

(1991) 10 KL CK 0048
In the High Court Of Kerala
Case No : O.P. No. 11316 of 1990

Excel Glasses Ltd. and Others

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 31-10-1991

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 19, 19(1), 31

Citation : (1992) 2 LLJ 330

Hon'ble Judges : Padmanabhan, J

Bench : Single Bench

Advocate : K.K. Venugopal and Narayana Swamy and Ors, for the Appellant;
Cyriac Joseph, A.A.G., P. Balagangadhara Menon and Ors., for the Respondent

Final Decision : Dismissed

Judgement

Padmanabhan, J.

Kerala Industrial Establishments (National and Festival Holidays) Act (for brevity, the Act) came into force on December 29, 1988, providing for seven paid holidays, comprised of three national and four festival holidays. National holidays are Republic Day (26th of January), May Day (1st of May), and Independence Day (15th of August). Kerala Industrial Establishments (National and Festival Holidays) Amendment Act, 1990 (for short, Amendment Act) increased the national holidays from three to four with the addition of Gandhi Jayanthi, birth day of the Father of the Nation, falling on 2nd of October, Festival holidays were increased from four to nine. Constitutional validity of the Amendment Act is under challenge in these original petitions. At the time of arguments, all concerned made it clear that Gandhi Jayanthi may continue as a national holiday. Challenge was, therefore, confined to the addition of five festival holidays.

2. The Act is applicable to industrial establishments, which take in plantations also. Some of the petitioners are plantations and some are industrial or commercial establishments. Challenge is that Amendment Act is violative of

Articles 14 and 19(1)(g) of the Constitution of India. Respondents denied violations and said that the restrictions, if any, are reasonable in the interest of the general public. But main argument was that the challenge cannot stand in view of the Constitutional protection available under Article 31C of the Constitution, particularly when the legislation was enacted in discharge of the Constitutional obligations under Article 43. Therefore, I shall first advert to the claim for protection under Article 31C, because if that claim is found in favour of respondents, further considerations may be unnecessary, though it could be said the other way that if the legislation could stand scrutiny under Articles 14 and 19(1)(g) the question of protection under Article 31C may not arise.

3. Article 31C was introduced in the Constitution by the 25th Amendment, in the year 1971. First part of the Article says that notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing the principles specified in Clause (b) or (c) of Article 39 shall be deemed to be void on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Articles 14, 19 or 31. Second part of Article 31C is to the effect that no law containing a declaration that it is for giving effect to such policy shall be called in question in any court on the ground that it does not give effect to such policy. Proviso says that when such law is made by the Legislature of the State, provisions of the Article shall not apply thereto, unless such law, having been reserved for the consideration of the President, has received his assent.

4. Validity of this Article was challenged in the decision in His Holiness Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala and Anr. (AIR) 1973 SC 1461. Supreme Court upheld the validity of the first limb, but struck down the second limb. Thus, the first limb and the proviso alone survived the decision. Then Article 31C was again amended by the 42nd Amendment Act, which received the assent of the President on January 3, 1977. Section 4 of the Act amended Article 31C to include all or any of the principles laid down in Part IV instead of the principles specified in Clause (b) or (c) of Article 39 alone. This and other amendments introduced by the 42nd Amendment Act were the subject matter of challenge in the decision in *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, By majority of 4:1. the 42nd Amendment in this respect was struck down. That means, the first limb of Article 31C and the proviso, upheld in *His Holiness Kesavananda Bharati Sripadagalvaru Vs. State of Kerala*, alone survived. We are not concerned with the amendment of Article 368 introduced by Section 55 of the 42nd Amendment Act, which was also struck down in *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, . Net result of the decision is that a law that subserves the principles of Article 39(b) and (c), falling under Part IV of the Constitution, alone will be valid even if it offends Articles 14 or 19 or both.

5. Next relevant decision is *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another*, which was rendered by another Constitution

Bench of equal strength. Contention of the respondents is that this decision overruled *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, and restored Article 31C in the form in which it was amended by the 42nd Amendment Act and, hence all laws giving effect to the policy of the State towards securing the principles laid down in Part IV, including Article 43, are entitled to the protection. Petitioners would say that *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another*, was not at all concerned with the 42nd Amendment, because the law challenged in that case was one coming under Article 39(b), which had constitutional validity even under (AIR) 1980-SC-1789 (*supra*), and what came up for consideration in that case was only the correctness of a Division Bench decision in *Bharat Coking Coal Ltd. Vs. Shri Parmeshwar Kumar Agarwala and Another*, holding that term "coking coal mine" does not include a coke oven plant and whether the Act challenged therein was saved by Article 39(b) or not. According to them, even though the decision in *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another*, expressed some doubts about the correctness of the decision in *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, , the matter was not further probed into and the question was left open. They would also say that the Constitution Bench was not competent to go into the question. It appears that there is great force in these arguments.

6. *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another*, said that the Constitutional validity of Article 31C, as amended by the 42nd Amendment, did not arise for consideration in *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, and whatever is said in that respect could only be taken as obiter. But the decision in *Minerva Mills Ltd. and Others Vs. Union of India (UOI) and Others*, shows that actually the matter came up for consideration and it was decided. Bhagwati, J., who wrote dissenting judgment in that case, himself admitted that the validity of Article 31C, as amended by 42nd Amendment, was the point at issue in that case. Preliminary objection raised by the Attorney General and the Additional Solicitor General to the contrary that the validity of Sections 4 and 55 of the 42nd Amendment Act was of academic importance was rejected. But the view taken in *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another*, is different. Though the decision in *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another*, , at para. 13, said "the dialectics, the logic and the rationale involved in upholding the validity of Article 31C when it confined its protection to laws enacted to further Article 39(b) or 39(c) should uncompromisingly lead to the same resolute conclusion that Article 31C with its extended protection is also constitutionally valid", Their Lordships went on to say, towards the close of that paragraph, "we wish to say no more about the *Minerva Mills* case (*supra*), as we are told that there is pending a petition to review the judgment". Then in para 14, the decision said that though strong reliance was placed on *Minerva Mills* case (*supra*), "we are not really concerned with the decision in that case since that is not the point at issue before us". It is, therefore, clear that Their

Lordships admitted that it was not a point at issue and it was not decided though some observations were made, which could only be treated as obiter, That judgment itself shows that what came up for consideration therein was only whether the Coking Coal Mines (Nationalisation) Act, enacted under Article 39(b), was immune under Article 31C from attack on ground of violation of Articles 14 or 19,

7. A Division Bench of this Court Unni Mammu Haji Vs. State of Kerala, took the view that though Sanjeev Coke's case (supra), expressed some doubts about the correctness of Minerva Mills case (supra) the point was not decided since it did not directly arise for consideration and, therefore, it is clear that the protection under Article 31C is available only if the legislation in question is for implementation of the directives contained in Clause (b) or (c) of Article 39. Though a Full Bench decision of this Court in Elizabeth v. State of Kerala 1991 (1) KLT 475 said that Article 31C gives protection in respect of a law giving effect to the policy of the State relating to all or any of the principles laid down in Part IV of the Constitution, that is only a general statement, without referring to any relevant decision. That decision did not consider any directive principles other than those under Article 39. A Full Bench of the Delhi High Court in the decision in D.C.M. Limited v. Union of India and Ors. (AIR) 1989 Delhi 193 said that so far as Article 31C is concerned, the decision in (AIR) 1980 SC 1989 (supra) is unaffected by the decision in Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another, . That was the view taken in the decision in Bapuji Educational Association v. State (AIR) 1986 Kar 119 (supra) also.

8. Sanjeev Coke's case (supra) could not and did not overrule Minerva Mills case (supra). A Constitution Bench of five Judges cannot overrule another decision of a Constitution Bench of the same strength. In Prakash Amichand Shah Vs. State of Gujarat and Others, , a Constitution Bench of the Supreme Court said that it cannot upset the Constitution Bench decision in an earlier case. In A.R. Antulay Vs. R.S. Nayak and Another, another Constitution Bench of seven Judges said that one Constitution Bench decision is binding on another Constitution Bench of equal strength and a larger Bench alone could overrule the decision of a smaller Bench. That is said to be the practice crystallised into a rule of law. That was the view taken in Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., also. A pronouncement of law by a Division Bench of the Supreme Court was held in that decision to be binding on a Division Bench of the same or a smaller number of Judges. If a larger Constitution Bench of the same or smaller strength feels any doubt about the decision of another Constitution Bench it can only refer the matter to a larger Bench without giving a dissenting rule by itself. A decision in conflict with that of an earlier Bench of the same or greater number of Judges could only be per incuriam. That is the view taken in Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., , also by a Constitution Bench. I do not find any force in the argument of the Additional Advocate General Mr. Cyriac Joseph that as between the decisions of two Constitution Benches of equal strength, the one which gave a unanimous

verdict of all the Judges must have supremacy over a decision rendered by majority. Whether the decision is unanimous or by majority it is by the Bench and the unanimous verdict cannot have any legal supremacy over the other, which was rendered by majority. None of these questions may arise for consideration evidently for the reason that Sanjiv Coke's case (*supra*) did not refer the matter to a larger Bench because Their Lordships did not want to decide that issue which did not come up for consideration in that case. Only some doubts were expressed and the matter was left open.

9. In *A.R. Antulay Vs. R.S. Nayak and Another*, a Constitution Bench of seven Judges of the Supreme Court said that Supreme Court, under its rules of business, ordinarily sits in divisions and not as a whole one and each Bench, whether small or large, exercises powers vested in the Court and decisions rendered by the Benches irrespective of their size are considered as decisions of Supreme Court. It is also said that a practice has developed that a larger Bench is entitled to overrule the decision of a smaller Bench notwithstanding the fact that each of the decisions is that of the Court. Their Lordships went on to say "that principle, however, would not apply in the present situation and since we are sitting as a Bench of seven, we are not entitled to reverse the decision of the Constitution Bench. Overruling, when made by a larger Bench, of an earlier decision of a smaller one is intended to take away the precedent value of the decision without affecting the binding effect of the decision in the particular case". It is in order to guard against the possibility of inconsistent decisions on points of law by different Benches that the rule has been evolved, in order to promote consistency and certainty in the development of law and its contemporary status, that the statement of law by one Bench is binding on another of the same or lesser number of Judges. This principle was evolved in India by several generations of Judges. What is binding under Article 141 is only the law declared by Supreme Court. Doubts or assumptions without any decision in a judgment on a matter which did not arise for consideration could only be obiter and not declaration of law under Article 141 of the Constitution. Even though the obiter dicta of the Supreme Court is also binding on High Courts, when there is a binding decision to the contrary, position is different. As held in *Union of India (UOI) and Another Vs. Raghbir Singh (Dead) by Lrs. Etc.*, , when a statute is declared invalid in India, it cannot be reinstated unless it is overruled by a larger Bench or Constitutional sanction is obtained therefore by a Constitutional amendment or an appropriately modified version of the statute is enacted, which accords with Constitutional prescription. Even if the strength of the two differing Benches constituted the same number of Judges, it is not open to one Bench to decide the correctness or otherwise of the views of the other. As between a direct decision and an obiter dicta in another decision, it is definitely the former one that would prevail. Even conceding that they are conflicting decisions, in such a situation, it is open to the High Court to choose as to which should apply to the case before it.

10. Further, under the proviso to Article 31C if the law which claims protection is

made by the Legislature of a State, the provisions of Article 31-C shall not apply unless such law, having been reserved for the consideration of the President, has received his assent. Only contention in the counter affidavit, which itself has not been established, is that assent of the President was obtained under Article 254(2), which is for a different purpose and not under the proviso to Article 31-C. A Constitution Bench of the Supreme Court, in *Gram Panchayat of Village Jamalpur v. Malwinder Singh and Ors.*(AIR) 1985-SC-1394, at Paragraphs 12 and 19, said that if assent is given in general terms so as to be effective for all purposes, different considerations may arise. But, if the assent is sought and obtained for a specific purpose, the efficacy of the assent would be limited to that purpose and cannot be extended beyond it. Assent, if any, obtained under Article 254(2), cannot be used for the purpose of Article 31-C.

11. Legislation in question could claim protection only under Article 43. Article 31-C, as it now survives in the light of the facts and law discussed above, could afford protection for Articles 14 and 19 only for legislations enacted in furtherance of the directive principles under Article 39(b) and (c). Therefore, the Amendment Act will have to be tested in the light of Articles 14 and 19, because protection could be claimed only under Article 43, which must be subject to Articles 14 and 19, because protection could be claimed only under Article 43, which must be subject to Articles 14 and 19. Only if the legislation is for the purposes mentioned in Article 39 (b) and (c), State can contend that the protection afforded by Article 14 or 19 is not available. In every other case, Articles 14 and 19 would come into play and Article 31-C cannot be pressed into service to get over the violations of Articles 14 and 19. In this connection, it is worth remembering that after (AIR) 1980-SC- 1789 (*supra*), or (AIR) 1983-SC-239 (*supra*), no decision was rendered by the Supreme Court upholding that the benefit of Article 31-C is available to any legislation under Part IV other than those under Article 39(b) and (c). Since the protective umbrella of Article 31-C is not available, the impugned provision will have to be tested in the light of Articles 14 and 19.

12. One of the attacks against the Amendment Act was that the festival holidays were arbitrarily increased, without any demand or identification and without any investigation or consultation, unmindful of the need for the increase and ignoring what the Supreme Court said and what is happening in the neighbouring States. Parent Act was enacted in 1958, after considering Ext.P3 proceedings of the Industrial Relations Board. It is said that thereafter in 1968 or 1969, a study group, appointed by the National Commission on Labour submitted a report and that was also not taken into account. These allegations were denied on behalf of the respondents. It is said that members of the Executive Council of the Kerala Institute of Labour and Employment studied the subject and submitted a report which was also considered. It was also pointed out that the amendment bill was referred to the Subject Committee, which also studied the matter and submitted a report and the bill was passed after due deliberation and the assent of the President was also obtained under Article 254(2). On behalf of the petitioners, it

was argued that the number of paid national and festival holidays in the neighbouring States, like Tamil Nadu and Karnataka, were also not taken into account.

13. As held in *Sant Lal Bharti v. State of Punjab* (AIR) 1988- SC-485, Article 14 of the Constitution does not authorise striking down of a law of one State on the ground that in contrast with a law of another State on the same subject its provisions are discriminatory or different. Nor does it contemplate a law of the Centre or of a State dealing with similar subjects being held to be unconstitutional by a process of comparative study of the provisions of two enactments. The source of authority for the two statutes being different, Article 14 can have no application. So also, even without a demand, a labour welfare legislation could be enacted if the Legislature finds that it is necessary to achieve the Directive Principles of State Policy. Need is for the Legislature to decide and the Court need decide only its constitutionality. I am in full agreement with the view taken in the decision in *Syed Saheb & Sons v. State of Mysore* 1972 (1) MLJ 450. But, on facts, Additional Advocate General pointed out that there were persistent general complaints regarding inadequacy of festival holidays, even though the complaint was not in relation to any particular festival day.

14. I can scarcely be disputed that securing of living wages to labourers, which ensure not only bare physical subsistence, but also maintenance of health and decency, is conducive to the general interest of the public. This is one of the Directive Principles of State Policy, included in Article 43 (*Bijay Cotton Mills Ltd. and Ors. v. State of Ajmer* 1955 II LLJ 129). There is strong presumption in favour of the constitutionality of the Statute. Unconstitutionality is to be alleged and proved. Even if two views are possible, presumption may be in favour of Constitutionality (*V.M. Syed Mohammad and Company Vs. The State of Andhra*, and *Madhubhai Amathalal Gandhi Vs. The Union of India (UOI)*, . In pronouncing on the constitutional validity of a statute, Court is not concerned with the wisdom or unwisdom, justice or injustice of the law. If that which is passed into law is within the scope and powers conferred on a legislature and it violates no restrictions on that power, the law must be upheld whatever a court may think about it (*State of Bombay and Anr. v. F.N. Balsara* 1951 SC 685). Court cannot substitute its wisdom for that of the Legislature (*Darshan Singh and Others Vs. State of Punjab*, . It must be presumed that the Legislature understands and correctly appreciates the needs of its own people, that its laws are directed to the problems made manifest by experience and that its discriminations are based on adequate grounds. Legislature is free to recognise the degrees of harm and may confine its restrictions to those cases where the need is deemed to be the clearest. In order to sustain a presumption of Constitutionality, Courts may take into consideration the matters of common knowledge, matters of common report, history of the times and may assume every state of facts existing at the time of legislation. Good faith and knowledge of the existing conditions on the part of the Legislature are to be presumed if there is nothing on the face of the law or the surrounding circumstances brought to the notice of the Court on which

the classification may be reasonably regarded as based. *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, Under Article 43 of the Constitution, it is the duty of the Parliament to enact appropriate laws to secure to all workers conditions of work ensuring decent standards of life and full enjoyment of leisure and to prevent unscrupulous exploitation of labour. The decision on the question whether there is need for the legislation or not finally rests with the Legislature and it is not for the Court to express any opinion on it. (*P.Syed Saheb & Sons v. State* (supra) and *Banerjee v. Anitha Pan* (AIR) 1957 SC 1146.) As held in *Chinnamarkathian alias Muthu Gounder and Others Vs. Ayyavoo alias Periana Gounder and others*, at para. 6, while construing the provisions of such enactments, Court should adopt that construction which advances, fulfils and furthers the objects of the Act rather than the one which would defeat the same and render the protection illusory. Constitution has expressed a deep concern for the welfare of the workers and had provided in Article 42 that the State shall make provision for securing just and humane conditions of work and, in Article 43 that 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 employment of leisure. Mandate of Article 37 is that though the Directive Principles are not enforceable by any court, the principles are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws. Though courts are not free to direct making of legislations, courts are bound to evolve, affirm and adopt principles of interpretation which will further and not hinder the goals set out in the Directive Principles of State Policy. This command of the Constitution must be ever present in the minds of Judges when interpreting statutes which concern themselves, directly or indirectly, with matters set out in the Directive Principles of State Policy *U.P. State Electricity Board, v. H. S. Jain* It is for the State to decide what economic and social policy it should pursue and what discriminations advance these social and economic policies. In view of the inherent complexity to these fiscal adjustments, courts give a larger discretion to the Legislature in the matter of its preferences of economic and social policies and effectuate the chosen system in all possible and reasonable ways (*P.M. Ashwathanarayana Setty and Others Vs. State of Karnataka and Others*,

15. In respect of legislations and notifications concerning wages, working conditions and other amenities for the working classes, Courts have always adopted liberal attitude and the interests of the workers are to be protected notwithstanding the hardship that might be caused to the employers. It is, therefore, open to the Legislature or the authorities concerned to ensure proper holidays for working classes and provide certain closed days in the year *Municipal Corporation of the City of Ahmedabad and Others Vs. Jan Mohammed Usmanbhai and Another*, It is extremely inadvisable for the court to interfere with the measures of economic control and planning directed at maximising general welfare. Courts . cannot pass judgments on the wisdom of the Legislature, unless

actions taken are so completely unreasonable that no law can be cited to sanction them. (*Prag Ice and Oil Mills and Another Vs. Union of India (UOI)*, These are the legal and factual backgrounds, on which the challenge made by petitioners will have to be understood and appreciated. It is not for the courts to consider the details of the steps taken by the Legislature to ensure the needs for bringing the legislation in hand.

16. It was argued by Mr.K.K. Venugopal, on behalf of some of the petitioners, that there are many social welfare legislations like Factories Act, Plantation Labour Act, Shops and Commercial Establishments Act, E.S.I. Act, Maternity Benefits Act, Workmen's Compensation Act, etc. looking after the welfare of workers and providing for their health, recuperation and physical and mental well-being and that the total working days, even before the amendment, were only 279 per year, whereas what the National Commission recommended was 305 to 310. He said that social welfare could only be through work and not through more holidays and that festival holidays are not at all concerned with rest, recreation, health or need for recuperation of physical and mental well-being, but they are concerned only with identification of festivals which are to be enjoyed. Unfortunately, I am not in a position to agree. Evidently, it is a social welfare legislation in furtherance of the Directive Principles of State Policy. The factual position in regard to leave in relation to above- said enactments itself was disputed and I do not think it necessary to go into those aspects in detail. Anyhow, it is definite that the Act is in addition to and independent of those legislations.

17. Legislature in its wisdom, after due enquiry, was satisfied that more festival holidays are required. It is true that festival holidays were not identified. But that is left to be decided by the Inspector in consultation with the employees and employers in relation to establishments on identification of festival holidays applicable. We are not very much concerned with that aspect. National holidays are intended to commemorate cherished values in relation to national events or men whose memories are to be cherished as valuable to the nation. But festival holidays are intended to celebrate festive occasions. These are also occasions of rest, rejuvenation, celebration and enjoyment in identification with important events for celebration of a festival. Provisions for paid festival holidays are intrinsically connected with the relevant Directive Principles of State Policy, which the State is bound to achieve. Objects behind the Amendment Act are, (i) to provide wages even if the holiday falls during strike or illegal lock-out; ii) to include Gandhi Jayanthi Day; and iii) to increase the number of festival holidays.

18. On behalf of some of the petitioners, M/s. Narayana Swami and Venugopal cited decisions of the Supreme Court impressing upon the necessity of more production and less number of holidays. Decisions in *Saxby and Farmer (India) Private Limited Vs. Their Workmen*, ; *Bijili Cotton Mills (P) Ltd. Vs. The Presiding Officer, Industrial Tribunal II and Others*, ; *Federation of Small and Medium Industries and Others Vs. The Workmen and Others*, ; *Hindustan Steel Ltd. Vs.*

Their Workmen and Others, , Pfizer (P) Ltd. Bombay Vs. The Workmen, ; The Indian Oxygen Limited Vs. Workmen and Others, ; Pfizer (P) Ltd. Bombay Vs. The Workmen, and some other decisions were cited before me. All these decisions dealt with awards on industrial disputes in relation to holidays. Supreme Court said that in our country, there are too many holidays and that too when the need for industrial production is urgent and paramount and it may be advisable to reduce the number of holidays in industrial concerns. Emphasis was on the aspect that there should be more concentration on increase of production and efficiency than on enjoying holidays if the country is to move ahead on the road to prosperity. Opinion of the National Commission in its report also supported this view, which was endorsed by Supreme Court. Supreme Court said that custom, practice and uniformity in the industry, without prejudicially affecting efficiency and increased production, are some of the relevant factors which are to be taken into account in determining the number of paid festival holidays per year. But, in some of these cases, Supreme Court itself accepted and ratified more number of paid holidays than allowed by the Amendment Act in question. As held in *Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union*, considerations are different when a legislative process is challenged as unconstitutional.

19. It is true that all are entitled to equality before law or equal protection of the laws and the right to practice any profession or to carry on any occupation, trade or business. But that will not prevent reasonable restrictions in the exercise of right being imposed in the interest of general public. "In the interest of general public" occurring in Article 19(6) of the Constitution need not always mean, interest of the whole of the public. It means what we may call "in public interest" (*Bhanwar Lal v. State* (AIR) 1959 Raj. 257). "General public" means, even a particular class of the general public and even if the restrictions is in the interest of a class of the general public, if that class, on the basis of a reasonable differentia, can be distinguished from others, the restriction, if reasonable, will not be ultra vires *Madho Singh Vs. The State of Bihar and Others*,

20. "Reasonable restriction" connotes that the limitation imposed upon a person in enjoyment of a right should not be arbitrary or of an excessive nature beyond what is required in the interest of the public. 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 under Article 19(1)(g) and the social control permitted by Clause (6) of Article 19, it must be held to be wanting in reasonableness. A law or order, which confers arbitrary and uncontrolled power upon the executive cannot but be held to be unreasonable. Proved public interest in the mandate of Article 19(6) *Dwarka Prasad Laxmi Narain Vs. The State of Uttar Pradesh and Others*, and *Saghir Ahmad Vs. The State of U.P. and Others*, But the provision should be interpreted against the social set up, growing requirements of society, increasing needs of the nation, burning problems of the day and the complex issues facing the people, which the Legislature considered beneficial. Courts will have to bear

in mind the Directive Principle of State Policy in deciding the reasonableness of the restrictions. No cut and dry test can be applied and no abstract standards or general pattern could be laid down *P.P. Enterprises and Others Vs. Union of India (UOI) and Others*, . A legislation seeking social justice cannot ignore the needs of the national economy. 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 (*State of Madras Vs. V.G. Row*,

21. It is true that when a citizen complains of violation of fundamental rights under Article 19(1), 60 or for that matter on any of the Sub-clauses (a) to (e) thereof, onus is on the State to prove or justify, by acceptable evidence, inevitable consequences or sufficient materials that the restriction, whether partial or complete, is in public interest and contains the quality of reasonableness (*Laxmi Khandasari v. State of U.P. (AIR) 1983 SC 873*). "Reasonable" implies intelligent care and deliberations, that is the choice of a course which reason dictates (*Chintaman Rao Vs. The State of Madhya Pradesh*, It is also true that determination by the Legislature of what constitutes a reasonable restriction is not final or conclusive and it is subject to judicial review. Even a policy decision could infringe fundamental right in some cases (*Miss. Nishi Maghu and Others Vs. State of Jammu and Kashmir and Others*, Like Article 19, under Article 14 also, burden may be on the State to affirmatively establish not only the rational principle, on which classification is founded, but correlate it to the objects sought to be achieved, that is reasonableness (*D.S. Nakara and Others Vs. Union of India (UOI)*, But, as held in *The Anant Mills Co. Ltd. Vs. State of Gujarat and Others*, the party challenging the provision should prove its discriminatory character. Then only the burden shifts to the State. In evaluating the elusive factors and forming conclusions of what is reasonable, in all the circumstances of a given case, it is inevitable that the social philosophy and values of life involved should be understood and appreciated by the participating Judges. As held in *Narendra Kumar and Others Vs. The Union of India (UOI) and Others*, restriction is wide enough to include prohibition also in appropriate cases though it is not the normal rule. But, when restriction reaches the stage of prohibition, special care has to be taken by the court to see that the test of reasonableness is satisfied. The greater the restriction, the more the need for strict scrutiny by the court.

22. As held in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, what Article 14 strikes at is arbitrariness because an action that is arbitrary must necessarily involve negation of equality. Doctrine of classification, which is evolved by courts, is not paraphrase of Article 14 nor is it the objective and end of that Article. It is merely a judicial formula for determining whether Legislative or Executive action in question is arbitrary and, therefore, constituting denial of equality. When there is arbitrariness in State action, whether it be legislative or executive or of an authority under Article 12, Article 14 immediately springs into

action and strikes down such State action.

23. Viewed in the light of these legal propositions, it is not possible to say that the Amending Act is violative of Articles 14 and 19(1)(g). The restrictions or limitations, if any, on the rights under Article 19(1)(g), cannot but be reasonable in public interest. The legislation is enacted to achieve one of the Directive Principles of State Policy. In *Express Hotels Private Ltd. Vs. State of Gujarat and Another*, excessive wage was considered to be no reason to strike down the State action under Article 19(1)(g). *Minerva Talkies v. State of Karnataka and Ors.* 1988 S.C.C.176 upheld the provision limiting the number of cinema shows to four, and *Municipal Corporation v. Jan Mohammed Usmanbhai and Anr.* (supra) held that closure of slaughter house on certain days was in public interest. As held in *Malwa Bus Service v. State of Punjab and Ors.* (AIR) 1983 SC 634 merely because a business became uneconomical, as argued by petitioners in this case, a legislation cannot be said to impose unreasonable restrictions on fundamental rights to carry on business. The words "in the interest of the general public" occurring in Article 19(6) are of wide import comprehending public health, public security, public morale, economic welfare of the community and the objects mentioned in Part IV of the Constitution (*Manohar Lal Vs. The State, and Ramdhandas and Another Vs. The State of Punjab*, upheld restrictions on hours of employment and time of opening and closing of commercial establishments as not violative of Article 19(1)(g), The present legislation, at any rate, does not stand on a worse footing. In support of the contention that the Amendment Act in question imposed only reasonable restrictions, as envisaged by Article 19(6) of the Constitution, Mr. Balagangadhara Menon, on behalf of some of the trade unions, pointed out that tea plantations, like *Harrisons Tea and Malayalam Plantations*, implemented the provisions of the Amendment Act and came to settlement with the workers. Even though that is not a conclusive circumstance, it could also be taken into account. In *Sunder and Ors., v. State of Kerala and Ors.* 1975 KLT 867, it was held that a gratuity scheme is retirement benefit essential for social justice and it could only be understood to be in furtherance of social justice and in the interest of general public. Evidently, the Act in question was enacted for social justice in furtherance of the Directive Principles of State Policy enshrined in Article 43 of the Constitution. As pointed out by the Supreme Court in *State of Tamil Nadu and Others Vs. L. Abu Kavur Bai and Others*, though the directive principles are not enforceable, courts should make a real attempt at harmonising and reconciling the directive principles and the fundamental rights and any collision between the two should be avoided as far as possible. The reason why the directive principles are not made enforceable was due to the vital consideration of giving the Government sufficient latitude to implement the principles from time to time, according to capacity, situations and circumstances that may arise. Court should interpret the Constitutional provisions in order to suppress the mischief and advance the objects of the Act. The doctrine of nexus cannot be extended to such an extreme limit that the very purpose of the directive principles is defeated. By requiring that there should be nexus between

the law and the directive principles, what is meant is that there must be reasonable connection between the Act and the objects mentioned in the directive principles. The declaration in the Act also could be taken as an item of evidence of nexus to the extent possible.

24. *Jalan Trading Co. (P) Ltd. and Others Vs. D.M. Aney and Another*, said that the provision to pay bonus, even during years when there has been loss sustained by the management, is reasonable in public interest within the meaning of Article 19(6). What is reasonable depends on a variety of circumstances, but what is important is that the Directive Principles of State Policy in Part IV of the Constitution are fundamental to governance of the country. Therefore, what is directed as State policy by Founding Fathers of the Constitution cannot be regarded as unreasonable or contrary to public interest even in the context of Article 14 or 19. If payment of bonus, being in implementation of Articles 39 and 43 of the Constitution, is reasonable, the Amending Act cannot be put in the different position.

25. Mr. Balachandran took me to the various provisions of the different labour resolutions in order to convince me that most of them do not afford the extent of leave or holidays as argued on behalf of petitioners and most of them are inapplicable to the establishments involved in the case. He took me to the decision in *The Hindustan Times Ltd., New Delhi Vs. Their Workmen*, which said that under the Workmen's Compensation Act there is no leave on account of sickness. For the same purpose, he cited the decision in *Management of Diocesan Press Vs. Labour Court, Madras and Another*, The decision in *Dasappa (D.M.) Vs. Labour Court and Another*, was relied on to argue that even under the Act in question, eligibility for paid holidays depends upon the specification made by the Inspector in consultation with labourers and management regarding the particular establishment and that it need not necessarily extend upto the maximum period, which is only the outer limit. In the decision in *Mohammed & Sons v. Worhnen* 1968 I LLJ 536, Supreme Court said that a paid weekly holiday should be the goal. He also said that Chapter VI of the Factories Act is not a welfare measure, as held in *People's Union for Democratic Rights and Others Vs. Union of India (UOI) and Others*, and it is intended only to avoid violation of Article 23 of the Constitution, which is made penal. These legislations do not have any substantial bearing in deciding the validity or otherwise of the Amendment Act, which is intended for the social welfare of workers.

26. I do not think that the Act went beyond the limits of reasonability under Article 19(6). Suffice it to say that the challenge cannot stand.

27. All the original petitions are, therefore, dismissed. No costs.