

brought by the Province against the amount in an award. Shri Kanwar
Jagat Bahadur
Singh

In my opinion, therefore, the amount of court-fee payable on appeal such as the one now before me is governed by Article 11 of Schedule II and not by Article 1 Schedule I. Rs 4 is, therefore, the proper fee in this case. v.
The Punjab
State

Kapur, J.

BISHAN NARAIN, J.—I agree.

Bishan Narain,
J.

REVISIONAL CRIMINAL

Before Bhandari, C.J. and Bishan Narain, J.

MANOHAR LAL,—*Petitioner*

versus

THE STATE,—*Respondent*

Criminal Revision No. 1058 of 1954.

Punjab Trade Employees Act (X of 1940)—Section 7(1)—Whether contravenes Articles 19(1)(g) and 14 of the Constitution of India—Restrictions imposed upon the carrying on of business—Whether reasonable—Interpretation of Statutes—Purpose and object of Act—Title and Preamble of the Act—Whether conclusive proof of the intention of the legislature—Constitution of India—Article 14—Legislative classification—Person alleging discrimination to allege and prove it beyond doubt.

1956

May, 23rd

Held, that section 7(1) of Trade Employees Act imposes a reasonable restriction on the traders and businessmen and thereby promotes welfare of the people of this country and therefore does not contravene article 19(1)(g) of the Constitution.

Held, that it is well established that the Legislative purpose of an enactment should be ascertained from that which the legislature has chosen to enact either by express words or by reasonable or necessary implication. It must be presumed that the legislature intends that which is the necessary effect of its enactment, and such enactment is the purpose and object of the Act. The title and preamble of an enactment are indicative of the intention of the legislature but these two sources cannot be considered and have never been considered to be conclusive of that intent.

Held, that there is a strong presumption in favour of the validity of legislative classification and it is for those who challenge it as unconstitutional to allege and prove beyond all doubt that the legislation arbitrarily discriminates between different persons similar in circumstances.

(Case referred to Division Bench by the Hon'ble Mr. Justice Bishan Narain, on 28th July, 1955, as there is an important question of law and is of general importance.)

Petition for revision under section 439, Cr. P. C., against the order of Shri R. S. Phulka, Additional District Magistrate, Ferozepore, dated 19th August, 1954.

MELA RAM, for Petitioner.

HARPARSHAD, Assistant Advocate-General, for Respondent.

ORDER

Bishan Narain,
J.

BISHAN NARAIN, J.—Shri Mela Ram Aggarwal contends that S. 7 of the Punjab Trade Employees Act 1940 contravenes Articles 14 and 19 of the Constitution and is, therefore, invalid. This is an important question of law and is of general importance and, therefore, it should be decided by a larger Bench. Let the papers be placed before Hon'ble C.J. for orders.

JUDGMENT

Bishan Narain,
J.

BISHAN NARAIN, J. The petition for revision raises the question of validity of section 7(1) of

the Punjab Trade Employees Act, 1940. The facts leading to this petition are not in dispute. The petitioner Manohar Lal is the proprietor of the Imperial Book Depot, Ferozepore Cantonment. He observes Friday as his close day under the Act. He has not engaged any employee to work in his shop. His shop was, however, found open on Friday the 29th of January, 1954, and his son was found selling certain articles to some customers. Manohar Lal was tried for contravening the provisions of section 7(1) of the Act. He admitted these facts but pleaded that section 7(1) of the Trade Employees Act contravened his fundamental rights guaranteed by the Constitution. The trial Magistrate rejected the defence and on convicting him imposed a fine of Rs. 100. He has come to this Court and has challenged the validity of this section before us.

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The Punjab Trade Employees Act came into force on the 7th June, 1940. It was considerably modified by the amending Act X of 1943. The petitioner was previously prosecuted for the same offence and in that case he challenged the validity of this provision of law on the ground that it was beyond the competence of the Punjab Legislature to enact it. Their Lordships of the Supreme Court, however, came to the conclusion that the enactment came under item 27 in List II or item 27 in List III in the Government of India Act, 1935 (vide *Manohar Lal v. The State* (1)).

In the meantime our Constitution came into force in 1950 and the petitioner has again challenged the validity of section 7 of the said Act but this time he has challenged it on the ground that his fundamental rights guaranteed by Articles 14 and

(1) A.I.R. 1951 S.C. 315

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“Save as otherwise provided by this Act, every shop * * * * shall remain closed on a close day.”

and subsection (2)(i) of Section 7 states—

“The choice of a close day shall rest with the owner or occupier of a shop * * * and shall be intimated to the prescribed authority within * * * * .”

As I have already stated, Manohar Lal had chosen Friday as his close day under subsection (2)(i) of section 7 of the Act.

The Act, broadly speaking, provides for certain facilities to persons working in shops and commercial establishments. Similar facilities have been given to persons working in factories under the Indian Factories Act. Both these Acts *inter alia* limit the hours of work and provide for one holiday in a week.

I shall first deal with the petitioner's objection under Article 19(1)(g) of the Constitution. The validity of this Act is challenged on the ground that it infringes the petitioner's right to carry on his business guaranteed to him by Article 19(1)(g) of the Constitution. This right, however, is not absolute in nature. It is subject to reasonable restriction in the interests of general public (Article 19(6) of the Constitution). It is argued by the learned counsel for the petitioner that the object of the Act is to safeguard the health and welfare of employees but it is neither within the scope or object of the Act nor is it a reasonable restriction

to prevent a petty shopkeeper, who has no employee working with him, from earning his livelihood on one day in a week.

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There is no doubt that this provision of section 7(1) of the Act does restrict the right of a trader to carry on his business on every day of the week if he so chooses. As I have already stated this right, however, is subject to reasonable control by the Government. It is the duty of Courts of law to see that this right is not unduly restricted by public authorities and it is also their duty to see that this right does not adversely affect the security, welfare and health of general public. There is no doubt that the determination by the legislature of what constitutes a reasonable restriction is not final and conclusive and that it is subject to the supervision by Courts of law. Whether a restriction is reasonable in law or not must be judged in context of the times and in the context of social needs and social urges *Bapubhai Ratanchand Shah and others v. State of Bombay and another* (1). One of the directive principles of our Constitution is that the State should promote the welfare of the people (Article 38). In a welfare State the social interests of an individual or a class of persons cannot be ultimately left to their personal discretion. It is the duty of the State to promote welfare of its citizens and if it affects the guaranteed freedom to carry on business, then the restriction imposed must be reasonable. The phrase "reasonable restriction" was explained by their Lordships of the Supreme Court in *Chintamanrao and another v. The State of Madhya Pradesh* (2), in these words—

"The phrase 'reasonable restriction' connotes that the limitation imposed on

(1) A.I.R. 1956 Bom. 21

(2) A.I.R. 1951 S.C. 118

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a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. 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."

In the present case a petty shopkeeper is being compelled to have one day's rest and he has objected to it. It appears to me self-evident that imposition of such a rest by the State should be considered to be a reasonable restriction in the interests of general public and for general benefit. In modern times it is so recognised by all civilised countries. Obviously this law is intended to protect and preserve the health of the petitioner and of persons connected with business and such a rest must be welcome to his family members and friends also. It is true that a petty shopkeeper may prefer to work on every day of the week to improve his economic position but the State has a right to protect him against himself with a view to preserve his health. In *Chintamanrao's case* (1), it was held by their Lordships of the Supreme Court that section 4 of the C. P. and Berar Regulation of Manufacture of Bidis (Agricultural Purposes) Act contravened Article 19(6),

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and in the course of the judgment it was observed—

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“The effect of the provisions of the Act, however, has no reasonable relation to the object in view but is so drastic in scope that it goes much in excess of that object.”

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J.

Relying on these observations it was argued on petitioner's behalf that the object and the scope of the impugned Act is given in its title and in the preamble to the Act. It was pointed out that the Act is called the Punjab Trade Employees Act and its preamble reads—

“An Act to limit the hours of work of shop assistants and commercial employees and to make certain regulations concerning their holidays, wages and terms of service.”

From this the learned counsel desires us to conclude that as section 7(1) does not relate to shop assistants and commercial employees, it has no relation to the object of the Act and travels beyond it. It is, however, conceded that traders or businessmen, who employ shop assistants or have commercial employees working in their premises, may be reasonably restrained from carrying on their trade or business on one day in a week on administrative grounds as was held in the petitioner's previous case (*Manohar Lal v. The State* (1)), but it was urged that it does not justify restriction on a petty shopkeeper who has not employed any assistant. It was argued that merely because this restriction travels beyond the provisions of the Act it should be declared invalid as was held in *Chintamanrao and another v. The State of Madhya Pradesh* (2). There is no force

(1) A.I.R. 1951 S.C. 315

(2) A.I.R. 1951 S.C. 118

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in this contention. It is well established that the legislative purpose of an enactment should be ascertained from that which the legislature has chosen to enact either in express words or by reasonable or necessary implication. It must be presumed that legislature intends that which is the necessary effect of its enactment and such intention is the purpose and object of the Act. It is true that the title and the preamble of an enactment are indicative of the intention of the legislature and throw light thereon, but these two sources cannot be considered and have never been considered to be conclusive of that intent." In *Chintamanrao's case* (1), their Lordships of the Supreme Court declared section 4 of the Berar Act invalid on the ground that it imposed unreasonable restriction on the petitioner's freedom to carry on his business and in the course of the judgment it was observed by them that the impugned Act exceeded the purpose and object of the Act. In that case, it was, however, not held that merely because the impugned section travelled beyond the purpose of the Act as indicated in the title and preamble of the Act it was on that ground alone invalid. If that were so, their Lordships would not have discussed the reasonableness or otherwise of the restriction imposed by section 4 of the Berar Act. I am of the opinion that section 7(1) of the Trade Employees Act, 1940, cannot be held as violating Article 10 of the Constitution merely on the ground that it travels beyond the purpose of the Act as indicated in its preamble and title. I, therefore, hold that section 7(1) of the Trade Employees Act imposes a reasonable restriction on the traders as it protects and preserves the health of all the traders and businessmen and thereby promotes welfare of the people of this country.

(1) A.I.R. 1951 S.C. 118

The validity of this Act is then challenged on the ground that it violates equal protection provisions of Article 14 of the Constitution. Section 2-A of the impugned Act exempts certain shops, commercial establishments and persons from the application of the Act and section 2-B exempts certain other shops and commercial establishments from the application of sections 6 and 7 of the Act. Section 2-C authorises the Government by notification to extend the provisions of the Act to persons or establishments etc. mentioned in sections 2-A and 2-B. It is argued that the lists given in sections 2-A and 2-B discriminate against the petitioner and in favour of the persons and establishments enumerated therein. Now, the scope of Article 14 of the Constitution has been authoritatively laid down by their Lordships of the Supreme Court in *Budhan Choudhry and others v. State of Bihar* (1), in these words—

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“It is now well established that while Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on all intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary

(1) A.I.R. 1955 S.C. 191

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is that there must be *nexus* between the basis of classification and that object of the Act under consideration."

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J.

It follows from these observations that Article 14 does not require that same law should be applicable to all persons or trades and that they can be differently treated on the same rational grounds. The learned counsel has argued that there are no reasonable grounds which can be said to distinguish the persons and establishments to whom the Act has been made applicable or those whose have been exempted therefrom and that there is no reasonable basis for this distinction. It is further urged that there is no reason why this Act was not extended to the exempted persons or establishments and that this arbitrary selection vitiates Article 14 of the Constitution. This may or may not be so. There is not sufficient material before us to be able to distinguish the exempted persons and establishments from the persons and establishments to whom the Act has been made applicable. There is, however, a strong presumption in favour of the validity of legislative classification and it is for those who challenge it as unconstitutional to allege and prove beyond all doubt that the legislation arbitrarily discriminates between different persons similar in circumstances. In the absence of such material on the present record it is not possible to give a clear finding that persons similarly placed have been treated differently by this piece of legislation.

Further, it is well established that the legislature is not bound, in order to support the constitutional validity of its Act, to extend to all cases which it might possibly reach. Dealing with practical exigencies, the legislature may be

guided by experience. It is free to recognize degrees of harm, and it may confine its restrictions to those classes of cases where the need is deemed to be clearest. It may proceed cautiously, step by step, and if an evil is specially experienced in a particular branch of business it is not necessary that the prohibition should be couched in all-embracing terms. If the law presumably hits the evil where it is most felt, it is not to be overthrown because there are other instances to which it might have been applied (vide *F. A. Miller v. F. P. Wilson*, (1). This principle was recognised by their Lordships of the Supreme Court in *Sakhawat Ali v. The State of Orissa* (2), wherein it was observed—

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“* * * legislation enacted for achievement of a particular object or purpose need not be all embracing.

It is for the legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left out would not render legislation which has been enacted in any manner discriminatory and violative of the fundamental right guaranteed by Article 14 of the Constitution.”

These principles fully apply to the present case. Section 2-C of the impugned Act makes it clear that the legislature realised that persons and establishments mentioned in sections 2-A and 2-B could be governed by this section and laid down that the exemption granted to them could be removed by notification by the State Government.

(1) 69 Law Ed. 4 S. 623 at page 632

(2) 1955 S.C.A. 363

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It appears to me that it is a matter of legislative policy whether the provisions of this Act should be extended to certain persons or commercial establishments or not. In any case the provisions of section 7 are beneficial to all those to whom they apply and it is for those who have been exempted from its operation to object to the operation and not for the present petitioner. I am, therefore, of the opinion that section 7(1) of the Trade Employees Act, 1940, does not contravene Article 14 of the Constitution and its validity cannot be challenged on this ground.

The result is that this petition fails and I would dismiss it.

Bhandari, C.J. BHANDARI, C. J. I agree.

CIVIL WRIT

Before Bhandari, C.J. and Khosla, J.

THE LUMSDEN CLUB,—*Petitioner*

versus

THE PUNJAB STATE,—*Respondent*

Civil Writ No. 45 of 1955.

1956

June 29th

Punjab Excise Act (I of 1914)—Sections 2(18), 24(4), 26, 35, 54—Constitution of India, Articles 14 and 19—Supply of Liquor by a club to its members, whether constitutes sale within the meaning of section 26 Punjab Excise Act—Notifications (i) prohibiting sale of liquor by Club to its members (ii) prohibiting keeping of liquor by a member on premises of an unlicensed Club—Validity of—Constitution of India, Article 19—Punjab Excise Act—Validity of—Discretion to issue licence to sell liquor, under section 35 of