PETITIONER:
M.R.F. LTD.

Vs.

RESPONDENT:
INSPECTOR KERALA GOVT. AND ORS.

DATE OF JUDGMENT: 11/11/1998

BENCH:
S.SAGHIR AHMAD, AND B.N. KIRPAL.,

ACT:

HEADNOTE:

JUDGMENT:
JUDGMENT
S.SAGHIR AHMAD. J.

The classic judgment of Patanjali Sastri, C.J. in State of Madras vs. V.G. Row, 1952 SCR 597 = AIR 1952 SC 196, has again to be referred to and relied upon in this case to settle the controversy regarding the constitutional validity of the Kerala Industrial Establishments (National and Festival Holidays) (Amendment) Act, 1990 (for short, 'the Amending Act') which has already been upheld by a Single Judge, and in appeal, by the Division Bench of the Kerala High Court.

By the Amending Act, national and festival holidays, fixed under the Principal Act, namely, the Kerala Industrial Establishments (National and Festival Holidays) Act, 1958 (for short, 'the Parent Act') were altered. The national holidays were increased from three to four (with the addition of 2nd of October as Mahatma Gandhi's Birthday) and festival holidays were increased from four to nine. The total number of compulsory paid holidays were thus raised from seven to thirteen. This alteration was challenged by the appellants on the ground that the holidays. and festival, so increased were violative of the Fundamental Right guaranteed to them under Article 19(1)(g) to carry on their trade, business or profession. It was also challenged on the ground of arbitrariness as the contention was that the increase in the number of national and festival holidays was wholly arbitrary, without there being any reasonable basis for such increase which has compelled the appellants to pay to their Labour and other employees salary even for closed days on which they do not work.

Article 19(1)(g) provides as under:

> "19. Protection of certain rights regarding freedom of speech, etc. - (1) All citizens shall have the right-
> (a) .....
> (b) .....
> (c) .....
> (d) .....
> (e) .....

(f) .....
(g) to practice any profession, or to carry on any occupation, trade or business.

Sub-clause (6) of this Article provides as under:

"(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to -

(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or

(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise."

Fundamental Rights guaranteed by Article 19 are the basic and natural Rights inherent in the citizen of a free country but none of the seven Rights, guaranteed by Article 19(1), is an absolute Right as each of the Rights is liable to be controlled, curtailed and regulated by law made by the State of the extent set out in Clauses (2) to (6) of the Article. This is based on the old principle enunciated by this Court that "LIBERTY" has to be limited in order to be effectively possessed". Article 19, therefore, while guaranteeing some of the most valued elements of LIBERTY to every citizen, as Fundamental Rights, provides for their regulation for the common good by the State imposing certain restriction on their exercise.

Article 19(1)(g) protects the freedom of each individual citizen to practice any profession or carry on any occupation, trade or business. This is a right distinct from Article 301 which relates to trade, commerce or intercourse both with and within the State.

As pointed out earlier, the Right under Article 19(1)(g) is not absolute in terms but is subject to reasonable restrictions contemplated by Clause (6) thereof. The test of reasonableness of restrictions was considered by this Court on several occasions but all the decisions are not being referred to and only a few are mentioned to make out the focal point on the basis of which we intend to dispose of this case.

We begin with an extract from, what is known as, the locus classicus, written down by Patanjali Sastri, C.J., in the State of Madras vs. V.G. Ros, 1952 SCR 597 = AIR 1952 SC 196 :-

"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. In evaluating such elusive

factors and forming their own conception of what is reasonable in all the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision should play an important part, and the limit to their interference with legislative judgment in such cases can only be dictated by their sense of responsibility and self-restraint and the sobering reflection that the Constitution is meant not only for people of their way of thinking but for all, and that the majority of the elected representatives of the people have in authorising the imposition of the restrictions, considered them to be reasonable."

This decision was followed in Mineral Development Ltd. vs. State of Bihar, (1960) 2 SCR 609 = AIR 1960 SCC 468, and it was laid down that the principle set out by Patanjali Sastri, C.J., have to be considered and kept in view by the Courts in deciding whether a particular Statute satisfies the objective test of reasonableness.

The observations of Patanjali Sastri, C.J., were again approved in Collector of Customs. Madras vs. Nathella Sampathu Chetty. (1962) 3 SCR 786 = AIR 1962 SC 316. Ayyangar, J. who wrote the judgment observed that though there were several decisions of this Court in which the relative criteria were laid down to test the reasonableness of the restrictions imposed under Clause (6) of Article 19, the passage from the Judgment of the Patanjali Sastri, C.J. in State of Madras vs. V.G. Row (Supra), which we have already extracted above, was held sufficient for the purpose of reference.

These decisions were considered, discussed and followed in M/s Laxmi Khandsari vs. State of U.P. & Ors. AIR 1981 SC 873 = 1981 (2) SCC 600.

In examining the reasonableness of a statutory provision, whether it is violative of the Fundamental Right guaranteed under Article 19, one cannot lose sight of the Directive Principles of State Policy contained in Chapter IV of the Constitution as was laid down by this Court in Saghir Ahmad vs. State of U.P., AIR 1954 SC 728 = (1955) 1 SCR 707 as also in Mohd. Hanif Qureshi vs. State of Bihar, 1959 SCR 629 = AIR 1958 SC 731.

This principle was also followed in Laxmi Khandsari's case (supra) in which the reasonableness of restrictions imposed upon the Fundamental Rights available under Article 19 was examined on the grounds, amongst others, that they were not violative of the Directive Principles of State Policy.

On a conspectus of various decisions of this Court, the following principles are clearly discernibly

(1) While considering the reasonableness of the restrictions, the Court has to keep in mind the Directive Principles of State Policy.

(2) Restrictions must not be arbitrary or of an excessive nature so as to go beyond the requirement of the interest of the general public.

(3) In order to judge the reasonableness of the restrictions, no abstract or general pattern or a fixed principle can be laid down so as to be of universal application and the same will vary from case to case as also with regard to changing conditions, values of human life, social philosophy of the Constitution, prevailing conditions and the surrounding circumstances.

(4) A just balance has to be struck between the restrictions imposed and the social control

envisaged by Clause (6) of Article 19.

(5) Prevailing social values as also social needs which are intended to be satisfied by restrictions have to be borne in mind. (See: State of U.P. vs. Kaushailiya, (1964) 4 SCR 1002 = AIR 1964 SC 416)

(6) There must be a direct and proximate nexus or a reasonable connection between the restrictions imposed and the object sought to be achieved. If there is a direct nexus between the restrictions, and the object of the Act, then a strong presumption in favour of the constitutionality of the Act will naturally arise. (See: Kavalappara Kottarathil Kochuni @ Moopli Nayar vs States of Madras and Kerala. (1960) 3 SCR 887 = AIR 1960 SC 1080: O.K. Ghosh vs. E.X. Joseph. (1963) Supp. (1) SCR 789 = AIR 1963 SC 812)

Having regard to what to what has been set out above, we may now proceed to consider the reasonableness of the restrictions imposed in the instant case on the right of the appellants to carry on their trade on business.

It may be mentioned that the appellants do not challenge the legislative competence in enacting the law by which the Parent Act was amended. What is contended is that in altering the number of national and festival holidays and raising its total number to thirteen from seven, the right to carry on trade and business on six additional days has been taken away causing serious loss of production apart from heavy financial liability of making payment of salary or wages to the employees and Labour for the closed days. The restriction placed on this right for keeping their industries closed on national and festival holidays cannot be treated as reasonable within the meaning of Clause (6) of Article 19. This, it is contended, is in contravention of the right guaranteed to them under Article 19(1)(g).

The Directive Principles of State Policy are not enforceable but are nevertheless fundamental in the governance of the country and have to be applied by the State in making the laws. They are essential articles of faith of the country and as such the Legislature, the Executive and the judiciary have to follow them unless there is likely to be an infringement of any express provision of the constitution. They have to be regarded as the "Wisdom" of the Nation manifested in the "paramount" law of the country.

Article 43 of the Constitution provides as under:-

"43. Living wage, etc., for workers. The state shall endeavour to secure, by suitable legislation or economic organisation or in any other way, to all workers, agricultural, industrial or otherwise, work, a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities and, in particular, the State shall endeavour to promote cottage industries on an individual or co-operative basis in rural areas."

This Article enjoins the State to endeavour to secure to all workers, be they agricultural, industrial or otherwise, a living wage and proper conditions of work so as to assure to them a decent standard of life and full enjoyment of leisure and social and cultural opportunities. The idea, therefore, is that the workers would not be compelled to work on all days. While other employees may enjoy national and festival holidays, the workers in an industry or an agricultural farm must work throughout and should not avail of any holiday is not the philosophy of Article 43. As human beings, they are entitled to a period

of rest which would enable them to fully enjoy their leisure and participate in social and cultural activities. It was for this reason that this Court in Manohar Lal vs. State of Punjab, (1961) 2 SCR 343 = AIR 1961 SC 418, upheld the compulsory closure of shop on one day. This decision was followed in Ramdhandas vs. State of Punjab, (1962) 1 SCR 852 = AIR 1961 SC 1559 upholding the restriction placed on the opening and closing hours of the 'shop. Both these decisions were followed in Collector of Customs, Madras vs. Nathella Sampathu Chetty, AIR 1962 SC 316 = (1962) 3 SCR 786. These decisions were treated as social and industrial welfare legislation. On the principles of this philosophy, this Court has already upheld the provisions of the Industrial Disputes Act in Niemla Textile Finishing Mills Ltd. vs. 2nd Punjab Tribunal AIR 1957 SC 329 = 1957 SCR 335; Minimum Wages Act in U.Unichoyi vs. State of Kerala, (1962) 1 SCR 946 = AIR 1962 SC 12; Payment of Bonus Act in Jalan Trading Co. Pvt. Ltd. vs D.M. Aney, AIR 1979 SC 233 = 1979 (3) SCC 220 whereunder compulsory payment of minimum statutory bonus even in the years of loss was held to be valid and reasonable under Article 19(6) of the Constitution.

Coming now to some decisions of the High Courts, we may mention that the Bombay High Court in State of Bombay vs. V.M. Jawadekar, 62 Bombay Law Report 183, has already upheld the provisions of Section 9(1) of the O.P. * Berar Shops and Establishments Act, 1947 (as amended in 1955) which provided for compulsory holidays for the employees and closing of shop. The Allahabad High Court in Matrumal Sharma and another vs. The Chief Inspectors of Shops and Commercial Establishments, V.P. Kanpur. AIR 1952 Allahabad 773, has upheld the validity of the U.P. Shops and Commercial Establishments Act. The provisions of Mysore Shops and Establishments Act. The provisions of Mysore Shops and Establishments Act were upheld in Babajan Mir Zahiruddin vs. State of Mysore and another, AIR 1957 Mysore 64: the provisions of Ajmer Shops and Establishments Act were upheld in Bhanwarlal and others vs. State of Rajasthan and other, AIR 1959 Rajasthan 257; the restrictions placed under Madras Shops and Establishments Act, 1947 were held to be reasonable in Sadasivam vs. State of Madras, AIR 1957 Madras 144. So also the Andhra Pradesh High Court in Grandhi Mangaraju, Manager, Brothers Shop and Branches, Rajam, Srikakulam District vs. Assistant Labour Inspector, Srikakulam and another, AIR 1959 A.P. 604 and a Full Bench of the Punjab and Haryana High Court in Ram Chander Baru Ram vs. The State, AIR 1963 Punjab 148 have upheld their local laws dealing with shops and commercial establishments.

It may be pointed out that the State of Kerala in its counter-affidavit pleaded that in order to introduce the amendments in the Parent Act by which the number of the national and festival holidays were increased, the Government took into consideration the change in social conditions, the developments in the State and the number of holidays enjoyed by other sectors. It was pleaded that the outlook towards Labour has undergone a drastic change since the enactment of the Parent Act in 1958. The contention of the appellants that the increase in holidays would result in the loss of production was refuted by the State on the ground that the power to increase production required healthy Labour force. Some recreation and rest would make the Labour more fit and capable of doing their work more efficiently and satisfactorily which would result in more production. The Kerala Institute of Labour and Employment had already made a study of paid holidays available to

industrial workers in Kerala State in 1982 and after studying the conditions prevailing in about one hundred and eighty public and private industrial establishments as to the national and festival holidays available to their workers had published a report. As per the analysis made in that report, it was noticed that the number of paid holidays available to industrial workers in the public sector in Kerala ranged from seven to twenty one days and in private sector, from seven to seventeen days. It was also noticed that the Government of India had declared sixteen holidays while Government of Kerala had declared eighteen holidays for the year 1990 which were repeated in 1991.

Having regard to the factors enumerated in the counter-affidavit as also to the Directive Principles of State Policy contained in Article 43, we are of the opinion that the Act by which the national and festival holidays have been increased in fully constitutional and does not, in any way, infringe the right of the appellants to carry on their trade or business under Article 19(1)(g). The compulsory closure of the industrial concern on national and festival holidays cannot be treated as unreasonable. It is protected by Clause (6) of Article 19 and, therefore, cannot be treated to be violative of the Fundamental Right under Article 19(1)(g).

The plea under Article 14 also cannot be entertained. The decision by legislative amendment to raise the national and festival holidays in based upon relevant material considered by the Government, including the fact that the holidays allowed by the Central Government and other public sector undertakings were far greater in number than those prescribed under the Act. As pointed out earlier, the Act is a social legislation to give effect to the Directive Principles of State Policy contained in Article 43 of the Constitution. The law so made cannot be said to be arbitrary nor can it be struck down for being violative of Article 14 of the Constitution.

Learned counsel for the appellants contended that before raising the national and festival holidays from their original number under the Parent Act, to the number of days contemplated by the Amending Act, the industries or their representatives should have been given an opportunity of hearing. This argument is wholly untenable. Principles of natural justice cannot be imported in the matter of legislative action. If the Legislature, in exercise of its plenary power under Article 245 of the Constitution, proceeds to enact a law, those who would be affected by that law cannot legally raise a grievance that before the law was made, they should have been given an opportunity of hearing. This principle may, in limited cases, be invoked in the case of sub-ordinate legislation specially where the main legislation itself lays down that before the sub-ordinate legislation is made, a public notice shall be given and objections shall be invited as is usually the case, for example, in the making of municipal bye-laws. But the Principle of Natural Justice, including right of hearing, cannot be invoked in the making of law either by the Parliament or by the State Legislature.

No other point was pressed before us. We, consequently, find no merit in this appeal which is dismissed but without any order as to costs.