IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2334 OF 2014

BEST Worker's Union .. Petitioner
versus
Union of India & Ors. .. Respondents

Ms Neeta Karnik for Petitioner.
Ms Kavita Anchan i/b. M/s. M. V. Kini & Co. for Respondent Nos. 3 and 4.
Mr. A. I. Patel - Addl. G.P. for State.

CORAM: DR. MANJULA CHELLUR, C. J. AND M. S. SONAK, J.
DATE : 24 OCTOBER 2016

ORAL JUDGMENT :

1] Heard learned counsel for the parties.

2] The petitioner which claims to be an approved and representative union established to espouse the cause of the employees in the transport section and other common departments of Brihanmumbai Electric Supply and Undertaking (BEST) seeks declaration that section 16 (1) of the Motor Transport Workers Act, 1961 (said Act) and the second proviso to section 13 of the said Act are *ultra vires* Articles 14 and 21 of the Constitution of India and be therefore struck down.

3] Ms Neeta Karnik, learned counsel for the petitioner submits that section 13 of the said Act mandates that no adult motor transport

workers shall be required or allowed to work for more than 8 hours in any day and 48 hours in any week. However, she submits that the second proviso to section 13 completely negates this mandate by permitting the employer to require motor transport workers to work for more than 8 hours in any day or more than 48 hours in any week. She submits that the dilution which the second proviso to section 13 brings about to the mandate of section 13(1) is arbitrary and violates Article 14 of the Constitution of India. She further submits that requiring any motor transport workers to work beyond 8 hours in any day or more than 48 hours in any week, adversely affects the right to life of such workers, constitutes bonded labour and is consequently violative of Article 21 of the Constitution of India.

4] Ms Karnik further submits that section 16(1) of the said Act which permits spread over of more than 12 hours in any day takes no cognizance whatsoever of the conditions of service in metropolitan areas where, it is practically impossible for the workers to afford any housing or place, where to take rest. She submits that the provisions contained in the second proviso to section 13 and section 16 of the said Act, are virtually being observed in breach on regular basis in metropolitan places. Such breach or abuse of the statutory provisions affects the life and health of the transport workers and this according to her constitutes sufficient reason to declare the provisions as *ultra vires* Articles 14 and 21 of the Constitution of India. She submits that the impugned provisions, to the extent, they are in variance with several other labour legislations like the Factories Act, Shops and Establishment Act, Construction Labour Act etc. practice or permit the practice of hostile discrimination only against motor transport workers and for this reason also, they violate the guarantee of equality enshrined in Article 14 of the Constitution of India. For all these

reasons, Ms Karnik submits that the impugned orders are liable to be declared as ultra vires and struck down. She relies upon the following decisions in support of her contentions :

(i) ***Atam Prakash vs. State of Haryana & Ors.[1];***
(ii) ***Bandhua Mukti Morcha vs. Union of India & Ors.,[2]***
(iii) ***Consumer Education & Research Centre & Ors. vs. Union of India & Ors.[3]***
(iv) ***Forum, Prevention of Environmental & Sound Pollution vs. Union of India & Anr;[4] and***
(v) ***Nandini Sundar & Ors. vs. State of Chhattisgarh[5]***

5] We have duly considered Ms Karnik's submissions. However, we find ourselves unable to agree with the same.

6] The Statement of Objects and Reasons to the said Act makes it clear that though, at the time of enactment of the said Act, there were certain enactments like the Motor Vehicles Act, 1939 and the Factories Act, 1948 which cover certain sections of the motor transport workers and certain aspects of their conditions of employment, the legislature felt the need of having an independent legislation applicable to motor transport workers as a whole or for regulating the various aspects of their conditions of employment work and wages. The legislature considered it desirable to have separate legislative measure for motor transport workers which would cover matters like the medical facilities, welfare facilities, hours of work, spread over,

1 (1986) 2 SCC 249
2 (1984) 3 SCC 161
3 (1995) 3 SCC 42
4 (2005) 5 SCC 733
5 (2011) 7 SCC 547

rest periods, overtime, annual leave with pay etc. on the analogy of similar enactments for workers in factories, mines and plantations. With this object, the said Act came to be enacted by the Parliament.

7] The said Act applies to every motor transport undertaking employing 5 or more motor transport workers. The State Government is empowered to apply all or any of the provisions of the said Act to motor transport undertaking employing less than 5 motor transport workers. The said Act makes provision for registration of motor transport undertakings, appointment of inspecting staff, welfare and health of motor transport workers, hours and limitation of employment of motor transport workers, prohibits employment of young persons, makes provisions for wages and leave and finally provides for penalty and procedure for imposition of the same. This is, therefore, quite comprehensive legislation dealing with various aspects regulating the conditions of employment, work and wages of motor transport workers. The term '*motor transport worker*' has been defined in section 2(h) of the said Act.

8] Chapter V of the said Act regulates hours and limitation of employment of motor workers. This comprises Sections 13 to 20, which read thus:

> "***13. Hours of work for adult motor transport workers--*** *No adult motor transport worker shall be required or allowed to work for more than eight hours in any day and forty-eight hours in any week:*
>
> *Provided that where any such motor transport worker is engaged in the running of any motor transport service on such long distance routes, or on such festive and other occasions as may be notified in the prescribed manner by the prescribed authority, the employer may, with the approval of*

such authority, require or allow such motor transport worker to work for more than eight hours in any day or forty-eight hours in any week but in no case for more than ten hours in a day and fifty-four in hours in a week, as the case may be :

Provided further that in the case of a breakdown or dislocation of a motor transport service or interruption of traffic or act of God, the employer may, subject to such conditions and limitations as may be prescribed, require or allow any such motor transport worker to work for more than eight hours in any day or more than forty-eight hours in any week.

14. Hours of work for adolescents employed as motor transport workers.--No adolescent shall be employed or required to work as a motor transport worker in any motor transport undertaking--

(a) for more than six hours a day including rest interval of half-an-hour;

(b) between the hours of 10 P.M. and 6 A.M.

15. Daily intervals for rest.--(1) The hours of work in relation to adult motor transport workers on each day shall be so fixed that no period of work shall exceed five hours and that no such motor transport worker shall work for more than five hours before he has had on interval for rest for at least half-an-hour;

Provided that the provisions of this sub-section in so far as they relate to interval for rest shall not apply to a motor transport worker who is not required to work for more than six hours on that day.

(2) The hours of work on each day shall be so fixed that a motor transport worker is, except in any case referred to in the second provision to section 13, allowed a period of rest of at least nine consecutive hours between the termination of duty on any one day and the commencement of duty on the next following day.

16. ***Spread-over.--(1) The hours of work of an adult motor transport worker shall, except in any case referred to in the second provision to section 13 be so arranged that inclusive of interval for rest under section 15, they shall not spread-over more than twelve hours in any day.***

(2) The hours of work of an adolescent motor

transport worker shall be so arranged that inclusive of interval for rest under section 14, they shall not spread-over more than nine hours in any day.

17. Split duty.--Subject to the other provisions contained in this Act, the hours of work of a motor transport worker shall not be split into more than two spells on any day.

18. Notice of hours of work.--(1) There shall be displayed and correctly maintained by every employer a notice of hours of work in such form and manner as may be prescribed showing clearly for every day the hours during which motor transport workers may be required to work.

(2) Subject to the other provisions contained in this Act, no such motor transport worker shall be required or allowed to work otherwise than in accordance with the notice of hours of work so displayed.

19. Weekly rest.--(1) The State Government may, by notification in the Official Gazette, make rules providing for a day of rest in every period of seven days, which shall be allowed to all motor transport workers.

(2) Notwithstanding anything contained in sub-section (1), an employer may, in order to prevent any dislocation of a motor transport service, require a motor transport worker to work on any day of rest which is not a holiday so, however, that the motor transport worker does not work for more than ten days consecutively without a holiday for a whole day intervening.

(3) Nothing contained in sub-section (1) shall apply to any motor transport worker whose total period of employment including any day spent on leave is less than six day.

20. Compensatory day of rest. -- Where, as a result of any exemption granted to an employer under the provisions of this Act from the operation of section 19, a motor transport worker is deprived of any of the days of rest to which he is entitled under that section, the motor transport worker shall be allowed within the month in which the days of rest are due to him or within two months immediately following that month, compensatory days of rest of equal number to the days of rest so lost."

9] Section 13 of the Act provides the general rule that no adult motor transport worker shall be required or allowed to work for more than 8 hours in any day and 48 hours in any week. The first proviso to section 13 however, makes exception where motors transport worker is engaged in the running of any motor transport service on long distance routes, or on such festive and other occasions as may be notified. The second proviso to section 13, which is impugned in the present petition, provides that in case of a breakdown or dislocation of a motor transport service or interruption of traffic or act of God, the employer may, subject to such conditions and limitations as may be prescribed, require or allow any such motor transport workers to work for more than 8 hours in any day or more than 48 hours in any week.

10] Section 15(1) of the said Act provides that the hours of work in relation to adult motor transport workers on each day shall be so fixed that no period of work shall exceed 5 hours and that no such motor transport worker shall work for more than 5 hours before he has had on interval for rest for at least half an hour, the proviso makes inapplicable this sub section in so far as they relate to interval for rest to motor transport worker who is not required to work for more than 6 hours on that day. Sub section (2) of section 15 provides that hours of work of each day shall be so fixed that the motor transport worker is, except in any case referred to in the second proviso to section 13, allowed a period of rest of at least none consecutive hours between the termination of duty on any one day and the commencement of duty on the next following day.

11] Finally, section 16 (1) of the said Act provides that the hours of

work of an adult motor transport worker shall, except in any case referred to in the second proviso to section 13 be so arranged that inclusive of interval of rest under section 15, they shall not spread over more than 12 hours in any day. Section 2(k) of the said Act defines the expression *'spread over'* to mean the period between commencement of duty of any day and the termination of duty on that day.

12] The scheme and the provisions in Chapter V of the said Act express a legislative policy, to which, the courts will normally have to defer, unless, it is established that the statutory provisions exceed the legislative competence of the legislature or they contravene Part III of the Constitution of India. Based upon some individual instances of hardship or inconvenience, it is not possible to declare the provisions of law as *ultra vires* or unconstitutional. In the matter of determining hours and limitation of employment some latitude has to be conceded to the legislature and the courts cannot insist on mathematical or accurate classification covering diverse situation and all possible contingencies in view of the inherent complexities involved in society.[6]

13] The submission that the second proviso to section 13 of the said Act completely nullifies the general rule spelt out in section 13 that no adult motor transport worker shall be required or allowed to work for more than 8 hours in any day and 48 hours in any week cannot be accepted. The purpose of a proviso, no doubt, is to make an exception or to exclude the situation, which would otherwise be covered in the main enactment. However, that by itself, does not render the proviso unconstitutional or *ultra vires.* This is not a case of some wholesale relaxation without any rhyme or reason. The second proviso applies

6 State of Karnataka vs. Mangalore University Non-Teaching Employees Association (2002) 3 SCC 302
Ombalika Das vs. Hulisa Shaw (2002) 4 SCC 539

only in case of a breakdown or dislocation of a motor transport service or interruption of traffic or act of God. In all such situations, it was reasonable for the legislature to relieve the employer from the rigours of the main enactment in section 13 of the said Act. Further, the second proviso contemplates fixing of conditions and limitations as may be prescribed. Therefore, this is not some case of unfettered, unguided or uncanalised discretion vested in the employer, in the matter of non compliance with the mandate of main enactment in section 13.

14] There is no material on record to accept the petitioner's contention that the provisions now impugned are abused or observed only in breach. In any case, the circumstance that the provisions are abused or observed only in breach, by itself, is not sufficient reason to strike down the provisions themselves. Any acts of abuse or breach, if established, can always be challenged and there is no necessity to strike down the provisions. Accordingly, we see no constitutional infirmity in the second proviso to section 13 of the said Act.

15] Section 16(1) only provides that the hours of a work of an adult motor transport worker shall be so arranged that inclusive of interval for rest under section 15, they shall not spread over more than 12 hours in any day. Obviously, this situation will not apply to a case where the second proviso to section 13 of the said Act applies. Again, we fail to understand as to how such a provision is either arbitrary and unreasonable or infringes the right to life of the motor transport workers. It is possible, as contended by Ms Karnik that there are some practical or logistic difficulties in so far as motor transport workers in metropolitan areas are concerned. However, that by itself, is not a ground for declaring the provision as *ultra vires* qua motor transport

workers in metropolitan areas but constitutional in so far as motor workers in other areas are concerned.

16] When a legislative policy is enunciated with sufficient clearness or a standard is laid down, the courts should not interfere. What guidance should be given and to what extent and whether guidance has been given in a particular case at all depends on consideration of the provisions of the particular Act with which the court has to deal with including its Preamble. In order to strike down a legislation, the party has to satisfy that the legislation is totally unreasonable or manifestly arbitrary. The expression of *'arbitrary'* means act done in an unreasonable manner, capriciously or at pleasure without adequate determining principle, not founded in the nature of things, non-rational, not done or acting according to reason or judgment, depending on the will alone. The law cannot be declared *ultra vires* on grounds of hardship but can be done so on the ground of total unreasonableness. In order to declare an act *ultra vires,* under Article 14, the court must be satisfied that there is substantive unreasonableness in the statute.[7]

17] In ***Transport and Dock Workers Union & Ors. vs. Mumbai Port Trust & Anr***.[8], appellants had filed a petition before the High Court complaining of violation of Article 14 of the Constitution on the ground that typist cum computer clerks appointed in Mumbai Port Trust prior to 1 November 1996 had to work for 6 and ½ hours a day. Whereas, their counterparts appointed after 1 November 1996 had to work for 7 and ½ hours per day. This, it was alleged violates Article 14 of the Constitution. The Supreme Court accepted the Port Trust's explanation that the differential working hours had nexus with the

7 State of Tamil Nadu & Ors. vs. K. Shyam Sunder & Ors. (2011) 8 SCC 737 (2011) 9 SCC 286

8 (2011) 2 SCC 575

change in situation, change in technology and the desire to bring in uniformity in working hours of the personnel working with the indoor establishment and outdoor establishment. The Port Trust explained that effect in change with regard to existing personnel in the indoor establishment may involve the Port in litigation and the introduction of the change may be delayed. Therefore, a decision was taken to change duty hours of personnel recruited on the indoor establishment after 1 November 1996 without disturbing the duty hours of the personnel working at that time in the indoor establishment. The position of working hours was made clear to the recruits and it is only upon their accepting this term, that they were given appointment. The Supreme Court held that Article 14 of the Constitution, does not take away from the State or from its instrumentality the power of classification, which to some degree is bound to produce some inequality. However, mere inequality is not enough to violate Article 14. Differential treatment, *per se*, does not constitute violation of Article 14. There is denial of equal protection only when there is no reasonable basis for differentiation. If the law or the practice deals equally with members of a well-defined class, it is not obnoxious and it is not open to the charge of denial of equal protection on the ground that it has no application to others.

18] The Supreme Court proceeded to add that one of the tests for determining whether classification or differential is reasonable or not is whether the same is conducive to the functioning of the modern society. If it is, then it is certainly reasonable and rational. In modern world, businesses have to face competition with other businesses. To do so, they may have to have longer working hours and introduce efficiency, while avoiding labour disputes. From this perspective, the classification in question was held to be reasonable. The Supreme

Court also held that matters like hours of work are normally in the realm of policy and courts ordinarily do not interfere with policy decisions. The Supreme Court also held that in view of inherent complexities involved in modern society some free play must be given to the executive authorities in this connection.

19] If, free play in joints is to be conceded to the executive, then, surely, greater latitude has to be extended to the legislature, which has enacted the impugned provisions based upon the experience gained by it. There is a presumption of constitutionality which cannot be overturned by citing some difficulties or some hardship in individual cases or to some particular class of employees.

20] In case of ***M/s. Laxmi Khandsari & Ors. vs. State of U.P. & Ors***.[9], the Supreme Court refused to strike down the provisions of Sugar-cane (Control) Order, 1966 by observing that the reasonableness of restrictions imposed by law in the field of industry, trade or commerce, cannot be determined by the mere fact that some of the persons engaged in a particular trade may incur loss due to imposition of such restrictions. Individual hardship or hardship to even a particular class is not a ground to declare the provision as unreasonable or arbitrary and to strike down the same.

21] In the context of hours of work relating to employees of the Bombay Port Trust, the Supreme Court in the case of ***Workmen of the Bombay Port Trust vs. Trustees of the Port of Bombay***[10] at paragraph 12 has observed thus :

9 (1981) 2 SCC 600
10 AIR 1966 SC 1201

*"**12.** It will be noticed that the arrangement of these sections is almost the same as the cognate provisions of the Minimum Wages Act. Here too, the hours of work cannot be more than 9 in a day and taken with the intervals for rest these 9 hours may be spread over 10½ hours. The only difference is that a worker must not be made to work for more than 5 hours at a stretch before he has had an interval for rest of half an hour at the at least. There is no provision in the Minimum Wages Act which breaks up the hours of work by interposing a compulsory period of rest as is done by the latter part of Section 55 of the Factories Act. The reason, perhaps, is that in some employments time for work depends on some extraneous factors and hours of rest cannot always be fixed to break up those hours. It is proverbial that time and tide do not wait for any man. Workers at a tidal dock must work when the tide is in and take their rest when the tide is out. It is for this reason that a variable recess is in force at the Prince's and Victoria Docks and due notice of the interval is given by specifying a day in advance the hours of rest. We do not think that the Trustees are guilty of infraction of the Minimum Wages Act by keeping the recess variable so long as they specify in advance the recess on any particular day. It will also be noticed that the scheme of the Minimum Wages Act compels the inclusion of an hour of rest in a normal working day. This is achieved by prescribing that the hours of work in a six-day week shall not exceed 48, although on any particular day the hours of work in a day may go up to 9. In this indirect way one hour of rest is included in a normal working day because the total number of work hours in a six-day week cannot go beyond 48. What has not been done by the Act or the Rules is to specify that the interval for rest shall break up the hours of work. The Trustees cannot be compelled to break up the of work by interposing intervals for rest, if owing to the nature of the work there is difficulty in giving the intervals for rest in that manner on any particular day. According to their resolution the recess is fixed as near the middle of the work as possible, depending on the tides."*

22] In ***Ramdhandas & Anr. vs. State of Punjab***[11], the Supreme Court, in the context of the provisions fixing hours of work in the Punjab Shops and Commercial Establishments Act 1958 has made the following observations in paragraph 8 :

> *"**8.** The constitutional objection is that, the impugned provisions impose unreasonable restrictions on the fundamental right of the petitioners "to carry on their trade or business". The regulation of contracts of labour so as to ameliorate their conditions of work is in reality a problem of human relationship and social control for the advancement of the community. The public and social interest in the health and efficiency of the worker is, at the 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 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-hour 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 content 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 time."*

23] The purpose for spread over of not more than 12 hours in any

11 AIR 1961 SC 1559

day is in fact, intended to benefit the motor transport workers. The provision is also in public interest, since, the motor transport workers transport, on most occasions, members of the public and if the motor transport workers are over-strained, there is possibility of accidents. Situations like breakdown, dislocation of motor transport service, interruption of traffic or act of God are generally, not matters of routine. In such a situation, if the rigours otherwise imposed by the legislation are marginally relaxed, it cannot be said that such statutory relaxation is unreasonable or arbitrary or that it results in denial of right to life as guaranteed by Article 21 of the Constitution of India. As noted earlier, these are matters of legislative policy and unless, manifest unreasonableness or arbitrariness is made out, it is not for the courts to strike down the law or to declare that such a law will not apply to metropolitan areas or may continue to apply in other areas only.

24] In *Bandhua Mukti Morcha* (supra), the Supreme Court has conceded *locus standi* to an organization which espouses the cause of bonded labourers, since, such labourers were not in a position to institute legal proceedings by themselves. The Supreme Court has also held that the system of bonded labour is contrary to several statutes as also the constitutional guarantees. On account of the impugned provisions, we are not prepared to accept Ms Karnik's contention that the status of motor transport workers has been reduced to that of bonded labourers. The decision in *Bandhua Mukti Morcha* (supra) is therefore, of no assistance to the petitioner.

25] In *Consumer Education & Research Centre* (supra), *Forum, Prevention of Environmental & Sound Pollution* (supra) and *Nandini Sundar* (supra), the Supreme Court has expounded the various facets of Article 21 of the Constitution of India. The Supreme Court has held

that Article 21 of the Constitution of India does not guarantee mere animal existence or continued drudgery through life but has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure. The right to health of a worker is an integral facet of meaningful right to life, to have not only a meaningful existence but also robust health and vigour without which the worker would lead a life of misery. Compelling economic necessity to work in an industry exposed to health hazards due to indigence to bread-winning for himself and his dependants, should not be at the cost of the health and vigour of the workman.

26] The dynamic interpretation of right to life under Article 21 of the Constitution of India is no doubt, here to stay. However, we are not convinced that the impugned provisions, in any manner, denude the motor transport workers of such right to life, as interpreted by the Supreme Court in the decisions cited. The provisions of Chapter V of the said Act which comprises section 13 to 20 have to be construed in their entirety. Thus construed, there is no case of arbitrariness or unreasonableness made out. So also, it cannot be said that the impugned provisions denude the motor transport workers of rights as guaranteed by Article 21 of the Constitution of India.

27] *Atam Prakash* (supra) is cited for the observations at paragraph 5 that when constitutional validity of a statute is considered, the court must look to the Preamble as the guiding light and to the Directive Principles of State Policy as the Book of Interpretation. The implication of the word *'socialist'* into the Preamble of the Constitution is to clearly set up a *'vibrant throbbing socialist welfare society*' in place of a '*feudal exploited society*'. The court must drive to such an interpretation as would promote the march and progress towards a

socialistic democratic state. The classification which is not in tune with the Constitution is per se unreasonable and cannot be permitted. In this case, as we have found the impugned provisions are neither unreasonable nor out of tune with the constitutional provisions, the decision cited therefore, does not assist the petitioners.

28] For the aforesaid reasons, we dismiss this petition. There shall however be no order as to costs.

CHIEF JUSTICE

(M. S. SONAK, J.)

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