

Andhra Pradesh Grain and Seed Merchants Association Etc. Etc.

Vs

Union of India and Another

Writ Petition Nos. 468, 469, 489 and 490 of 1969

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

13.03.1970

JUDGMENT

SHAH, J. -

1. The petitioners who are traders in foodgrains, edible oils, and other articles of food, challenge the validity of Section 7 read with Section 2(v) and 2(ix), and Section 19, Section 2(i) and Section 10 to read with Section 13 of the Prevention of Food Adulteration Act 37 of 1954 and the rules framed thereunder. They claim that by the Act and the rules the fundamental rights guaranteed under Articles 14, 19(1)(g) and 20(3) of the Constitution are infringed.

2. The Parliament, with a view to control adulteration and misbranding of articles of food enacted the Prevention of Food Adulteration Act, 1954. The petitioners concede that they do not claim a fundamental right to carry on business in adulterated or misbranded foodstuffs : they claim that they are honest traders, and do not resort to any malpractice, still in carrying on their business in foodstuffs they are, by the Act, subjected to restrictions which are not reasonable. They contend that the Act presumes every trader charged with an offence under Section 16(1)(a) to be guilty and imposes upon him the burden of proving that he is not guilty of the offence charged, by establishing facts which are not within his knowledge, or which without great expense wholly incommensurate with his means and the facility available to him, he cannot establish. They also claim that by the Act they are denied the equal protection of the laws and the guarantee of Article 20(3) of the Constitution is infringed.

3. The relevant provisions of the Act may first be noticed. Section 7 of the act provide :

"No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute -

(i) any adulterated food;

(ii) any misbranded food;

(iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence;

(iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority in the interest of public health; or

(v) any article of food in contravention of any other provision of this Act or of any

rule made thereunder."

By Section 10 a Food Inspector appointed under Section 9(1) of the Act is authorised to take samples of any articles of food from any person selling such article, or from any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee, or from a consignee after delivery of any such article to him, and to send such sample for analysis to the Public Analyst, and with the previous approval of the Health Officer having jurisdiction in the local area concerned, or with the previous approval of the Food (Health) Authority to prohibit the sale of any article of food in the interest of public health. Sub-Section (5) of Section 13 provide :

"Any document purporting to be a report signed by a Public analyst, unless it has been superseded under sub-section (3), or any document purporting to be a certificate signed by the director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under Sections 272 to 276 of the Indian Penal Cod :

Provided that any document purporting to be a certificate signed by the Director of the Central food Laboratory shall be final and conclusive evidence of the facts stated therein."

Section 16(1) prescribes the penalties : clause (a) and (f) which are relevant provide :

"(1) If any person -

(a) whether by himself or by any other person on his behalf imports into India or manufactures for sale, or stores, sells or distributes any article of food -

(i) which is adulterated or misbranded or the sale of which is prohibited by the Food (Health) Authority in the interest of public health;

(ii) other than an article of food referred to in sub-clause (i), in contravention of any of the provisions of this Act or of any rule made thereunder; or

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(f) whether by himself or by any other person on his behalf gives to the vendor a false warranty in writing in respect of any article of food sold by him,

he shall in addition to the penalty to which he may be liable under the provisions of section 6, be punishable with imprisonment for a term which shall not be less than six months but which may extend to six years, and with fine which shall not be less than one thousand rupees :

Provided that -

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Section 19 deals with the defences which may, and which may not, be allowed in prosecutions under the Act. It provide :

"(1) It shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated or misbranded Article of food to allege merely that the vendor was ignorant of the nature substance or quality of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale.

(2) A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves -

(a) that he purchased the article of food -

(i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer;

(ii) in any other case, from any manufacturer, distributor or dealer,

with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it.

(3) Any person by whom a warranty as is referred to in Section 14 is alleged to have been given shall be entitled to appear at the hearing and give evidence."

"Food" is defined in Section 2(v) as meaning "any article used as food or drink for human consumption other than drugs and water and includes - (a) any article which ordinarily enters into, or is used in the composition or preparation of human food, and (b) any flavouring matter or condiments". Clauses (i) and (ix) of Section 2 define the expressions "adulterated" and "misbranded".

4. According to counsel for the petitioners the Act imposes unreasonable restrictions, because it creates absolute liability by Section 16(1)(a) and imposes severe penalties for storage and sale or distribution of article of food found to be adulterated or misbranded, or prohibited by law, it prescribes therefrom the trader is liable to be prosecuted and punished. Counsel submitted that it is impossible for an ordinary trader without the assistance of an expert technician to ascertain whether the articles of food purchased by him comply with the prescribed standards, and that in prescribing the standards of quality the imperceptible changes which take place in foodstuffs by passage of time, are not taken into account.

5. In our judgment, the restrictions imposed upon the conduct of business by traders in foodstuffs cannot be deemed unreasonable. By Section 16(1) provision is made for imposing penalties, among other acts, for storage, sale or distribution of articles of food which are adulterated or misbranded, or sale of which is prohibited by the Food (Health) Authority in the interest of the public health, or is in contravention of the Act or the rules. The Act, it is true, does not make some blame-worthy mental condition constituted by knowledge or intention relating to the nature of the article stored, sold or distributed, an ingredient of the offence. Unless the case falls within sub-section (2) of Section 19, if sale, storage or distribution is established, intention to sell articles or knowledge that the articles are adulterated, misbranded, or prohibited need not be proved by the prosecutor to bring home the charge. Sub-section (1) of Section 19 provides that it is not defence in a charge for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him, or that the

purchaser having purchased any article for analysis was not prejudiced by the sale. By that clause a bare plea of ignorance by a trader about the nature, substance or quality of the food sold by him is not a defence in a prosecution for the offence pertaining to the sale of any adulterated food, nor that the article was purchased for analysis.

6. But in considering whether creation of absolute liability amounts to imposing unreasonable restrictions, the Court has to strike a balance between the individual right and public weal. The Courts will not strike down an Act as imposing unreasonable restrictions merely because it creates an absolute liability the object of the statute could be reasonably secured. For that purpose the Court will consider the object of the Act, apprehended danger to the public interest, arising out of the activity if not controlled and the possibility of achieving the intended results by less stringent provisions. The nature of the trade in foodstuffs, the channels of supply and the movement of goods from trader to trader and fertile sources of adulteration and misbranding make it extremely difficult in a large majority of cases to establish affirmatively that storage or sale of adulterated or misbranded foodstuff was with a guilty mind. Provisions in the statute book creating absolute liability for sale of adulterated food are fairly common. Section 3(1) of the English "Foods and Drugs Act", 1938, imposes absolute duty on a dealer in foodstuffs regardless of negligence : *Lindley v. George W. Horne & Co. Ltd.*, ((1950) 1 All ER 234) and *Lamb v. Sunderland and District Creamery Ltd.* ((1951) 1 All ER 923) The same provision is repeated in Section 2 of the "Food and Drugs Act, 1955". In Halsbury's Laws of England, Volume 10 (3rd Edn.) at p. 273, Article 508, it is state :

"A statutory crime may or may not contain an express definition of the necessary state of mind. A statute may require a specific intention, malice, knowledge, willfulness or recklessness. On the other hand, it may be silent as to any requirement of mens rea, and in such a case in order to determine whether or not mens rea, is an essential element of the offence, it is necessary to look at the objects and terms of the statute. In some cases, the Courts have concluded that despite the absence of express language the intention of the Legislature was that mens rea was a necessary ingredient of the offence. In others, the statute has been interpreted as creating a strict liability irrespective of mens rea. Instances of this strict liability have arisen on the legislation concerning food and drugs, liquor licensing, and many other matters."

In *Nausell Brothers v. London and North Western Rail Co.* ((1917) 2 KB 845) the Court of Appeal held that Regulation 26(1) of the Milk and Dairies Regulation, 1949, requiring a distributor to ensure that every vessel used as a container for milk shall be in a state of thorough cleanliness, imposed an absolute liability.

8. It is true that for the protection of the liberty of the citizen, in the definition of offences, blameworthy mental condition is ordinarily an ingredient a grave social evil, or for ensuring public welfare, especially in offences against public health, i.e. statutes regulating storage or sale of articles of food and drink, sale of drugs, sale of controlled or scarce commodities, it is often found necessary in the larger public interest to provide for imposition of liability without proof of a guilty mind.

9. If from the scheme of the Act it appears that compliance with the regulatory provisions will be promoted by imposing an absolute liability, and that it cannot otherwise on the right of the trader is in the interest of the general public. Adulteration and misbranding of foodstuffs is a rampant evil and a statute calculated to control that evil is indisputably in the interest of the general public. The

statute imposing restrictions upon traders will not be deemed unreasonable merely because it makes a departure from the normal structure of statutes enunciating offences and prescribing punishments. By sub-section (2) of Section 19, even in respect of the absolute offence, the Parliament has enacted that on proof of certain facts, criminal liability will be excluded. Thereby a vendor is not deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves that he purchased the article of food from a duly licensed manufacturer, distributor or dealer in a case where a licence is prescribed for the sale thereof, and in any other case from any manufacturer, distributor or dealer with a written warranty in the prescribed form, provided the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it. The argument of counsel for the petitioners that the provision that a retail seller who opens a container of a branded article of food loses even the limited protection under Section 19 (2) is without substance. Clause (b) of Sub-section (2) of Section 19 does not provide, nor does it imply, that if the container of a branded article is opened, the article of food ceases to be in the same state in which the vendor purchased it. If the article of food is sold in the same condition in which it was purchased from a licensed manufacturer or dealer, or was purchased with a warranty, the vendor will not lose the protection of sub-section (2) of Section 19 merely because he opened the container. If the vendor has obtained the article from a licensed manufacturer, distributor or dealer or from a manufacturer, distributor or dealer with a warranty, he is protected, provided he has properly stored the article and sells it in the same state as he purchased the article, even if it turns out that the article was adulterated or misbranded. The Act does not dispense with proof that the article of food is adulterated, misbranded or that its sale is prohibited : it enacts that a vendor selling articles of food adulterated or misbranded cannot plead merely that he was ignorant of the nature, substance or quality of the goods. A statute enacted by the Parliament in the interest of public health (which is generally made in similar statutes elsewhere) imposing liability for an offence without proof of a guilty mind does not per se impose restrictions on the freedom to carry on trade which are unreasonable.

10. It is true that stringent penalties are provided under Section 16(1)(a). A vendor of adulterated, misbranded or prohibited articles of food is punishable with imprisonment for a term which shall not, in the absence of adequate and special reasons, be less than six months, and which may extend to six years, and with fine which shall not be less than one thousand rupees. But for the protection of the public by ensuring the purity of articles of food supplied to the people and preventing malpractices by the traders in articles of food, severity of the penalties is not so disproportionate to the gravity of the offence that it may be deemed unreasonable.

11. We are again unable to accept the argument that under the Act even when an article is purchased not as an article of food, but for use otherwise, the vendor will be deemed guilty if the article does not conform to the prescribed standards, or is as an article of food adulterated or misbranded. Counsel said that coconut oil is used in the State of Kerala as a cooking medium, and sale of adulterated coconut oil may in Kerala be an offence under Section 16, but in other parts of the country where coconut oil is not used as a cooling medium and is used as a component of hair oil or for other purposes, it amounts to imposing an unreasonable restriction to penalise the vendor who sells coconut oil knowing that the purchaser is not buying it as a cooking medium. But there are no articles which are used as food only in one part, and are not at all used as food in another part of the country. Even coconut oil is used as a cooking medium by certain sections of the people in parts of India other than Kerala. In any event it is always open to a person selling an article capable of being used as an article of food as well as for other purpose to inform the purchaser by clear notice that the article sold or supplied is not intended to be used as an article of food as well as for other purpose to inform the purchaser by clear notice that the article sold or supplied is not intended to be

used as an article of food. What is penalised by Section 16(1) is importation, manufacture for sale, or storage, sale or distribution of any article of food. If what is imported, manufactured or stored, sold or distributed is not an article of food, evidently Section 16 can have no application.

12. The various items in the Schedule setting out standards of quality use technical expressions with which an ordinary retail dealer may not be familiar, and also set out percentages of components which the dealer with the means at his command cannot verify. But by Section 3, the Central Government has to set up the Central Committee for Food Standards to advise the Central and the State Governments on matters arising out of the administration of the Act. The Committee consists of experts and representatives of the Central Government and of the State Governments and the Director General of Health Services is its Chairman. Under Section 23(1)(b) the Central government makes rules prescribing the standards of quality and the limits of variability permissible in any article of food. The rules are made after consultation with the Committee for Food Standards. The standards set out in the Appendix to the Rules are prescribed after consultation with the Committee for Food Standards. It has not been even urged that the standards have been fixed arbitrarily. Apart from a general argument that small retail dealers may not be in a position to ascertain whether goods purchased by them or in their possession are according to the standards, no specific argument was advanced that the standards are not normal, or that the variations in quality during the course of storage are unreasonably restricted.

13. This Court in *State of Uttar Pradesh v. Kartar Singh* ((1964) 6 SCR 670) in which in dealing with an argument of invalidity of the rule setting out standards under the Prevention of Food Adulteration Act observe :

"The Standards themselves, it would be noticed have been prescribed by the Central Government on the advice of Committee which included in its composition persons considered experts in the field of food technology and food analysis. In the circumstances, if the rule has to be struck down as imposing unreasonable or discriminatory standards, it could not be done merely on any apriori reasoning but only as a result of materials placed before the court by way of scientific analysis. x x x That where a party seeks to impeach the validity of a rule made by a competent authority x x x x the burden is on him to plea and prove the infirmity is too well established to need elaboration. If, therefore, the respondent desired to challenge the validity of the rule on the ground either of its unreasonableness or its discriminatory nature, he had to lay a foundation for it by setting out the facts necessary to sustain such a plea and adduce cogent and convincing evidence to make out his case, for there is a presumption that every factor which is relevant or material has been taken into account in formulating the classification of the zones and the prescription of the minimum standards to each zone, and where we have a rule framed with the assistance of a Committee containing experts such as the one constituted under Section 3 of the Act, that presumption is strong, if not overwhelming."

14. In the petitions a plea was raised that by the Act and the Rules, the guarantee of Article 14 was infringed, but no argument was presented before us independently of the argument relating to infringement of the guarantee under Article 19(1)(g), in support of the contention to the Act infringed the guarantee of equality before the law or equal protection of the laws. The Act deals with the regulation of a class of traders, and in view of the widespread malpractices, and the practical difficulties of controlling those malpractices, stringent provisions have been made by the Act. The classification is founded on an intelligible differential and the differential has a rational

relation to the object sought to be achieved. The provisions of the Act again do not invest arbitrary authority upon those who are to administer the Act, nor can it be said that the standards prescribed are arbitrary.

15. The Act does not infringe the guarantee of Article 20(3) of the Constitution. By that clause no person accused of any offence shall be compelled to be a witness against himself. But by enacting that a plea by the vendor in a prosecution for an offence pertaining to sale of adulterated or misbranded article of food, that he was ignorant of the nature, substance or quality will not be a defence, the guarantee under Article 20(3) is not infringed. The vendor when charged with a offence is not thereby compelled to be a witness against himself. Not can it be said that by making the report of the Director of central Food Laboratory conclusive evidence of the facts stated therein, any such infringement is intended. The provision has been made with a view to secure formal evidence of facts without requiring the Director to remain present, and in the interest of effective administration of the Act the certificate signed by the Director of the Central Food Laboratory is made final and conclusive evidence of the facts stated therein. The Director is a highly placed official an expert in determining the nature, substance and quality of food, and is wholly disinterested in the result of any case coming before the Courts. It is difficult to appreciate how conclusiveness attributed to the certificate of the Director compels the vendor charged with an offence under the Act to be a witness against himself.

16. The petitions fail and are dismissed with costs. One hearing fee.

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