

(1963) 01 P&H CK 0026
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 785-D of 1962

Messrs. Bhag Chand Chandi Ram

APPELLANT

Vs

The Chief Commissioner, Delhi and others

RESPONDENT

Date of Decision : 11-01-1963

Acts Referred:

Constitution of India, 1950 — Article 19, 226

Delhi Shops and Establishments Act, 1954 — Section 15, 15(1), 16, 4

Citation : (1963) 01 P&H CK 0026

Hon'ble Judges : D. Falshaw, J

Bench : Single Bench

Advocate : Gurbachan Singh, Keshav Dayal R.L. Tandon, for the Appellant; H.N. Sanyal A.S.G. and S.N. Shankar, for Respondents Nos. 1 to 3, Messrs. R.S. Narula and R.S. Sandhu, for the Respondent No. 4, for the Respondent

Judgement

Falshaw, C.J.—These are 11 petitions (Civil Writ Nos. 785-D to 795-D of 1962) filed under Article 226 of the Constitution by firms or individuals who carry on the business of dealing wholesale in fruits and vegetables and are members of the registered Fruit & Vegetable Merchants' Union of Subzimandi, Delhi. Two complementary notifications of the Labour Department of the Delhi Administration dated the 30th of April 1962 under Sections 4 and 15(1) of the Delhi Shops and Establishment Act of 1954 are challenged.

2. The matter arises in the following way. The Delhi Shops & Establishment Act came into force in 1954, its primary object being to regulate the working conditions of persons employed in shops and other like commercial establishments. Section 4 of the Act is headed "Exemption" and reads-

Notwithstanding anything contained in this Act, the provisions of this Act mentioned in the third column of the Schedule shall not apply to the establishment, employees and other persons mentioned against them in the second column of the said Schedule Provided that the Government may, by notification published in the official gazette, add to omit or alter any of the

entries of the said schedule and on the publication of such notification, the entries in either column of the said schedule shall be deemed to be amended accordingly." Section 15, as amended by Act XXI of 1961, is headed "Opening and closing hours of shops and Commercial establishments" and reads-

(1) No shop or commercial establishment shall, on any day, be opened earlier than such hour or closed later than such hour, as may be fixed by the Government by general or special order made in that behalf:

Provided that any customer who was being served or was waiting to be served in any shop or commercial establishment at the closing hour so fixed may be served during the period of fifteen minutes immediately following such hour.

(2) Before making an order under Sub-section (1) the Government shall hold an inquiry in such manner as may be prescribed.

(3) The Government may for the purposes of this section, fix different opening hours and different closing hours for different classes of shops or commercial establishments or for different areas or for different times of the year.

Section 16 of the Act also comes into play in the present case and it is headed "Close Day" and the relevant portion reads-

(1) Every shop and commercial establishment shall remain closed on a closed day.

(2) In addition to the close day every shop and commercial establishment shall remain closed on three of the National holidays each year as the Government may by notification specify.

3. Before the impugned notifications of the 30th of April 1962 were promulgated item No. (3) in the schedule of exemptions u/s 4 of the Act used to read-

S. No.

Establishment

Provisions of the Act.

3.

Shops dealing mainly in meat, fish, poultry, eggs, milk and milk products excluding ghee, sweets, ice-cream, cooked food, fruit, flowers, vegetables, betel leaves.

Sections 15 & 16

* * *

Thus there was no close day and no restrictions on opening hours for all shops dealing in fruits and vegetable whether wholesale or retail. By the impugned notification u/s 4 in the schedule a new item. No. (9), was substituted for the old

item No. (3), reading-

Retail shops dealing mainly in meat, fish, poultry, eggs, milk and milk products excluding ghee, ice-cream, cooked food, flowers, betal leaves, fruit and vegetables.

That other notification needs to be set out in detail. It reads-

In exercise of the power conferred by Sub-section (1) of Section 15 of the Delhi Shops & Establishments Act, 1954, and all other powers enabling him in this behalf and after holding the enquiry prescribed in Rule 7-A of the Delhi Shops & Establishment Rules, 1954, the Chief Commissioner, Delhi, hereby makes the following amendments in his order fixing the opening and closing hours of shops in the Union Territory of Delhi and published with his notification No. F. 20(6)/(61)-Labour, dated the 17th of October 1961. These amendments shall take effect from the 7th of May 1962.

AMENDMENTS

(1) In the said order for the Words and figures open earlier than 9 O" clock in the morning and close later than 7 O" clock in the evening " the words and figures "open earlier than 9-30 a. m. in summer and 9 a. m. in winter and close later than 7-30 p. m. in summer and 7 p. m. in winter" shall be substituted.

(2) To the said order, the following proviso shall be added, namely:

Provided that the opening and closing hours of the following classes of shops shall be as shown against each.

(1) shops of wholesale fruit and vegetable merchants situated in fruit and vegetable markets of Subzimandi and PhoolMandi, Daryaganj.

Opening hour 4. a. m. Closing hour 8 p. m.

(2) Shops licensed under the Bombay Agricultural Produce Markets Act, 1939, as extended to and located in: ?

a) the market yard of Narela.

Opening hour 8 a. m. in summer and 9 a. m. in winter. Closing hour 5. p. m.

(b) the market yard of Najafgarh.

Opening hour 7 a. m. in summer and 8 a. m. in winter. Closing hour 4 p. m. in summer and 5 p. m. in winter.

4. On behalf of the Petitioners two attacks have been made on the notifications. The first ground was that there had been no compliance with the provisions of Sub-section (2) of Section 15, and the second was that in view of the nature of the business carried on by the Petitioners, which involves the handling at all hours of day and night of vast quantities of perishable fruits and vegetables arriving by road and rail for distribution both to the local markets and to

neighbouring States, the restriction of the opening hours of their establishment and the imposing of close days amounted to interference with their right to carry on their business under Article 19 of the Constitution which in the circumstances was unreasonable.

5. A great deal of the matter contained in the petitions themselves and in the replies, particularly on behalf of the Employees' Union, and also the arguments addressed on behalf of the Petitioners and the employees, naturally related to the factual aspect of the matter and what might be called the balance of convenience, but I do not consider it necessary to go into these matters in deciding the present petitions which in my opinion must succeed on the first point raised.

6. The effect of Sub-section (2) of Section 15 is that before any order is passed u/s 15 regarding the opening and closing hours of any shops and commercial establishments an enquiry must be held in the prescribed manner. The manner of enquiry is set out in Rule 7 A of the Rules framed under the Act as follows:

Not less than thirty days before making an order under Sub-section (i) of section 15, the Government shall cause to be published in the official gazette a notification that it proposes to make such an order.

(2) A copy of the notification issued under Sub-rule (1) shall be sent to every registered Association and Union representing employees and employers of shops and establishments for their comments. The Labour Advisory Board, if any, for the Union Territory of Delhi shall also be consulted before making the order.

(3) After considering the objections or suggestions, if any, by the Associations, Unions and the advice tendered by the Labour Advisory Board, the Government may make the order in the form proposed or in such modified form as it may deem fit.

Provided that, it shall not be necessary to re-publish proposal before making the order in the modified form.

7. The petitions are all drafted more or less on the same lines and the first ground on which the notifications are impugned is contained in paragraph 4(a) of the petition of Messrs Bhag Chand Chandi Ram, C. W. No. 783-D of 1962, at some length. The gist of it is that the Fruit & Vegetable Merchants Union is a union as contemplated and recognised in Rule 7-A, and that no notification under Rule 7-A(1) intimating the proposal to withdraw the exemption enjoyed by wholesale fruit shops and to fix opening and closing hours for them was ever sent to the Union before the change was made, and so no opportunity was granted for the Union to submit its objections for consideration. In an affidavit dated the 24th of September 1962 filed by Sadhu Ram as President of the Fruit & Vegetable Workers Union in connection with an interim matter it was alleged in paragraph 9 that in November 1961 the Labour Advisory Board had appointed a Sub Committee to consider the affairs of the fruits and vegetables dealers and

the representatives of both sides were heard by that Sub Committee. It was also alleged that the Worker's Union had submitted a representation dated the 18th of April 1962 when the matter was being considered by The Labour Advisory Board. The reply of the Labour Secretary, Delhi Administration, deals with paragraph 4(a) of the petition as follows:

It is wrong that the provisions of Rule 7-A of the Delhi Shops & Establishment Rules 1954 were not observed. A notification in compliance with Rule 7-A(1) was published in the official gazette. A copy of this notification proposing the fixation of timings was sent to the Fruit & Vegetable Merchants' Union for its comments. The other averments made by the Petitioner are not admitted by me.

8. It cannot be denied that the sentence, "A copy of this notification proposing the fixation of timings was sent to the Fruit & Vegetable Merchants Union for its comments" is to say the least disingenuous and misleading. The learned Counsel for the Petitioners had handed me the document which is evidently intended to be referred to in the written statement of the Labour Secretary. It is a copy of the notification dated the 27th of February 1962, the endorsement on which shows that it was received in the office of the Fruit & vegetable Merchants Union on the 1st March 1962. It reads -

In pursuance of the provisions of Sub-rule (1) of Rule 7-A of the Delhi Shops and Establishments Rules 1954, it is hereby notified that in exercise of the powers conferred by Section 15 of the Delhi Shops and Establishment Act 1954 and all other powers enabling him in this behalf, the Chief Commissioner, Delhi, proposes to make, on the expiry of thirty days from the date of publication of this notification in the official gazette, the following amendment in his order issued vide his notification No. F. 20 (6)/61-Lab, dated the 17th October 1961 fixing the opening and closing hours for the shops and commercial establishments in the Union Territory of Delhi. Any objection or suggestion received within the said period of thirty days will be duly considered by the Chief Commissioner. All objections/suggestions should be addressed to the Labour Commissioner, (sic)-Rajpur Road, Delhi.

DRAFT AMENDMENT

In the said order, for the words and figures "9 O'clock in the morning" and "7 O'clock in the evening", the words "10 O'clock in the morning" and "8 O'clock in the evening" shall respectively be substituted.

Then follows the signature of the Labour Secretary. After that there occur the words-

Copy forwarded to:

1. The Labour Commissioner, Delhi with 300 spare copies for necessary action.

A copy of this notification may be sent to every registered Association and Union representing employees and employers of shops for their comments. After

complying the objections/suggestions received, the case may be referred to the Labour Advisory Board for their advice. The final suggestion may kindly be furnished to this Secretariat in due course along with draft order.

9. It is quite clear from this that the only proposed change in the existing order regarding opening and closing hours of shops and establishments covered by the Act was that the hours were to be, instead of 9 A.M. and 7 P.M., 10 A. M. and 8 P. M., and the particulars regarding copies indicate that although a copy may have been sent to the Fruit and Vegetable Merchants Union this was purely incidental since copies were to be sent to every existing organisation of employers and employees. There was nothing whatever in this notification to indicate to the Fruit and Vegetable Merchants Union that any question was under consideration of removing the wholesalers from the scope of the schedule of exemptions either as regards Section 15 or Section 16 or that their hours of opening and closing were intended to be fixed. The only proposed change mentioned in the notification was that which is covered by item (1) in the impugned notification.

10. It may be true, as alleged in the affidavit of the President of the Workers" Union, that some questions regarding working conditions in this business came under the consideration of a Sub Committee appointed by the Labour Advisory Board sometime towards the end of 1961, and I was actually shown record of proceedings at which one of the present Petitioners was recorded as being present, but the minutes of the meeting of the Labour Advisory Board held on the 24th of April 1962 fixing the hours for wholesale fruit and vegetable merchants at 4 A. M. (opening) and 8 P. M. (closing) do not show the presence of any representative of the Petitioners" Union as as a result of the circulating of the notification of the 27th of February 1962, it was admitted by the learned Counsel for the State, after consultation with a representative of the department who was assisting him with the record, that no such representation had been received.

11. In my opinion whatever may have happened at some Sub Committee"s meeting in November or December 1961 is completely irrelevant, and I do not consider there is any doubt whatever that if it was proposed to fix opening and closing hours for the shops of wholesale fruit and vegetable dealers, and consequently to withdraw such shops or establishments from the schedule of exemptions, it was absolutely necessary that this proposed change should be set out specifically in the notification under Rule 7-A (1). However, in the notification actually issued on the 27th of February 1962 the only proposed change was regarding the opening and closing hours of shops in general, and there was no indication whatever that any change was contemplated in respect of establishment of the wholesale fruit and vegetable dealers, or for that matter of any other shops or establishments which were exempted from the application of the provisions of Sections 15 and 16 of the Act in the Schedule.

12. Such being the case I can only say that if I had been the Secretary or President of the Fruit & Vegetable Merchants Union, and I had received the

document which has now been placed before me, I should have at once come to the conclusion that it did not concern me, and that the only change contemplated was change in the opening and closing hours of the shops and establishments not exempted from the provisions of Section 15. I should accordingly not have considered it at all necessary to send any kind of representation for consideration by the Labour Advisory Board. I do not doubt for a moment that the wholesalers' Union in this case would have taken steps to press their case with vigour if they had any reason for anticipating changes against their interests.

13. In these circumstances I am of the opinion that the notification fixing the hours of wholesale fruit and vegetable dealers at 4 A. M. (opening) and 8 P. M. (closing) was issued without there having been any compliance with the mandatory provisions of Rule 7-A governing the form of the enquiry prescribed by Section 15(1) and that therefore the notification is invalid, and I consider that the question of fixing the opening and closing hours u/s 15 is so closely inter connected with the fixing of close days u/s 16, the one apparently following on the other for various reasons, that although there is no strict legal requirement for any enquiry before withdrawing the exemption u/s 16 the whole matter requires reconsideration on the lines indicated. I accordingly accept the petitions and quash the notifications under Sections 4 and 15 of the Act. The parties will bear their own costs.