

CASE NO.:  
Appeal (civil) 3270 of 1998

PETITIONER:  
Om Prakash & Others

RESPONDENT:  
State of UP & Others

DATE OF JUDGMENT: 09/03/2004

BENCH:  
D.M. Dharmadhikari

JUDGMENT:

J U D G M E N T  
Dharmadhikari J.

On the question of competence of the Municipal Board Rishikesh to amend the bye-law and validity of ban on sale of eggs in public within the municipal limits of Rishikesh, I have found myself in respectful agreement with the reasoning and conclusion of learned Brother Shivaraj V. Patil, J.

I, however, consider it necessary to deal with separately the ground urged to assail the bye-law as being violative of fundamental right of trade guaranteed to citizens under Article 19 (1) (g) read with Article 19 (6) of the Constitution of India.

Right to practice any profession or to carry on any occupation, trade or business being a very valuable right has been treated as fundamental and guaranteed under Article 19 (1) (g) of the Constitution. This right can be restricted under Article 19 (6) only by law and on such reasonable grounds which are found to be in the interest of general public. What should be considered a reasonable restriction within the meaning of clause (6) of Article 19 came up for consideration in a series of cases before this Court.

In Chintaman Rao vs. State of M.P. [AIR 1951 SC 118], it was observed that there should be proper balance between the right of trade guaranteed under Article 19(1)(g) and the social control permitted under clause (6) of Article 19 :-

'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 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'.

[emphasis added]

In the case of State of Madras vs. V.G. Row [AIR 1952 SC 196], this Court observed that there can be no general principles or standards to test reasonableness of a restriction on a particular trade. Each case has to be judged on the basis of facts and circumstances brought to the notice of the Court.

'The test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the

judicial verdict'.

[emphasis added]

The observations in the aforesaid two decisions have been quoted with approval in the State of Maharashtra vs. Himmatbhai Narbheram Rao [AIR 1970 SC 1157] in which challenge to Section 385 of Bombay Municipal Corporation Act imposing restrictions on dealing with carcass or skin of animals within the municipal limits as affecting the trade of the people dealing in those obnoxious items was negatived holding such restrictions to be in general public interest.

Reasonable restriction on certain trades in articles which are hazardous to public health such as liquor, it is held, can go to the extent of imposing complete prohibition on such trade. See State of Andhra Pradesh vs. McDowell & Co. [1996 (3) SCC 709] .

Complete ban on slaughter of cow and its progeny has also been upheld to save cow as an animal species highly useful to human community. See Mohd. Hanif Quareshi & Ors. vs. State of Bihar [AIR 1958 SC 731] and Hashmattullah vs. State of Madhya Pradesh & Ors. [1996 (4) SCC 391 ].

Learned Counsel on behalf of appellants has argued that trade of eggs cannot be considered as objectionable or injurious to society. In fact, egg eating is encouraged as necessary for improvement of public health. Doctors recognise it as a nutritive supplement to other food. There are eggs which contain no chicks and, therefore, acceptable to many sections of the society including those who are otherwise vegetarians.

The basic question, therefore, that arises is whether complete prohibition imposed on trade of eggs within the municipal limits of Rishikesh can be held to be reasonable and can pass the test of clause (6) of Article 19, as has been interpreted by this Court from case to case in various situations

It is a matter of common knowledge that Haridwar, Rishikesh and adjoining town Muni Ki Reti situate on the bank of river Ganges are pilgrim centres with huge temple complexes, shrines, ashrams, yoga teaching institutions and other institutions engaged in religious activities and spiritual practices. The three towns attract pilgrims round the year and in greater numbers during auspicious days and annual fairs. Pilgrims congregate in the towns to take bath in river Ganga considered to be holy by them. They visit temples and stay in various religious places and institutions. There is, thus, a continuous inflow of pilgrims in these religious towns. Every 6th year a big religious fair is organised called as Purn Kumbh or Ardh Kumbh in which crores of people from all over the country congregate in the three towns.

Supporting the imposition of ban on trade of eggs along with ban on trade of meat and fish, which is already in existence, it has been stated by the State and the local authority that it was so imposed on constant demands of citizens, various organisations and institutions operating within Haridwar and Rishikesh areas. Copies of some of such representations in writing received from individuals and religious organisations have been placed on record of this case. A major section of the society in the three towns consider it desirable that vegetarian atmosphere is maintained in the three towns for the inhabitants and the pilgrims.

In municipal limits of Haridwar public dealing in meat, fish and eggs was banned by the Notification issued as far back as on 23rd

July, 1956 and in Muni Ki Reti by Notification dated 18.12.1976. These restrictions imposed in Haridwar and Muni Ki Reti have not been challenged by any section of people in the Court and have continued as fully acceptable to all. The towns of Haridwar and Rishikesh have acquired religious importance as they are located on banks of river Ganges in the foot hills of Himalayas and are two main entry points for pilgrimage to Badrinath and Kedarnath located on the heights of Himalayas.

As a justification for extension of ban on trade of eggs with ban on trade of meat and fish in municipal area of Rishikesh which adjoins Haridwar and Muni Ki Reti, it has been stated on behalf of Municipal Board and State that during the periodical Kumbh fairs, the areas which are notified for organizing Kumbh Mela comprise parts of municipal areas in Haridwar, Muni Ki Reti and Rishikesh. One such Notification earmarking the areas of Kumbh Mela held in the year 1992, issued under byclause (2) of United Province, Mela Act of 1938 (UP Act No.16 of 1938) has been annexed with counter affidavit of the State.

The High Court in upholding complete restriction on dealing and trading of eggs in Rishikesh has relied on several decisions of this Court. The High Court has come to the conclusion that such prohibition extended to the trade of eggs in municipal town of Rishikesh is a reasonable restriction and has been imposed in the interest of general public.

Whether a particular restriction on trade to the extent of its complete prohibition can be held to be 'reasonable' within the meaning of clause (6) of Article 19 depends upon the nature of the trade involved and the public interest that is intended to be served by such total restriction.

The concept of 'reasonableness' defies definition. Abstract definition like 'choice of a course which reason dictates' as propounded in the earliest case of this Court in Chintaman Rao (Supra) is elastic. In the subsequent case of V.G. Row (supra), therefore, this Court has observed that 'no abstract standard or general pattern' of reasonableness can be laid down as applicable to all cases. Legal Author Friedmann in his book 'Legal Theory, 4th Ed., at pages 83-85', comments that reasonableness is an expression used to convey basically the Natural Law ideal of 'justice between man and man'. The concept of 'reasonable man' is also an application of the principles of natural justice to the standard of behaviour expected of the citizen. The functional and conceptual implication of the term 'reasonableness' is that it is essentially another word used for public policy. It means the application of the underlying principles of social policy and morality to an individual case. Friedmann further observes that the 'test of reasonableness is nothing substantially different from 'social engineering', 'balancing of interests', or any of the other formulas which modern sociological theories suggest as an answer to the problem of the judicial function'.

The term 'reasonable restriction' as used in Article 19(6) is highly flexible and relative term which draws its colour from the context. One of the sources to understand it is natural law and in the sense of ideal, just, fair, moral or conscionable to the facts and circumstances brought before the Court.

The law regulating local administration of an urban or rural area affects the social and economic life of the community. As pointed out by another Legal Thinker Stone, in his book Social dimensions of Law & Justice 'reasonable restriction', if properly used, helps in 'adjustments of conflicting interests' such as in the present case where large number of people residing and visiting Rishikesh, believe in strict vegetarianism as a part of their religion and way of life. The

appellants who are running hotels and restaurants and others like them constitute comparatively a very small section of the society engaged in carrying on trade of non-vegetarian food items in the town.

The reasonableness of complete restriction imposed on trade of non-vegetarian food items has, therefore, to be viewed from the cultural and religious background of the three municipal towns.

It is a matter of common knowledge that members of several communities in India are strictly vegetarians and shun meat, fish and eggs. Such people in great number regularly and periodically visit Haridwar, Rishikesh and Muni Ki Reti on pilgrimage.

In the three towns people mostly assemble for spiritual attainment and religious practices. All citizens are enjoined by Fundamental Duties prescribed in Article 51-A to respect faith of each other and thereby 'promote harmony and spirit of common brotherhood' in a pluralistic society as India is.

Article 51-A\027 "It shall be the duty of every citizen of India \027

(a)

(b)

(c)

(d)

(e) to promote harmony and the spirit of common brotherhood amongst all people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;

(f) to value and preserve the rich heritage of our composite culture."

The Fundamental Duties enjoined on citizens under Article 51-A should also guide the legislative and executive actions of elected or non-elected institutions and organisations of the citizens including the municipal bodies.

The resolution by Municipal Board Rishikesh to amend its bye-laws for banning public dealing and trade of non-vegetarian food items in municipal town of Rishikesh along with adjoining towns of Haridwar and Muni Ki Reti has been taken in deference to the religious and cultural demands of large number of residents and pilgrims who visit regularly and periodically on auspicious and festive days to the three towns. It is stated on behalf of the Municipal Board that major source of revenue and employment in the three towns is from the continuous inflow of tourists and floating population of pilgrims. Maintenance of clean and congenial atmosphere in all religious places which are spread over all the three towns is in common interest of the residents, pilgrims and visitors. Continuous floating population of pilgrims benefit the inhabitants of the towns by providing them various sources of earning livelihood and employment. Tourists and pilgrims are the major sources of revenue for the Local Municipal Bodies and the inhabitants of the three towns. Geographical situation and peculiar culture of the three towns justify complete restriction on trade and public dealing in non-vegetarian food items including eggs within the municipal limits of the towns. The High Court rightly upheld it to be a reasonable restriction. Trade in all kinds of food items vegetarian or non-vegetarian in adjoining towns and villages outside the municipal limits of three towns remains unrestricted and there is no substantial harm caused to those engaged in such trade.

For the aforesaid reasons, the impugned bye-law notified by Municipal Board Rishikesh cannot be held to be violative of Article 19 (1) (g) of the Constitution. With this addition, I respectfully agree with the opinion of learned brother Shivaraj V. Patil, J. and with his conclusion that this appeal be dismissed.

JUDIS