CIVIL MISCELLANEOUS

Before Mehar Singh and D. K. Mahajan, JJ.

DR. P. A. PAUL AND OTHERS,—*Petitioners*

versus

THE STATE OF PUNJAB,—*Respondent.*

Civil Writ No. 679 of 1958.

1961

Oct., 5th

Punjab Shops and Commercial Establishments Act (XV of 1958)—Sections 7, 8, 11, 12, 13, 14, 20(2), 21 30, 32 and form B prescribed under the Rules framed under the Act—Whether impose unreasonable restrictions on the medical practitioners and hence ultra vires *Article 19, Constitution of India—Medical profession—Whether carried for profit—Establishment of a medical practitioner—Whether commercial establishment—Constitution of India (1950)—Article 19(6)—Restrictions curtailing fundamental right of citizen reasonable* qua *a certain section of the general public but operating to the deteriment of the general public—Whether can be justified—Test of reasonableness in such cases stated.*

Held, that if the provisions of Punjab Shops and Commercial Establishment Act, 1958, are viewed with reference to the various exemptions granted by the Act itself and the notifications issued and to be issued thereunder, there can be no manner of doubt that the restrictions on the medical practitioners under the Act cannot be said to be unreasonable for they do not operate to the detriment of the general public, but are really for its benefit. The Act is, therefore, not *ultra vires* Article 19 of the Constitution as violating the fundamental rights of the medical practitioners under Article 19(1)(g).

Held, that keeping in view the purpose of the Punjab Shops and Commercial Establishment Act, 1958, the medical profession is a profession carried on for profit and the establishment of a medical practitioner comes under the definition of "commercial establishment".

Held also, that the correct test, as to the reasonableness of restrictions which are reasonable *qua* a certain section of the general public but which operate to the

detriment of the general public, would be to see whether the benefit conferred on the general public by the restriction is in proportion to the detriment resulting therefrom. If the detriment outweighs the benefit there can be no doubt that the restrictions will be unreasonable. The yard-stick to judge the validity of an enactment which curtails the fundamental right to carry on one's profession freely is whether the abridgement of that right is reasonably necessary in the interest of the general public.

Case referred by Hon'ble Mr. Justice K. L. Gosain, on 11th October, 1960, to a larger Bench for decision of an important question of law involved in the case. The case was finally decided by a Division Bench consisting of Hon'ble Mr. Justice Mehar Singh and Hon'ble Mr. Justice Mahajan, on 5th October, 1961.

Petition under Article 226 of the Constitution of India praying that a writ in the nature of Mandamus *or any other appropriate writ, order or direction be issued declaring the Act No. 15 of 1958, the Punjab Shops and Commercial Establishment Act, 1958,* ultra vires *of the Constitution and further praying that sections 7, 11, 12, 13 and 14 and other provisions of the Act are inapplicable to the shops, establishments and premises occupied by the Medical Practitioners for their profession.*

DALIP KAPUR AND RAJINDER NATH, ADVOCATES, for the Petitioners.

H. S. DOABIA AND A. M. SURI, ADVOCATES, for the Respondent.

JUDGMENT.

MAHAJAN, J.—This is a petition under Article 226 of the Constitution by seven petitioners. Mahajan, J.

The Challenge in this petition is against the vires of the Punjab Shops and Commercial Establishments Act (Act No. 15 of 1958) — hereinafter referred to as the Act. Is is contended that the Act is *ultra vires* Article 19 of the Constiution of India, inasmuch as it places unreasonable restrictions on the medical profession and in the matter of employment of technical

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staff by the petitioners without which they cannot carry on their profession in all its practical aspects.

Petitioner No 1, is running a Nursing Home at Ambala City and is a surgeon also engaged in Gynacology and Obstetrics. He has in his employment one lady doctor, three nurses, two mid-wifes, one laboratory and X-ray technician, one ward bearer and two sweepers. The normal hours of this institution for running the out-door department are from 7.30 a.m. to 1.0 p.m. and from 4.0 p.m. to 8.0 p.m. This petitioner performs operations on four days in a week from 2.0 p.m. onwards and sometimes the operation may last as late as 7.0 p.m. After finishing the operation, the petitioner attends to his out-door patients for about 2 hours on these particular days. He has also to attend to maternity cases at all hours of the day and night depending when delivery is to take place. The nature of his work is such that he may not require the assistance of his attendants during the normal working hours, though his attendants have to be available during these hours, but may require their assistance beyond these hours in an emergency. It is for this reason that he has provided residential accommodation to his assistants within the premises of the Nursing Home. It is further alleged that it is not possible to have technical assistants in addition to what he has because such assistants are not easily available or rather there is an acute shortage of such assistants and that it will be very expensive to maintain a double staff with the result that it will be outside the reach of the common man to get efficient medical facilities. The petitioner is one of the essential services and in the interest of general public, it is claimed that the restrictions placed on him or on his assistants in carrying on his profession are such as would cause more harm to the general public and also are not in consonance with medical ethics and the peculiar requirements and objectives of his profession.

Petitioner No. 2, is a practising pathologist and has his clinic at Amritsar. He has one laboratory assistant and his usual working hours are from 8.0 a.m. to 8.0 p.m. with two hours break to the Assistant from 12.0 noon to 2.0 p.m. The various aspects of his duties

are set out in paragraphs 20, 21, 22, and 23 of the petition. It is not necessary to reproduce them because his claim is more or less the same as that of petitioner No. 1, for he claims that his services have close connection with the medical profession and are and may be needed as that of any medical practitioner in a case of emergency beyond those hours. It is not disputed that some of his functions are and can be clearly carried on during the working hours. The challenge to the *vires* of the Act is on the ground that in emergent cases he is rendered useless by reason of the provisions of the Act.

Petitioner No. 3, is a physician and surgeon practising at Chandigarh in Sector 22-D. He maintains a clinic and his usual working hours are 8.0 a.m. to 12.0 noon and 4.0 p.m. to 8.0 p.m. He has three assistants working with him. Before the impugned Act came into force these assistants were working with him from 8 a.m. to 8 p.m. with four hours interval from 12 noon to 4 p.m. In cases of emergency, the petitioner availed of their services and assistance even for longer time according to the nature of the case. His contention is that he cannot in view of the restrictions imposed by the Act effectively carry on his profession without the help of the assistants which the Act has cut down with the result that he cannot render proper medical assistance to the public at large and is under a disability *vis-a-vis* his profession.

The other petitioners, Nos. 4 to 7, are practising doctors and their claims is that they are seriously handicapped in their practice by reason of the application of the Act to them and are prevented from discharging their professional duties effectively and efficiently.

In the petition, it is stated that the Act is unconstitutional and *ultra vires* Article 14, 15, 19 and 39-A of the Constitution of India, but before us its *vires* were only challenged with reference to Article 19.

In the return filed by the State, it is maintained that the petitioners can take work from their employees in excess of the working hours, i.e., for more

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than 8 hours a day provided the excess is not more than 50 hours within the period of three months and for the hours in which the employees are made to work in excess they are paid remuneration twice the normal rate of wages. It is also maintained that subject to the aforesaid restrictions, the petitioners are otherwise at liberty to utilise the services of lady doctors, assistants and nurses any time according to the exigencies of the work. With regard to the charge of petitioner No. 1 that double establishment has to be maintained, it is stated that the increase required is only about 6 to 10 per cent and there is no necessity for a double establishment. The contention of the petitioners that there is an acute shortage of medical staff is stated to be incorrect and it is averred on the other hand that there is great unemployment among the medical juniors. It is maintained that there is no unreasonable restriction imposed on the carrying on of the profession of the petitioners and, therefore, the provisions of the Act are *intra vires* and are not *ultra vires* Article 19(1)(g) of the Constitution.

It is also claimed by the petitioners that their establishments are not governed by the Act whereas the case of the State is that their establishments are governed by the Act.

Objection is taken by the petitioners to the provisions of sections 7, 11, 12, 13, 14, 30 and 32 of the Act, also to sections 21, 8 and 20(2) of the Act and to form 'B' prescribed under the Rules framed under the Act.

The petition was filed on the 8th of July, 1958, and during its pendency a notification in the following terms was issued by the Government under the powers conferred on it under section 28 of the Act:—

"*LABOUR DEPARTMENT*
NOTIFICATION

Dated, Chandigarh the 26th June, 1958.

No. 7339-C-Lab.-58|20920.—In exercise of the powers conferred by section 28 of the

Punjab Shops and Commercial Establishments Act, 1958, (Punjab Act 15 of 1958), the Governor of Punjab is pleased to exempt hospitals, Nursing Homes and clinics from the operation of the provisions of section 8(2) and 30(1) of the said Act, with immediate effect subject to the condition that the working hours of the employees employed in these establishments shall not exceed the hours of work specified in section 7 of this Act."

This petition came up for hearing before Gosain J., on the 26th of August, 1960, and by his order, dated the 11th of October, 1960, the learned Judge, in view of the importance of the question involved, referred the matter to a larger Bench for disposal. That is how this matter has been placed before us.

The contentions of the learned counsel for the petitioners are—

(1) that the shops of medical practitioners are not commercial establishments and therefore, the provisions of the Act do not apply to them;

(2) that even if such establishments are commercial establishments and fall within the ambit of the Act, the Act has specifically exempted such establishments In this connection reference is made to section 3(g) of the Act; and

(3) that, in any case, the restrictions imposed on the medical practitioners in the carrying on of their profession are such as cannot be termed as reasonable restrictions and, therefore, these restrictions are *ultra vires* Article 19 of the Constitution.

On behalf of the State, it is conceded that the individual doctors carrying on their profession are not governed by the provisions of this Act, but the establishments of medical practitioners run with the

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assistance of employees are covered by the provisions of the Act, but it is maintained that only such restrictions have been placed on such establishments as are for the welfare of the employees consistent with the efficient running of such establishments. It is also maintained that such establishments have been exempted from the inflexible provisions of the Act by the Act itself or by notifications issued under the Act. Reference is made in this connection to section 4 of the Act and to the notification, which has already been set out in the earlier part of the judgment.

We will now proceed to examine the respective contentions in the order in which they have been set out above. Before doing so, it will be proper at this stage to refer to the decision of their Lordships of the Supreme Court in *Ramdhandas and another v. State of Punjab* (Writ Petition No. 164 of 1958) decided on the 10th of April, 1961, relating to the constitutional validity of this very Act. That was a case where one of the petitioners was carrying on the business of a wholesale grain merchant and the other petitioner was carrying on the retail business on a small scale. He employed no one but attended to the business himself, with the assistance, if necessary, of the members of his family. Their Lordships while upholding the constitutionality of the Act pointed out that the Act contemplated three categories of establishments:—

(i) 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 restriction imposed by sections 9 or 10;

(ii) those in which there is no need for complete freedom from these restrictions, but in which an adjustment merely as regards hours set out in section 9 is sufficient; and

(iii) those in which niether the requirements of the trade nor, of course, the interests of the general public would suffer if the establishment adjusted its operation in conformity with the Act.

In the present case we are concerned with the first category of establishments and by reason of section 4 of the Act, the provisions of sections 9 and 10 do not apply to 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. Along with this, there is the notification already referred to which exempts such establishments from the provisions of sections 8(2) and 30(1) of the Act, subject to the condition that the working hours of the employees did not exceed the hours of work specified in section 7 of the Act. In the case before their Lordships of the Supreme Court, the petitioners did not fall in the first category, whereas in the case before us they fall within the first category.

So far as the first two contentions are concerned, it is necessary to set out the relevant provisions of the Act bearing on the question and they are in these terms:—

> "2(1)(iv). 'commercial establishment' means any premises wherein any business, trade or profession is carried on for profit, and includes journalistic or printing establishments and premises in which business of banking, insurance stocks and shares, brokerage or produce exchange is carried on or which is used as hotel, restaurant, boarding or eating house, theatre, cinema or other place of public entertainment or any other place which the Government may declare by notification in the official Gazette to be a commercial establishment for the purposes of this Act;
>
> "2(viii) 'establishment' means a shop or a commercial establishment;
>
> "2(xxv) 'shop' means any premises where any trade or business is carried on or where services are rendered to customers and includes offices, store-rooms, godowns or warehouses, whether in the same premises

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or otherwise, used in connection with such trade or business but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop are allowed the benefits provided for workers under the Factories Act, 1948, (LXIII of 1948);

"3. Nothing in this Act shall apply to—

(a) * * * * *
(b) * * * * *
(c) * * * * *
(d) * * * * *
(e) * * * * *
(f) * * * * *

(g) any person whose work is inherently intermittent.

4. Nothing in sections 9 and 10 shall apply to—

(a) * * * * *
(b) * * * * *
(c) * * * * *

(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) * * * * *

* * * * *

The learned counsel for the petitioners has argued that the medical profession is not a profession carried on for profit and, therefore, any establishment of a medical practitioner cannot be said to be a commercial establishment. According to the learned counsel, profit denotes gain made by sale of produce or manufactures after deducting the value of the labour, materials, rent, and all expenses, together with the interest on the capital employed. The wages or the fees of a doctor, therefor, cannot be said to be profit. They are in the

nature of compensation for services rendered. In support of his contention, he relies on the following passage in 73 C.J.S. 3—

> "The term 'profit' is defined as meaning gain; gain, benefit, or advantage; the gain resulting from the employment of capital; the gain which is made on any business or investment when both receipts and payments are taken into account; the benefit or advantage remaining after all costs, charges, and expenses have been deducted from the income; the net gain made from an investment or from the prosecution of some busness after the payment of all expenses incurred; the gain made by the sale of produce or manufacture, after deducting the value of the labour, materials, rent, and all expenses, together with the interest on the capital employed.

The word 'profit' is also defined as meaning the excess of returns over expenditures; the excess of receipts over expenditures, that is, not earnings; the excess of the price received over the cost of purchasing and handling, or of producing and marketing particular goods; the excess of value received for producing, keeping or selling over cost; hence, pecuniary gain in any transaction or occupation; the excess of what is obtained over the cost of obtaining it."

According to the learned counsel, the legal profession, the profession of the clergy and the profession of medicine are the only professions known to jurisprudence in the technical sense, and so far as these professions are concerned, remuneration paid for services rendered cannot be said to be for profit, particularly in the case of the medical profession, which, is, according to the Oath of Hippocrates, meant to alleviate suffering, and no medical practitioner can refuse to render service whether he is paid for it or not. He also relies on two reported cases of the American Courts, *W. W. Oliver* v. *James W. Halstead* (1), and *Laureldale Cemetory Association* v. *Matthews* (2), The

(1) 86 S.E. 2nd 858.
(2) 47 A. 2nd 277.

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argument though attractive cannot be accepted. According to the very treatises on which the learned counsel relies, the word 'profit' has a great variety of meaning and it has been variously interpreted in judicial pronouncements. At page 1 of 73 C.J.S. the following observations are very pertinent and would furnish a complete answer to the argument of the learned counsel:—

> "It (profit) is an elastic, relative term, susceptible of various meanings under varient circumstances, and often and properly used in more than one sense. Some courts hold that it is ambiguous, and some courts hold the contrary, and it has been said that the word, in and of itself, can hardly be considered to have any well defined legal meaning. However, courts have said that it is a well-known term, having a fixed and definite, and well-defined, legal meaning. Its specific meaning in a particular case is governed by the intent of the parties as derived from the context, and in construing the term the situation and general purpose to be accompalished may be considered."

Therefore, the true test is to look to the enactment and its purport before coming to a decision whether the word 'profit' covers the remuneration received by the medical practitioners. It will not be out of place to mention that the Act is to provide for the regulation of conditions of work and employment in shops and commercial establishments as its preamable denotes. The first Act that was enacted on this subject was the Punjab Trade Employees Act of 1940. It was repealed by the Punjab Shops and Commercial Establishments Act (Punjab Act 15 of 1958). Under the 1940 Act, only premises wherein any business or trade was carried on for profit were covered, whereas the 1958 Act, has also covered the premises where any profession is carried on for profit. It will not be out of place to mention that the word 'profession' has no fixed meaning. In this connection, reference may

be made to the following passage in Volume 72 of C.J.S. at page 1215:— ....

> "It has been said that it is difficult, if not impossible, to lay down any strict legal definition of the word 'profession', and that the term may, perhaps, be best understood by mention of some prominent or characteristic elements, rather than by an attempted complete definition. The word is vague, and neither static nor rigid, and is used in many different senses, and in one sense it means a public declaration respecting something, and in a somewhat different sense, it means that of which one professes knowledge. However, the word 'profession' is more commonly employed in the sense of vocation, business, calling or occupation, and it is in this sense that the term is treated in the following paragraphs."

Thus neither the word 'profit' nor the word 'profession' has any fixed meaning and it has to be interpreted in the context in which it is used in any particular enactment. These words can be given a wider or a narrow meaning consistent with the context in which they are used.

This straightway brings me to the purpose and object for which the Act was enacted and this has now been fully explained by their Lordships of the Supreme Court in *Ramadhandas's* case, wherein their Lordships observed as under:—

> "The regulation of contracts of labour so as to ameliorate their conditions of work is in reality a problem of human reationship and social control for the advancement of the community. The public and social interest in the health and efficiency of the worker is, at present day, beyond challenge. Our Constitution does not protect or guarantee any fundamental right in the nature of the provision in Article 1, section 10(1), of the U.S. Constitution against 'impairment of the obligation of contracts.' The only test of

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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-hours 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 contents 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 itme."

If reference is made to the provisions of section 4(d) of the Act, it will be apparent that the framers of the Act in the definition of the term 'commercial establishment' used the words 'profit' and 'profession' in their wider sense. This definition included the establishments of medical practitioners and that is why a specific exemption was granted to these establishments nnder section 4. The argument that section 4 has been enacted by way of abundant caution is untenable. The object of the Act being to cover all types of employees in whatever trade, business or profession they are engaged, explains the reason for section 4 as well as for section 3. Thus keeping in view the purpose of the Act and the definition of the 'commercial establishment', it cannot but he held that for the purpose of the impugned Act, the medical profession must be held to be a profession carried on for profit. It is not necessary to refer to the two American

decisions already cited for they were decisions on their own peculiar facts and did not lay down any inflexible rule of law or interpretation so far as the term 'profit' is concerned. Moreover, the nursing home in question is not a charitable institution nor is it being run on no profit and no loss basis. It is being run on commercial linse for one of the grievances against the Act is that the earnings of the petitioners have been adversely affected by it. Therefore, there is no merit in the first contention of the learned counsel for the petitioners and the same is repelled.

The second contention is based on the provisions of section 3(g) of the Act. It is maintained that the work of the medical practitioners is inherently intermittent. No one has the volition in the matter of falling ill. The time and place of illness cannot be predicted. Therefore, neither the medical practitioner can say with any amount of certainty when he will get a patient nor can the patient similarly say when he will need the doctor. The availability of the patient to the doctor or of the doctor to the patient depends on a factor wholly outside the control of each one of them. It is for this reason that the learned Advocate-General fairly and frankly conceded that the individual medical practitioners are wholly exempt from the provisions of the Act. But he maintained that the establishments of these practitioners are not exempt. The same considerations, excepting in a case of emergency, do not apply to the case of establishments. These establishments have fixed hours of working and barring emergency cases it is only during the working hours that the normal and routine cases of persons needing medical aid are attended to.

The argument of the learned counsel for the petitioners is that as the medical practitioners are exempted from the operation of the Act, therefore, their establishments are also exempted. This argument is not tenable for section 3(g) only exempts persons and not the establishments, that is, any individual whose work is inherently intermittent is exempted. The persons employed in these institutions are not necessarily working intermittently for the institution is not opening and closing intermittently. It is open for

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normal work during the normal working hours and is really open for emergent cases for practically all the 24 hours. If the argument of the learned counsel is accepted, these employees will have to work all the 24 hours and even if they are not actually working they are, in any case, wholly under the control of the employer for that period—a situation which cannot be countenanced.

Therefore, this argument of the learned counsel for the petitioners has no merit and must be rejected.

It is the third contention, which has been vehemently pressed by the learned counsel for the petitioners and which needs close scrutiny.

The contention of the learned counsel is that the restrictions imposed by the Act do not operate for the benefit of the general public, but, on the contrary, they operate to their detriment. To illustrate his argument the learned counsel pointed out that it may not be possible to attend to a maternity case to its logical conclusions in view of the various restrictions placed under the Act. Similarly, in any other serious case which requires attention to the patient for more than 8 hours with an additional latitude of 50 hours for three months, the general public may be bereft of the advantages of a medical practitioner and thereby suffer irreparable injury.

It is no doubt true that in certain circumstances and in certain cases these provisions may operate to the detriment of the general public. Therefore, the question that really arises is as to what is to happen when certain restrictions curtailing a fundamental right of the citizens like the present right of the medical practitioners to carry on their profession are reasonable *qua* a certain section of the general public, as in the instant case the employees; and also operate to the detriment of the general public, that is, the sick and ailing humanity; what would then be the test as to the reasonableness of the restrictions? In my view, in such a case, the correct test would be whether the benefit conferred on the general public by the restriction is in proportion to the detriment resulting therefrom. If the detriment outweighs the benefit.

there can be no doubt that the restrictions will be unreasonable. The yard-stick to judge the validity of an enactment which curtails the fundamental right to carry on ones profession freely is whether the abridgement of that right is reasonably necessary in the interest of the general public. In other words, the curtailment of the fundamental right guaranteed by Article 19(1)(g) of the Constitution must be and can only be to the extent laid down in clause (6) of Article 19. The relevant part of Article 19 is in these terms:—

"19. (1) All citizens shall have the right—

(a) * * * * *

(b) * * * * *

(c) * * * * *

(d) * * * * *

(e) * * * * *

(f) * * * * *

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

(2) * * * * *

(3) * * * * *

(4) * * * * *

(5) * * * * *

(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

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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."

It will not be out of place at this stage to keep in mind the various tests laid down by their Lordships of the Supreme Court in some of the decided cases.

In *Chintamanrao and another* v. *The State Madhya Pradesh* (1), their Lordships of the Supreme Court observed as under:—

> "The question for decision is whether the statute under the guise of protecting public interests arbitrarily interferes with private business and imposes unreasonable and unnecessarily restrictive regulations upon lawful occupations; in other words, whether the total prohibition of carrying on the business of manufacture of bidis within the agricultural season amounts to a reasonable restriction on the fundamental rights mentioned in Article 19(1)(g) of the Constitution. Unless it is shown that there is a reasonable relation of the provisions of the Act to the purpose in view, the right of freedom of occupation and business cannot be curtailed by it.
>
> The phrase 'reasonable restriction' connotes that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The word 'reasonable' implies intelligent care and deliberation, that is the choice of a course which reason dictates. Legislation which arbitrarily or excessively invades the right cannot be said to contain the quality

(1) A.I.R. 1951 S.C. 118.

of reasonableness and unless it strikes a proper balance between the freedom guaranteed in Article 19(1)(g) and the social control permitted by clause (6) of Article 19, it must be held to be wanting in that quality."

In the State of Madras v. *V G. Row* (1), at page 199 the following observations occur and are very pertinent:—

"This Court had occasion in *Dr. N. B. Khare* v. *State of Delhi* (2), to define the scope of the judicial review under clause (5) of Article 19 where the phrase 'imposing reasonable restrictions on the exercise of the right' also accurs, and four out of the five Judges participating in the decision expressed the view (the other Judge leaving the question open) that both the substantive and the procedural aspects of the impugned restrictive law should be examined from the point of view of reasonableness; that is to say, the Court should consider not only factors such as the duration and extent of the restrictions, but also the circumstances under which and the manner in which their imposition has been authorised. It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to such 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,

(1) A.I.R. 1952 S.C. 196.
(2) (1950) S.C.R. 519.

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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."

In State of West Bengal v. *Subodh Gopal* (1), page 104, the objects and reasons of the enactment were referred to in order to ascertain the conditions prevailing at the time which actuated the legislative measure and the extent and urgency of evil which the measure sought to remedy, and it was held that these matters must enter into the judicial verdict as to the reasonableness of the restrictions which are imposed under various clauses of Article 19. In *Express Newspaper Private Limited* v. *The Union of India* (2), the capacity to pay was taken into account while judging the reasonableness of the restriction which imposed an extra burden on the citizens against whom the restriction operated with regard to their fundamental rights under Article 19 of the Constitution. *In Mohammad Hanif Qureshi* v. *State of Bihar* (3), it was observed as under:—

"Clause (6) of Article 19 protects a law which imposes in the interests of the general public reasonable restrictions on the exercise of the right conferred by sub-clause (g) of clause (1) of Article 19. Quite obviously, it is left to the Court, in case of dispute, to determine the reasonableness of the restrictions imposed by the law. In determining that question the Court, we conceive, cannot proceed on a general notion of what is

(1) A.I.R. 1954 S.C. 92.
(2) A.I.R. 1958 S.C. 578.
(3) A.I.R. 1958 S.C. 731.

> reasonable in the abstract or even on a consideration of what is reasonable from the point of view of the person or persons on whom the restrictions are imposed. The right conferred by sub-clause (g) is expressed in general language and if there had been no provision like clause (6), the right so conferred would have been an absolute one. To the person who has this right, any restriction will be irksome and may well be regarded by him as unreasonable. But the question cannot be decided on that basis. What the Court has to do is to consider whether the restrictions imposed are reasonable in the interests of the general public."

It is in the light of these observations that the various provisions of the statute have to be examined in order to find out whether the restrictions imposed by the impugned statute can be said to be reasonable restrictions. It is in this view of the matter that the decision of the Supreme Court in *Ramdhandas and another* v. *State of Punjab* (C. W. No. 164 of 1958) cannot be held to conclude the matter so far as the medical practitioners are concerned. These provisions are sections 7, 8, 11, 12, 13, 14, 20 and 21, and also form 'B' prescribed under section 20(1) of the Act. The provisions of section 30(1) of the Act were also attacked in this petition, but, they do not need any consideration in view of the notification exempting hospitals, nursing homes, and clinics of the medical practitioners from the same.

Section 7 prescribes the maximum hours which an employee can be required to work during one week and during a single day. These hours are 48 for a week and not more than 9 hours in a day. Subsection (2) of section 7 provides for additional 50 hours for every three months on account of seasonal and exceptional pressure of work and also for overtime payment at twice the rate of normal wages calculated by the hour for such overtime. The contention of the learned counsel is that this section is so worded as to include both the employers and the employees, whereas the contention of the learned counsel for the

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State is that this section merely covers the employees and has nothing to do with the employers. In our view the contention of the learned counsel for the State is correct. The language used is no doubt slightly unhappy, but if this section is read in its proper context, there is no manner of doubt that it has only relation to the employees and has no connection whatever so far as the employers are concerned. This section only confers benefit on the employees and in that sense it would naturally entail necessary obligations on the employers, but it does not, in any way, affect the employers if they want to exceed the hours of work prescribed by this section. Mr. Kapur, learned counsel for the petitioners, pointed out that section 7(5) would cover both the employers and the employees because the words used are "may be lawfully employed under this Act," and when an employer is working he is certainly employed. But sub-section (5) of section 7 cannot be construed in an isolated manner as the learned counsel would seek to do. Section 7 read as a whole with the scheme of the Act leaves no manner of doubt that the entire provision deals with the employees and not with the employers, but *vis-a-vis* the institution it does, so far medical practitioners are concerned, put unreasonable restrictions inasmuch as in a certain given case the prescribed period under section 7(1) for a particular day may elapse and so also the additional period allowed under section 7(2), and yet the emergency may not be over. But this difficulty no longer stares the medical practitioners in the face for the simple reason that the State has given an undertaking that a notification will be issued providing that in cases of emergency overtime in excess of 50 hours in a quarter of a year would be made admissible on the condition that the remuneration at twice the normal rate of wages would be paid to the employees concerned. Therefore, in view of this undertaking and in view of the fact that a notification will follow, this restriction would cease to be an unreasonable restriction because if any emergent work goes beyond the hours prescribed in section 7, the institution would be justified in asking the employees to stick on for additional hours on payment of double the normal rate of wages for each hour. This concession by the Government would

really knock off any supposed hardship that may arise in the actual working of an institution.

So far as section 8 is concerned, it merely provides for intervals for rest or meals and this can hardly be said to be an unreasonable restriction in the practice of any profession. Section 11 provides for an off-day in a week. So far as the medical practitioners are concerned, the provision of a close-day is not applicable by reason of section 4, which exempts the medical practitioners from the provisions of section 10, but according to section 11(b) one day in a week has to be given to the employees as an off-day. This can very well be adjusted by the institution according to the exigencies of the work.

Section 12 deals with holidays, but there is a provision in this section that even on holidays an employee may be made to work provided remuneration is paid to him at double the rate of normal wages calculated by the hour. Therefore, this section does not present any real difficulty and the work of the institution can be carried on without any real impediment. The mere fact that double the wages have to be paid would not amount to an unreasonable restriction on the carrying on of the work of the institution, particularly when these institutions are not charitable institutions and are really profit making institutions.

Section 13 provides for the registration of establishments. No serious objection can be taken to this provision. Section 14 merely deals with leave and no serious objection was taken to this provision by the learned counsel.

The only serious objection that was taken was to section 20(2) and that too to the effect that entries regarding the working hours, rest intervals and the amount of leave, etc., by an employer have to be made while the employee is at the disposal of the employer. The argument was that when some emergent work is being carried on and the doctor is busy, he cannot make the entries and as the working hours are over the employees would naturally leave before the employer is free. In view of the fact that the Government has given an undertaking, and a notification will

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follow, there would be no question of the employees leaving before the emergency is over. Moreover, there is no requirement that the doctor is personally to maintain this record. Any ordinary clerk employed by the doctor or even his employees can make these entries in the books before they leave. Therefore, this provision cannot be said to place any unreasonable restriction on the working of the medical practitioners.

The last objection was that the form 'B' prescribed under section 20(1), which is as follows:—

"FORM B

Notice to be exhibited under section 20(1) *of the Shops and Commercial Establishments Act,* 1958.

(Rule 4 of the Punjab Shops and Commercial Establishments Rules, 1958)

1. Close day, if any————Year————.
2. Opening hour of the Establishment————
   Closing hour of the Establishment————.
3. Name and parentage of the employer ————.
4. Name of the Manager, if any————.
5. Name of the establishment————.
6. Nature of Business————.
7. Full Address————.
8. Name of the employee and father's name————

	Working hours		*Interval for rest*		Weekly off day
	From	To	From	To	
1	2		3		4
Young persons					
1. ..	..		..		..
2. ..	..		..		..
3. ..	..		..		
4. ..			..		..
Othe persons					
1. ..	..		..		
2. ..	..		..		..
3. ..	..		...		..

9. Date of declaration ——————————.

10. Inspection by authorities——————————.

(Signature of the employer)
(Name and Full Address)"

cannot be practically filled by any medical practitioner and if this is not properly filled then the practitioner is liable to prosecution. I see no serious difficulty in this matter. Most of the provisions do not apply to the medical practitioners for they have either been exempted from their application by the Act itself or by notifications issued and to be issued by the Government. Therefore, any matter in the form relating to exempted provisions need not be filled by the medical practitioners. Only those particulars have to be supplied which flow from those provisions of the Act which remain operative *qua* the medical practitioners. There can be no manner of doubt that for any inconseqential omission in the form, there would be no question of the doctor being prosecuted. All laws have to be administered in a reasonable manner and merely because a law can be abused is no ground to hold that the law should be struck down because it can be abused, for as a matter of that any law can be abused, however beneficent it may be. Thus if the provisions of the Act are viewed with reference to the various exemptions granted by the Act itself and the notifications issued and to be issued thereunder there can be no manner of doubt that the restriction on the medical practitioners under the Act cannot be said to be unreasonable for they do not operate to the detriment of the general public, but are really for its benefit. It cannot be urged that the staff employed by the medical practitioners can be worked in such a way that their health suffers for it is as much essential for the efficient carrying on of the medical profession that its staff should have proper rest and proper leisure for which purpose the impugned statute has been enacted.

The other argument of the learned counsel for the petitioners is that there is an acute shortage of

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technical staff pertaining to the medical profession, e.g., nurses, compounders, analysts, etc. To prove that there is such a shortage he relies on the Second Five-Year Plan 1956, pages 533 and 537, and also maintains that a similar shortage still continues in the Third Five-Year Plan. According to him, it is not possible for the petitioners to carry on their profession without adequate staff and that staff is not available. Therefore, the restrictions imposed by the Act when such staff is not available are wholly unreasonable and cannot be said to be in the interests of the general public. He also draws our attention to *Mohammad Hanif Quareshi's case*, where for a similar purpose their Lordships of the Supreme Court had referred to the Third Five-Year Plan. This argument need not detain us long in view of the fact that the Government has undertaken to let the staff work beyond the period prescribed by section 7 in cases of emergency by issuing a fresh notification as already indicated. Therefore, this difficulty no longer remains.

Thus if the entire matter is viewed with reference to the restrictions as they now stand so far as the medical practitioners are concerned (I say 'now stand' for the simple reason that most of the objectionable restrictions were excepted by the Act and have also either been withdrawn or so modified by the notifications issued and to be issued under the Act that they no longer stand in the way of the medical practitioners). It cannot be said that the petitioners cannot effectively and efficiently carry on their profession. The remaining restrictions are reasonable and are in the interest of the general public and must, therefore, be held to be valid.

In view of what has been stated above, it cannot be held that the impugned legislation is *ultra vires* Article 19 of the Constitution as violating the fundamental rights of the petitioners under Article 19(1)(g) of the Constitution.

For the reasons given above, this petition is rejected, but there will be no order as to costs because it is only after the filing of the petition that the really objectionable part of the statute has ceased

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to apply to the medical practitioners. It may also be mentioned in passing that the State counsel made it plain that if any serious grievance of the medical practitioners still remains it will be open to them to move the Labour Commissioner who will sympathetically consider their representation and try to meet their just grievances. It is further directed that the letter containing the Government undertaking be placed on the record.

Mehar Singh, J.

MEHAR SINGH, J.—I agree.

K.S.K.

CIVIL MISCELLANEOUS

Before D. Falshaw and Tek Chand, JJ.

THE BRITISH INDIA CORPORATION LIMITED,—
Petitioner

versus

THE INDUSTRIAL TRIBUNAL, PUNJAB, AND ANOTHER,—
Respondents.

Civil Writ No. 426 of 1960.

1961

Oct 12th

Industrial Disputes Act (XIV of 1947)—Section 33(2)—Application under, for approval of the action of the management—When to be made.

Held, that the application under section 33(2) of the Industrial Disputes Act, 1947, to the Labour Court or Tribunal for approval of the action taken by the management against the workman concerned is an *ex post facto* requirement and what the employer has to apply to the Labour Court or Tribunal for is not approval of an action proposed to be taken but one which has actually been taken. It will be sufficient compliance of the proviso if an order of dismissal is passed by the employer and the dismissed workman paid one month's wages and application is filed for the approval of the Labour Court or Tribunal within a reasonably short time.

Case referred by the Hon'ble Mr. Justice A. N. Grover on 25th November, 1960, to a Division Bench, for decision