DELHI HIGH COURT

Municipal Corporation

Vs.

Laxmi Narain (Delhi)

Criminal Appeal Nos. 11, 63 and 64 of 1968.
(Hardayal Hardy, S. N. Andley and Jagjit Singh, JJ.)

7.1.1970

JUDGEMENT

Jagjit Singh, J.

1. The following three questions which had arisen during the hearing of four appeals (Criminal Appeals Nos. 11, 36, 63 and 64 of 1968) were referred to a Full Bench:-

> "(i) Whether for purposes of the Act there is no sale of food which is provided by a hotelier to a guest when a consolidated charge is made for room and the other amenities, including food, and when no rebate is allowed for any meal which may not be taken by the guest?
> (ii) Whether the expression "store", as used in Section 7 and Section 16 of the Act, means storage simpliciter or storing for sale?
> (iii) Whether a report signed by a Public Analyst after issue of notification regarding his appointment as such when the sample of food for analysis was received in the office of the Public Analyst and was caused to be analyzed before the issue of the notification regarding his appointment as Public Analyst can be used as evidence of the facts stated therein in any proceedings under the Act?"

2. Detailed facts are given in the order of reference, dated September 22, 1969. This much may, however, be mentioned that on July 25, 1966, four food inspectors took samples of ice-cream, butter, milk and curd from the kitchen and stores of the Oberoi Maidens Hotel, 7 Alipore Road, Delhi. On the same day one sample of each of these articles of food was sent for analysis to the office of the Public Analyst for the Delhi Municipal Corporation area. On being analyzed all the samples were found to be adulterated. On the basis of the reports of the Public Analyst four separate complaints

were filed against Sri Laxmi Narain Tandon, Manager of the hotel and Messrs Associated Hotels of India Limited through the Managing Director Sri M. S. Oberoi Admittedly the said hotel is owned by Messrs. Associated Hotels of India Limited.

3. The samples sent to the Public Analyst were received in his office on July 25, 1966. The samples of curd and Milk were analyzed on the 26th July and that of butter on the 29th July. The sample of ice-cream was analyzed on the 30th of that month. The reports showing the results of analysis were signed by Sri Sudhamoy Roy, as Public Analyst, in the first week of August 1966.

4. During the trial of the complaint relating to the ice-cream, the sample which had been retained by Sri P. P. Singha, Food Inspector, was sent, at the instance of the accused, to the Director Central Food Laboratory, Calcutta, for analysis. The Director as well found the sample sent to him to be adulterated.

5. As provided by Section 13 (3) of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as "the Act") the certificate issued by the Director of the Central Food Laboratory supersedes the report given by the Public Analyst. The report of the Public Analyst regarding sample of the ice- cream was, therefore, superseded by the certificate issued by the Director of the Central Food Laboratory. Consequently it became immaterial whether or not the report of the Public Analyst regarding the ice-cream sample could be used as evidence of the facts stated therein.

6. So far as the reports of the Public Analyst in respect of samples of curd, butter and milk are concerned, a contention was raised that the said reports could not be used as evidence of the facts stated therein as Sri Sudhamoy Roy was not a Public Analyst on the date the samples were received by him or were caused to be analyzed by him as he was appointed a Public Analyst on July 30, 1966 through a notification of that date issued by the Chief Commissioner, Delhi. It was further submitted that though the appointment was notified to be effective from July 20, 1966 yet the notification could only take effect prospectively and not retrospectively.

7. It appears the third question is not capable of a simple reply in the affirmative or negative. It would make all the difference if the appointment of Sri Sudhamoy Roy, through the Chief Commissioner's notification dated July 30, 1966 was a new one. It was, however, submitted by the learned counsel for the Municipal Corporation that Sri Roy was a Public Analyst from December 1964 and after availing of some leave had rejoined his duties on July 20, 1966.

8. Evidently if Sri Sudhamoy Roy was not a Public Analyst for the Delhi Municipal Corporation area on July 25, 1966, he had no authority to receive the samples sent to the Public Analyst on that date or to cause them to be analyzed before his appointment as Public Analyst.

In that event even if the reports signed by him after his appointment as a Public Analyst are used as evidence of the facts stated therein, yet their evidentiary value would be seriously affected.

9. Even the counsel for the Municipal Corporation did not urge that the appointment of a Public Analyst can be made with retrospective effect. The stand taken by the learned counsel was that Sri Sudhamoy Roy was appointed Public Analyst for the Municipal Corporation area on December 30, 1964 and had proceeded on leave with effect from May 5, 1966 when Sri Prem Parkash Bhatnagar was appointed Public Analyst for that area for the period of leave in addition to his own duties as a Public Analyst for the New Delhi Municipal Committee area and Delhi Cantt. area. Sri Sudhamoy Roy was stated to have returned from leave and re-joined his duties as Public Analyst with effect from July 20, 1966 and for that reason his appointment as Public Analyst was notified by the Chief Commissioner, Delhi, with effect from July 20, 1966. It was, therefore, urged that though the notification was issued on the 30th of that month it did not amount to making the appointment of Sri Sudhamoy Roy as Public Analyst with retrospective effect but what was intended was to merely notify the fact that Sri Roy had re-joined as Public Analyst from a particular date.

10. Three notifications, as published in the extraordinary issues of the Delhi Gazette, were brought to our notice. One of these notifications, dated December 30, 1964 is about appointment of Sri Sudhamoy Roy as Public Analyst for the Delhi Municipal Corporation area in place of Dr. Kanan. The other notification is dated May 3, 1966 regarding appointment of Sri Prem Parkash Bhatnagar as Public Analyst for the Delhi Municipal Corporation area in addition to his own duties with effect from the 5th May, 1966. The third notification of July 30, 1966 is in the following terms:-

> "Delhi Administration, Delhi
> Notification
> Delhi, the 30th July 1966 No. F.32 (2)/ 66-M and PH.- In exercise of the powers conferred by Section 8 of the Prevention of Food Adulteration Act, 1954 (37 of 1954) read with the Government of India. Ministry of Health Notification No. F. 14-46/57-P.H., dated 24th April, 1957, the Chief Commissioner, Delhi, is

pleased to appoint Sri Sudhamoy Roy to be Public Analyst for the Delhi Municipal Corporation area in place of Sri Prem Parkash Bhatnagar with effect from 20th July, 1966.

By Order,

D. S. Faujdar, Under Secy."

11. Though in the notifications of the 3rd May and the 30th July, 1966 there was no mention of Sri Sudhamoy Roy proceedings on leave yet from the fact that Sri Prem Parkash Bhatnagar was appointed Public Analyst for the Municipal Corporation area in addition to his own duties it seems to follow that his appointment was a stop-gap arrangement. Moreover as Sri Sudhamoy Roy received the samples on July 25, 1966 he must have re-joined his duties earlier to that date. Under these circumstances the submission made on behalf of the appellant that Sri Sudhamoy Roy was already a Public Analyst and had re-joined his duties on July 20, 1966 appears to be correct. It seems that in substance the notification of July 30, 1966, to which reference was made in the Public Analyst's report, merely notified the fact of Sri Sudhamoy Roy having resumed the functions of the Public Analyst from July 20, 1966 and as such he was properly mentioned to have been appointed from that date. It cannot, therefore, be said that Sri Sudhamoy Roy was not competent to receive samples on July 25, 1966 or to get the analysis caused. The reports purporting to bear his signatures as a Public Analyst and which relate to analysis of curd, milk and butter can be used as evidence of the facts stated therein as provided by sub-section (5) of Section 13 of the Act.

12. We next advert to question No. 1. It will be noticed that the matter requiring consideration is as to whether there is a sale for purposes of the Act when food is provided by a hotelier to a guest from whom a consolidated charge is made for room and other amenities, and when no rebate is allowed for any meal which may not be taken by the guest.

13. The term "sale" is defined in Section 2(xiii) of the Act to mean:-

> “sale" with its grammatical variations and cognate expressions, means the sale of any article of food, whether for cash or on credit or by way of exchange and whether by wholesale or retail, for human consumption or use, or for analysis, and includes an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale of any such article, and includes also an attempt to sell any such article."

14. When a guest takes a room in a residential hotel and a consolidated charge is made from him for all the amenities provided, including food, it is difficult to say that in

terms of the definition of sale as given in the Act there has been sale to him of any article of food. As is made clear in the question the guest is not entitled to any rebate if any meal is not taken by him. If providing food by such a hotelier was to constitute sale then it would follow that the property in the food served would be transferred to the guest. It was stated before us that a guest who does not take any meal cannot ask for the food not consumed by him to be served to a friend or any other person. Even the food which remains un-eaten cannot be carried away by him. There is thus no transfer of the property in the food to the guest unless it is actually consumed by him.

15. The matter came up before the Punjab High Court in the case of *M/s. Associated Hotels of India Ltd., Simla v. Excise and Taxation Officer*, [1] though in connection with liability to tax under the Punjab General Sales Tax Act, 1948. The problem posed was whether the approximate cost of food included in the consolidated charge made by a hotelier from a resident client during his stay in the hotel is liable to tax under the said Act. Narula, J. held that such supply of food did not amount to sale but service, the transaction being indivisible contract of multiple service and did not involve any sale of food. The learned Judge also referred to a judgment of the Court of Errors and Appeals of *New Jersy, Nisky et. al v. Childs Co.* [2] and considered that case to be nearest to the point and most helpful. The decision of Narula, J. was upheld by a Bench consisting of Capoor and Jindra Lal JJ., on a Letters Patent Appeal being filed, *State of Punjab v. Associated Hotels of India Ltd.* [3] The learned Judges comprising the Bench while dismissing the appeal observed that the view taken by the Single Judge appeared to be "unexceptionable and fully supported by authorities".

16. In the judgment in the case of Nisky et. al. 130 NJL 464 referred to above, the observation made in *Parker v. Flint,* [4] that an innkeeper does not sell but utters his provisions was referred to with approval and the following passage from Beale's treatise on Innkeepers, Section 169, was quoted:-

> "As innkeeper does not lease his room he does not sell the food he supplies to his guests. It is his duty to supply such food as the guest needs, and the corresponding right of the guest to consume the food he needs and to take no more. Having finished his meal he has no right to take food from the table, even the uneaten portion of the food supplied to him. Nor can he claim a certain portion of the food as his own to be handed over to another in case he chooses not to consume it himself."

17. The learned counsel for the appellant contended that the case of Nisky could not be of much help in view of the wide definition of sale, as given in the Act. Reliance

was also placed on two cases of the Madras High Court, In re T. S. Ananthanarayana Iyer, AIR 1941 Madras 320 and the *Public Prosecutor v. R. Narayanaswami Reddy,* [6] *Karnani Properties Ltd. v. Miss Augustine* [5] and *Dy. Custodian, Evacuee Property, New Delhi v. Official Receiver of the estate of Daluat Ram Surana, Delhi,* [7] were as well cited.

18. Lakshmana Rao, J. in the case of Ananthanarayana Iyer, AIR 1941 Madras 320 did not give any reasons and it appears that storing of ghee for sale in the hotel concerned was not a disputed fact. The case of Narayanaswami Reddy, 1956-1 Mad LJ 481 was not regarding a residential hotel. That case related to Modern Cafe in Tirvuvannamali. Out of the ghee prepared for sale along with the meals samples were taken by a Sanitary Inspector. The sample of ghee sent to the Government Analyst was found to be adulterated. The hotel keeper was acquitted by the trial court on the ground that he was not present in the cafe on the day the samples were taken. Appeal against the order of acquittal was accepted by Ramaswamy, J. as on the facts of the case the master was held to be liable for the acts of his servant. Thus the cases of Ananthanarayana Iyer, AIR 1941 Madras 320 and Narayanaswami Reddy, 1956-1 Mad LJ 481 can be of no help.

19. No assistance can even be derived from the Supreme Court cases on which reliance was sought to be placed by the learned counsel for the appellant. In the case of Karnani Properties Ltd., AIR 1957 Supreme Court 309 it was held that the definition of premises set out in the West Bengal Premises Rent Control (Temporary Provisions) Act, 1950, was in very wide terms and included not only gardens, grounds and outhouses, if any, appurtenant to a building or a part of a building, but also furniture supplied by the landlord for the tenant's use and any fittings affixed to the building. That case, therefore, depended upon interpretation of the definition of a particular expression as given in the particular enactment which was applicable to the case. The case of Dy. Custodian, Evacuee Property, New Delhi, AIR 1965 Supreme Court 951 pertained to certain transfers by intending evacuees before migrating from India, which were held by the Supreme Court to come within the definition of evacuee property. Obviously no advantage can be taken by the appellant from that case as well.

20. It is true that the meaning of the expression "sale" as defined in Section 2(xiii) of the Act was considerably widened by including within its ambit an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale. Supply of food by a hotelier to a resident guest from whom only a consolidated charge is made for the room and the other amenities and who is not entitled to rebate for any meal which may

not be taken by him is, however, not covered by any portion of the definition of "sale".

21. In determining whether there is a sale of food which is provided by a hotelier under the circumstances enumerated in the first question it is relevant to consider if the hotelier agrees to transfer the property in the food to be supplied to the guest for a price. It was not disputed that there is no separate agreement regarding the supply of food, which is supplied only as part of the service for which a consolidated charge is made. The property in the food supplied as part of service also does not pass to the guest except in that which is actually consumed by him. The food to be supplied is not even specified in advance. What the guest pays is for the service as a whole and it is not possible to split up the charges made from him by saying that a particular portion of it represents the price of food. Moreover as the consolidated charge is for the service as a whole no portion of it can be regarded nationally as price of food even though the hotelier must have also taken into account the cost of food to be supplied by him in fixing the consolidated charge to be made from guests staying in the hotel. In the case of *State of Madras v. M/s. Ganon Dunkerley and Co.*[8] the Supreme Court held that in a building contract which was "one, entire and indivisible" there was no sale of the material used in such contract.

22. The view taken by Narula, J. in the case of Messrs. Associated Hotels of India Ltd.. Simla, AIR 1966 Punjab 449 appears to be correct. It may, however, be added that if a residential hotel permits non-residents to have meals against payment or undertakes catering for outsiders, it would not be possible to say which particular portion of any article of food is meant for the use of residents and which is meant for outsiders. In that case the articles of food kept in the hotel may be regarded for sale.

23. For answering the second question it would be necessary to refer to certain provisions of the Act and the rules made there under. Section 7 which *inter alia* prohibits manufacturing for sale, or storing, selling or distributing any adulterated food reads as follows:-

> "7. 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 license is prescribed, except in accordance with the conditions of the license;
> (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 rules made there under."

24. Section 16 provides penalties and the relevant portion thereof is as under:

> "16. Penalties. - (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 interests of public health;
> * * * * *
> * * * * *
> he shall, in addition to the penalty to which he may be liable under the provisions of Section 6, be punishable with imprisonment.
> * * * "

25. In Section 2 (xi) of the Act the expression "premises" has been defined to include any shop, stall, or place where any article of food is sold or manufactured or stored for sale. Section 10 deals with powers of Food Inspectors and authorizes them to take samples of any article of food from (i) any person selling such article, (ii) any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee, and (iii) a consignee after delivery of any such article to him. By Section 12 a purchaser of any article of food other than a Food Inspector has been given power of having such article analyzed by the Public Analyst. Under Rule 9(c) of the Prevention of Food Adulteration Rules, 1955, one of duties of Food Inspector is to procure and send for analysis, if necessary, samples of any articles of food which he has reason to suspect are being manufactured, stocked or sold or exhibited for sale in contravention of the provisions of the Act or the rules thereunder.

26. There has been some conflict of opinion as to the implications of the expression "store", as used in Sections 7 and 16 of the Act. By differing from the view taken in *Municipal Corpn. of Delhi v. Prahlad Singh, Criminal Appeal* [9] another Bench of this Court held in *Municipal Corpn. of Delhi v. Jetha Nand,* [10] decided on 13-6-1969 (Delhi) that the absence of the words "for sale" after the word "store" was deliberate and that storing was an offence by itself whether it was for sale or not. Reliance was mainly placed on the judgment of P. B. Mukharji, J. in *Shipping and Clearing (Agents) Pvt. Ltd. v. Corpn. of Calcutta,* [11] in which the learned Judge held that storing of an adulterated article of food is by itself an offence and it is not necessary that such storing ought to be for sale before the offence can be said to have been committed. It was further remarked that importing the words such as "for sale" in Sections 7 and 16

after the word "store" would be unjustified legislation on the part of the Court. The same learned Judge in an earlier case, *Gopalpur Tea Co., Ltd. v. Corpn. of Calcutta,* [12] had also expressed an opinion that the language of Section 7 prohibited "even storing". In *Bherudhan Charadia v. State.* [13] as well Chief Justice G. Mehrotra considered that in Sections 7 and 16 the word "store" is not qualified and mere storing of adulterated ghee was an offence.

27. *Food Inspector, Kozhikode v. Punsi Desai,* [14] , *Narain Das v. State,* [15] *Municipal Board, Faizabad v. Lal Chand Surajmal,* [16] and *Rameshwar Dass Radhey Lal v. State,* [17] are some of the cases in which it was held that the word "store" in Sections 7 and 16 means storing for sale.

28. While interpreting the word "store" as appearing in Sections 7 and 16 the scheme of the Act cannot be lost sight of and a harmonious construction has to be put on it. If storing simpliciter was to attract Sections 7 and 16 then Food Inspectors would have been not only authorised to take samples of any article of food from any person selling such article but also from persons not selling it. If storing simplicities of the prohibited articles of food was to be an offence under the Act even persons buying such articles from market without knowing that these are adulterated or misbranded would incur liability.

29. In the case of Narain Das, AIR 1962 Allahabad 82 V. G. Oak and Kailash Prasad, JJ. took the view that under Section 7 of the Act manufacture of adulterated food is not prohibited and what is prohibited is its manufacture for sale. The learned Judges considered that there appeared no reason why manufacture of adulterated food should be treated differently from its storage. It was further remarked that the expression "or store" is preceded by the words "manufacture for sale" and is followed by "sale" and, therefore, the context in which the word "store" is used indicates that it means storing for sale; the word "store" having taken color from the expression "manufacture for sale" and "sale" with which it is associated in the section.

30. Maxwell in his book on the Interpretation of Statutes (Twelfth 1969 Edition at page 228) while dealing with the topic of modification of the language to meet the intention stated as under:-

> "Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity which can hardly have been intended, a construction may be put upon it which modifies the meaning of the

words and even the structure of the sentence. This may be done by departing from the rules of grammar, by giving an unusual meaning to particular words, or by rejecting them altogether, on the ground that the legislature could not possibly have intended what its words signify, and that the modifications made are mere corrections of careless language and really give the true meaning. Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of language used."

Except Sections 7 and 16 wherever the Act refers to storing it is storing for sale. It seems to us that the juxtaposition in which the expression "or store" occurs in Sections 7 and 16 of the Act and the scheme of the Act do not leave any doubt that the intention of the storing being "for sale" was implicit in the word "store" as used in those Sections.

31. *Mangal Das Raghavji Ruperal v. State of Maharashtra,* [18] was also cited at the bar, in which their Lordships of the Supreme Court held that a sale for analysis to a Food Inspector must be regarded as sale within the meaning of the Act. In that case, however, their Lordships of the Supreme Court were not considering the scope of the word "store" as used in Sections 7 and 16 of the Act.

32. We, therefore, answer the questions referred to the Full Bench as follows:-

(i) There is no sale of food.
(ii) The word "store" used in Sections 7 and 16 of the Act means storing for sale.
(iii) Yes, but the evidentiary value of the report would be seriously affected if the Public Analyst before his appointment as such had received the sample of food and had caused it to be analyzed.

33. The case shall now be laid before the Division Bench for disposal of the appeals.

Answers accordingly.

Cases Referred.

1. AIR 1966 Punjab 449,

2. (No. 49) cited in 130 NLJ 464,

3. (1967) 20 STC 1 (Punj).

4. (1669-1732) 12 Mod 254

5. AIR 1957 Supreme Court 309

6. (1956) 1 Mad LJ 481.

7. AIR 1965 Supreme Court 951

8. AIR 1958 Supreme Court 560,

9. Criminal Appeal No. 16-D of 1965, decided on 27-2-1969 (Delhi)

10. Criminal Appeal No. 100-D of 1964,

11. AIR 1967 Calcutta 110

12. AIR 1966 Calcutta 51

13. AIR 1963 Assam 28

14 AIR 1959 Kerala 190

15.AIR 1962 Allahabad 82,

16. AIR 1964 Allahabad 19

17. AIR 1967 Punjab 132

18. AIR 1966 Supreme Court 128