

V. Basavayya Vs. N. Kottayya

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Court : Andhra Pradesh

Decided On : Jul-05-1963

Reported in : AIR1964AP145

Judge : Basi Reddy and ;Anantanarayana Ayyar, JJ.

Acts : [Partnership Act, 1932](#) - Sections 44; Madras Cloth (Dealers) Control Order, 1944; [Indian Contract Act, 1872](#) - Sections 23

Appeal No. : Second Appeal No. 487 of 1958

Appellant : V. Basavayya

Respondent : N. Kottayya

Advocate for Def. : N.C.V. Ramanujachari, Adv.

Advocate for Pet/Ap. : N. Bapi raju, Adv.

Disposition : Appeal Dismissed

Judgement :

Anantanaravana Avyar, J.

1. Veguntha Basavayya, as sole plaintiff, filed O.S. No. 209 of 1952 in the Court of the Principal District Munsif, Eluru, for a dissolution of partnership business carried on between him (plaintiff) and the defendant and for accounts. The case of the

plaintiff was that he and the defendant were partners of a partnership firm and did business from 1944 to 1947 in sundry articles and cloth. The defendant contested the suit raising various contentions which resulted in various issues. Of them, Additional Issue No. 1 framed on 31-7-1954 was: 'Whether the suit is not maintainable by reason of the suit partnership being void'? The learned Principal District Munsif heard this as a preliminary issue and held that the suit partnership was illegal, void and unenforceable and that the suit was not maintainable. Accordingly he dismissed the suit with costs. The plaintiff filed A.S. No. 36 of 1955 before the learned Subordinate Judge, Eluru. The latter framed 3 single points for decision, namely, 'Whether the suit is maintainable or not'. He agreed with the trial Court and dismissed the appeal. Thereupon the plaintiff filed this second appeal.

2. When the second appeal originally came up for hearing before our learned brother, Seshachalapathi, J. he passed an order dated 3-8-1961 as follows :

'The two Courts below have relied upon the decision in *Pisupati Rama Rao v. Tadepalli Papayya*, 1954-2 MLJ (Andh) 103 : (AIR 1954 Andh 51). That decision had been rendered on the language of an express prohibition erected under Sections 13 and 16 of the Rice Rationing Order of 1943. It is not in dispute that the Madras Cloth (Dealers) Control Order of 1948 does not in express terms contain a prohibition analogous to Sections 13 and 16 of the Rice Rationing Order of 1943 referred to above. The question is bereft of any direct authority of this Court. A decision of the Calcutta High Court in *Matizuddin Khan Choudhury v. Habibuddin Sheikh*, (S) : AIR 1957 Cal 336, has been brought to my notice which, while dealing with the terms of the Bengal Silk Control Order of 1945, held that forming a partnership for running the licensed business is neither illegal nor opposed to public policy. In view of the importance of question and the large number of similar cases that may arise, I direct that this Second Appeal may be posted before a Bench.'

Accordingly, this appeal has come up before this Bench.

3. The points which arise are:

(1) Whether the suit partnership is void? And

(2) Whether the suit is not maintainable on that ground?

4. The relevant facts of the case are as follows:

The partnership is alleged to have been formed in 1944 for carrying on business in sundry articles and cloth. On 26-10-1948, the plaintiff obtained a licence (Ex. A-1) under the Madras Cloth (Dealers) Control Order, 1944. The licence mentions the plaintiff as the licensee and gives his father's name. It describes the business as follows:

'6. Nature of business for Retail business in which licence has mill-made cloth been issued. his own account.'

It also gives the exact description and boundary of the premises where the business was to be carried on as 'in his own house at Dharmajigudem'. The plaintiff alleged that the defendant was in management of the partnership business, from 1946 up to the end of 1950 which means that the defendant was the managing partner from prior to the obtaining of the licence.

5. Section 81 (2) of the Defence of India Rules runs as follows:

'The Central Government or the Provincial Government so far as appears to it to be necessary or expedient for securing the defence of British India or the efficient prosecution of the war or for maintaining supplies and services essential to the life of the community may by order provide

(a) for regulating or prohibiting the production, treatment, keeping, storage, movement, transport, distribution, disposal, acquisition, use or consumption of articles of any description whatsoever and in particular for prohibiting the withholding from sale either generally or to specified persons or classes of persons of articles or things kept for sale to be sold either generally or to specified persons or classes of persons or in specified circumstances.

(b) for controlling the prices or rates at which articles or things of any description whatsoever may be sold or hired and for relaxing any maximum or minimum limits otherwise imposed on such prices or rates.' Rule 81 (4) runs as follows: 'If any

person contravenes any order made under this rule, he shall be punishable with imprisonment for a term, which may extend to three years or with fine or with both.'

The Government of Madras, in exercise of the powers conferred by Rule 81 (2) (b), made the Madras Cloth (Dealers) Control Order (hereinafter referred to for convenience as the M.C.D.C. Order) in 1944. Both sides have placed before us the above Order of 1944 and proceeded on the basis that the provisions of that Order were substantially in force during the relevant period concerned in this case and were substantially the provisions under which the licence (Ex. A-1) was issued. We also proceed accordingly. Clause 3(c) of the M.C.D.C. Order defines a 'dealer' as follows:

dealer means a person carrying on the Business, whether on his own account or as commission agent, or selling or storing for sale cloth, whether wholesale or retail, and whether or not in conjunction, with any other business and includes a hawker.'

Clause 4 reads: 'Save as hereinafter provided, no person shall carry on business as a dealer or hawker or store cloth for sale on or after 2nd May, 1944, except under and in accordance with the terms and conditions of a licence granted under this Order by the licensing authority.'

Note: Where a dealer has more than one shop or place of business, whether in the same town or village or in different towns or villages, he shall obtain a separate licence in respect of each shop or place of business.'

Clause 17 runs:

'if any person contravenes any of the provisions of this Order, then, without prejudice to any other punishment to which he may be liable, any Court trying the offence may order that any stocks together with the packages and coverings thereof. In respect of which the Court is satisfied that the offence has been committed, shall be forfeited to His Majesty.'

6. The two lower Courts relied on the decision of this Court in 1954-2 Mad LJ (Andh) 108 : (AIR 1954 Andh 51). The facts in that case were the plaintiff and

defendants formed a partnership for running a rice ration shop business from 3-9-1944 and conducted that business on the basis of a ration shop licence issued in the name of the first defendant and the suit was filed by the plaintiff for a declaration that the firm had been dissolved on the 1st September 1945 and for settlement of accounts and other allied reliefs. The sole question which arose in the second appeal was whether the suit partnership was illegal. Subba Rao, C. J. (as he then was) observed as follows: at p. 109 (of Mad LJ (Andh)); (at p. 52 of AIR):

'It is seen from the aforesaid provisions that the Ration Order was passed for maintaining supplies and services essential to the life of the community. It was intended to ensure an equitable distribution of rice to the members of the public at controlled rates, to achieve that object, it was necessary that the person, who buys and sells rice, should be under the control of the authorities concerned and subject to the regulations made to prevent abuse. The Order, therefore, enabled the authorities concerned to issue an authorisation to a retail dealer to buy and sell rice subject to the conditions laid down in the said Order. Under Section 13, the authorisation cannot be used by any person other than the person to whom it was issued. Under Section 16, such a person is prohibited from transferring a ration document to any other person It is, therefore, obvious that 'any contract involving the transfer of a ration document not only contravenes the express prohibition' contained in Section 13 of the Order 'but also relates to an act which is made an offence punishable' under the Defence of India Rules. Such a contract would be void under Section 23 of the Contract Act as the object of that contract involves something illegal or contrary to public policy.'

The learned Judge relied on the decision in *Nalan Padmanabhan v. Badrinath Sarda*, 21 Mad LJ 425 and the decision of the Full Bench in *Velu Padayachi v. Sivasoariam Pillai*, : AIR1950 Mad444 and observed as follows: at p. 111 (of Mad LJ (Andh)) : (at p. 53 of AIR):

'In my view, the principles laid down in the aforesaid decisions equally apply to the facts of the instant case. The partnership business of buying rice and selling the, same in the retail shop was carried on with the aid of a licence in favour of the 1st

defendant. When the licence was issued to the 1st defendant, it was intended that he should and none else (should) use that for doing Business. Instead, the plaintiff and other partners, who had no ration card along with the 1st. defendant bought and sold rice. 'It certainly was a user of the ration card by persons other than the one to whom it was issued in contravention of Section 13 of the Rationing Order'. It also involved the transfer of a ration document prohibited by Section 16 of the Rationing Order.'

The above decision is based on the following grounds:

- (1) That the licence issued to the 1st defendant was intended that he and no one else should use that for doing business.
- (2) When the partnership did the business, not only D. 1 (the licensee) but also the other partners including the plaintiff did the business though they had no ration card.
- (3) So, it was the user of the ration card by persons other than those to whom it was issued and thus a contravention of Section 13 of the Madras Rationing Order.
- (4) The forming of the partnership involved transfer of a ration document prohibited by Section 16 of the Madras Rationing Order.
- (5) The forming of the partnership related to an act which was an offence punishable under the Defence of India Rules.
- (7) In : AIR1950 Mad444 (FB), Horwill, J. observed as follows: at pp. 320-321 (of Mad LJ) : (at pp. 446-447 of AIR):

'..... when a licence, 'which is a personal privilege to vend', is acquired by one partner. It is certainly his licence and not the licence of the partnership. Since it was granted to him on the express understanding that it was to be used by him and by him alone, its use by the partnership would involve a transfer in precisely the same way as it would if the partnership were entered into 'after the licence was issued. 'On the question of public policy it is difficult to see any difference between the object of a partnership entered into before the licence was granted and one

entered into after it was granted'. In either case, the partnership would be entered into for the purpose of bringing about a result prohibited by law i.e., the vending of arrack by a person who had no licence to do so.'

(8) In 21 Mad LJ 425, the learned Judges observed thus: (at pp. 430-431):

'But 'if one person carrying on a trade and possessing stock' and capital, 'admits another into partnership' with himself, making the stock and capital, the joint property of both, 'it is impossible to contend that there is not a transfer in such a caseWe are not concerned in construing a statute like the Opium Act with the mere form of the transaction but with the substance of it.'

9. It has been held in *In Re Manu Iyer*, : AIR1954 Mad485 also that the licence issued to a person under Clause 4(1) of the M.C.D.C. Order was personal to the licences and would not enure for the benefit of his heirs after his death.

10. Thus, it is clear that the licence (Ex. A-I) was a personal privilege granted to the plaintiff to deal in cloth and that if it was used by the partnership there was in substance and in effect, a transfer of the licence to the partners other than the plaintiff and dealing under the licence by the partnership would amount to those partners, in addition to the plaintiff, also dealing under that licence.

11. Both the lower Courts proceeded on the basis that the decision in 1954-2 Mad LJ (Andh) 103 : (AIR 1954 Andh 51), which related to the Madras Rationing Order 1943, also applied to the present case. In the judgment of the trial Court, it is observed that a licence issued under the provisions of Cloth Dealers' control Order comes within the definition of a 'ration document' under Section 2 (9) of the Rationing Order and that, therefore, Sections 13 and 16 of the Madras Rationing Order directly applied. The learned Subordinate Judge, in his appeal judgment, has referred to the Madras Cloth (Dealers) Control Order 1944 in two places wrongly as Cloth Rationing Order. 'Rationdocument' is defined in Section 2 (9) of the Madras Rationing Order, 1943 as follows:

' 'ration document' includes a ration book, a ration card or any part of any ration book or ration card or any ration coupon or any declaration, authority, permit or

other 'document issued' or made by or 'under' the provisions of this Order.'

The licence (Ex. A-1) clearly shows that it was issued under the M.C.D.C. Order, 1944 and was not issued under the Madras Rationing Order, 1943. It is not a 'ration document', as defined in Section 2(9) of the Madras Rationing Order, 1943, in spite of the fact that the definition mentions the word 'includes'.

12. The learned District Munsif also mentions in his judgment as follows :

'It is conceded that during the relevant period, the mill cloth was a rationed article and that no person can deal with mill cloth without first obtaining a licence.'

Shri N. Bapiraju, the learned counsel for the appellant, contends before us that mill cloth for which the licence (Ex. A-1) was issued was not a rationed article but he is not able to substantiate his contention by placing any material before us. Shri N.C.V. Ramanujachari for the respondent, also does not produce any material. In view of the fact that there was a concession made before the trial Court obviously by the party against whose interest that concession was made, we do not find sufficient reason to hold that the above observation by the trial court is wrong or without adequate basis. But, even then, the licence (Ex. A-1) is not a ration 'document' as defined in Section 2(9) of the Madras Rationing Order, 1943,

13. Both sides have argued elaborately before us on the question as to whether the above decision in 1954-2 Mad LJ (Andh) 108 : (AIR 1954 Andh 51), is applicable to the present case purely on the basis of the M.C.D.C. Order.

14. Sections 13 and 16 of the Madras Rationing Order, 1943 run as follows :

'Section 13. A ration document shall not be used for obtaining any rationed article except by or on behalf of the person to whom such document was issued.' 'Section 16. No person shall transfer to any other person a ration document issued to himself.'

It is beyond doubt or dispute that there is no clause in the M.C.D.C. Order laying down express prohibition of transfer of a licence like Ex. A-1, corresponding to Section 16 of the Madras Rationing Order. As seen above, the partnership

conducting the business amounted to transfer of rights under the licence by the plaintiff to the defendant who was a partner but was not a licensee under Ex. A-1. The question is whether the absence of any such express prohibition by a clause in the M.C.D.C. Order makes a material difference.

15. Shri Bapi Raju contends that there is no clause in the M.C.D.C. Order corresponding to Section 13 of the Madras Rationing Order and that, therefore, the operation by the partnership of the licence which was issued in the name of the plaintiff was not illegal. It is true that though there is no clause in the M.C.D.C. Order which is exactly in terms of Section 13 of the Madras Rationing Order, there is Clause 4 which we have already extracted earlier in this judgment. Shri Bapi Raju argues that operation of licence by the partnership was not in conflict with Clause 4 and that it can be reconciled with Clause 4 as being in conformity with it. He contends that the defendant as partner and also the plaintiff as partner carried business only in accordance with the terms and conditions of the licence (Ex. A-1). It is true that the business if done by the plaintiff alone would have been in accordance with the terms and condition of the licence (Ex. A-1). But that fact does not mean that it was done in conformity with Clause 4 when the defendant as partner, in effect, did the business.

Defendant did business as 'dealer'. Dealer as defined in Clause 3 (e) of the M.C.D.C. Order has to do Business under and in accordance with the terms of licence which means that he must do business under a licence granted to him as dealer. As already pointed out by us above and held by the various Madras decisions including the Full Bench in : AIR1950 Mad444 , the licence (Ex. A-1) is a personal privilege and gave lawful sanction to business by the Plaintiff alone as dealer and not the defendant as dealer. Shri Bapi Raju points out that the note in Clause 4 of the M.C.D.C. Order mentions that when a dealer has more than one shop, he should have a licence in respect of each shop. This does not mean that when a dealer had one shop and one licence, the business could be conducted in that shop under that licence by any dealer other than that licenced dealer even if the former be a partner of the licenced dealer. We find that this contention of Shri Bapi Raju is not tenable.

16. In *Marudamuthu Pillai v. Rangasami Moopan*, ILR 24 Mad 401, A held a licence for sale of toddy while B held a licence for sale of arrack and A entered into an agreement of partnership with B in the business of vending arrack and toddy at a time when there was a rule in force under the Abkari Act prohibiting a person having a licence for the sale of toddy from being interested in the sale of arrack and prohibiting a person having a licence for the sale of arrack from being interested in the sale of toddy. A filed a suit against B for dissolution of partnership. The suit was held to be not maintainable and was dismissed. The learned Judges of the High Court held that the contract was void ab initio as being in contravention of the rule which was made not merely for the protection of the revenue but also in the interests of the public and that the contract was also invalid on another ground as follows (at pp. 404-405) :-

'Apart from this, we should hold that the contract was invalid also on the ground that the licence in each case was to be obtained by only one of the partners.....To hold that a person who has not got a licence could still be partner with one who has a licence and as such partner carry on the business with or without the other would enable the unlicensed partner to evade the liabilities intended by the law to be cast on persons carrying on abkari business.'

In the present case also, it is clear that the M.C.D.C. Order was passed not merely for the protection of revenue but also in the interests of the public. The ground mentioned in the above passage holds good independent of the rule under the Abkari Act and applies to the present case.

17. In ILR 35 Mad 582, which was under the Opium Act, the learned Judges of the Division Bench held that the contract of partnership was void and the suit was not maintainable on two main grounds:

(1) that the transfer without sanction of the collector was prohibited; and

(2) that there was contravention of provisions of Clause 20 of the licence which prohibited the transfer of the right.

In this case, the conditions of the licence do not include any express prohibition of transfer but the first term in the licence is that it was granted subject to the provisions of M.C.D.C. Order 1944 and the other conditions specified in it.

18. In *Ramanayudu v. Seetharamayya*, AIR 1935 Mad 440 : 41 Mad LW 521 (FB) the highest bidder at an abkari auction of toddy shop entered into a partnership with another to work the abkari business of the shop without getting previous permission of the Collector for such partnership and the partnership ran the business though the licence was only in the sole name of the highest bidder. It was held that the suit for recovery of the advances made by him to the partnership business was not maintainable. The learned Judges relied on the decision in ILR 24 Mad 401 and other decisions and held that the partnership was illegal and that the suit was not maintainable.

19. In : AIR1950 Mad444 a Full Bench held that a partner in a partnership entered into for the purpose of vending arrack under a licence granted to only one of the partners could not sue for the balance due on settlement of accounts as the contract was void ab initio whether it was entered into before the licence was granted or afterwards. The learned Judges approved of the decisions in ILR 24 Mad 401, ILR 35 Mad 582, AIR 1935 Mad 440 : 41 Mad LW 521 (FB) and observed as follows at p. 324 (of Mad LJ) : (at pp. 449-450 of AIR):

'If the licensee holds his licence for the partnership or by an act of volition shares his licence with his partner, then there is a transfer which offends Rule 27. If it be found that the licensee does not hold the licence for the partnership, because it is illegal for him to do so, or because for any other reason the non-licensed partner does not purport to sell, by himself or through his partner, under his partner's licence, then there is no transfer; but the non-licensed partner would then commit a breach of Section 15 of the Act. In either case, a punishable offence would be committed; and a partnership formed that would lead to a breach of these provisions would be illegal, either because an offence would necessarily be committed or because it would be against the general public policy underlying the enactment that only approved persons, specifically licensed, should be allowed to sell liquor.'

Section 15 of the Abkari Act which is substantially similar to Clause 4 of the M.C.D.C. Order ran as follows:

'He liquor or intoxicating drug shall be sold without a licence from the Collector'.

(20) In (S) : AIR1957 Cal336 the learned Judges of the Division Bench of the Calcutta High Court discussed the above decision in AIR 1935 Mad 440 (FB) In para 50 and observed as follows: at p. 341

'The Madras High Court applied R. 27 framed under the Madras Abkari Act and strictly enforced the same. The strict provisions of R, 27 may be so interpreted, but we do not think that the rules of public policy which were attempted to be applied or introduced were properly applied in that case AIR 1935 Mad 440 (FB).....Suffice it to say for the present that, in our view, the consideration of an object of agreement will not be deemed to be forbidden by law unless in the circumstances related above there is a specific provision forbidding transfer or sale of a right made under a license'.

On an interpretation of the facts of that case including the relevant provision of the Silk Control Order, which did not prohibit the formation of any partnership for the starting of a filature or for carrying on silk business and only required that the owners of a filature should get themselves registered, the learned Judges held that the arrangement under the partnership was not prohibited under the Silk Control Order and that there was no contravention of Section 23 of the Contract Act on the ground that the object of the partnership was opposed to public policy. The Full Bench decision of the Madras High Court in : AIR1950 Mad444 that a partnership's conducting a business under a licence which stood in the name of one of the partners is opposed to public policy for the purpose of Section 23 of the Contract Act is binding on this Court.

21. In the Calcutta case, it was observed that the first defendant in that case whose name was registered as owner of the filature under the Silk Control Order had been in sole charge of the management of the filature. Such a fact would not make any difference in the present case and the position would be the same in this case if plaintiff, in whose name the licence stood, had been doing the

management in view of the decisions of the Madras High Court which we have referred to above and which we respectfully follow. But, all the same, as a matter of fact, the case of the plaintiff is that the defendant was in management of the partnership business and conducted the business. In effect, the Calcutta High Court held on the basis of the specific provisions of the Silk Control Order that the formation of a partnership was not prohibited by law and was not opposed to public policy.

22. In *Bhushayya v. Chinnappa Reddy*, : AIR 1960 AP39 it was held by a Division Bench of this Court consisting of Syed Qamar Hasan, J. and Jaganmohan Reddy J. that a partnership by persons who are licensed under the Central Excises and Salt Act (1 of 1944) with those who had no licences was not prohibited (by law). This was based on the provisions of Section 6 of that Act and certain rules framed under that Act. In particular, Rule 178(4) merely required that intimation should be given to the authority concerned within a month from the date of an unlicensed person becoming a partner with a licensed person. A penalty of fine was provided for failure to make such intimation. It was held by the learned Judges in at in view of the fact that there was special provision that, notwithstanding the omission to give intimation as mentioned above, an unlicensed person who became a partner with a licensed person would still be responsible for the terms and conditions of the licence, it did not appear that the intention of the rule was to declare such partnership as illegal or invalid. They also observed as follows: at p. 553 (or Andh WR) : (at p. 41 of AIR):

'Apart from the fact that under the rule there is a clear distinction, cases under the Abkari, Opium and Forest Acts have no application in determining the validity of partnerships made in contravention of the provisions of the Central Excises and Salt Act, as the prohibition is for the protection or convenient collection of revenue (but not in furtherance of a public policy as in the Abkari and Opium Acts). Where, therefore, a statute merely imposes a penalty without declaring it to be illegal or void, the imposition of penalty by itself does not in our view have the effect of making any contract made in contravention of a specific provision of the statute -- illegal or void. It must further be seen whether 'he statute was designed as a whole to further a public policy'.

They relied on a passage in Anson's Law of Contract as follows:

'The effect in such a case depends on the proper construction of the particular statute. But where the words of the statute leave room for doubt as to its intention, it is material to ask whether the object of the Act in imposing the penalty is merely to protect the revenue or whether its object or one of its objects-is to protect the general public or some class of the general public by requiring that the contract shall be accompanied by certain formalities or conditions, as, for example, registration in the case of a money-lender. In the latter case. It is probable that the act for the doing of which the penalty is imposed is impliedly prohibited by the statute and therefore illegal.'

This makes it clear that the act for the doing of which penalty was imposed can be impliedly prohibited and that, therefore, the prohibition need not necessarily be in express terms. In particular, in the present case, prohibition of formation of partnership or transfer of licence under the M.C.D.C. Order can be implied and inferred even though it is not mentioned in that Order in express terms.

23. The above decision was relied on by a later Division Bench of this Court in Venkatadri v. Govindaraju, 1960-2 Andh WR 151. The learned Judges held that it was indisputable that the Abkari Act and the Opium Act were designed in furtherance of a public policy and not merely for fiscal purposes and that, on the other hand, the Central Excises and Salt Act was designed with the avowed object of levy and collection of duties and that, therefore, the principle of the decision of the Full Bench in : AIR1950 Mad444 did not apply to the case of a holder of licence under the Central Excises and Salt Act (1 of 1944) entering into a partnership in regard to a business covered by the licence and contravening the provisions of the concerned rule by failing to report the fact of partnership within 30 days. They took into account the fact that, notwithstanding the omission to give intimation to the licensing authority within 30 days which was punishable with a penalty, the unlicensed partners were responsible under the rules for the terms and conditions of the license.

24. Section 23 of the Contract Act runs as follows:

'Section 23. The consideration or object of an agreement is lawful, unless

(i) it is forbidden by law or

(ii) is of such a nature that, if permitted, it would defeat the provisions of any law;
or -

(iii) is fraudulent;

(iv) or involves or implies injury to the person or property of another;

(v) or the Court regards it as (a) immoral, or (b) opposed to public policy.'

In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void. For purposes of convenience of reference, we have given numbers (i) to (v) and letters (a), (b) to the various portions in the above section. In this case, we are concerned only with items (ii) and (v) (b). The question as to whether a contract of partnership is valid or not depends on whether it comes under category (ii) or (v) (b). A licence, such as is concerned in the present case namely, a licence issued to a person under the M.C.D.C. Order, is a personal privilege given to the licensee (See : AIR1950 Mad444 (FB)). The privilege granted under it cannot extend to any persons with whom the licensee chooses to form a partnership Vide : AIR1954 Mad485 . M.C.D.C. Order was designed not merely for the protection of public revenue but in furtherance of a public policy. This is clear from the nature of the provisions in the order, formation of a partnership in effect amounts to transfer of rights under the licence by the licensee mentioned in that licence to his partners. Section 21 Mad LJ 425. If transfer of rights or formation of partnership in the above manner were expressly prohibited by law (M.C.D.C. Order), then the dealing in the business by the partnership would amount to an offence punishable under Rule 81(4) of the Defence of India Rules and also to the penalty of confiscation of stocks etc., under Clause 17 of the M.C.D.C. Order which is also a punitive provision.

The mere fact that punishment is provided for formation of a partnership may not render the partnership illegal if there is no express provision of the Act concerned

making it illegal provided that the object of the Act is merely for protection of the revenue. But if the object of the Act is furtherance of a public policy, the formation of the partnership would become illegal under category (v) (b) as being opposed to public policy. The formation of the partnership can be illegal if it falls under category (ii) of Section 23, i.e., such partnership, if permitted, would defeat the provisions of the M.C.D.C. Order. If a partnership such as existed in the present case is allowed, it would enable a person who has not got a licence to evade the liabilities intended by the law to be cast on persons carrying on the business of dealing in cloth. So, it would come under category (n) of Section 23 it would also come under category (v) (o) of Section 23. The decision of the Full Bench in : AIR1950 Mad444 as well as the other decisions of the Madras High Court already referred to by us including ILR 24 Mad 401 are applicable to this case.

25. It is true that the M.C.D.C. Order does not contain an express prohibition of the formation of partnership or transfer of licence or an express provision that formation of partnership or transfer of licence is illegal. But prohibition of partnership and of transfer of licence and their being illegal need not necessarily be declared in express terms. They can be implied and they can be inferred from the provisions of the statute and the rules in : AIR1950 Mad144 (FB) It was held that (a) if the licensee held his licence for the partnership and shared his licence with the partner, then the transfer attended against Rule 27 and that (o) if the licensee did not hold the licence for the partnership, then the unlicensed partner committed a breach of Section 15 of the Act because of selling without a licence and that in either case, an offence would be committed and that, therefore formation of partnership was illegal because an offence would be committed or it would be against the general public policy underlying the enactment that only approved persons specifically licensed should be allowed to do business under the license.

In the present case also, it is clear that the public policy underlying the enactment especially as seen from Clause 4 of the M.C.D.C. Order is that only approved persons specifically licensed should be allowed to do the cloth business under the licence and the formation of partnership would be against that general public policy and would, if permitted, defeat the implied provisions of the M.C.D.C. Order

especially Clause 4. So, the formation of partnership is illegal. The provisions of the M.C.D.C. Order show that by implication though not by express terms in the Order, the formation and working of partnership by a licensee with non-licensees was prohibited and amounted to a violation of the conditions of the licence (Ex. A-1).

26. In an unreported judgment of the supreme Court in *Govinda Rao v. Nathmal*, (unreported judgment of the Supreme Court in C.A No. 30 of 1960, D/- 11-4-1952) the question of maintainability of a suit for accounts of a dissolved firm came up for decision under the following circumstances. Plaintiff filed a suit for accounts of a dissolved firm which, according to him, had existed as a partnership between himself and the defendants by formation in October 1946 under which the firm was to trade in food-grains. The defendants challenged the partnership on the ground that it contravened the Central Provinces and Berar Food Grains Control Order (1945) and was, therefore, illegal. That plea of the defendants was accepted by the two lower courts and came up on appeal by the plaintiff to the Supreme Court. The two defendants held a licence in the name of their joint family firm in Rajnandgaon State under the law in force in that State for dealing in foodgrains there. That State was an Indian State outside British India. The plaintiff held a licence under the Central Provinces and Berar Food Grains Control Order, 1945, for dealing in food-grains as a wholesale dealer in the Nagpur District. In October 1946 the plaintiff entered into a partnership with the two defendants for dealing in food-grains. This partnership conducted two transactions of purchase in Central Provinces. It was the admitted case of the plaintiff that the partnership was formed for the specific purpose of exporting food-grains to places outside the Central Provinces and was formed because the two defendants, who were not registered dealers in the Central Provinces, could not get permits for export from the Central Provinces.

27. The relevant provisions in the C.P. and Berar Food-Grains Control Order, 1945, were as follows:-

'Section 3(1). No person shall deal in food-grains as a wholesale dealer except under and in accordance with a licence issued by the Deputy Commissioner of the

district.' The phrase 'deal in food-grains' is defined as follow:

'To engage in the business of purchase, sale or storage for sale of food-grains whether on one's own account or on account of or in partnership or in association with any other person or as a commission agent or arhatiya, and whether or not in conjunction with any other business; and the words 'dealer' and 'dealing' shall be construed accordingly.'

A 'wholesale dealer', under the Food Grains Control Order, was a dealer dealing in food-grains in quantities above a certain weight.

28. Their Lordships of the Supreme Court observed as follows:

'Without going into the pleas of the defendants, it is quite clear that the appellant (plaintiff) was making it easy for the respondents to trade in food-grains in Central Provinces and Berar without holding a licence, thus abetting an offence of the contravention of the Food Grains Control Order by the respondents. If not committing an offence himself. The definition of the phrase 'deal in food grains' which we have quoted above, clearly shows that every person who dealt in food-grains in a place where the Order applied, had to possess a licence. The word 'person' in Section 3(1) must include a group or association of persons like a firm or partners. A licence in the name of one of the partners was not enough. The partnership thus was an illegal one, because the object of the partnership was illegal.What we have to find out is whether the partnership was legal, because the suit was for accounts of that dissolved partnership. If the partnership was illegal or was for an unlawful purpose, then the Court will give no assistance to a plaintiff in such a case. It is obvious that the partnership was not licensed as a partnership. Therefore, the partnership could not deal in food-grains in Central Provinces and Berar. The licence in the name of the appellant was not one in favour of the partnership, and the whole of the transaction by the partnership was in contravention of the Food Grains Control Order. A Court would not enforce any claim arising from this illegal partnership The suit was not for the enforcement of any money claim against the respondents, but was one for accounts of the dissolved firm, which we have already shown, was an illegal firm. The suit was, therefore, rightly dismissed.'

It will be observed that Section 3(1) of the C.P. and Berar Food-Grains Control Order is substantially similar in relevant particulars to Clause 4 of the M.C.D.C. Order. There is some difference Between the two provisions but it is not material for the purpose of this case. Both are in agreement on the material feature that no person shall deal in the concerned article as a dealer except under and in accordance with the terms and conditions of a licence duly granted. The definition of 'dealer' in Clause 3(c) of the M.C.D.C. Order is substantially in agreement in relevant particulars with the definition of the phrase 'deal in food-grains' and the indication in it as to how the word 'dealer' was to be construed on that basis in the C.P. and Berar Food Grains Control Order. Their lordships came to the conclusion that the partnership was illegal on the following grounds:-

(1) The word 'person' in Section 3 (i), corresponding to Clause 4 of the M.C.D.C. Order, included a firm of partners.

(2) The licence in the name of one of the partners did not amount to a licence in favour of the partnership so as to authorise a partnership to deal lawfully as 'dealer' under that licence.

(3) Therefore, the object of the partnership namely, dealing by the partnership in food-grains under the licence, which was in the name of one-partner (Plaintiff) alone was illegal as the partnership was not licensed as a partnership. So the dealing by the partnership in food-grains was in contravention or the C.P. and Berar Food-grains Control Order and was illegal.

(4) Suit for accounts of such a dissolved partnership was not maintainable.

All the above grounds apply to the present case on the basis of the provisions of the M.C.D.C. Order which

are substantially similar to the corresponding provisions of the C.P. and Berar Food-Grains Control Order on which those grounds are based by the Supreme Court. Consequently the decision of the Supreme Court applies directly to the present case and is sufficient to decide it, being ample authority of the highest court in the land, in particular, the decision of the Supreme Court does not rely

upon any express prohibition of transfer such as contained in Section 13 and Section 16 of the Madras Rationing Order 1943. The decision shows that the illegality of the partnership does not depend on there being an express prohibition such as contemplated in Sections 13 and 16. That question, as to whether the absence of such express term affected the illegality of a partnership such as concerns in the present case was bereft of direct authority of this Court when our learned brother, Seshachalapathi, J., made the reference on 3-8-1961, But, subsequently, direct authority of the highest Court has come into existence on this question when the Supreme Court passed judgment on 11-4-1962.

Their Lordships of the Supreme Court did not consider the question as to whether the C.P. and Berar Food-Grains Control Order and the prohibition of dealing without a licence under that order was merely to protect the revenue or whether the object was the furtherance of public policy or the question as to whether the partnership would be illegal if the object of the C.P. and Berar Food-Grains Control Order had been only for the protection of the revenue and not in furtherance of public policy. But, we find that it does not affect the present case in view of the substantial similarity of the relevant provisions of the M.C.D.C. Order with the relevant provisions of the C.P. and Berar Food-Grains Control Order. The principle of the decision of the Supreme Court directly applies to the present case and the position remains unaffected by the decision of the Calcutta High Court in (S) : AIR1957 Cal336 . It is clear that the partnership was illegal and that the suit was not maintainable.

29. Though the decision of the Supreme Court is direct authority which is sufficient and ample to decide the present case, we have dealt with the various other decisions as they were cited and relied upon by the learned Advocates in the course of their arguments.

30. We, therefore, hold that the suit partnership is void and that the suit is not maintainable. Consequently, we uphold the judgment of the Court below and dismiss the second appeal with costs.