

Matrumal Sharma And Anr. vs The Chief Inspector Of Shops And ... on 25 March, 1952

Equivalent citations: AIR1952ALL773, AIR 1952 ALLAHABAD 773

ORDER

1. This is a petition under Article 228 of the Constitution praying for transfer of a pending criminal case against the petitioner from the Court of the City Magistrate to this Court.

2. The first petitioner, Matrumal Sharma is the proprietor of Sharma Restaurant in Aminabad, Lucknow. Niranjan Lal Sharma, the second petitioner is its manager. Both of them are being criminally prosecuted under Section 27, U. P. Shops and Commercial Establishments Act, for failure to maintain a register of attendance of employees as required by Rule 13 framed under Section 31 of the Act.

3. Section 26 provides:

"Subject to any general or special order of the State Government, an employer shall maintain such registers and records and display such notices as may be prescribed."

4. Under Section 31, the State Government is empowered to make rules to carry out the purposes of the Act. It expressly confers rule-making powers with, respect to the maintenance by the employer of registers and records and to regulate "matters which are to be or may be prescribed."

5. Rule 13 enjoins that every employer must maintain a register of attendance and wages in form E and another register of holidays in form F. According to the prosecution case, the applicants are governed by the U. P. Shops and Commercial Establishments Act & they are liable to punishment under Section 27 for infringing the aforementioned rule. Section 27 makes the contravention by an employer of any provision of the Act or any rule or order made thereunder punishable with fine which may extend to fifty rupees for the first offence and to five hundred rupees for every subsequent offence after the first conviction.

6. The defence was based principally on two grounds: (1) That the applicants were not governed by the Act in view of Section 4 which provides that it shall not apply to persons whose work is inherently intermittent such as a traveller or canvasser, it being urged that such was the nature of the work in the applicants' restaurant, and (2) That the Act infringes the fundamental rights guaranteed under Articles 14 and 19(1) of the Constitution.

7. The criminal case was fixed for hearing in the Court of the City Magistrate for 23-7-1951. On that date the petitioner approached this Court for withdrawal of the case to the High Court under Article 228 of the Constitution which lays down that:

"If the High Court is satisfied that a case pending in a Court subordinate to it involves a substantial question of law as to the interpretation of this Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and may-

"(a) either dispose of the case itself, or "(b) determine the said question of law and return the case to the Court from which the case has been so withdrawn together with a copy of its judgment on such question, and the said Court shall on receipt thereof proceed to dispose of the case in conformity with such judgment."

8. The sole question which has been argued and which calls for determination is whether the case against the petitioners involves any substantial question as to the interpretation of the Constitution, the determination of which is necessary for the disposal of the case. It has to be noticed in the first place that if the defence that the Act does not apply to the petitioners succeeds, no decision regarding the Constitutionality of the Act would arise. In order, however, to put an end to the controversy raised on behalf of the petitioners, we think it would be proper to dispose of the application on merits rather than to reject it on the ground that the decision of the constitutional point is not essential at this stage. We will proceed, therefore, to consider as to whether there is a substantial question of interpretation of the Constitution, in other words, whether the Act infringes the fundamental rights conferred by Articles 14 and 19(1)(g) of the Constitution on every citizen of the Indian Union.

9. Article 14 guarantees to every person equality before the law or the equal protection of the law within the territory of India. Section 4 of the impugned Act provides that nothing in it shall apply to "(a) persons occupying positions of a confidential, managerial or supervisory character:

"Provided that the number of employee so exempted in any shop or commercial establishments shall not exceed ten per cent of the total number of persons employed in such shop or commercial establishment:

"Provided also that in any shop or commercial establishment which employs five persons or less no employee shall be exempt from the provisions of this Act;

(b) persons whose work is inherently intermittent, such as a traveller or canvasser;

(c) offices of Government or of local authorities;

(d) establishments for the treatment or the care of the sick, infirm, destitute, or mentally unfit;

(e) members of the family of any employer."

10. The petitioners maintain that the Act denies equality amongst halwais and restaurant-keepers to which class they belong inasmuch as it prescribes the observance of certain formalities by a class of

halwais and restaurant-keepers and subjects them to restrictions and penalties while exempting from its operation classes of persons mentioned in Clauses (a) to (e) and in particular the halwais and restaurant-keepers who carry on their trade with the aid of members of their own family without employing outside labour.

11. The equality referred to in Article 14 has recently been the subject-matter of consideration of their Lordships of the Supreme Court in 'CHARANJIT LAL v. UNION OF INDIA', AIR 1951 S C 41. The interpretation placed by Mukherjea J. with which the Chief Justice of India agreed may be reproduced with advantage:

"It must be admitted that the guarantee against the denial of equal protection of laws does not mean that identically the same rules of law should be made applicable to all persons within the territory of India in spite of differences of circumstances and conditions. As has been said by the Supreme Court of America 'equal protection of laws' is a 'pledge of the nrotection of equal laws'. See 'YICK WO v. HOPKINS', (1886) 118 U S 356 at p. 369, and this means 'subjection to equal laws applying alike to all in the same situation' Vide SOUTHERN RAILWAY CO. v GREENE', (1910) 216 U S 400 at p. 412. In other words, there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is the same. I am unable to accept the argument of Mr. Chari that a legislation relating to one individual or one family or one body corporate would per se violate the guarantee of the equal protection rule.

There can certainly be a law applying to one person or to one group of persons and it cannot be held to be unconstitutional if it is not discriminatory in its character. (See Willis, Constitutional Law, p. 580). It would be bad law 'if it arbitrarily selects one individual or a class of individuals, one corporation or a class of corporations and visits a penalty upon them, which is not imposed upon others guilty of like delinquency'. See 'GULF C. & S. F. R. CO. v. ELLIS', (1897) 163 U S 150 at 159. The Legislature undoubtedly has a wide field of choice in determining and classifying the subject of its laws, and if the law deals alike with all of a certain class it is normally not obnoxious to the charge of denial of equal protection; but the classification should never be arbitrary. It must always rest upon some real and substantial distinction bearing a reasonable and just relation to the things in respect to which the classification is made; and classification made without any substantial basis should be regarded as invalid. See 'SOUTHERN RAIL WAY CO. v. GREENE', (1910) 216 U S 400 at 412."

12. Patanjali Sastri J. who differed from the other learned Judges on the merits of the application nevertheless considered it undeniable that equal protection of the laws cannot mean that all laws must be quite general in their character and application. He observed that:

"A Legislature empowered to make laws on a wide range of subjects must of necessity have the power of making special laws to attain particular objects and must, for that

purpose, possess large power of distinguishing and classifying the persons or things to be brought under the operation of such laws provided the basis of such classification has a just and reasonable relation to the object which the legislature has in view. While for instance a classification in a law regulating labour in mines or factories may be based on age or sex it may not be based on the colour of one's skin. It is also true "that the class of persons to whom the law is made applicable may be large or small and the degree of harm which has prompted the enactment of a particular law is a matter within the discretion of the law makers. It is not the province of the Court to canvass the legislative judgment in such matters."

13. According to Dicey, equality before the law means the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts. He says that: " 'the rule of law' in this sense excludes the idea of any exemption of officials or others from the duty of obedience to the law which governs other citizens or from the jurisdiction of the ordinary tribunals....." (Dicey on the Law of the Constitution, 1948 edn. pages 202-203).

14. Article 14 of the Constitution aims against the conferment of special privileges at law on account of birth, religion, caste or creed and enjoins equal subjection of all persons and classes of persons to the laws of the land without distinction of race, wealth, social status or political affiliations. Applying the principles enunciated by their Lordships of the Supreme Court, it cannot but be held that the inequalities complained of do not come within the constitutional inhibitions of Article 14.

15. The argument relating to the infringement of the freedom to practice the profession of their choice or to carry on any occupation, trade or business rests on three features of the Act. It is urged that inasmuch as the Act (1) regulates the hours of regular and over time work of the employees; (2) regulates the number of holidays and the extent of sick leave and (3) necessitates the keeping of registers of attendance, fines and overtime work etc., it infringes the applicants' right to practice their trade as halwais or restaurant-keepers.

Sub-article (6) of Article 19 lays down that nothing in Article 19(1)(g) shall affect the operation of any existing law in so far as it imposes reasonable restrictions on the exercise of the right of freedom of profession in the interest of the general public and in particular nothing in the Sub-clause (g) shall affect the operation of any existing law in so far as it prescribes the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business. The freedom referred to does not mean the freedom to carry on a trade or profession in a way which may be prejudicial to the public interest and it has, for example, been generally recognized that the State may validly prohibit gambling or immoral occupations, the employment of child labour in certain industries, the licensing of certain kinds of business in the interest of the public safety or regulate the conditions for the manufacture of foodstuffs or chemical products etc. The avowed object of the Act as shown by its preamble is to provide for holidays and to regulate and lay down conditions of and the hours of employment in shops and commercial establishments. It is made applicable to all cases falling outside the purview of Section 4 where labour is employed. The regulation of the hours of work of the employees or the prescription of. holidays and sick leave or the insistence on the observance of the legislative requirements to keep proper records of

attendance, fines or overtime work, does not it would seem *prima facie* deny the freedom of profession. Its underlying purpose is to prevent what is called 'sweating of labour' by persons who by nature of their position as employers have a dominant voice and are apt to use it for their own benefit rather than for the benefit of their own employees.

16. As a result of what has been said above, there is no substantial question of law as to the interpretation of the Constitution involved in the criminal case and recourse, therefore, to Article 228 is unjustified.

17. We dismiss the application with costs which we fix at Rs. 160/-. The interim order of stay dated 24-7-1951, is vacated.