

ALLAHABAD HIGH COURT

Nagar Mahapalika, Lucknow

Vs.

Ram Dhani

Criminal Appeal No. 682 of 1968, from order of Addl. Dist. and S.J. Lucknow,
(K.C. Puri and O.P. Trivedi, JJ.)

08.07.1968. 03.02.1970

JUDGMENT

Trivedi, J.

1. This appeal has been filed by the Nagar Mahapalika Lucknow and is directed against the judgment and order of the Additional Sessions Judge, Lucknow dated 8th July, 1969, allowing an appeal and setting aside the conviction and sentence which was passed against Ram Dhani respondent under Section 7/16 of the Prevention of Food Adulteration Act. Ram Dhani was put on trial for offence punishable under Section 7 read with Section 16 of the Prevention of Food Adulteration Act, the prosecution case being that on 21-8-1965, S.N. Ojha, Food Inspector, found Ram Dhani carrying milk. He purchased sample of milk from him after payment of price on 21-8-1965. The sample was in due course sent to the Public Analyst, Agra. Sri R. S. Srivastava, who submitted his report on 21-9-1965 to the effect that the sample was adulterated. The accused Ram Dhani respondent did not plead guilt to the charge framed against him. The trying Magistrate found the charge proved and Ram Dhani guilty of commission of an offence punishable under Section 7/16 of the Prevention of Food Adulteration Act, and sentenced him to pay a fine of Rs. 1000/-; whereupon Ram Dhani appealed and challenged validity of the order of conviction and sentence on the ground, amongst others, that the Food Inspector, who claimed to have taken the sample and the Public Analyst, who submitted the report, and, which formed the basis of conviction, were appointed under the Prevention of Food Adulteration Act, 1954 and not under the Prevention of Food Adulteration Act as amended by Act 49 of 1964 with the result that upon amendment of the Act by the said Act of 1964, they became functus officio and had no power to discharge any functions under the said Act. This submission found favour with the Additional Sessions Judge who allowed the appeal and set aside the conviction and sentence of Ram Dhani. It is in these circumstances that the Nagar Mahapalika, Lucknow comes to this Court.

2. Only one submission was made by the learned counsel for the appellant before us. It was urged that the Additional Sessions Judge was in error in applying the case of *Prabhu Dayal v. The State*¹, to the present case. There is much force in the submission of the learned counsel for

the appellant. The case of *Prabhu Dayal v. The State* was based on the decision of a Full Bench of this Court in *Municipal Board,*

¹1968 All WR 207

*Kanpur v. Behari Lal*², The case of Municipal Board, Kanpur, appears to be clearly distinguishable. In that case the appointment of Dr. A. C. Chatterjee as Public Analyst had been made under the U. P. Pure Food Act, 1950, in September, 1953, and, therefore, the argument was that he could not be treated as a Public Analyst under the Prevention of Food Adulteration Act, 1954, he not having been appointed a Public Analyst under the provisions of the Prevention of Food Adulteration Act, 1954. This argument was accepted by the Full Bench on the ground that the Pure Food Act, 1950 was repealed by Section 25 of the Prevention of Food Adulteration Act, 1954, and, therefore it was held that the repeal of the U. P. Pure Food Act had the necessary consequence of terminating the appointment of Public Analyst appointed under that Act having regard to the totality of provisions contained in the Prevention of Food Adulteration Act, 1954. In the present case, the Food Inspector and the Public Analyst were appointed under a notification dated 27-7-1959 issued under the provisions of the Prevention of Food Adulteration Act, 1954. The provision relating to appointment of a Public Analyst is contained in Section 8 of the Prevention of Food Adulteration Act, 1954. By Act 49 of 1964 Section 8 was amended only to this extent that the Central Government was given concurrent powers with the State Government in the matter of appointment of a Public Analyst through notification; Act 49 of 1964 did not repeal any part of the Prevention of Food Adulteration Act, 1954 which then existed and any amendments in specific provisions of the said Act which were effected by Act 49 of 1964 clearly will not have the effect of repeal of any part of the said Act. That being so, the present case reveals real distinction with the facts which came up for consideration before the Full Bench in the case of Municipal Board, Kanpur, and, therefore, the decision of the Full Bench in that case did not apply and could not be the basis for decision of the present case. Inasmuch as we take this view, with great respect, we cannot agree with the decision in the case of Prabhu Dayal. The learned counsel for the appellant drew our attention to a Bench decision of this Court in the case of *Yadram v. State*³, In that case also a question was raised questioning the appointments of Food Inspector and the Public Analysts on the ground that the appointments having been made under the Prevention of Food Adulteration Act, 1954 and not after the said Act had been amended in 1964, their appointments did not hold good and they were incompetent to function for carrying out the provisions of the Prevention of Food Adulteration Act as amended in 1964. This contention was repelled in that case. It was observed :

"A comparison of these two versions of Section 8 will show that, apart from mere verbal changes that do not affect the meaning, all that has been done by way of amendment is to add a provision for the appointment of Public Analysts by the Central Government and to delete the second proviso. The original Act empowered the State Government alone to make appointments, whereas the amended Act confers concurrent jurisdiction in this respect on the Central Government as well. The power to make appointments, conferred on the State Government by the section as it originally stood, remains unaffected by the

amendment; and we fail to understand how in such circumstances the amendment can be construed as 'repealing,' the original section."

It was held that a Public Analyst appointed under the unamended provision could be deemed to be a Public Analyst under that Act after its amendment in 1964. We are in

²1960 All WR 229 : (AIR 1960 All 546) (FB)

³1968 All WR 675

respectful agreement with the view expressed in that case, and for reasons already stated, hold that the appointments of the Food Inspector and the Public Analyst by notification dated 27-7-1959 were valid and effective and they possessed power to function under the Act after its amendment in 1964 and that the Food Inspector possessed the power to take the sample and the Public Analyst to submit a report as he did.

We allow the appeal and set aside the judgment and order of the Additional Sessions Judge, Lucknow, dated 8-7-1968, and remand the case to him with a direction that he shall rehear the appeal of Ram Dhani on merits in the light of observations made above.

Appeal allowed.