

JEEVAKARAN
v.
RATNASIRI WICKREMANAYAKE AND OTHERS

SUPREME COURT.
FERNANDO, J.,
WIJETUNGA, J. AND
DR. GUNAWARDANA, J.
S.C. APPLICATION NO. 623/96
JANUARY 28, 1997.

Fundamental Rights – Curtailment of Public holidays – Section 4 of the Holidays Act, No. 19 of 1971 – Effect on freedom of worship and right to equality – Articles 14(1)(e) and 12(1) of the Constitution.

The Holidays Act, No. 19 of 1971 declared every full moon poya day and Sunday to be a public holiday. In addition, certain days specified in the 1st Schedule were also made public holidays. Section 4 gave the Minister the power to amend or vary the 1st Schedule. In view of the fact that an excessive number of public holidays affected the productivity of the country, the Government decided on the recommendation of a committee to eliminate holidays for Maha Sivarathri, Hadji, National Heroes Day and Bandaranaike Commemoration Day. However, in response to subsequent representations the Government declared Maha Sivarathri and Hadji as "Special Holidays for the followers of Hinduism and Islam respectively".

Held:

1. The decision of the Government did not infringe the petitioners right to freedom of worship under Article 14(1)(e) of the Constitution. The essence of the freedom of worship is that the State (or even a private employer) must not prohibit or interfere with the citizen's practice of his religion, but is not bound to provide facilities for such practice.
2. There is also no infringement of the petitioner's right to equality under Article 12(1) of the Constitution. Given its role and responsibilities in managing the national economy, the decision to reduce the number of holidays was legitimate. The Government is entitled to take into consideration a variety of matters in determining public holidays. The discretion is not fettered by some rigid principle.

APPLICATION for relief for infringement of fundamental rights.

S. N. Vijithsinghe with Anton Punethanayagam for petitioner.

Kolitha Dharmawardana, D. S. G. for respondents.

February 24, 1997.

FERNANDO, J.

Under the Holidays Act, No. 17 of 1965, Sundays had ceased to be public holidays and the four Poya days were the weekly holidays. The Holidays Act, No. 19 of 1971, repealed that Act, and declared every full moon Poya day and every Sunday to be a public holiday. In addition the following 14 days specified in the 1st Schedule were also made public holidays:

The Tamil Thai-Pongal Day
 Milad-un-Nabi (Holy Prophet's Birthday)
 National Day
 Maha Sivarathri Day
 The Day Prior to the Sinhala and Tamil New Year's Day
 The Sinhala and Tamil New Year's Day
 Good Friday
 May Day
 The Day following the Wesak Full Moon Poya Day
 National Heroes Day
 Id-UI-Fitr (Ramazan Festival)
 Id-UI-Allah (Haj Festival Day)
 Deepawali Festival Day
 Christmas Day

Section 4 gave the Minister the power to amend or vary the 1st Schedule.

Facts

The 3rd respondent, Secretary to the Ministry of Public Administration, issued a notice dated 6.8.96 setting out the public holidays approved by the 1st respondent, the Minister, for 1997-23 in number, including the 12 full moon Poya days. These did not include Maha Sivarathri and Hadji. Claiming that this was in violation of their fundamental rights, the petitioner in this application, and the petitioner in SC Application No 624/96, sought the restoration of Maha Sivarathri and Hadji as public holidays.

It is not in dispute that from 1971 to 1996 Maha Sivarathri and Hadji had been public holidays although not mercantile holidays.

According to the 3rd respondent, representations had been made to the Government by the Ceylon National Chamber of Industries that the number of public holidays were excessive and that this affected the productivity of the country, thus reducing its competitive advantage. That Chamber urged that two special bank holidays on 30th June and 31st December be eliminated, as well as the following five holidays, all of which were not mercantile holidays:

Maha Sivarathri
Ramazan Festival
Good Friday
Hadji Festival
Deepawali

The 3rd respondent averred that it was upon the recommendations of a committee appointed to consider the matter that the Government decided to curtail the number of public holidays, by eliminating holidays for Maha Sivarathri, Hadji, National Heroes Day and Bandaranaike Commemoration Day. That was done by the notice dated 6.8.96. Whether that constituted a proper exercise of the powers conferred by section 4 was not argued.

However, consequent upon representations made by various persons and organisations, the Government later declared Maha Sivarathri and Hadji as "special holidays for the followers of Hinduism and Islam respectively".

In his application the petitioner stated that "from childhood onwards up to the years 1996, he could observe Maha Sivarathri day, fasting, watch night praying and following religious recitals [rituals?] since that day had been declared a public holiday." In his written submissions the petitioner added that "on the Maha Sivarathri, bathing, fasting, watch night praying is observed with hour-to-hour mass before the holy fire to redeem the sins committed by the individual before the Hindu Gods, [which] are part of the religion for which a holiday is needed"; that "... religion and religious practices obtained by both doctrine and tradition have played a large part in the lives of our people, so much so that it has become difficult to say what is religion and what is religious practice, as they are both intermixed. Sometimes religious practice is taken by the bulk of our people as religious faith"; that this was applicable to Maha Sivarathri,

day observances; and that accordingly "it is important to have a public holiday to manifest (his) religion or belief" on that day.

CONTENTIONS

The petitioner contended that "his religious consciousness and belief is going to be imminently infringed/its infringed by the executive or administrative actions of the respondents since Maha Sivarathri is not going to be a public holiday so that the petitioner would not be able to observe these religious recitals [rituals ?]". He further claimed that "different religious groups normally get together to observe the manifestation of the religion or belief of the other since that day is a public holiday", and that "this is essential in order to promote interreligious harmony for a country wounded by war". He alleged the violation of Articles 10 and 14(1)(e).

The petitioner's next contention was that the sudden denial of the holiday was "against the legitimate expectations of the petitioner and is totally unilateral, unreasonable, arbitrary, unjustified, without proper procedure, *ultra vires*, capricious, wrong classification, not for any good reason but for some collateral purpose and thus denies the equal opportunity and violates the rights guaranteed under Article 12(1) of the Constitution"; and that the "Hindu religion is professed by [a] small minority compared to the total population and not declaring Maha Sivarathri as a holiday and reducing the holidays only from minority religions amounts to a violation of the rights guaranteed by Article 12(2) of the Constitution".

Leave to proceed was sought in respect of the alleged infringement of Articles 10, 12(1), 12(2) and 14(1)(e), but was granted only in respect of Articles 12(1) and 14(1)(e).

FREEDOM OF WORSHIP: ARTICLE 14(1)(e)

The petitioner's contention that the withdrawal of the Maha Sivarathri public holiday infringed his fundamental right of freedom of worship is untenable. Although his affidavit does not satisfy me on that point, I will nevertheless assume that the religious observances, practices, rites and rituals (which I will collectively refer to as "religious observances") which he described could not be duly performed on that day unless some part of the normal working hours

was also used. If the State, or any employer for that matter, does not grant a holiday on a day of religious significance does it mean that an employee's freedom of worship is impaired? To answer that question in the affirmative would be to blur the distinction between **not facilitating** the exercise of a fundamental right, and **infringing** it. In my view, the obligation created by Article 14(1)(e) is to allow the citizen to practice his religion, but not to give him additional facilities or privileges which would make it easier for him to do so. While the State must not prevent or impede religious observances, it need not go further, and provide a holiday or other facilities for such observances. An employee has various leave entitlements which are intended for his personal, family, social and other needs, and this he may use for religious observances on days which are not holidays; while the unreasonable denial of such leave may well amount to an infringement of Article 14(1)(e), the refusal of holidays, privileges and concessions would not: thus while Article 14(1)(e) may compel the grant of leave requested by an employee in order to perform his religious observances at a distant shrine or place of worship, the refusal by the State to provide facilities (such as a paid holiday, free transport, or travelling and subsistence allowances) to make those observances easier or more convenient would not constitute an infringement. To take another example, while that Article might entitle Christians to obtain and use wine for the rite of communion, in which event the prohibition of such use would be an infringement, yet that Article certainly does not compel the State to provide wine free for use by Christians for that purpose. The essence of the freedom of worship is that the State (or even a private employer) must not prohibit or interfere with the citizen's practice of his religion, but is not bound to extend patronage or provide facilities for such practice. The position is no different in regard to other freedoms; while the freedom of speech may entitle a citizen to publish a newspaper or to operate a radio station, it does not entitle him to a grant of State land or funds for his enterprise; and the freedom of associations may entitle citizens to establish a company, society or union, but not to demand from the State a building for its activities.

- The contrary view will result in absurdity. We find in Sri Lanka today public holidays of significance to the followers of four world religions, – Buddhism, Hinduism, Christianity and Islam; and I have no doubt

that devout citizens, from among these, will be able to identify many other days of religious significance, on which the performance of religious observances are most desirable, and would be greatly facilitated by the grant of paid holidays. Likewise, Sri Lanka adherents of other religions, however small in number, will be able to identify days of significance to themselves, and will make the same plea, claiming that otherwise their freedom of worship will be impaired. If that is accepted there will be many more holidays than working days, and we will then need, not a Holidays Act, but an Act to identify and declare the few remaining working days. Religion is essentially a private matter, and Article 14(1)(e) does not entitle a citizen to State patronage for the practice of his religion. Of course, if the State does grant patronage to one religion (except as permitted by Article 9), the question of equal treatment may arise under Article 12, and to that I will refer later.

The petitioner's contention must fail on the facts in any event, because even if Article 14(1)(e) did require a holiday for Maha Sivarathri the Government had already granted Hindus a special holiday on that day.

These conclusions make it unnecessary to consider the petitioner's other contentions, but since they were pressed with some vehemence, I will deal with them briefly.

Learned Counsel submitted that because Maha Sivarathri was not a holiday for persons of other religions, such persons could not join with the petitioner in the performance of his religious observances on that day. Stressing the words "by himself *or in association with others*" in Article 14(1)(e), he argued that "others" included persons of other religions; that it was the practice in many places for persons of other religions to join with Hindus in religious observances on Maha Sivarathri day; that it was only such inter-religious practices which could bring about racial and religious amity in a multi-racial and multi-religious nation, and thus heal the wounds of war; and that this Court should adopt a liberal interpretation to achieve such a result.

That approach to interpretation does not commend itself to me. The jurisdiction of this Court is defined in the Constitutions, and

cannot be expanded, directly or indirectly, by the Court under the guise of interpretation to give effect to policies and practices which it considers conducive to nationally desirable objectives, whether political, economic, religious, cultural, social or otherwise. Article 14(1)(e) cannot be given an artificial or extended meaning, which its language, considered in the context of the Constitution as a whole, does not permit, for a collateral purpose of that kind.

The phrase stressed by learned Counsel only gives effect to the "community" aspect of religion and religious freedom: although religion is a "private" matter *vis-a-vis* the State, yet the practice of religion has always had a "community" dimension as well, because religious observances are often performed together with co-religionists. The freedom which the petitioner has is "in public or in private, to manifest *his* religion or belief in worship, observance, practice and teaching"; and that he has the right to do both by himself, and "in association with others". The lack of a public holiday will not impair his ability to do so "by himself"; and it will not affect the manifestation of "*his*" religion or belief in association with his co-religionists. As for persons of *other* religions, the petitioner has failed to establish how or why their non-participation in his religious observances, would affect the manifestation of "*his*" religion or belief. I am not prepared to presume, in the absence of clear pleadings and proof, that the petitioner cannot properly perform his religious observances on Maha Sivarathri Day without the participation of such others. Further, even if it be true that others customarily do participate therein, there is nothing to show that this is for anything other than social reasons: there is no suggestion that this was on account of anybody's religious beliefs. And even if I were to assume that the participation of others was for religious reasons, yet that would be only to manifest *their* religion or belief – not the petitioner's. And so their non-participation, at best, could affect only *their* religion or belief, and cannot give rise to a cause of complaint by the petitioner that *his* own freedom of worship was impaired.

RIGHT TO EQUALITY; ARTICLE 12(1)

The Government was faced with a situation in which there were a large number of non-working days: Saturdays and Sundays, 12 full moon Poya days, and 15 public holidays, totalling 131 days (not taking

into account that some of these would overlap). Assuming an average annual leave entitlement of 42 days, this meant, that an employee would work for just over half the year. Given its role and responsibilities in managing the national economy, it was legitimate and justifiable for the Government to form the opinion that the number of holidays should be reduced by four. And, indeed, the impact of that reduction was softened by granting two special holidays. Even without such special holidays, in my view, it was within the discretion of the Government to have made an even more drastic reduction, on the lines of the recommendation of the Ceylon National Chamber of Industries.

It is quite clear, therefore, that the Government did not intend to discriminate against followers of Hinduism and Islam. The question then is, was there nevertheless unequal treatment *vis-a-vis* followers of other religions whose holidays were not reduced?

In determining public holidays it is not religion and religious significance alone that must be taken into account. Thus in today's world it can hardly be said that Sunday is a public holiday, solely or mainly, because of its significance to Christians. The demands of international finance, trade and business now make it imperative that the weekly holiday, so necessary for the health and well-being of employees, should be Sunday and not any other day. Holidays are also granted on days which are of national or general significance – such as National Day, May Day, and Sinhala and Tamil New Year. Days of religious significance constitute a third category, in regard to which the Government has a discretion. It cannot be said that that discretion is fettered by some rigid principle – as, for instance, that such holidays should be granted on the basis of religious proportionality, or that each religion must have the same number of holidays as every other religion, or that only religions which have more than a specified number of followers should be taken into account. However, some consideration of all these factors would be relevant.

It is the Holidays Act which has declared Sundays and the full moon Poya days to be public holidays, and this Court has no jurisdiction to review statutory provisions. Consequently, any question of unequal treatment arises in a limited context: there were eleven public holidays of religious significance, three for Hindus (Thai-

Pongal Maha Sivarathri, and Deepavali), three for Muslims. (Holy Prophet's Birthday, Ramazan Festival, and Hadji Festival Day), two for Christians (Good Friday and Christmas Day) and one for Buddhists (the day following Wesak).

Learned Counsel for the Petitioner argued that the two days in question were holidays by virtue of the statute, and that it was only by a statutory amendment that they could be eliminated. But that contention overlooks the power conferred on the Minister, by section 4, to vary the 1st Schedule. He also submitted that equal treatment required that a similar reduction be made from the holidays enjoyed by the majority. If, and to the extent that, followers of Hinduism and Islam needed a holiday on the two days in question, that need was satisfied by the grant of special holidays. However I prefer to base my decision on this point on the fact that the Government was entitled to take a variety of matters into consideration in determining public holidays, and the material adduced by the petitioner is quite insufficient to show that the elimination of these two holidays was unreasonable, arbitrary, capricious or for an improper purpose. Article 12(1) has not been infringed.

ORDER

The petitioner's application therefore fails. I make no order for costs.

WIJETUNGA, J. – I agree.

DR. GUNAWARDANA, J. – I agree.

Application dismissed.