

Dwarka Nath and Another

Vs

The Municipal Corporation of Delhi

Criminal Appeal No. 264 of 1968

(CJI S. M. Sikri, C. A. Vaidialingam, A. N. Ray JJ)

23.04.1971

JUDGMENT

VAIDIALINGAM, J. -

The short question that arises for consideration in this appeal by the accused, by special leave, is, whether Rule 32(b) and (e) of the Prevention of Food Adulteration Rules, 1955 (hereinafter to be referred as the Rules) is ultra vires as being beyond the rule-making power under Section 23 of the Prevention of Food Adulteration Act, 1954 (hereinafter to be referred as the Act). As the Rules have been framed by the Central Government, notice had been issued by this Court to the Attorney-General.

2. The first appellant is a partner of the second appellant M/s. Mohan Ghee Laboratories carrying on business in Pure Deshi Ghee, in Gurdwara Road, New Delhi 5. On December 29, 1962 at about 12.50 p.m. five Food Inspectors of the respondent visited the Laboratories of the appellants at Gurdwara Road, and all of them purchased Ghee from different containers on payment of price. After going through the necessary formalities as required by the Act and the Rules, the samples of Ghee purchased by the Food Inspectors were sent to the Public Analyst for Delhi Municipal Corporation for analysis. The Public Analysts tested the sample on January 3, 1963, and reported that all the five samples taken by the five Food Inspectors and sent to him conformed to standard. It is also to be noted that on December 29, 1962, the Food Inspectors had also seized the labelled tins from which samples of Ghee had been taken.

3. On August 31, 1963, the respondent filed five complaints in the Court of the Magistrate, Ist Class, Delhi against the appellants under Section 7/16 of the Act read with Rule 32(b) and (e) of the Rules. As all the complaints are on the same pattern, we will just refer to one of these complaints, filed on the basis of the report of the Food Inspector Lekh Raj Bhutt. The averments are that the said Food Inspector on December 29, 1962 at about 12.55 p.m took a sample of pure Ghee from the appellants from one of the sealed tins of pure Ghee exhibited for sale at the sale counter after due observance of the Rules. One sealed bottle was given to the appellants at the spot. The labelled tin of pure Ghee from which the sample was taken was also seized by the Food Inspector in the presence of witnesses and the said tin is produced as an exhibit. The complaint further proceeds to state that the sample of pure Ghee taken from appellants conformed to the standard or pure Ghee. According to the report of the Public Analysts, the sealed tin of pure Ghee from which the sample was taken had a label, but it did not conform to the packing and labelling Rules under the Act inasmuch as the name and business address of the manufacturer of packer or vendor and both or code numbers had not been specified on the label as required under Rule 32(b) and (e) of the Rules; and that the appellants are guilty for non-observance of the Labelling Rules. The respondent

ultimately prayed that the appellants may be punished, according to law, for contravention of Rule 32(b) and (e) of the Rules.

4. Similarly, the charge framed in each of the five cases was also on the same pattern. The charge after referring to the substance of the complaint and after referring to the fact that the sample of Ghee taken from the shop of the appellants conformed to the standard alleged.

"But complete address, Batch or Code No. etc. were not written on the Ghee tins seized by the Food Inspectors.

Therefore, you are to show cause, why you should not to punished under Section 7/16 PFA Act, 1954, read with Rule 32(b) and (e) of PFA Rules, 1955".

The appellants pleaded not guilty to the charge.

5. One of the Food Inspectors, Dina Nath has given evidence as P.W. 1. We will only refer to that part of his evidence which has a bearing on the point for consideration before us. In chief examination he has stated that when he examined the tin from which the sample of Ghee had been taken, he found that the tin did not bear the batch number, the code number and that the address given therein was incomplete. In cross-examination he has stated that the address given on the label was Mohan Ghee Laboratories, New Delhi 5, and there was also a further writing "Pure Ghee". He was not able to say whether the address referred to above and found on the tin was incomplete. He has further stated that though he has been working as Food Inspector from about 1949, he does not remember if he had seen the premises number written on any packing. He has further stated that "Batch number can start from any serial number. I am saying about serial number by common sense Code No. and Batch Number is the same."

6. We will refer to the question put to the first appellant when he was examined under Section 342 and to his answer in respect of the labelling and packing.

"Q. There is an allegation against you that labelling and packing of the Ghee tins taken in possession, was defective, since they do not bear the complete address of your shop, Code number and Batch number, What have you to say ?

A. It is incorrect Labelling and packing were in order, address was also correct"

The appellants had also examined some of their employees. We will refer to the material part of the evidence of P.W. 2, who was incharge supervising the packing of the Ghee. He has referred to the fact that the address of the shop of the appellants is Mohan Ghee Laboratories, Delhi 5 and that they receive letters, addressed as above. He has further stated that the appellants purchase Ghee from outsiders in small tins and utensils and then pack them in their premises. In cross-examination he has stated that the premises of the appellants is situated in 37 Nai Wallam, Gurdwara Road, Karol Bagh.

7. The Trial Magistrate has rather elaborately gone into the question whether the samples of Ghee seized from the appellants conform to the standard and criticises without any basis the evidence of the defence witnesses on the ground that the appellants should not have printed on the label "Pure Ghee" when they could not have known the quality of Ghee stored in the containers. This discussion is totally irrelevant because, even according to the respondent, the Public Analysts had certified that

the sample conformed to the standard and the appellants were not being tried for adulteration of Ghee.

8. Regarding the requirement regarding the Batch number or Code number, the Magistrate after reference to Rule 32(e) holds that the provision is mandatory and the object of giving those particulars is to indicate the serial order in which the particular article of food was packed and thereby to indicate the period for which it could remain fit for human consumption. We are not able to appreciate where from the Magistrate got all these indications, because the relevant rule does not provide for giving any particulars regarding the period for which the article of food could remain fit for human consumption. Ultimately the Magistrate found the appellants guilty for contravening Rule 32(b) and (e) and sentenced them to pay a token fine of Re. 1/- in each of the five cases.

9. The appellants challenged their conviction before the learned Additional Sessions Judge, Delhi. The Sessions Judge, by his order, dated October 18, 1965, agreed with the Trial Magistrate that the appellants are guilty of breach of Rule 32(b) and (e). However, the Sessions Judge was of the opinion that five separate complaints and five separate convictions were not legal and therefore, he made a recommendation to the High Court that the conviction of the appellants is to be set aside in respect of four complaints and that it should be maintained only in one case. According to the learned Sessions Judge, the appellants have not complied with the requirement of sub-rule (b) of Rule 32 as they have given on the label the address as "Mohan Ghee Laboratories, New Delhi 5" without giving the number of the premises and the locality where the premises is situate. Similarly, the learned Sessions Judge is of the view that the object of specification of Batch number and Code number is to track down all the samples of food stuff that were packed out of a particular lot if the authorities found the sample to be defective. This will enable the authorities to at once withdraw from the market all the containers of a particular Batch number. In this view the learned Sessions Judge held that the appellants have committed breach of Rule 32(e).

10. The learned Chief Justice of the Delhi High Court, in the order under attack, has held that it is enough if the appellants are convicted in one case and accordingly the reference made by the Additional Sessions Judge in this regard was accepted. But on the main question as to whether Rule 32(b) and (e) was within the rule-making power under Section 23 of the Act, the learned Chief Justice has held that the said rule is intra vires and comes within the rule-making power conferred under Section 23(1)(d). According to the High Court the Batch number and Code number would serve to provide a re-assuring factor to the purchaser inasmuch as it would indicate to some extent the time when the commodity was manufactured or packed. The High Court has further held that the display of Batch number or Code number would seem to be a relevant factor for assuring the public or the purchaser that they are getting from the market an article which is fresh enough to suit their purpose and requirement. Ultimately, the High Court confirmed the conviction of the appellants as well as the levy of fine of Re. 1/- in one case for breach of Rule 32(b) and (e).

11. Mr. S. C. Manchanda, learned counsel for the appellants, contended that Rule 32(b) and (e) is beyond the rule making power conferred under Section 23(1)(d) of the Act. The learned counsel further pointed out that the reasons given by the High Court are not warranted by the provisions of either the Act or the Rules.

12. Dr. V. A. Syed Mohammed, appearing for the learned Attorney-General contended that the impugned rule could be sustained under clause (c), (d) and (g) of Section 23(1). In particular he supported in full the reasons given by the High Court that the impugned rule is within the ambit of the rule-making power under Section 23(1)(d).

13. Mr. S. P. Maheshwari, learned counsel for the respondent, urged that apart from the clauses referred to on behalf of the Attorney-General, the rule could be sustained even under Section 23(1)(f).

14. In order to appreciate the contentions urged before us, it is necessary to refer to the material part of Section 23 as well as the relevant rules. Section 23(1) gives power to the Central Government to make rules. We have already referred to the clauses on which reliance is placed on behalf of the Attorney-General and by the respondent, namely, clauses (c), (d), (f) and (g). Section 23(1) with those clauses reads as follows :

"23(1) Power of the Central Government to make rules. - The Central Government may, after consultation with the Committee and subject to the condition of previous publication, make rules -

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(c) laying down special provisions for imposing rigorous control over the production, distribution and sale of any article or class of article of food which the Central Government may, by notification in the Official Gazette, specify in this behalf including registration of the premises where they are manufactured, maintenance of the premises in a sanitary condition and maintenance of the healthy state of human beings associated with the production, distribution and sale of such article or class of articles :

(d) restricting the packing and labelling of any article of food and the design of any such package or label with a view to preventing the public or the purchaser being deceived or misled as the character, quality or quantity of the article;

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(f) prohibiting the sale or defining the conditions of sale of any substance which may be injurious to health when used as food or restricting in any manner its use as an ingredient in the manufacture of any article of food or regulating by the issue of licences as the manufacture or sale of any article of food;

(g) defining the conditions of sale or conditions for licence of sale of any article of food in the interest of public health."

15. The Rules have been framed by the Central Government in exercise of the powers conferred by sub-section (2) of section 4 and sub-section (1) of Section 23 of the Act. The Rules framed under sub-section (2) of Section 4 relate to the functions of the Central Food Laboratory and allied matters. We are not concerned with those rules. Part VII of the Rules relates to the "packing and labelling of foods". Rule 32 relating to the "contents of the label" is in this part. Rule 32 with material clauses (b) and (e) and the first proviso as well as the Explanation reads as follows :

"Rule 32. Contents of the label. - Unless otherwise provided in these rules there shall be specified on every label :

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(b) the name and business address of the manufacturer or importer or vendor or packer,

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(e) a batch number or code number either in Hindi or English numerical or alphabets or in combination :

Provided that in the case of food package weighing not more than 60 grams particulars including the statement under any clause need not be specified.

Explanation. - The term 'label' means a display of written, printed, perforated, stencilled, embossed or stamped matter upon the container, cover lid and/or crown cork of any food package."

16. Admittedly there is no definition of the expressions "Batch number" or "Code number" either in the Act or in the Rules. Nor has any affidavit been filed on behalf of the respondent or by the Attorney-General of any expert whether these expressions have any technical meaning in the trade and if so what that is. The material available on record is only the evidence of Dina Nath, one of the Food Inspectors, who has given evidence as P.W. 1 in one of the complaints. We have already adverted to his evidence which is to the effect that Batch number can start from any serial number and that what he says about serial number is only by common sense. Further, according to him Code number and Batch number is the same. From this evidence it is clear that there is no specific meaning attached to these two expressions either in the Act or in the Rules and even the Food Inspectors are not very clear as to what those expressions mean.

17. He has also stated that in the label on the container, the address of the appellants had been given as "Mohan Ghee Laboratories, New Delhi 5". According to him the said address is incomplete because it does not give the details about the door number of the premises, as well as the locality where the premises is situate. He has also stated that he does not remember to have seen the premises number on any packing.

18. We have now to see whether any of the clauses in section 23(1) on which reliance is placed on behalf of the Attorney-General and the respondent will sustain the provisions contained in clauses (b) and (e) of Rule 32. We are not able to find anything in clauses (c), (f) and (g) of section 23(1) of the Act, which will give power to the Central Government to frame rules requiring the name and business address of manufacturer or vendor being given; or for Batch number or Code number being given on the labels. Clause(c) deals with provisions for imposing rigorous control over production, distribution and sale of any article or class of articles or class of articles of food notified by the Central Government in the official Gazette. No notification issued by the Central Government in this behalf regarding Ghee has been brought to our notice and, therefore, clause (c) does not apply.

19. Clause (f) relates to prohibiting the sale or defining the conditions of sale of any substance injurious to health when used as food. This clause has also no application, because it is not the case of the respondent that the article of food, with which we are concerned, namely, Ghee, is a substance which in injurious to health when used as food. Clause (g) again will have no application because one of the essential requirements therein is that the rule should be related to the interest of public health. Any rule made under this clause, must be of universal application because it is in the interest of public health. The requirement regarding compliance with any such rule, cannot depend upon the quantity of food packed in any container. That clause (g) of section 23(1) will stand

eliminated is clearly seen by a reference to the first proviso to Rule 32. The said proviso indicates that if the food package weights not more than 60 grams, the particulars mentioned in clauses (a) to (e) of the Rule need not be specified. If a requirement has to be in the interest of public health, as is mandatory under clause (g), the very fact that the first proviso to Rule 32 excludes the operation of clauses (a) to (e) of the said rule in respect of food package weighing not more than 60 grams, is an indication that Rule 32 is not framed under clause (g) of section 23(1) of the Act. From the above discussion it is clear that under clauses (c), (f) and (g) of Section 23(1) of the Act, the rules contained in clauses (b) and (e) could of Rule 32, not be framed.

20. This leaves us for consideration the question whether Rule 32(b) and (e) fall within the ambit of rule-making power under clause (d) of Section 23(1). We will first take up for consideration the vires of clause (e) of Rule 32. There cannot be any controversy that the object of a rule framed under clause (d) must be with a view to preventing the public or the purchaser being deceived or misled as to the character, quality or quantity of the article. We have already pointed out that in this case the label contained the words "pure Ghee" and on analysis of the sample it has been found to conform to the standard. It is difficult for us to appreciate how the giving of the batch number or the code number alone without giving any further particulars such as date of manufacture of the article of food and the period within which the said article has to be utilised, used or consumed and the quantity of the article in a container, will prevent the public or the purchaser being deceived or misled as to the character, quality or quantity of the article. No attempt has been made by the respondent to establish any relation between the giving of the batch number or the code number with the public or the purchaser, being prevented from being deceived or misled in respect of the matters, referred to in clause (d). We are not able to find any rational or even a remote connection between the batch or code number artificially given by a packer and the public or the purchaser being prevented from being deceived or misled as to the character, quality or quantity of the article, contained in a sealed tin.

21. There is no definition of the expression "batch number" or "code number" either in the Act or the Rules. It is also admitted the even issuing that the batch or code number has to be given, there is no further obligation to specify in the label the date of packing and manufacture of the article of food or the period within which the article of food has to be utilised, used or consumed. In the absence of any obligation to give the particulars mentioned by us above, the public or the purchaser will not be able to find out even the freshness of the contents of a container. Therefore, it follows that merely giving an artificial batch number or code number will not be of any use to the public or to the purchaser. In view of all these circumstances we are of the opinion that Rule 32(e) is beyond the rule-making power even under Section 25(1)(d) of the Act. The appellants could not be convicted for any violation of clause (e) of Rule 32 as the said provision, as pointed out above, is invalid.

22. We will now consider the question regarding the validity of clause (b) of Rule 32. That clause is also challenged as being beyond the rule-making power under Section 23(1)(d) of the Act. Clause (b) of Rule 32 requires that the name and business address of the manufacturer, or importer, or vendor or packer be given on every label. According to Mr. Manchanda, this clause has also no relation to the purpose for which the rules can be framed under Section 23(1)(d) of the Act. According to Mr. Manchanda, mere giving of name and business address will not give any indication to the public or the purchaser regarding the character, equality or quantity of the article. Even assuming that clause (b) or Rule 32 is valid, he pointed out, that in this case, his clients have complied with the requirement by stating on the label "Mohan Ghee Laboratories, New Delhi-5". According to him there has been at any rate a substantial compliance with the requirement of the

rule and therefore his clients could not be convicted for any violation of this clause.

23. We are not inclined to accept the contention of Mr. Manchanda that clause (b) of Rule 32 is beyond the rule making power of the Central Government under Section 23(1)(d) of the Act. It is well known that in many cases in business the name and address of a manufacturer, or importer, or vendor or packer has become associated with the character, quality or quantity of the article and as such we are of the opinion that clause (b) of Rule 32 is a valid rule. In this case, as pointed out by Mr. Manchanda there has been a substantial compliance with that rule by the appellants giving in the label the address as "Mohan Ghee Laboratories, New Delhi-5". But according to the requirement of the rule, some more particulars will have to be given, namely, the number of the premises and the locality or the area where the premises is situate. This is the evidence adduced on behalf of the prosecution also. Therefore, it can be said that there is a technical breach of clause (b) of Rule 32 inasmuch as full particulars, referred to above, have not been given by the appellants in the label. No doubt, the appellants have been convicted for breach of clauses (b) and (e) of Rule 32 and a fine of Re. 1/- has been imposed. We have already held that clause (e) of Rule 32 is invalid and the appellants cannot be convicted for non-compliance of the same. Though there is a technical breach of Rule 32(b), there is no indication available from the judgments of the High Court and the subordinate courts that the appellants would have been convicted for a technical breach of Rule 32(b) if there was no charge under clause (e) of Rule 32 also. On the other hand, more prominence is given in the judgments to the violation of Rule 32(e) and the inference is that the conviction is substantially for a violation of the said rule. In the circumstances of this case, we are of the view, that the appellants could not be convicted for a technical breach of Rule 32 (e) alone. Therefore, the conviction of the appellants for offences, under Rule 32 and (e) as well as the fine imposed in the sum of Re. 1/- for the said offence, are both set aside.

24. In the result, the appeal is accordingly allowed and the judgment and order of the Delhi High Court in Criminal Revision No. 371-D of 1969 are set aside. The fine, if collected, will be refunded.

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