1961

Inder Singh
v.
Gurdial Singh

S. K. Das J.

on March 24, 1946, and the execution of a deed of adoption which he cancelled within a short time were not a sufficient manifestation of the intention of Nathu to adopt Inder Singh as his son. There was no evidence that Nathu Singh treated Inder Singh as his son; on the contrary, there was evidence to show that he repudiated the declaration that he had earlier made.

For the reasons give above, we see no merit in the appeal which is, accordingly, dismissed with costs.

Appeal dismissed.

1961

April 10.

RAMDHANDAS AND ANOTHER
v.
THE STATE OF PUNJAB

(P. B. GAJENDRAGADKAR, A. K. SARKAR, K. N. WANCHOO, K. C. DAS GUPTA and N. RAJAGOPALA AYYANGAR, JJ.)

Shop Establishments—Enactment to provide for regulation of hours of work—Constitutional validity—Forty eight hour week—Opening and closing hours—Reasonable restrictions—Punjab Shops and Commercial Establishments Act, 1958 (Punj. 15 of 1958), ss. 4, 7, 9, 10—Constitution of India, Arts. 19(1)(g), 19(6).

Section 7 of the Punjab Shops and Commercial Establishments Act, 1958, provided that no person shall be employed about the business of an establishment for more than forty eight hours in any week and nine hours in any one day. Under s. 9 of the Act no establishment shall, save as otherwise provided by the Act, open earlier than ten o'clock in the morning or close later than eight o'clock in the evening. The petitioners challenged the constitutional validity of the aforesaid provisions of the Act on the ground that having regard to the nature of their business, it would be impossible for them to carry it on in the manner in which they were doing unless the Act permitted them to work without regard to the restrictions imposed by the limitation as to hours of work of employees under s. 7(1) or the hours for the opening and closing of the establishments under s. 9, and that,

consequently, these provisions imposed unreasonable restrictions on their fundamental right to carry on their trade or business under Art. 19(1)(g) of the Constitution of India. The petitioners' case was that their business was such that the customers who supplied them with goods brought them in vehicles which arrived at their godowns at all hours of the day and night and that they received messages by telephone and telegram similarly both during day and night. These according to them rendered it necessary that their place of business should be kept open practically for all the 24 hours of the day.

Held, that ss. 7 and 9 of the Punjab Shops and Commercial Establishments Act, 1958, are *intra vires* the Constitution of India.

The test of constitutional validity is whether the impugned provisions of the Act which were enacted to afford the worker better conditions of work and more regulated hours so as to avoid physical overstrain and ensure to him a reasonable amount of leisure in the interest of the general public, are unreasonable restrictions from the point of view of the employer and go beyond what is reasonably needed to protect the worker. Judged by this test, neither the 48-hour week, nor the specification of the opening and closing hours could be said to have gone beyond what by modern standards are necessary for ensuring the health and efficiency of the employee.

Manohar Lal v. *The State of Punjab*, [1961] 2 S.C.R. 343, followed.

ORIGINAL JURISDICTION: Writ Petition No. 164 of 1958.

Writ Petition under Art. 32 of the Constitution of India for the enforcement of Fundamental Rights.

N. C. Chatterjee and *Naunit Lal*, for the petitioners.

N. S. Bindra and *D. Gupta*, for the respondent.

1961. April 10. The Judgment of the Court was delivered by

AYYANGAR, J.—The constitutional validity of the operative provisions of the Punjab Shops and Commercial Establishments Act, 1958 (Punjab Act 15 of 1958), which we shall hereafter refer to as the Act, is challenged in this writ petition filed under Art. 32 of the Constitution, seeking reliefs appropriate to such a challenge. *Ayyangar J.*

There are two petitioners and the nature of the business carried on by them, which is set out in the

1961

Ramdhandas v. State of Punjab

Ayyangar J.

petition, indicates that they have combined with a view to bring up before the Court the implications of the enactment with reference to different types of business which traders in the Punjab might be carrying on and which would be impeded or restricted by the provisions of the Act. The first petitioner states that he has a shop at Mandi Dabwali in Hissar District where he carries on business in the purchase and sale of grains, etc. in wholesale. The relevant averment in regard to the nature of his business is that the customers who supply him with goods bring them loaded in carts drawn by camels or bullocks and that these vehicles arrive at his godowns at all hours of the day and night. He also states that for the purpose of the purchases or sales effected by him, he receives messages by telephone and telegram both during the day and the night. These, according to him, render necessary, if he has to carry on business as he has been doing all along, that his place of business should be kept open practically the whole of the day and night, i.e., for all the 24 hours. The second petitioner states that he is carrying on a retail business on a small scale, and that he employs no outsider but attends to all the work in the shop himself, with the assistance, if necessary, of the members of his family. In this case also it is stated that the goods purchased are brought to him at all hours of the day and night and similarly he has to receive messages during the entire period. It is in this background that the petitioners desire that the Court should view the restrictions imposed upon them by those provisions of the Act which are challenged in the petition.

We shall now proceed to set out the impugned provisions of the Act with a view to determine whether for all or any of the reasons set out in the petition, any of them could be said to constitute an unreasonable restriction on the right to carry on trade or business so as not to be protected by Art. 19(6) of the Constitution which is the gravamen of the complaint formulated in the petition.

The Act received the assent of the President on April 25, 1958, and was published in the Punjab

Gazette on May 1, 1958. According to the preamble, it is an Act to provide for the regulation of conditions of work and employment in shops and commercial establishments. The Act repealed and re-enacted, with modifications, the Punjab Trade Employees Act, 1940, to which enactment also it would be necessary to advert in its proper place. Section 1(3) of the Act provides that the Act shall come into force on such date as Government may, by notification appoint in this behalf and by a notification under this provision the Act was directed to come into force from June 1, 1958. The Act, however, did not of its own force apply to the entirety of the Punjab State, for s. 1(4) enacted:

> "1(4). It shall apply in the first instance to the areas specified in the Schedule, but Government may by notification direct that it shall also apply to such other area and on such date as may be specified in the notification."

Mandi Dabwali where the petitioners carry on business is one of the local areas in the district of Hissar set out in the Schedule annexed. We might here note that the main grievance of the petitioners appears to be that it has not been brought into force in neighbouring local areas and that this disparity in the regulations is acting to the disadvantage of people carrying on business in the areas set out in the Schedule. This, however, cannot obviously be a ground of constitutional grievance and learned Counsel therefore very properly did not rely on it except merely to draw our attention to this fact.

Section 2(iv) defines a 'a commercial establishment' to which the Act applies as meaning "any premises wherein any business, trade or profession is carried on for profit", omitting the unnecessary words. Section 2(v) defines 'day' as meaning "the period of twenty-four hours beginning at midnight", again omitting what is immaterial. The operative provisions of the Act which were attacked in the petition are ss. 7 and 9 and it would be convenient to set out their material terms:

> "7. Hours of employment.—(1) Subject to the

1961

Ramdhandas
v.
State of Punjab

Ayyangar J.

provisions of this Act, no person shall be employed about the business of an establishment for more than forty-eight hours in any one week and nine hours in any one day.

(2) .....
(3) .....
(4) .....
(5) .....

9. Opening and closing hours.—No establishment shall, save as otherwise provided by this Act, open earlier than ten o'clock in the morning or close later than eight o'clock in the evening;

Provided that any customer who was in the establishment before the closing hour may be served during the period of fifteen minutes immediately following such hour;

Provided further that the State Government may, by order and for reasons to be recorded in writing, allow an establishment attached to a factory to open at eight o'clock in the morning and close at six o'clock in the evening.

Provided further that the State Government may, by notification in the official Gazette, fix such other opening and closing hours in respect of any establishment or class of establishments, for such period and on such conditions, as may be specified in such notification."

For the sake of completeness and to understand the scheme of the enactment we would set out the terms of s. 10 also, which reads:

"10. Close day.—(1) Save as otherwise provided by this Act, every establishment shall remain close on every Sunday:

Provided that, in the case of an establishment attached to a factory, the employer may substitute the close day of such establishment so as to correspond to the substituted close day of the factory in the same manner and subject to the same conditions as are laid down in this behalf in the Factories Act, 1948.

(2) (i) The employer of an establishment shall in the prescribed form intimate to the prescribed

authority the working hours and the period of interval of the employed persons within fifteen days of the date of registration of the establishment.

(ii) The employer of an establishment may change the working hours and the period of interval once in a quarter of the year by giving intimation in the prescribed form to the prescribed authority at least fifteen days before the change is to take place.

(3) Notwithstanding anything contained in subsection (1), the employer of an establishment may open his establishment on the close day if—

(a) such day happens to coincide with a festival; and

(b) employees required to work on that day are paid remuneration at double the rate of their normal wages calculated by the hour".

It is urged by Mr. Chatterji—learned Counsel for the petitioners—that having regard to the nature of the petitioners' business, whose features we have set out earlier, it would be impossible for them to carry it on in the manner in which they have been doing up to now, unless the Act permitted the first petitioner to work without regard to the restrictions imposed by the limitation as to hours of work of employees imposed by s. 7(1) of the Act, and both the petitioners without regard to the hours for the opening and closing of the "establishments" under s. 9.

Before entering on a discussion of the constitutional propriety of the restrictions imposed we may point out that the provisions of the Act contemplate that establishments might fall under three categories: (1) where it is necessary in the public interest, and having regard to the service which they render to the community, that the normal hours of working should not be subject to the restrictions imposed by ss. 9 or 10, (2) those in which there is no need for complete freedom from these restrictions, but in which an adjustment merely as regards the hours set out in s. 9 is sufficient, (3) those in which neither the requirements of the trade nor, of course, the interest of the general public

1961

Ramdhandas
v.
State of Punjab

Ayyangar J.

would suffer if the establishment adjusted its operations in conformity with the Act.

The first head is dealt with by s. 4 of the Act which reads:

"4. Provisions of sections 9 and 10 not applicable to certain establishments.—Nothing in sections 9 and 10 shall apply to—

(a) clubs, hotels, boarding houses, stalls and refreshment rooms at the railway stations;

(b) shops of barbers and hair-dressers;

(c) shops dealing mainly in meat, fish, poultry, eggs, dairy produce (except ghee), bread, confectionery, sweets, chocolates, ice, ice-cream, cooked food, fruit, flowers, vegetables or green fodder;

(d) shops dealing mainly in medicines or medical or surgical requisites or appliances and establishments for the treatment or care of the sick, infirm, destitute or mentally unfit;

(e) shops dealing in articles required for funerals, burials or cremations;

(f) shops dealing in pans (betel leaves), biris or cigarettes, or liquid refreshments sold retail for consumption on the premises;

(g) shops dealing in newspapers or periodicals, editing and despatching sections of the newspaper offices and offices of the news agencies;

(h) cinemas, theatres and other places of public entertainment;

(i) establishments for the retail sale of petrol and petroleum products used for transport;

(j) shops in regimental institutes, garrison shops and troop canteens in cantonments;

(k) tanneries;

(l) retail trade carried on at an exhibition or show, if such retail trade is subsidiary or ancillary only to the main purpose of the exhibition or show;

(m) oil mills not registered under the Factories Act, 1948;

(n) brick and lime kilns;

(o) commercial establishments engaged in the manufacture of bronze and brass utensils so far as

it is confined to the process of melting in furnaces; and

(p) saltpetre refineries."

Similarly by notification of the State Government dated June 1, 1958, the following classes of establishments were exempted from the provisions of ss. 9 and 10:

"(1) establishments dealing in the retail sale of Phullian, Murmura, sugar-coated grams and Reoris;

(2) commercial colleges of shorthand and typewriting.

(vide Punjab Government notification No. 6567. S-Lab. 58/1737-RA, dated June 1, 1958.)

(3) all booking offices of the Transport Services.

(vide Punjab Government notification No. 6147/5815-C-Lab-58/1741-RA, dated June 1, 1958)."

(2) The second category of cases are those covered by the second and third provisos to s. 9. Action has been taken under the third proviso to s. 9, by a notification which was issued at the same time as when the Act was brought into force which runs in the following terms:

"The following categories of establishments in the State of Punjab shall not open earlier than eight o'clock in the morning or close later than six o'clock in the evening during the period from 1st May to thirty-first August every year:—

(1) establishments dealing in timber, manufacture of furniture, tents, supply of furniture or tents on hire, cycles or their repairs, or painting or dyeing;

(2) establishments, other than tailoring establishments, which include 'workshops' or other establishments where articles are produced, adapted or manufactured, with a view to their use, transport or sale; and

(3) establishments dealing in agricultural produce brought for sale by producers.

(vide Notification No. 6567. S-Lab-58/1735-RA, dated June 1, 1958)."

(3) Those outside s. 4 and which are not covered by notifications under the provisos to s. 9 have, of

1961

Ramdhandas
v.
State of Punjab

Ayyangar J.

course, to adjust their business in accordance with the requirements of the Act. It is in the context of these exceptions and the elasticity for which provision is made to meet the imperative requirements of particular types of business, that the constitutional objection has to be considered.

The constitutional objection is that, the impugned provisions impose unreasonable restrictions on the fundamental right of the petitioners "to carry on their trade or business". The regulation of contracts of labour so as to ameliorate their conditions of work is in reality a problem of human relationship and social control for the advancement of the community. The public and social interest in the health and efficiency of the worker is, at the present day, beyond challenge. Our Constitution does not protect or guarantee any fundamental right in the nature of the provision in Art. 1, s. 10(1), of the U. S. Constitution against "impairment of the obligation of contracts". The only test of constitutional validity therefore is whether the provision in the impugned law, which is enacted to avoid physical overstrain of the worker, and so as to afford him better conditions of work, and more regulated hours, thus ensuring to him a reasonable amount of leisure—factors which would render the restrictions in the interest of the general public, is unreasonable from the point of view of the employer. For answering this question it would be necessary to ask—are the restrictions necessary, or do they go beyond what is reasonably needed to protect the worker? Judged by this test, neither the 48-hour week, nor the specification of the opening and closing hours can be said to have gone beyond what by modern standards are necessary for ensuring the health and efficiency of the employee. It might also be added that the concept of what is necessary to secure the welfare of labour, or indeed of the elements which determine its content are neither of them fixed or static, but are dynamic, being merely the manifestation or index of the social conscience as it grows and develops from time to time.

Besides, this point regarding restrictions of this

nature being unreasonable is concluded against the petitioners by the decision of this Court in *Manohar Lal* v. *The State of Punjab* (1) judgment on which was delivered on November 11, 1960. The provision there impugned was s. 7 of the Punjab Trade Employees Act, 1940, (which, as stated earlier, had been repealed and re-enacted with modifications by the Act) which directed that the shops and establishments to which it applied should remain closed on one day in the week (corresponding to s. 10 of the Act of 1958). The appellant before this Court was a small trader who did not employ any person under him but who, like the second petitioner before us, himself with the members of his family attended to all the requirements of his shop. Basing himself on this feature he challenged the validity of the provision which restricted his right to carry on his business in such manner as he chose on all the seven days in the week. In repelling these objections this Court said:

> "The ratio of the legislation is social interest in the health of the worker who forms an essential part of the community and in whose welfare, therefore, the community is vitally interested. It is in the light of this purpose that the provisions of the Act have to be scrutinized..... The learned Judges of the High Court have rested their decision on this part of the case on the reasoning that the terms of the impugned section might be justified on the ground that it is designed in the interest of the owner of the shop or establishment himself and that his health and welfare is a matter of interest not only to himself but to the general public..... A restriction imposed with a view to secure this purpose would, in our opinion, be clearly saved by Art. 19(6)... Apart from this, the constitutionality of the impugned provision might be sustained on another ground also, viz., with a view to avoid evasion of provisions specifically designed for the protection of workmen employed. It may be pointed out that acts innocent in themselves may be prohibited and the restrictions in that regard would

(1) [1961] 2 S.C.R. 343.

1961

Ramdhandas v. State of Punjab

Ayyangar J.

be reasonable, if the same were necessary to secure the efficient enforcement of valid provisions. The inclusion of a reasonable margin to ensure effective enforcement will not stamp a law otherwise valid as within legislative competence with the character of unconstitutionality as being unreasonable."

These observations, in our opinion, clearly apply and suffice to support the validity of the related provisions here impugned.

The petition fails and is dismissed with costs.

Petition dismissed.

1961

April 10.

GLASS CHATONS IMPORTERS & USERS' ASSOCIATION

v.

UNION OF INDIA

(P. B. GAJENDRAGADKAR, A. K. SARKAR, K. N. WANCHOO, K. C. DAS GUPTA and N. RAJAGOPALA AYYANGAR, JJ.)

Import and Export—Decision to canalise import through specialised channel or agency—Constitutional validity—Import and Export Control Act, 1947—(XVII of 1947), s. 3—Imports (Control) Order, 1955, Para. 6(h)—Constitution of India, Arts. 14, 19(1)(f) & (g) and 31.

The appellants were importers and users of glass chatons the import of which was prohibited except under a licence granted by the licensing authorities under the Import and Export Control Act, 1947, and the Imports (Control) Order, 1955. The import was totally prohibited for some time but afterwards it was permitted under the Export Promotion Scheme and licence was issued in favour of the State Trading Corporation. The appellants who made no application for licence contended *inter alia* that the provisions of para. 6(h) of the Imports (Control) Order, 1955, that the Central Government or the Chief Controller of Imports and Exports may refuse to grant a licence or direct any licensing authority not to grant licence if the licensing authority decided to canalise imports and the distribution thereof through special or specialised agencies or channels are unreasonable restrictions on the right to carry on trade