

A. K. Roy and Another

Vs

State of Punjab and Others

Criminal Appeal No. 400 of 1986

(A. P. Sen, B. C. Ray JJ)

29.09.1986

JUDGMENT

A.P. SEN, J. -

1. This appeal by special leave directed against the judgment and order of the Punjab and Haryana High Court dated February 12, 1986 raises a question of some importance. The question is whether the Food Inspector, Faridkot was competent to lodge a complaint against the appellants under Section 20(1) of the Act for commission of an offence punishable under Section 16(1)(a)(ii) of the Prevention of Food adulteration Act, 1954 (for short 'the Act') by virtue of the delegation of powers by the Food (Health) Authority, Punjab under notification dated September 7, 1972 purported to have been issued by him under Rule 3 of the Prevention of Food Adulteration (Punjab) Rules, 1958.

2. Put very shortly, the essential facts are these, Appellant 2, Messrs Food Specialities Limited is a company incorporated under the Companies Act, 1956 engaged in the business of manufacturing and selling various well known articles of food including New Maggi 2 minute noodles with sweet sour taste-maker while appellant 1 A.K. Roy is the Manager, Quality Control of the Company. On December 14, 1984 at about 3.30 pm the Food Inspector, Faridkot purchased a sample of New Maggi Noodles from the shop of a general merchant for purposes of analysis. The Public Analyst by his report dated January 17, 1985 opined that the said article of food contains carmosine and sunset yellow acid coal tar dye instead of caramel as described on the label and was therefore both adulterated as well as misbranded. He further opined that the label of the article of food did not comply with the requirements of Rules 24 and 32 of the Prevention of Food Adulteration Rules, 1955 regarding the addition of extraneous colouring matter. On February 1, 1985 the Food Inspector, Faridkot filed a complaint against the general merchant as well as the appellants for having committed an offence punishable under Section 16(1)(a)(ii) of the Act for alleged violation of Rules 24, 28, 29 and 32 of the Prevention of Food Adulteration Rules, 1955 by virtue of the delegation of powers by the Food (Health) Authority under notification dated October 10, 1968 purported to have been issued by him under Rule 3 of the Prevention of Food Adulteration (Punjab) Rules, 1958.

3. During the course of the proceedings, the appellants raised an objection inter alia that Rule 3 of the Rules framed by the State Government in purported exercise of powers under Section 24(2) read with Section 20(1) of the Act, was ultra vires the State Government and alternatively by virtue of the authority derived under Rule 3 of the said Rules, the food (Health) Authority alone had the power to initiate prosecutions for an offence under the Act and therefore he could not legally by the impugned notification sub-delegate his powers to launch the prosecutions to the Food Inspector. The

learned Sub-Divisional Judicial Magistrate by his order dated December 4, 1985 rejected the preliminary objection raised as to the power of the Food Inspector to launch the prosecution under Section 20(1) read with Section 9 of the Act, on the ground that the State Government having delegated its powers to the Food (Health) Authority by framing Rules 3 under Section 24(2)(e) of the Act, the Food (Health) Authority was competent to issue the impugned notification and therefore the complaint was validly lodged. The learned Sub-Divisional Judicial Magistrate further proceeded to frame charges against the appellants for having committed an offence punishable under Section 16(1)(a)(ii) of the Act. Therefore, the appellants moved the High Court by a petition under Section 482 of the Code of Criminal Procedure, 1973 for quashing the impugned order passed by the learned Sub-Divisional Judicial Magistrate taking cognizance of the offence and the consequent framing of the charge by him. The High Court did not go into the question and dismissed the petition in limine.

4. It is argued on behalf of the appellants that as a matter of construction the first part of Section 20(1) of the Act makes it clear that a prosecution for offences under the Act not being an offence under Section 14 or Section 14-A, can be instituted only by one of the following authorities, namely : (i) the Central Government or the State Government, or (ii) with the written consent of the Central Government or the State Government, or (iii) a person authorised in this behalf by a general or special order by the Central Government or the State Government, or (iv) with written consent of a person so authorised. It is urged that the opening words of Section 20(1) "No prosecution for an offence under this Act . . . shall be instituted except by" being of a negative character, the requirements of the section are imperative and that a discretionary power must in general, be exercised by the authority to which it has been committed. Emphasis is placed on the word 'in this behalf' in the second part of Section 20(1) of the Act for the submission that the delegation of powers to launch a prosecution by the Central Government or the State Government, by general or special order, must be for a specific purpose in that behalf viz. to authorise the institution of prosecutions under the Act. It was accordingly submitted that Rule 3 of the Punjab Rules enables the food (Health) Authority to sub-delegate his power 'to authorise the launching of a prosecution for an offence under the Act' to the Food Inspector, was ultra vires the State Government and could not be sustained on the terms of Section 24(2)(e) i.e. the general power of the State Government under Section 24(2)(e) of delegation of its powers and functions under the act.

5. In reply, the learned counsel for the respondents contends that Rule 3 is in the nature of a general order in terms of Section 20(1) the Act and therefore the State Government has not only delegated its powers 'to launch a prosecution for an offence under the Act' under Section 20(1) to the Food (Health) Authority i.e. the Director of Health Services, Punjab but also under the said rule provision has been made for further sub-delegation of his power to authorise the launching of prosecutions under Section 20(1) to the Food Inspectors.

6. In order to appreciate the contentions it is necessary to refer to the relevant provisions. Sub-section (1) to Section 20 the Act which is material for our purposes, provides as follows :

20. Cognizance and trial of offences. - (1) No prosecution for an offence under this Act, not being an offence under Section 14 or Section 14-A, shall be instituted except by, or with the written consent of, the Central Government or the State Government or a person authorised in this behalf, the general or special order, by the Central Government or the State Government.

Sub-section (1) of Section 24 of the Act empowers the State Government to frame

rules after consultation with the Committee and subject to the condition of previous publication, for the purpose of giving effect to the provisions of the Act not falling within the purview of Section 23. Sub-section (2) thereof provides that in particular and without prejudice to the generality of the foregoing power, the State Government may make rules for the purpose of giving effect to the provisions of the Act in matters not falling within the purview of Section 23. Section 24(2)(e) of the Act provides :

24(2) In particular, and without prejudice to the generality of the foregoing power, such rules may -

(e) provide for the delegation of the powers and functions conferred by this Act on the State Government or the Food (Health) Authority to subordinate authorities or to local authorities.

In exercise of the powers under Section 24(2)(e) of the Act, the Punjab Government framed the Prevention of Food Adulteration (Punjab) Rules, 1958. Rule 3 of the Rules reads as under :

3. Power of Food (Health) Authority. - The State Government may, by an order in writing delegate its powers to appoint Food Inspectors, to authorise a person to institute prosecutions for an offence under the Act and such other powers exercisable by it under the Act as may be specified in the order of the Food (Health) Authority of the State of Punjab.

7. In accordance with Rule 3, the State Government issued a notification dated October 10, 1968 purporting to delegate its powers and functions considered by Section 29(1) of the Act viz. to initiate prosecutions for an offence under the Act, to the Food (Health) Authority, to the effect :

In pursuance of the provisions of Rule 3 of the Prevention of Food Adulteration (Punjab) Rules, 1958, the President of India is pleased to delegate to the Food (Health) Authority its powers of appointment of Food Inspectors and to authorise institution of prosecution for an offence under the Prevention of Food Adulteration Act, 1954.

In terms of the aforesaid notification, the Food (Health) Authority issued a notification dated September 7, 1972 authorising the Food Inspector, Faridkot to launch prosecutions under Section 20(1) for an offence under the Act, in these terms :

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In exercise of the powers conferred by Section 9 of the Prevention of Food Adulteration Act, 1954 (Act 37 of 1954) read with Rule 8 of the Prevention of Food Adulteration Rules, 1955 and the powers delegated vide Punjab Government Notification No. 5575-2HB/L-68/29659 dated October 10, 1968, Shri Jagrup Singh is hereby appointed as Government Food Inspector for all the local areas in the District, in which the official is posted as Government Food Inspector.

In exercise of powers conferred by Section 20 of the Prevention of Food Adulteration Act, 1954 (Act 37 of 1954) read with Punjab Government Notification No. 5575-2HB1/68/29659 dated October 10, 1968 the Director, Health Services, Punjab also authorises the above mentioned Food

Inspector to institute prosecution against the persons committing offences under the said Act within the limits of his local areas.

8. In this appeal, two main questions arise, namely : (i) Whether Rule 3 of the Prevention of Food Adulteration (Punjab) Rules, 1958 framed under Section 24(2)(e) of the Act being contrary to the legislative mandate contained in Section 20(1) of the Act, was ultra vires the State Government and therefore the impugned notification issued by the State Government dated October 10, 1968 purporting to delegate its powers under Section 20(1) to the Food (Health) Authority viz. to authorise the institution of prosecutions for an offence under the Act, was liable to be struck down. Consequently, whether the impugned notification dated September 7, 1972 issued by the Food (Health) Authority authorising the Food Inspector, Faridkot to institute such prosecutions was illegal, bad in law and void ab initio. (ii) Even if Rule 3 of the said Rule could be regarded as a general order issued by the State Government in terms of Section 20(1) of the Act authorising the Food (Health) Authority to launch prosecutions for an offence under the Act by the framing of a rule under Section 24(2)(e) of the Act, whether the Food (Health) Authority by the impugned notification dated September 17, 1972 could, in his turn, sub-delegate his powers to the Food Inspector, Faridkot. The ultimate question is whether the terms of Section 20(1) of the Act do not postulate further delegation by the person authorised to institute prosecutions for an offence under the Act; he can only give his written consent to such prosecution.

9. It is common ground that the prosecution in the instant case has not been launched either by or with the written consent of the Central Government or the State Government. It therefore becomes necessary to ascertain whether the Food Inspector, Faridkot was duly authorised to launch a prosecution. The Food Inspector had been conferred powers of the State Government under Section 20(1) of the Act viz. to initiate prosecutions for an offence under the Act, by the Food (Health) Authority i.e. the Director of Health Services. A mere perusal of the impugned notification dated September 7, 1972 makes it manifest that it was the Director of Health Services and not the State Government who had authorised the Food Inspector to launch prosecutions for an offence under the Act. It is therefore clear that the Food Inspector is not a person who has been authorised by any general or special order issued by the Central Government or the State Government. There would be no problem if the State Government were to issue a notification under Section 20(1) of the Act conferring authority on the Food Inspector, Faridkot under Section 20(1) to launch prosecutions for an offence under the Act as is the practice in the other States.

10. A careful analysis of the language of Section 20(1) of the Act clearly shows that it inhibits institution of prosecutions for an offence under the Act except on fulfillment of one or the other of the two conditions. Either the prosecutions must be instituted by the Central Government or the State Government, prosecutions should be instituted with the written consent of any of the four specified categories of authorises or persons. If either of these two conditions is satisfied, there would be sufficient authority for the institution of such a prosecution for an offence under the Act. The provision contained in Section 20(1) of the act does not contemplate the institution of a prosecution by any person other than those designated. The terms of Section 20(1) do not envisage further delegation of powers by the person authorised, except that such prosecution may be instituted with the written consent of the Central Government or the State Government or the person authorised. The use of the negative words in Section 20(1) "No prosecution for an offence under this Act . . . shall be instituted except by or with the written consent of" plainly make the requirements of the section imperative. That conclusion of ours must necessarily follows from the well known rule of construction of inference to be drawn from the negative language used in a statute stated by Craies on Statute Law, 6th edn., p. 263 in his own terse language :

If the requirements of a statute which prescribes the manner in which something is to be done are expressed in negative language, that is to say, if the statute enacts that it shall be done in such a manner and in no other manner, it has been laid down that those requirements are in all cases absolute, and that neglect to attend to them will invalidate the whole proceeding.

Where a power is given to do a certain thing in a certain way, the thing must be done in the way or not at all. Other modes of performance are necessarily forbidden. The intention of the legislature in enacting Section 20(1) was to confer a power on the authorities specified therein which power had to be exercised in the manner provided and not otherwise.

11. The first part of Section 20(1) of the Act lays down the manner of launching prosecutions for an offence under the Act, not being an offence under Section 14 or Section 14-a. The second part provides for delegation of powers by the Central Government or the State Government. It enables that prosecutions for an offence under the Act can also be instituted with the written consent of the Central Government or the State Government or by a person authorised in that behalf, by a general or special order issued by the Central Government or the State Government. The use of the words 'in this behalf' in Section 20(1) of the Act shows that the delegation of such power by the Central Government or the State Government by general or special order must be for a specific purpose, to authorise a designated person to institute such prosecutions on their behalf. The terms of Section 20(1) of the Act do not postulate further delegation by the person so authorised; he can only give his consent in writing when he is satisfied that a prima facie case exists in the facts of a particular case and records his reasons for the launching of such prosecution in the public interest.

12. In the case of statutory powers the important question is whether on a true construction of the Act, it is intended that a power conferred upon A may be exercised on A's authority by B. The maxim delegates non potest delegare merely indicates that this is not normally allowable but the legislature can always provide for sub-delegation of powers. The provision contained in Section 24(2)(e) enables the State Government to frame a rule for delegation of powers and functions under the Act but it clearly does not envisage any sub-delegation. That apart, a rule framed under Section 24(2)(e) can only provide for delegation of minor administrative function e.g. appointment of Food Inspectors, Food (Health) Authority etc. In the case of important executive functions like the one contained in Section 20(1) of the Act to authorise launching of prosecutions for an offence under the Act which is in the nature of a safeguard, the courts may be disposed to construe general powers of delegation restrictively. Keeping in view the language of Sections 20(1) and 24(2)(e) of the Act, Rule 3 of the Punjab Rules can be treated to be a general order issued by the State Government to authorise the Food (Health) Authority i.e. the Director of Health Services to institute prosecutions for an offence under the Act. Unfortunately, the draftsmen of Rule 3 more or less employed the language of Section 20(1) of the Act. If Rule 3 were to be literally interpreted, the words "to authorise the launching of prosecutions" may lead to the consequence that the Food (Health) Authority who had been delegated the power of the State Government under Section 20(1) of the Act could, in his turn, sub-delegate his powers to the Food Inspector. Such a consequence is not envisaged by Section 20(1) of the Act. It is well settled that rules framed pursuant to a power conferred by a statute cannot proceed or go against the specific provisions of the statute. It must therefore follow as a logical consequence that Rule 3 of the Prevention of Food adulteration (Punjab) Rules, 1958 must be read subject to the provisions contained in Section 20(1) of the Prevention of Food Adulteration Act, 1954 and cannot be construed to authorise sub-delegation of powers by the Food (Health) Authority, Punjab to the Food Inspector, Faridkot. If so construed, as it must, it would mean that the Food (Health) Authority was the person authorised by the State Government to initiate prosecutions. It was also permissible for the Food (Health) Authority being

the person authorised under Section 20(1) of the Act to give his written consent for the institution of such prosecutions by the Food Inspector, Faridkot as laid down by this Court in *State of Bombay v. Purshottam Kanaiyalal* [(1961) 1 SCR 458 : AIR 1961 SC 1 : 1961 (1) Cri LJ 170] and *Corpn. of Calcutta v. Md. Omer Ali* [(1976) 4 SCC 527 : 1977 SCC (Cri) 31].

13. In the premises, the impugned notification dated September 7, 1972 issued by the Food (Health) Authority must be declared as ultra vires the Food (Health) Authority insofar as he purported to delegate his powers to institute prosecutions for an offence under the Act under Section 20(1) to the Food Inspector, Faridkot. It must accordingly follow that the Food Inspector, Faridkot was not competent to lodge the complaint against the appellants for having committed an offence punishable under Section 16(1)(a)(ii) read with Section 9 of the Prevention of Food Adulteration Act, 1954.

14. In the result, the appeal must succeed and is allowed. The judgment and order passed by the High Court and that of the Sub-Divisional Judicial Magistrate, Moga are set aside.

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