

State of Karnataka Vs. C.B. Sheelavanth

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Court : Karnataka

Decided On : Jun-04-1991

Reported in : ILR1991KAR2368; 1991(2)KarLJ268

Judge : Mohan, C.J. and ;Hanumanthappa, J.

Acts : [Drugs and Cosmetics Act, 1940](#) - Sections 21(2), 22, 51 and 52

Appeal No. : W.A. No. 447 of 1991

Appellant : State of Karnataka

Respondent : C.B. Sheelavanth

Advocate for Def. : M. Mahabaleshwaragouda, Adv.

Advocate for Pet/Ap. : S. Shivaram, Govt. Adv.

Disposition : Appeal allowed

Judgement :

Mohan, C.J.

1. The short question that arises for our consideration in this case is whether Annexure-A to E and G, which are instructions issued by the second-appellant are binding on the Drug Inspector, namely the respondent herein? He questioned the validity of these instructions on the ground that they were not legally authorised, in

that one such instruction was to take prior permission of the Drugs Controller before any prosecution was launched against the alleged offenders of the [Drugs and Cosmetics Act, 1940](#), hereinafter referred to as the Act. The learned Single Judge concluded thus:

'...Bureaucratic resistance in the implementation and enforcement of the law is what is to be guarded against and not promoted. In the instant case, the Drugs Controller is under a statutory obligation to act in accordance with law and not to insist upon a subordinate official to obtain permission which is not mandated under the Act. Such insistence is not only unreasonable, but also an indirect subversion of law enforcement. The conduct of the Drugs Controller is reprehensible to say the least.'

Before us, in this Appeal, the Drugs Controller urged that unfortunately the learned Single Judge had not noticed the vital provisions of the Act. Our attention is drawn to Sections 21, 22, 51 and 52 of the Act. The first two Sections clearly postulate as to how Inspectors have to be appointed and how they have to exercise the powers within the local limits of the area for which they are appointed. They shall be under the Control of an Officer appointed in this behalf by the State Government. The Drug Inspector is to perform the duties as adumbrated in Section 51 of the Act. That shall be subject to the instructions of the Controlling Authority. Equally, Section 51 of the Act postulates that he is acting under the instructions of the Controlling Authority. Therefore, to hold, as the learned single has done that they are not legally warranted, is incorrect in law.

2. In opposition to this, the learned Counsel for the respondent would submit that in an unreported Judgment in SARDAR JASKARAN SINGH v. STATE OF UTTAR PRADESH, Crl Rev. No. 1816 of 1970 the Allahabad High Court held that for the prosecution launched against the alleged offenders, no sanction of the higher authorities is necessary. Therefore, the Judgment of the learned single Judge is correct

3. On a careful consideration of the above argument, we are of the view that the learned single Judge has not paid attention to the salient features of the Act which have a bearing on the facts and circumstances of this case.

4. First and foremost under Section 21 of the Act, the Central Government or a State Government is enabled to appoint, a person as it thinks fit, as Drug Inspector. Sub-section (2) of Section 21 of the Act reads as follows:

'The powers which may be exercised by an Inspector and the duties which may be performed by him, the drugs or classes of drugs or cosmetics or classes of cosmetics in relation to which and the conditions, limitations or restrictions subject to which, such powers and duties may be exercised or performed shall be such as may be prescribed.'

The words 'as may be prescribed' are to be contained in the instructions by way of Notifications which are Annexure-A to E and G in the instant case. The power of the Inspector is delineated under Section 22 of the Act which states the Inspector may, within the local limits of the area for which he is appointed, exercise his powers. Therefore, where, as in the instant case, to act within the local limits of the area would not be unwarranted under Section 22 of the Act.

5. Then again, what are the duties of the Inspector? They are found in Section 51 of the Act. It reads:

'Duties of Inspectors of premises licensed for sale - Subject to the instructions of the Controlling Authority, it shall be the duty of an Inspector authorised to inspect premises licensed for the sale of drugs -

xx xx xx(5) to institute prosecutions in respect of breaches of the Act and Rules thereunder;

xx xx xx(6) to make such enquiries and inspections as may be necessary to detect the sale of drugs in contravention of the Act.'

We are concerned particularly with the prosecution which is talked of under Sub-section (5) of Section 51 of the Act. Here again, one has to bear in mind the opening words of Section quoted above viz., 'subject to the instructions of the Controlling Authority'. That means that any instructions given by the Controlling Authority, the Drug Inspector shall be bound by the same. Equally Section 52 of the Act states:

'Duties of inspectors specially authorised to inspect the manufacture of drugs - subject to the instructions of the Controlling Authority it shall be the duty of an Inspector authorised to inspect the manufacture of drugs -

(1) to inspect not less than twice a year, all premises licensed for manufacture of drugs within the area allotted to him and to satisfy himself that the conditions of the licence and provisions of the Act and Rules thereunder are being observed;

(2) in the case of establishments licensed to manufacture products specified in Schedules C and C(1) to inspect the plant and the process of manufacture, the means employed for standardizing and testing the drug, the methods and place of storage, the technical qualifications of the staff employed and all details of location, construction and administration of the establishment likely to affect the potency or purity of the product;

(3) to send forthwith to the Controlling Authority after each inspection a detailed report indicating the conditions of the licence and provisions of the Act and Rules thereunder which are being observed and the conditions and provisions, if any, which are not being observed;

(4) to take samples of the drugs manufactured on the premises and send them for test or analysis in accordance with these Rules;

(5) to institute prosecutions in respect of breaches of the Act and Rules thereunder.'

Therefore, where such an instruction is conceived in order to see that undue harassment by the Drug Inspector may be avoided and more so there may be a check on the activities of the Drug Inspector, we find it not only wholesome but fully warranted under law having regard to the statutory provisions of law cited above.

6. The learned Counsel, for the respondent has cited an unreported Judgment of Allahabad High Court in Sardar Jaskaran Singh v. State of Uttar Pradesh, wherein it has been held that no sanction is necessary for prosecution of the alleged Offenders. That may be so, in the absence of any instruction. But where Sections

51 and 52 enable to issue instructions and then his powers are to be exercised as per those instructions, there is no escape from obeying these instructions. Therefore, to hold that they are not legally warranted appear to be not a correct method of appreciating these instructions. Looking at from this point of view, we are totally unable to support the Judgment of the learned single Judge. Accordingly, we set aside the order passed by the learned single Judge had hold that Annexure-A to E and G are fully warranted under law having regard to vide scope of Sections 51 and 52 as well as Section 21(2) of the Act. Appeal allowed. No costs.

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