CASE NO.:
Writ Petition (civil) 59 of 2001

PETITIONER:
Exp. Publications(Madurai)Ltd.& Anr.

RESPONDENT:
Union of India & Anr.

DATE OF JUDGMENT: 11/03/2004

BENCH:
Y.K. Sabharwal & D.M. Dharmadhikari

JUDGMENT:
J U D G M E N T

Y.K. Sabharwal, J.

In this petition filed under Article 32 of the Constitution of India challenge is to the constitutionality of paragraph 80(2) of the Employees' Provident Fund Scheme, 1952. The effect of the impugned paragraph is that the employees of newspaper industry, for the purposes of provident fund scheme, do not fall in the category of excluded employees despite their pay being above prescribed amount as notified by Government of India from time to time.

In order to appreciate the question involved, it is necessary to examine certain provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 (for short, 'the PF Act').

The PF Act was passed by the Parliament in the year 1952 to, inter alia, provide for the institution of provident fund for employees in factories and other establishments. Sub-section (3) of Section 1, inter alia, provides that the Act applies to every establishment which is a factory engaged in any industry specified in Schedule I and in which twenty or more persons are employed and to any other establishment employing twenty or more persons or class of such establishments which the Central Government may, by notification in the Official Gazette, specify in this behalf. The expression "basic wages" is defined in Section 2(b) and the expression "scheme" in Section 2(l). 'Scheme' means the Employees' Provident Fund Scheme framed under Section 5 of the PF Act. The Central Government has been empowered to add to Schedule-I any other industry in respect of the employees whereof it is of opinion that a provident fund scheme should be framed under the Act and thereupon the industry so added shall be deemed to be an industry specified in Schedule I for the purposes of the Act. Section 5, inter alia, provides that the Central Government may, by notification in the Official Gazette, frame a Scheme to be called the Employees' Provident Fund Scheme for the establishment of provident funds under the Act for employees or for any class of employees and specify the establishments or class of establishments to which the said Scheme shall apply and there shall be established as soon as may be after the framing of the Scheme, a Fund in accordance with the provisions of the Act and the Scheme.

In exercise of the powers conferred by Section 5 of the PF Act, the Central Government framed the Employees' Provident Fund Scheme, 1952 (for short, 'the Scheme'). The employees to whom the provisions of the Scheme and the Act would not apply are defined as "excluded employee" in paragraph 2(f) of the Scheme. The said paragraph to the extent relevant for present purposes reads as under :

"2(f) 'excluded employee' means\027
(i) ...
(ii) an employee whose pay at the time he is otherwise entitled to become a member of the Fund, exceeds six thousand and five hundred rupees per month;
Explanation.\027'Pay' includes basic wages with

dearness allowance, retaining allowance (if any) and cash value of food concessions admissible thereon;

The income ceiling mentioned in paragraph 2(f)(ii) has been substituted and suitably increased from time to time by issue of notification by the Central Government having regard to the fall in money value and increase in wages. The ceiling of Rs.6,500/- per month was fixed by notification dated 4th May, 2001 w.e.f. 1st June, 2001. Earlier to 1st June, 2001, it was Rs.5,000/- per month. Originally, an employee whose pay exceeded Rs.300/- per month was placed into the category of an 'excluded employee'. In 1957, the pay ceiling was increased to Rs.500/- per month; in 1962,it was increased from Rs.500/- to Rs.1,000/-; in 1976, it was increased from 1,000/- to Rs.1,600/-; in 1985, it was increased from 1,600/- to Rs.2,500/-; in 1990, it was increased from Rs.2,500/- to Rs.3,500/-, in 1994, it was increased from Rs.3,500/- to Rs.5,000/-; and lastly to Rs.6,500/- in the year 2001.

In so far as the employees of the newspaper industries are concerned, they have not been included in the category of 'excluded employee' for the last more than 47 years. By notification dated 4th December, 1956 issued by the Central Government, Chapter X was inserted in the scheme incorporating therein special provisions in the case of newspaper establishments and newspaper employees. Paragraph 80 thereof, substituted the definition of expression 'excluded employee' in relation to its application to newspaper establishments and newspaper employees. The relevant part of Paragraph 80 reads as follows :

"80. Special provisions in the case of newspaper establishment and employees.\027The Scheme shall, in its application to newspaper establishments and newspaper employees, as defined in Section 2 of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955, come into force on the 31st day of December, 1956 and be subject to the modifications mentioned below:

(1) In Chapters I to IX, references to 'industry', 'factories' and 'employees' shall be construed as references to 'newspaper industry', 'newspaper establishments' and 'newspaper employees', respectively:

(2) 'excluded employee' means,\027

(i) an employee who, having been a member of the Fund, has withdrawn the full amount of his accumulations in the Fund under clause (a) or (c) of sub-paragraph (1) of paragraph 69;

(ii) an apprentice.

Explanation.\027'Apprentice' means a person who, according to the standing orders applicable to the newspaper establishment concerned, is an apprentice or who is declared to be an apprentice by the authority specified in this behalf by the appropriate Government."

The aforesaid paragraph came into force on 31st December, 1956. Therefore, since the said date, instead of paragraph 2(f), the employees of the newspaper establishments have a separate and distinct definition. The effect of definition as contained in the impugned paragraph 80(2) is that since 1956, the income ceiling has not been applied to the employees of newspaper establishments. The result is that newspaper establishments and newspaper employees do not come in the category of 'excluded employee'. In other words, irrespective of pay, all such employees are entitled to the benefit of the scheme.

The main attack of the petitioners to the constitutional validity of Paragraph 80(2) is that only in case of employees of newspaper industry, the test of income has been excluded by keeping the newspaper establishments and employees as a class apart which is wholly discriminatory. There is no rationale or valid basis for

artificially treating newspaper establishments and employees as a distinct class so as to make them ineligible on the basis of income ceiling. The impugned definition of 'excluded employee' in paragraph 80(2) suffers from the vice of arbitrariness and offends Article 14 of the Constitution of India apart from imposing a serious financial burden only on newspaper establishments. According to the petitioners, there is no valid basis to single out newspaper establishments for additional burden.

The petitioners have tried to explain that though the impugned provision came into effect in 1956, they tried to bear the burden with equanimity and with a certain sense of rectitude but, with passage of years, there has been severe setback to the newspaper industry in general and the petitioners' organization in particular and, therefore, this challenge at this stage. In this regard, it has been pointed out that the recent trends have witnessed a recession of several financial crises in newspaper industry as a result of decline in their revenue from advertisements because of diversion of advertisements to electronic media. The inroads made by Television is said to have taken the sheen off the print media. In any case, delay in such matters, when constitutional validity is in issue, cannot be of any consequences, is the submission of Anil Dewan, Senior Advocate appearing for the petitioners. It has been further submitted that the mere fact that other newspaper organizations have not challenged the impugned provision is also of no consequence.

In order to appreciate the challenge in question, it is also necessary to examine certain provisions of the Working Journalists and Other Newspaper Employees (Conditions of Service) and Miscellaneous Provisions Act, 1955 (for short, 'the Working Journalists Act').

The Working Journalists Act was enacted to regulate certain conditions of service of working Journalists and other persons employed in the newspaper establishments. "Newspaper Employee" means any working journalist, and includes any other person employed to do any work in, or in relation to, any newspaper establishment [Sec.2(c)]. The expression 'newspaper establishment' is defined in Section 2(d). The expression 'non-journalist newspaper employee' is defined in Section 2(dd). The working journalists and those who are not journalists but are employed to do any work in, or in relation to, any newspaper establishment, are newspaper employees. Chapter II of the Working Journalists Act, inter alia, deals with conditions of service of working journalists, incorporating therein special provisions in respect of certain cases of retrenchment, payment of gratuity, hours of work, leave, fixation or revision of rates of wages, constitution of a Wage Board, Tribunal etc. Chapter IIA, inter alia, provides for fixation or revision of rates of wages of non-journalist newspaper employees, constitution of Wage Board for fixing or revising their rates of wages, constitution of Tribunal etc. Section 15 of the Working Journalists Act, inter alia, stipulates that the PF Act, as in force for the time being, shall apply to every newspaper establishment in which twenty or more persons are employed on any day, as if such newspaper establishment were a factory to which the aforesaid Act had been applied by a notification of the Central Government under sub-section (3) of Section 1 thereof, and as if a newspaper employee were an employee within the meaning of that Act. The applicability of the PF Act to the employees of the newspaper establishments is not in issue. The issue here is about not subjecting the employees of the newspaper establishments to income ceiling whereas employees of all other establishments and industries to which the PF Act is applicable, are subjected to income ceiling.

The Constitutional validity of certain provisions of the Working Journalists Act was examined in the celebrated decision of the Constitution Bench in Express Newspapers (Private) Ltd. & Anr. v. The Union of India & Ors. [(1959) SCR 12], and one of the questions was about violation of equality clause. We will revert to the said decision a little later.

The contention is that the impugned provision which applies exclusively to the employees of newspaper industry suffers from the vice of arbitrariness because there is no rational or distinctive basis for culling out a separate class called "newspaper establishment and newspaper employees" and to provide for a harsher and more financially crippling measure by providing a special definition thereby totally eliminating the income test. There is no valid classification to split the employers into newspaper organizations and non-newspaper organizations for different and discriminatory treatment in the matter of Provident Fund Contribution. It has also been contended that as a matter of fact the extent of

financial power available to newspaper industry is much less than many other industries like Steel, Heavy Engineering and other cash rich industries and if, at all, there is a case for providing a lesser burden it is newspaper industry which deserves it as a class. Instead of that, a heavy burden has been imposed upon a weaker section of the industries, viz., newspaper industry. The petitioners have also faintly suggested violation of right of freedom of speech and expression as guaranteed under Article 19(1)(a) contending that in view of additional burden, it becomes very difficult to maintain price line by keeping the price of the newspaper at certain level without increasing it and even a marginal increase would affect the number of readers, particularly, in a country like India with a large number of economically weaker sections. This reduction in the access of newspapers to the members of the public is a matter that is fraught with serious consequences because it not merely affects the fundamental rights of the petitioners to disseminate the news freely but it also affects the right of the members of the public to know, which is the essence of democracy. The contention is that any action which has effect of increasing the price of newspaper has very serious ramifications. It is claimed that the effect of the impugned provision is to place additional financial burden which is hardly conducive to the furtherance of the freedom of press and there is no warrant for providing harsh special impositions which are not applicable to other business organizations. The continuation of such a definition year after year would result in petitioners' totally going out of business since the amount involved have become astronomical.

The stand of the respondent in brief is that having regard to various considerations concerning newspaper establishments, the Government has distinguished the said establishments from non-newspaper establishments. The impugned provision is a welfare legislation made for the welfare of the employees of the newspaper establishments so as to cover a wider range of employees and grant to them the benefit of the beneficial legislation. Such a legislation is in furtherance of the freedom of press enshrined in Article 19(1)(a) of the Constitution of India. The Journalist and the persons working in the newspaper establishments form as much integral part of freedom of press as the establishment itself and it is to promote and protect the journalist and other employees of newspaper establishments who also form the bed rock of freedom of speech and expression that the benefit of Provident Fund to even those who draw higher pay has been extended.

Undoubtedly, the employees of the newspaper establishments are in a better position than the employees of other establishments and industries since the newspaper employees, without any income ceiling limit, are entitled to the benefits the PF Act and the Scheme. That has been the position for the last nearly half a century. On the other hand, right since inception of the PF Act, the benefit of the Scheme has been denied to those employees who have more than specified income. The benefit has been extended to weaker sections of employees of other establishments and industries and not to all sections. The income ceiling has been amended by notifications issued from time to time as already noticed.

The question for determination also is whether this benefit given to the employees of newspaper industry in the year 1956 and continuing till date can be challenged at this stage after lapse of so many years by only one of the newspaper establishments in the country.

The principles under Article 14 of the Constitution are well settled. It is not necessary to burden this judgment with various decisions on the subject of arbitrariness and the classification, except to notice the principles laid In Re The Special Courts Bill, 1978 [(1979) 1 SCC 381] as under :

"(5) By the process of classification, the State has the power of determining who should be regarded as a class for purposes of legislation and in relation to a law enacted on a particular subject. This power, no doubt, in some degree is likely to produce some inequality; but if a law deals with the liberties of a number of well-defined classes, it is not open to the charge of denial of equal protection on the ground that it has no application to other persons. Classification thus means segregation in classes which have a systematic relation, usually found in common properties and characteristics. It postulates a rational basis and does not mean herding together of certain persons and

classes arbitrarily.
(6) The law can make and set apart the classes according to the needs and exigencies of the society and as suggested by experience. It can recognise even degree of evil, but the classification should never be arbitrary, or evasive.
(7) The classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all the persons grouped together and not in others who are left out but those qualities or characteristics must have a reasonable relation to the object of the legislation. In order to pass the test, two conditions must be fulfilled, namely, (1) that the classification must be founded on an intelligible differentia which distinguishes those that are grouped together from others and (2) that differentia must have a rational relation to the object sought to be achieved by the Act.
(8) The differentia which is the basis of the classification and the object of the Act are distinct things and what is necessary is that there must be a nexus between them. In short, while Article 14 forbids class discrimination by conferring privileges a imposing liabilities upon persons arbitrarily selected out of a large number of other persons similarly situated in relation to the privileges sought to be conferred or the liabilities proposed to be imposed, it does not forbid classification for the purpose of legislation, provided such classification is not arbitrary in the sense above mentioned."

We will now examine other cases on which reliance has been placed by Mr. Anil Dewan in support of challenge to the impugned provision.

Motor General Traders & Anr. v. State of Andhra Pradesh & Ors. [(1984) 1 SCC 222] has been relied in support of the contention that the mere fact that the discrimination is allowed to be continued for a long time is not a ground to dispel the attack and also that what may have been once a non-discriminatory piece of legislation, in course of time, can become discriminatory. Motor General Traders' case is a case under Rent Laws where challenge was to the constitutional validity of clause (b) of Section 32 of Andhra Pradesh Buildings (Lease, Rent and Eviction) Control Act, 1960 which exempts all buildings constructed on and after 26th August, 1957 from the operation of the Act. The provision was enacted to provide an incentive to the house building activity to meet the shortage of accommodation and encourage new constructions. The effect of the impugned provision was that the Act was not to apply to any building constructed on and after 26th August, 1957. Earlier, when the constitutionality of the said provision was questioned before the High Court of Andhra Pradesh on the ground that it violated Article 14 of the Constitution, the petition was dismissed by the High Court [Chintapalli Achaiah v. P. Gopalakrishna Reddy [AIR 1966 AP 51] observing that the hardship caused to the tenants by the exemption given in the case of buildings constructed after 26th August, 1957 was short-lived and the concession should be tolerated for a short while. This Court noticed that the exemption had continued for more than a quarter of a century and the landlords who earned their exemption under Section 32(b) had continued to enjoy for a long number of years the freedom to indulge in malpractices which the Act intended to check while others are governed by the Act.

In view of Section 32(b) of the Andhra Pradesh Act, there were to sets of buildings in every area in which the Act applied \026 (1) those to which the Act applied; and (2) those which are exempted under Section 32(b). It was noticed that the buildings to which the Act was applicable are aged more than 26 years and those to which it was not applicable are aged about 26 years or less. During these 26 years from August 26, 1957, thousands of buildings may have been constructed and all of them are continuing to enjoy the immunity from the provisions of the Act. It was contended in that case that the result was that there were two class of landlords \026 one class governed by the Act and the other not.

There were also two class of tenants as well \026 one having the protection of the remedial provision of the Rent Act and the other not having such protection. The contention that was urged in support of challenge to the constitutional validity of Section 32 (b) was that whatever may have been the position in the first few years, after the Act was passed, there is no justification for continuing the exemption for all time to come. It was observed that the object of granting exemption was only to provide an incentive to the building activity and also that even the State Government was not quite satisfied with the existing law. The question of discrimination was determined having regard to these factors. The classification of buildings for purposes of Section 32(b) was held not to have satisfied the true tests of classification. It was observed that while it may be that there is some justification for exempting new buildings say which are five, seven or ten years old from the Act, in order to provide an incentive to builders of new buildings, there is hardly any justification to allow buildings which were constructed more than ten years ago to remain outside the scope of the Act. The landlords of such buildings, it was noticed, must have realized a large part of investment made on such buildings by way of rents during all these years. The Court took into account that owing to continuous influx of population into urban areas in recent years the rates of rents have gone up everywhere and that the landlords of such buildings have been able to take advantage of the situation created by the shortage of urban housing accommodation which is now a universal phenomenon. Under these circumstances, it was held that there was no longer any need to continue the exemption. It was said that there cannot be any valid justification to apply the Act to a building which was 27 years old and not to apply it in the case of a building which is 26 years old. It was held that the classification of buildings into two classes for purposes of Section 32(b) of the Act, therefore, does not any longer bear any relationship to the object, since the buildings which are exempted have already come into existence and their owners have realised a major part of their investment.

In Motor General Traders' case, two answers were given to the contention that since the impugned provision has been in existence for over 23 years and its validity has once been upheld by the High Court, this Court should not pronounce upon its validity at this late stage. First, the very fact that nearly 23 years are over from the date of enactment and the discrimination is allowed to be continued unjustifiably for such a long time is a ground of attack pointing out that what should have been just an incentive has become a permanent bonanza in favour of those who constructed building subsequent to August 26, 1957; there being no justification for the continuance of the benefit to a class of persons without any rational basis whatsoever, the evil effects flowing from the impugned exemption have caused more harm to the society than one could anticipate. What was justifiable during a short period has turned out to be a case of hostile discrimination by lapse of nearly a quarter of century. The second answer given was that mere a lapse of time does not lend constitutionality to a provision which is otherwise bad.

Rattan Arya & Ors. v. State of Tamil Nadu & Anr. [(1986) 3 SCC 385] again is a decision in which a provision of the Rent Act exempting from protection of the Act residential buildings paying monthly rent exceeding Rs.400/- whereas no such restriction was imposed in respect of tenants of non-residential buildings was struck down being violative of Article 14, following the Motor General Traders' case (supra).

In Malpe Vishwanath Acharya & ors. v. State of Maharashtra & Anr. [(1998) 2 SCC 1] challenge was to the validity of certain provisions of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 insofar the same provided that the landlords cannot charge rent in excess of the standard rent. It was held that there is considerable judicial authority for the proposition that with the passage of time, a legislation which was justified when enacted may become arbitrary and unreasonable with the change of circumstances. A three Judge Bench said that :

"It is true that whenever a special provision, like the Rent Control Act, is made for a section of the society it may be at the cost of another section, but the making of such a provision or enactment may be necessary in the larger interest of the society as a whole but the benefit which is given initially if continued results in increasing injustice to one section of the society and an

unwarranted largess or windfall to another, without appropriate corresponding relief, then the continuation of such a law which necessarily, or most likely, leads to increase in lawlessness and undermines the authority of the law can no longer be regarded as being reasonable. Its continuance becomes arbitrary."

None of the aforesaid decisions, in our view, have any applicability to the case in hand for various reasons. The aforesaid decisions were concerned with validity of provisions which intended to grant only a temporary benefit having regard to the prevailing conditions but were continued for long number of years without review of change of conditions and as purpose had been achieved, the provisions were held to be violative of equality clause. Further, after coming to the conclusion as above that the impugned provisions have become discriminatory, this Court rejected the contention that since the provisions had been unsuccessfully challenged earlier and held the field for a long time, the same do not deserve to be invalidated. In the present case it is not the contention that only temporary relief was granted to the employees of the newspaper industry. Apart from this, the employees of newspaper industry have always been treated as a class apart, an aspect which we have dealt in later part of the judgment.. Moreover, the mere fact that the similar benefit even after lapse of about half a century has not been given to the employees of other industries will not make the benefit given to the newspaper industry discriminatory. The principle that a provision which may be constitutional when enacted may become unconstitutional later due to changed scenario, has no applicability whatsoever to the present case.

Undoubtedly, the classification cannot be arbitrary. It has to be rational and must have a reasonable relation to the object sought to be achieved. The classification must be founded on an intelligible differentia. There is no difficulty in accepting these principles relied upon by Mr. Dewan. The difficulties generally do not arise in formation of principles under Article 14. But at times, difficulties do arise in the application of such principles to concrete cases.

We may also notice the aspect of long delay in laying challenge to the validity of the impugned provisions. No hard and fast principle can be laid down that under no circumstances delay would be a relevant consideration in judging constitutional validity of a provision. It has to be remembered that the constitutional remedy under Article 32 is discretionary. In one case, this Court may decline discretionary relief if person aggrieved has slept over for long number of years. In another case, depending upon the nature of violation, court may ignore delay and pronounce upon the invalidity of a provision. It will depend from case to case. In Rabindra Nath Bose & Ors. . v. Union of India & Ors. [(1970) 2 SCR 697], the extreme proposition that this court has no discretion and cannot dismiss a petition under Article 32 on the ground that it has been brought after inordinate delay, was not accepted by the Constitution Bench. The plea to reconsider law laid down in M/s.Tilokchand and Motichand & Ors. v. H.B.Munshi & Anr. [(1969) 1 SCC 110] did not succeed. It was held that:

"But after carefully considering the matter, we are of the view that no relief should be given to petitioners who, without any reasonable explanation, approach this Court under Article 32 of the Constitution after inordinate delay. The highest Court in this land has been given Original Jurisdiction to entertain petitions under Article 32 of the Constitution. It could not have been the intention that this Court would go into stale demands after a lapse of years.

It is said that Article 32 is itself a guaranteed right. So it is, but it does not follow from this that it was the intention of the Constitution makers that this Court should discard all principles and grant relief in petitions filed after inordinate delay."

In Ramachandra Shankar Deodhar & Ors. v. The State of Maharashtra & Ors. [(1974) 1 SCC 317] on aspect of belated and stale claims, the Bench said that it is not a rule of law, but a rule of practice based on sound and proper exercise of discretion. In Tilokchand (supra) Chief Justice Hidayatullah pointed

out that the question "is one of discretion for this Court to follow from case to case. There is no lower limit and there is no upper limit..... It will depend on what the breach of the Fundamental Right and remedy claimed are and how the delay arose"

In the present case, there is no satisfactory explanation for delay of over forty five years. The petition can be rejected by declining to exercise discretion in favour of petitioners only on this count. Further, as already noticed, a provision though constitutional when enacted, may with passage of time become unconstitutional, but the said principle has no applicability to the present case. The contention here is that the impugned provision was unconstitutional from its inception in the year 1956 since there was never any legal basis for classification of newspaper establishments as a separate class. We have, also examined hereafter this contention as well.

Mr.Dewan contends that newspaper industry cannot be singled out for harsh treatment. Reliance is placed upon observation made in Indian Express Newspapers (Bombay) Private Ltd. & Ors. v. Union of India & Ors. [(1985) 1 SCC 641 at 685 para 66] to the effect that levy of tax on newspaper industry should not be overburden on newspapers which constitute the Fourth Estate of the country which should not be singled out for harsh treatment. One of the questions that came to be considered was whether newspapers have immunity from taxation. Considering the earlier decisions, namely, Sakal Papers (P) Ltd. & Ors. v. The Union of India [(1962) 3 SCR 842] and Bennett Coleman & Co. & Ors. v. Union of India & Ors. [(1972) 2 SCC 788], the first being concerned with the newspaper price page policy and in the second the challenge being to the newsprint policy imposed by the Government, it was held that none of these two decisions were concerned with the power of the Parliament to levy tax on any goods used by the newspaper industry. Holding that taxes have to be levied for the support of the Government and newspapers which derive benefit from the public expenditure cannot disclaim their liability to contribute a fair and reasonable amount to the public exchequer, the above observations were made about not singling out newspaper industries for harsh treatment. It was further observed that a wise administrator should realize that the imposition of a tax like the customs duty on newsprint is an imposition of knowledge and would virtually amount to a burden imposed on a man for being literate and for being conscious of his duty as a citizen to inform himself about the world around him. It was further said that the fundamental principle involved was the people's right to know. Freedom of speech and expression should, therefore, receive a generous support from all those who believe in the participation of people in the administration. It is on account of this special interest which society has in the freedom of speech and expression that the approach of the Government should be more cautious while levying taxes on matters concerning newspaper industry than while levying taxes on others. This Court held that while the contention that no tax can be levied on newspaper industry cannot be accepted, it had to be held that any such levy is subject to review by courts in the light of the provisions of the Constitution. The observations in the judgment were pressed into service in support of the contention that freedom of speech and expression would be adversely affected by continuing the definition of 'excluded employee' in respect of the newspaper industry which has been singled out for harsh treatment. As can be seen from above, observations have been made in a different context. In any case, the decision, far from supporting the contention of the petitioners, in fact, to an extent lends support to the benefit that was given to the employees of the newspaper industry in the year 1956 as a result of the impugned provision. It has to be remembered that in spreading information, the employees of newspapers industry play dominant role and considering the employees of newspaper industry as a 'class', this benefit was extended almost at the same time when the Working Journalist Act was enacted. Thus, there can be no question of any adverse effect on the freedom of press. The financial burden on employer, on facts as herein, cannot be said to be a 'harsh treatment'. The contention that now the petitioners are unable to bear the financial burden which they have been bearing for the last over forty five years is wholly irrelevant. It is for petitioners to manage their affairs if they intend to continue with their activity as newspaper establishment.

In Express Newspapers (Private) Ltd. & Anr. v. The Union of India & Ors. [(1959) SCR 12], the question as to the vires of the Working Journalists (Conditions of Service) and Miscellaneous Provisions Act, 1955 came up for consideration. Tracing the history of the events which led to the enactment of the

said Act, it was noticed that newspaper industry in India did not originally start as an industry but started as individual newspapers founded by leaders in national, political, social and economic fields. During the last half a century, however, it developed characteristics of a profit making industry in which big industrialists invested money and combined controlling several newspapers all over the country also became the special feature of this development. The working journalists except for the comparatively large number that were found concentrated in the big metropolitan cities, were scattered all over the country and for the last ten years and more agitated that some means should be found by which those working in the newspaper industry were able to have their wages and salaries, their dearness allowance and other allowances, their retirement benefits, their rules of leave and conditions of service, enquired into by some impartial agency or authority, who would be empowered to fix just and reasonable terms and conditions of service for working journalists as a whole. The Government of India appointed a Press Commission to, inter alia, enquire into the state of press in India, its present and future lines of development and in particular to examine the method of recruitment, training, scales of remuneration, benefits and other conditions of employment of working journalists, settlement of disputes affecting them and factors which influence the establishment and maintenance of high professional standards. The commission also considered that there should be certain minimum wage paid to a journalist. The possible impact of such a minimum wage was also considered by it and it was considered not unlikely that the fixation of such a minimum wage may make it impossible for small papers to continue to exist as such but it thought that if a newspaper could not afford to pay the minimum wage to the employee which would enable him to live decently and with dignity, that newspaper had no business to exist. It also considered the applicability of the Industrial Disputes Act to the Working Journalists and came to the conclusion that the working journalists did not come within the definition of workman as it stood at that time in the Industrial Disputes Act nor could a question with regard to them be raised by others who were admittedly governed by the Act. It, therefore, considered the question as to the tenure of appointment and the minimum period of notice for termination of the employment of the working journalists, hours of work, provision for leave, retirement benefits and gratuity, made certain recommendations and suggested legislation for the regulation of the newspaper industry which should embody its recommendations with regard to notice period, bonus, minimum wages, Sunday rest, leave and provident fund and gratuity. Almost immediately after the report of the Press Commission, Parliament passed the Working Journalists (Industrial Disputes) Act, 1955 (1 of 1955). It was an Act to apply the Industrial Disputes Act, 1947 to the working journalists. The application of the Industrial Disputes Act, 1947 to the working journalist was not, however, deemed sufficient to meet the requirements of the situation. There was considerable hesitation in Parliament for the implementation of the recommendations of the Press Commission. Ultimately, the Government introduced a Bill on 30th November, 1955 in Rajya Sabha being Bill No.13 of 1955. It was a Bill to regulate conditions of service of working journalists and other persons employed in newspaper establishments. The recommendations of the Press Commission in regard to the minimum wages and other aspects, above noticed, was left to the Minimum Wages Board to be constituted for the purpose by the Central Government. Finally, the Working Journalist (Conditions of Service) and Miscellaneous Provisions Act, 1955 (45 of 1955) was passed and received the assent of the President on 20th December, 1955. The Act was challenged on the ground that it violates the fundamental right under Article 19(1)(a) of the Constitution guaranteeing to all citizens the right to freedom of speech and expression. Pointing out that the regulations of the conditions of service is the main object which is sought to be achieved by the impugned Act, it was considered that if a general law in regard to industrial or labour relation had been applied to press industry as a whole, no exception could have been taken to it. Further, if the matter had rested with the application of the Industrial Disputes Act, 1947 to the working journalist or with the application of the Industrial Employment (Standing Orders) Act, 1946 or the Employees' Provident Fund Act, 1952 to them, no exception could have been taken to this measure. The contention urged was that apart from application of these general laws to the working journalists, there are provisions enacted in the impugned Act in relation to payments of gratuity, hours of work, leave and fixation of the rates of wages which are absolutely special to the press industry qua the working journalists and

they have the effect of singling out the press industry by creating a class of privileged workers with benefits and rights which have not been conferred upon other employees and the provisions contained therein have the effect of laying a direct and preferential burden on the press, have a tendency to curtail the circulation and thereby narrow the scope of dissemination of information, fetter the petitioners' freedom to choose the means of exercising their right and are likely to undermine the independence of the press by having to seek Government aid.

This Court noticed that the journalist are but the vocal organs and the necessary agencies for the exercise of the right of free speech and expression and any legislation directed towards the amelioration of their conditions of service must necessarily affect the newspaper establishments and have its repercussions on the freedom of press. The impugned Act can, therefore, be legitimately characterized as a measure which affects the press and if the intention or the proximate effect and operation of the Act was such as to bring it within the mischief of Article 19(1)(a), it would certainly be liable to be struck down. The real difficulty, however, in the way of the petitioners is that whatever be the measures enacted for the benefit of the working journalists neither the intention nor the effect and operation of the impugned Act is to take away or abridge the right of freedom of speech and expression enjoyed by the petitioners. The question of violation of right of freedom of speech and expression as guaranteed under Article 19(1)(a) in the present case on account of additional burden as a result of impugned provision does not arise.

An attack was also made in the said case to the constitutional validity of the Act on the ground that it selected the working journalists for favoured treatment by giving them additional benefits which other persons in similar or comparable employment had not got and in providing for the fixation of their salaries without following the normal procedure envisaged in the Industrial Disputes Act, 1947. The following propositions were advanced :

"1. In selecting the Press industry employers from all industrial employers governed by the ordinary law regulating industrial relations under the Industrial Disputes Act, 1947, and Act I of 1955, the impugned Act subjects the Press industry employers to discriminatory treatment.

2. Such discrimination lies in

(a) singling out newspaper employees for differential treatment;

(b) saddling them with a new burden in regard to a section of their workers in matters of gratuities, compensation, hours of work and wages;

(c) devising a machinery in the form of a Pay Commission for fixing the wages of working journalists;

(d) not prescribing the major criterion of capacity to pay to be taken into consideration;

(e) allowing the Board in fixing the wages to adopt any arbitrary procedure even violating the principle of audi alteram partem;

(f) permitting the Board the discretion to operate the procedure of the Industrial Disputes Act for some newspapers and any arbitrary procedure for others;

(g) making the decision binding only on the employers and not on the employees, and

(h) providing for the recovery of money due from the employers in the same manner as an arrear of land revenue.

3. The classification made by the impugned Act is arbitrary and unreasonable, in so far as it removes the newspaper employers vis-a-vis working journalists from the general operation of the Industrial Disputes Act, 1947, and Act I of 1955."

The aforesaid propositions were considered in the light of the principles laid down in various decision on the aspect of Article 14. The well established

principle to be always borne in mind is that while Article 14 forbids class legislation, it does not forbids reasonable classification. In Budhan Choudhry & Ors. v. State of Bihar [(1955) 1 SCR 1045] Das, J. (as His Lordship then was) speaking for the court said:

"The provisions of article 14 of the Constitution have come up for discussion before this Court in a number of cases, namely, Chiranjit Lal Chowdhuri v. The Union of India [(1950) S.C.R. 869], The State of Bombay v. F. N. Balsara [(1951) S.C.R. 682], The State of West Bengal v. Anwar Ali Sarkar [(1952) S.C.R. 284], Kathi Raning Rawat v. The State of Saurashtra [(1952) S.C.R. 435], Lachmandas Kewalaram Ahuja v. The State of Bombay [(1952) S.C.R. 710], Quasim Razvi v. The State of Hyderabad [(1953) S.C.R. 581], and Habeeb Mohamad v. The State of Hyderabad [(1953) S.C.R. 661]. It is, therefore, not necessary to enter upon any lengthy discussion as to the meaning, scope and effect of the article in question. It is now well-established that while article 14 forbids class legislation, it does not forbid reasonable classification for the purposes of legislation. In order, however, to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group and (ii) that that differentia must have a rational relation to the object sought to be achieved by the statute in question. The classification may be founded on different bases; namely, geographical, or according to objects or occupations or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. It is also well-established by the decisions of this Court that article 14 condemns discrimination not only by a substantive law but also by a law of procedure."

In the light of the aforesaid principles, in Express Newspapers (supra) the Court considered whether the Act impugned therein violated the fundamental right guaranteed under Article 14. It was observed that in framing the scheme, various circumstances peculiar to the press had to be taken into consideration. These considerations weighed with the Press Commission in recommending special treatment for working journalists in the matter of amelioration of their conditions of service. The position as prevailing in other countries was also noticed. In nutshell, the working journalists were held as a group by themselves and could be classified as such. If the Legislature embarked upon a legislation for the purpose of ameliorating their conditions of service, there was nothing discriminatory about it. They could be singled out for preferential treatment. It was opined that classification of this type could not come within the ban of Article 14. Considering the position in regard to the alleged discrimination between press industry employers on one hand and the other industrial employers on the other, it was said that even considering the Act as a measure of social welfare legislation, the State could only make a beginning somewhere without embarking on similar legislations in relation to all other industries and if that was done in this case no charge could be levelled against the State that it was discriminating against one industry as compared with the others. The classification could well be founded on geographical basis or be according to objects or occupations or the like. The only question for consideration would be whether there was a nexus between the basis of classification and the object of the Act sought to be achieved. Both he conditions of permissible classification were fulfilled. The classification was held to be based on an intelligible differentia which had a rational relation to the object sought to be achieved, viz., the amelioration of the conditions of service of working journalists. The attack on constitutionality of the Act based on Article 14

was negatived.

Though challenge in the aforesaid case was to special treatment to working journalists but what is to be seen is, that the press industry was held to be a class by itself. The definition of 'newspaper employee' takes into its fold all the employees who are employed to do any work in, or relation to, any newspaper establishment. The decision in Express Newspaper's case amply answers the main contention about the Press Industry having been singled out, against the petitioners. This decision also holds that to provide social welfare legislation and grant benefit, a beginning had to be made somewhere without embarking on similar legislation in relation to other industries. The fact that even after about half a century similar benefit has not been extended to the employees of any other industry, will not result in invalidation of benefit given to employees of press industry. It is not for us to decide when, if at all, to extend the benefit to others. In view of aforesaid, we are unable to accept the contention that the impugned provision is violative of Article 14 on the ground that it singles out newspaper industry by excluding income test only in regard to the said industry. Apart from the fact that it may not be always possible to grant to everyone all benefits in one go at the same time, it seems that the impugned provision and the enacting of the Working Journalists Act was part of a package deal and that probably is the reason for other newspaper establishments not challenging it and petitioners also challenging it only after lapse of so many years. Further Section 2(i), 4 and Schedule I of Provident Fund Act shows how gradually the scope of the Act has been expanded by the Central Government and the Act and Scheme made applicable to various branches of industries. From whatever angle we may examine, the attack on the constitutional validity based on Article 14 cannot be accepted.

In view of the aforesaid discussion, we find no merit in the contentions urged on behalf of the petitioners. The petition is accordingly dismissed.