Inderjeet

Vs

State of Uttar Pradesh and Another

Writ Petition No. 449 of 1979

(V.R. Krishna Iyer, P.N. Shinghal JJ)

10.08.1979

JUDGMENT

KRISHNA IYER, J. -

1. The adventurous petitioner imaginatively challenges the vires of Section 7 read with Section 16 of the Prevention of Food Adulteration Act and the relevant rules framed thereunder. The gravamen of his charge is that the above provisions, read together, impose an inflexible minimum sentence of six months' R.I. if the offender is guilty of sale of adulterated food, excluding in the process even the need to prove mens rea in the accused. This absolute liability, with mandatory sentence, dependent on sophisticated chemical tests and complicated formulae, is oppressively unreasonable in the illiterate, agrestic realities of little Indian retail trade. Such, in one sentence, is the submission of counsel.

2. The primary props to support this broad submission may be briefly noticed. Counsel complains that there is no classification as between injurious pollutants and innocuous adulterants while prescribing the sentence. Nor is there any intelligent differentiation between petty dealers and giant offenders, and vendors, big and small, are put on the Procrustean bed of stern punishment alike. Articles 14, 19 and 21 are constitutional artillery employed by counsel to shoot down the said provisions of the Act.

3. Frankly, we are not impressed with the consternation about the constitutionality even if the potential for victimisation affecting smaller people may be real and elicit our commiseration. We may dwell for a moment on the latter grievance against the law a little later. First, we will repel the vice of unconstitutionality.

4. Let us be clear about the basics. Policy is for Parliament, constitutionality for the Court. Protection of public health and regulation of noxious trade belong to the police power of the State and legislation like the Prevention of Food Adulteration Act is of that genre.

5. If a sentence, as here, is prescribed as a mandatory minimum and that is too cruel to comport with Article 21 and too torturesome to be reasonable justifiable or socially defensible under Article 19 then a case for judicial review may arise. But we see none here. Nor can we agree that Judge-proof sentencing is per se bad. Sometimes judicial fluctuations in punishment, especially on the softer side where white collar criminals are involved, induce legislative standardisation of sentences, to avoid giving societal protection in hostage to fortune. There is a wide play still left for the court, and mandatory minima are familiar from the days of the Penal Code (vide Section 302). The prescription of equal protection is not breached either, because within the range of judicial

discretion the court deals out to each what he deserves according to established principles.

6. Shri R. K. Garg feelingly urged that the poor and the weak, who are the larger, lower sector of retail traders, will have to suffer the standardised imprisonment if Food Inspectors can challan them in Court and, on some minor variation in the chemical composition of food sold, get them convicted sans mens rea merely because, along the chain, some bigger trader has fobbed off inferior commodities on them. We are disturbed that it is possible that small men become the victims of harsh law when there is no executive policy which guides prosecution of offenders. Petty victuallers and big sharks operate on society in different degrees and draconian equality will be tempered by flexible policy.

7. This is a matter of penal policy in constitutionality and so it is, sense, out of bounds for judicial advice. Even so, we feel constrained to state that public authorities entrusted with the enforcement of regulatory provisions to protect society may, in proper cases, examine those prosecutions which are harassments to the humbler folk even if they technically violate the law and cause only minimal harm to society and decide whether they should at all sanction their prosecution. The legislature, in its wisdom, may also consider the advisability of resting power somewhere to reduce the sentence without the bigger offender escaping through these wider meshes meant for the smaller offenders. Even otherwise, there is a general power in the Executive to commute sentences and such power can be put into action on a principled basis when small men get caught by the law.

8. We dismiss the writ petition since there is no constitutional invalidity made out and the grounds urged are more appropriately an appeal to the Parliament and the Executive.

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