provisions of cl. (b) of s. 3 it is clear that no question of discrimination at all arises. Similarly the fact that action was taken by the Government in an emergency in the public interest would be a complete answer to the argument that that action is violative of the provisions of Art. 19(1)(g). The restriction placed upon the employer by such an order is only a temporary one and having been placed in the public interest would fall under cl. (6) of Art. 19 of the Constitution.

Upon this view we hold that the High Court was in error in issuing a writ against the State Government quashing their order in so far as it related to payment of bonus. The appeal is allowed and order of the High Court is set aside. Costs of this appeal will be paid by the respondents.

Appeal allowed.

MANOHAR LAL

v.

THE STATE OF PUNJAB

(JAFER IMAM, J. L. KAPUR, K. C. DAS GUPTA, RAGHUBAR DAYAL and N. RAJAGOPALA AYYANGAR, JJ.)

Trade Employees—Close day—Enactment, if violative of fundamental rights—Workers' Welfare—Protection—Restriction, if unreasonable—Punjab Trade Employees Act, 1940, (Punj. X of 1940) s. 7 (1)

The appellant who was a shopkeeper was convicted for the second time by the Additional District Magistrate for contravening the provisions of s. 7(1) of the Punjab Trade Employees Act, 1940, under which he was required to keep his shop closed on the day which he had himself chosen as a "close day". He raised the plea that the Act did not apply to his shop as he did not employ any stranger but that himself alone worked in it and that the application of s. 7(1) to his shop would be violative of his fundamental rights under Arts. 14, 19(1)(f) and (g) of the Constitution and also that the restriction imposed was not reasonable within Art. 19(6) as it was not in the interest of the general

1960

Manohar Lal
v.
The State of Punjab

public. The High Court dismissed his application for revision of the Magistrate's order. On appeal on a certificate of the High Court,

Held, that the main object of the Act was the welfare of the employees and to protect their as well as the employers' health by preventing them from overwork. Such a restriction being in the interest of the general public was reasonable within the meaning of Art. 19(6) of the Constitution.

The provisions of s. 7(1) were constitutionally valid and were justified as for securing administrative convenience and avoiding evasion of those provisions designed for the protection of the workmen.

Manohar Lal v. *The State*, [1951] S.C.R. 671, referred to.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 173/1956.

Appeal from the judgment and order dated May 23, 1956, of the Punjab High Court in Criminal Revision No. 1058/1954.

K. L. Arora, for the appellant.

N. S. Bindra and *R. H. Dhebar*, for the respondent.

1960. November 11. The Judgment of the Court was delivered by

Ayyangar J.

AYYANGAR J.—This appeal on a certificate under Arts. 132 and 134(1) of the Constitution granted by the High Court of Punjab raises for consideration the constitutionality of s. 7(1) of the Punjab Trade Employees Act, 1940.

The appellant—Manohar Lal—has a shop at Ferozepore Cantt. in which business is carried on under the name and style of 'Imperial Book Depot'. Section 7 of the Punjab Trade Employees Act, 1940 (hereinafter called the Act), enacts:

"7. (1) Save as otherwise provided by this Act, every shop or commercial establishment shall remain closed on a close day.

(2)(i). The choice of a close day shall rest with the occupier of a shop or commercial establishment and shall be intimated to the prescribed authority within two months of the date on which this Act comes into force."

to extract the provision relevant to this appeal. The

appellant had chosen Friday as "the close day", i.e., the day of the week on which his shop would remain closed. The Inspector of Shops and Commercial Establishments, Ferozepore Circle, visited the appellant's shop on Friday, the 29th of January, 1954, and found the shop open and the appellant's son selling articles. Obviously, if s. 7(1) were valid, the appellant was guilty of a contravention of its terms and he was accordingly prosecuted in the Court of the Additional District Magistrate, Ferozepore, for an offence under s. 16 of the Act which ran:

"Subject to the other provisions of this Act, whoever contravenes any of the provisions of this Act .....shall be liable on conviction to a fine not exceeding twenty-five rupees for the first offence and one hundred rupees for every subsequent offence"

The appellant admitted the facts but he pleaded that the Act would not apply to his shop or establishment for the reason that he had engaged no strangers as employees but that the entire work in the shop was being done by himself and by the members of his family, and that to hold that s. 7(1) of the Act would apply to his shop would be unconstitutional as violative of the fundamental rights guaranteed by Arts. 14, 19(1)(f) and (g) of the Constitution. The additional District Magistrate rejected the plea raised by the appellant regarding the constitutionality of s. 7(1) in its application to shops where no "employees" were engaged and sentenced him to a fine of Rs. 100 and simple imprisonment in default of payment of the fine (since the appellant had been convicted once before). The appellant applied to the High Court of Punjab to revise this order, but the Revision was dismissed. The learned Judges, however, granted a certificate of fitness which has enabled the appellant to file the appeal to this Court.

Though the validity of s. 7(1) of the Act was challenged in the High Court on various grounds, learned Counsel who appeared before us rested his attack on one point. He urged that the provision violated the

1960

Manohar Lal
v.
The State of Punjab

Ayyangar J.

appellant's right to carry on his trade or business guaranteed by Art. 19(1)(g) and that the restriction imposed was not reasonable within Art. 19(6) because it was not in the interest of the general public. Learned Counsel drew our attention to the long title of the Act reading " An Act to limit the hours of work of Shop Assistants and Commercial Employees and to make certain regulations concerning their holidays, wages and terms of service " and pointed out that the insistence on the appellant to close his shop, in which there were no " employees ", was really outside the purview of the legislation and could not be said to subserve the purposes for which the Act was enacted. In short, the submission of the learned Counsel was that the provision for the compulsory closure of his shop for one day in the week served no interests of the general public and that it was unduly and unnecessarily restrictive of his freedom to carry on a lawful trade or business, otherwise in accordance with law, as he thought best and in a manner or mode most convenient or profitable.

We are clearly of the opinion that the submissions of the learned Counsel should be repelled. The long title of the Act extracted earlier and on which learned Counsel placed considerable reliance as a guide for the determination of the scope of the Act and the policy underlying the legislation, no doubt, indicates the main purposes of the enactment but cannot, obviously, control the express operative provisions of the Act, such as for example the terms of s. 7(1). Nor is the learned counsel right in his argument that the terms of s. 7(1) are irrelevant to secure the purposes or to subserve the underlying policy of the Act. The ratio of the legislation is social interest in the health of the worker who forms an essential part of the community and in whose welfare, therefore, the community is vitally interested. It is in the light of this purpose that the provisions of the Act have to be scrutinized. Thus, s. 3 which lays down the restrictions subject to which alone " young persons ", defined as those under the age of 14, could be employed in any shop or commercial establishment, is obviously with a view to

ensuring the health of the rising generation of citizens. Section 4 is concerned with imposing restrictions regarding the hours of work which might be extracted from workers other than "young persons". Section 4(1) enacts:

"Subject to the provisions of this Act, no person shall be employed about the business of a shop or commercial establishment for more than the normal maximum working hours, that is to say, fifty-four hours in any one week and ten hours in any one day."

bringing the law in India as respects maximum working hours in line with the norms suggested by the International Labour Convention. Sub-clauses (4) and (5) of this section are of some relevance to the matter now under consideration:

"(4) No person who has to the knowledge of the occupier of a shop or commercial establishment been previously employed on any day in a factory shall be employed on that day about the business of the shop or commercial establishment for a longer period than will, together with the time during which he has been previously employed on that day in the factory, complete the number of hours permitted by this Act.

(5) No person shall work about the business of a shop or commercial establishment or two or more shops or commercial establishments or a shop or commercial establishment and a factory in excess of the period during which he may be lawfully employed under this Act."

It will be seen that while under sub-cl. (4) employers are injuncted from employing persons who had already worked for the maximum number of permitted hours in another establishment, sub-cl. (5) lays an embargo on the worker himself from injuring his health by overwork in an endeavour to earn more. From this it would be apparent that the Act is concerned—and properly concerned—with the welfare of the worker and seeks to prevent injury to it, not merely from the action of the employer but from his own. In other words, the worker is prevented from attempting to earn more wages by working longer hours than is good

1960

Manohar Lal v. The State of Punjab

Ayyangar J.

for him. If such a condition is necessary or proper in the case of a worker, there does not seem to be anything unreasonable in applying the same or similar principles to the employer who works on his own business. The learned Judges of the High Court have rested their decision on this part of the case on the reasoning that the terms of the impugned section might be justified on the ground that it is designed in the interest of the owner of the shop or establishment himself and that his health and welfare is a matter of interest not only to himself but to the general public. The legislation is in effect the exercise of social control over the manner in which business should be carried on—regulated in the interests of the health and welfare not merely of those employed in it but of all those engaged in it. A restriction imposed with a view to secure this purpose would, in our opinion, be clearly saved by Art. 19(6).

Apart from this, the constitutionality of the impugned provision might be sustained on another ground also, viz., with a view to avoid evasion of provisions specifically designed for the protection of workmen employed. It may be pointed out that acts innocent in themselves may be prohibited and the restrictions in that regard would be reasonable, if the same were necessary to secure the efficient enforcement of valid provisions. The inclusion of a reasonable margin to ensure effective enforcement will not stamp a law otherwise valid as within legislative competence with the character of unconstitutionality as being unreasonable. The provisions could, therefore, be justified as for securing administrative convenience and for the proper enforcement of it without evasion. As pointed out by this Court in *Manohar Lal* v. *The State* (1) (when the appellant challenged the validity of this identical provision but on other grounds):

"The legislature may have felt it necessary, in order to reduce the possibilities of evasion to a minimum, to encroach upon the liberties of those who would not otherwise have been affected.....To require a shopkeeper, who employs one or two men,

(1) [1951] S.C.R. 671, 675.

to close and permit his rival, who employs perhaps a dozen members of his family, to remain open, clearly places the former at a grave commercial disadvantage. To permit such a distinction might well engender discontent and in the end react upon the relations between employer and employed."

We have, therefore, no hesitation in repelling the attack on the constitutionality of s. 7(1) of the Act. The appeal fails and is dismised.

Appeal dismissed.

IMPERIAL CHEMICAL INDUSTRIES (INDIA) PRIVATE LIMITED

v.

THE WORKMEN

(AND CONNECTED APPEAL)

(P. B. GAJENDRAGADKAR, A. K. SARKAR and K. N. WANCHOO, JJ.)

Industrial Dispute—Award, if can deprive workmen of pre-existing benefits—Age of retirement—Fixation—Relevant considerations—Failure of Tribunal to consider evidence adduced by parties—Duty of Supreme Court.

The workmen of the Imperial Chemical Industries at Bombay claimed, firstly, twice the employee's normal rate of pay for the work done on Sundays and holidays and secondly that all employees of the company shall not compulsorily be retired by the company before they attain the age of 60. The company disputed the demands on the grounds that it had paid Sunday and holiday work allowance in terms of an earlier award, and as no change of circumstances had taken place since the making of the award a revision was not justified; as for the age of retirement as it had fixed the retirement age at 55 for all its employees throughout India, any revision would have repercussion in other branches of the company.

The tribunal partly allowed the claim of the workmen and directed the company to give the employees concerned for work done on Sundays and holidays half a day's total salary and dearness allowance; and for the work done by the employees on