in Section 129(6) of the Customs Act is not enforced. Reference can be made to the judgments of this Court in the case of Manak Lal v. Dr. Prem Chand [AIR 1957 SC 425] and Ors.[(2000) 10 SCC 502].

40. This Court in the case of Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and Ors. [(2001) 1 SCC 182], having regard to the changing structure of the society, stated that modernization of the society with the passage of time had its due impact on the concept of bias as well. The courts have applied the tests of real likelihood and reasonable suspicion. These doctrines were discussed in the case of S. Parthasarathi v. State of Andhra Pradesh [(1974) 3 SCC 459]. The Court found that `real likelihood' and `reasonable suspicion' were terms really inconsistent with each other and the Court must make a determination, on the basis of the whole evidence before it, whether a reasonable man would, in the circumstance, infer that there is real likelihood of bias or not. The Court has to examine the matter from the view point of the people. The term `bias' is used to denote a departure from the standing of even ended justice. After discussing this law, another Bench of -this Court in the case of State of Punjab v. V.K. Khanna [(2001) 2 SCC 330], finally held as under:- 8. The test, therefore, is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing a real danger of bias administrative action cannot be sustained. If on the other hand allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefor, would not arise.

41. The word `bias' in popular English parlance stands included within the attributes and broader purview of the word `malice', which in general connotation, means and implies `spite' or `ill will'. It is also now a well settled proposition that

existence of the element of `bias' is to be inferred as per the standard and comprehension of a reasonable man. The bias may also be malicious act having some element of intention without just cause or excuse. In case of malice or ill will, it may be an actual act conveying negativity but the element of bias could be apparent or reasonably seen without -any negative result and could form part of a general public perception.

42. Now, we shall proceed to examine the merits of the contention raised that the provisions of Section 129(6) of the Customs Act cannot be given effect to retrospectively. The argument advanced is that the appellants were enrolled as advocates when the provisions of Section 129(6) were not on the statute book. After ceasing to be members of the Tribunal and starting their practice as advocates, such a bar was not operative. Now, after the lapse of so many years, their right to practice before such Tribunals cannot be taken away and to that extent, in any case, the provisions of Section 129(6) cannot be made retrospective.

43. As already noticed by us above, the right to practice law is a statutory right. The statutory right itself is restricted one. It is controlled by the provisions of the Advocates Act, 1961 as well as the rules framed by the Bar Council in that Act. A statutory right cannot be placed at a higher pedestal to a fundamental right. Even a fundamental right is subject to restriction and control. At the cost of repetition, we may notice that it is not possible to imagine a -right without restriction and controls in the present society. When the appellants were enrolled as advocates as well as when they started practicing as advocates, their right was subject to the limitations under any applicable Act or under the constitutional limitations, as the case may be. One must clearly understand a distinction between a law being enforced retrospectively and a law that operates retroactively. The restriction in the present case is a clear example where the right to practice before a limited forum is being taken away in presenti while leaving all other forums open for practice by the appellants. Though such a restriction may have the effect of relating back to a date prior to the presenti. In that sense, the law stricto sensu is not retrospective, but would be retroactive. It is not for the Court to interfere with the implementation of a restriction, which is otherwise valid in law, only on the ground that it has the effect of restricting the rights of the people who attain that status prior to the introduction of the restriction. It is certainly not a case of settled or vested rights, which are incapable of being interfered with. It is a settled canon of law that the rights are subject to restrictions and the restrictions, if reasonable, are subject to judicial review of a very limited scope.

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44. We do not find any reason to accept the submission that enforcement of the restriction retroactively would be impermissible, particularly in the facts and circumstances of the present case.

45. We may refer to the case of R. v. Inhabitants of St. Mary, Whitechapel [(1881) 12 QB 149] whereby under Section 2 of the Poor Removal Act, 1846, `No woman residing in any parish with her husband at the time of his death shall be removed... from such parish, for twelve calendar months after his death, if she so long continue a widow.' In this case, a widow was sought to be removed within such period of 12 months, on the grounds that her husband had died before the coming into force of that Act. The question was whether that provision applied retrospectively. Lord Denman, C.J, held that `the statute is, in its direct operation, prospective, as it relates to future removals only and that it is not properly called a retrospective statute because a part of the requisites for its action is drawn from its time antecedent to its passing'. Thus, the provision was held not to be retrospective.

46. Examined the case of the appellants from this angle, it would mean that the law is not at all retrospective even though the -- retirement or date of ceasing to be a member of the Tribunal may have been on a date anterior to the date of passing of the law.

47. We may also notice that the restriction is not punitive, in that sense, but is merely a criterion for eligibility for continuing to practice law before the Tribunal.

48. Earlier, the nature of law, as substantive or procedural, was taken as one of the determinative factors for judging the retrospective operation of a statute. However, with the development of law, this distinction has become finer and of less significance. Justice G.P. Singh, in his Principles of Statutory Interpretation (12th Edition, 2010) has stated that the classification of a statute, as either a substantive or procedural law, does not necessarily determine whether it may have retrospective operation. For example, a statute of limitation is generally regarded as procedural, but its application to a past cause of action has the effect of reviving or extinguishing a right to sue. Such an operation cannot be said to be procedural. It has also been noted that the rule of retrospective construction is not applicable merely because a part of the requisites for its action is drawn from a time antecedent to the -- passing of the relevant law. For these reasons, the rule against retrospectivity has also been stated, in recent years, to avoid the classification of statutes into substantive and procedural and the usage of words like `existing' or

`vested'. Referring to a judgment of the Australian High Court in the case of Maxwell v. Murphy [(1957) 96 CLR 261], it is recorded as follows :

> One such formulation by Dixon C.J. is as follows : `The general rule of the common law is that a statute changing the law ought not, unless the intention appears with reasonable certainty, to be understood as applying to facts or events that have already occurred in such a way as to confer or impose or otherwise affect rights or liabilities which the law had defined by reference to the past events. But given rights and liabilities fixed by reference to the past facts, matters or events, the law appointing or regulating the manner in which they are to be enforced or their enjoyment is to be secured by judicial remedy is not within the application of such a presumption'.

49. In such matters, in judiciously examining the question of retrospectivity or otherwise, the relevant considerations include the circumstances in which legislation was created and the test of fairness. The principles of statutory interpretation have expanded. With the development of law, it is desirable that the Courts should -apply the latest tools of interpretation to arrive at a more meaningful and definite conclusion. The doctrine of fairness has also been applied by this Court in the case of Ors.[(2006) 6 SCC 289]. A restriction was introduced providing that a person shall not be a member of a Panchayat or continue as such, if he has been elected as Councilor of Zila Parishad or as a member of the Panchayat Samiti. This restriction was held to be retrospective and applicable to the existing members of the Panchayat also. Applying the rule of literal construction, this Court held that when a literal reading of the provision giving retrospective effect does not produce absurdity or anomaly, the same would not be construed only prospective. This was further strengthened by the application of the rule of fairness.

50. In the present case, the restriction would be applied uniformly to all the practicing advocates as well as to the advocates who would join the profession in future and would achieve the object of the Customs Act without leading to any absurd results. On the contrary, its uniform application would achieve fair results without really visiting any serious prejudice upon the class of the advocates -who were earlier the members of the Tribunal as it remains open to them to practice in other tribunals, forums and courts. If an exception was carved out in their favour, it would lead to an anomaly as well as an absurd situation frustrating the very purpose and object of Section 129(6) of the Act.

51. Still in another case titled Anr. [(2000) 3 SCC 607], this Court, while dealing with the question whether the amendment in the Rent Control Order, which had earlier only covered `houses', and was amended to encompass `premises' could be allowed to agreements entered into, prior in time, clearly held that the provision came into force when the appeal was still pending and, though the provision is prospective in force, it has retroactive effect. This provision merely provides for a limitation to be imposed for the future, which in no way affects anything done by a party in the past and the statutes providing for new remedies or new manners for enforcement of the existing rights will apply to future as well as past causes of action. This Court also held that the presumption against retrospective legislation does not necessarily apply to an enactment merely because a part of the -requisites for its action are drawn from a time antecedent to its passing.

52. In light of these principles, the provisions of Section 129(6) of the Customs Act and its operation cannot be faulted with. Another half-hearted attempt was made to raise a contention that the appellants can continue to appear before the Tribunal as they are permitted to do so in terms of Section 146A of the Customs Act, despite the provisions of Section 129(6) of the Customs Act. We are unable to find any merit in this contention as well. The provisions of Section 129(6) of the Customs Act are specific and both these provisions have to be construed harmoniously. We find nothing contradictory in these three provisions. Section 146(2)(c) of the Customs Act refers to the appearance by a legal practitioner who is entitled to practice as such in accordance with law. Section 129(6) places a restriction, which is reasonable and valid restriction, as held by us above. Thus, the provisions of Section 146A of the Act would have to be read in conjunction with and harmoniously to Section 129(6) of the Customs Act and the person who earns a disqualification under this provision cannot derive any extra benefit -contrary to Section 129(6) of the Customs Act from the reading of Section 146A of the Customs Act. Thus, we have no hesitation in rejecting this contention as well.

53. For the reasons afore-recorded, we dismiss all the aforesaid appeals, however, without any order as to costs.