

Chaturbhuj Vs. State

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Court : Allahabad

Decided On : Dec-22-1964

Reported in : AIR1967All31; 1967CriLJ13

Judge : Satish Chandra, J.

Acts : [Prevention of Food Adulteration Act, 1954](#) - Sections 7, 16 and 20; Uttar Pradesh Nagar Mahapalika Adhinyam, 1959 - Sections 577; Uttar Pradesh Nagar Mahapalika Removal of Difficulties (Fourth) Order, 1960; Uttar Pradesh General Clauses Act, 1904 - Sections 8; Uttar Pradesh Municipalities Act, 1916

Appeal No. : Criminal Revn. No. 823 of 1963

Appellant : Chaturbhuj

Respondent : State

Advocate for Def. : Govt. Adv.

Advocate for Pet/Ap. : M.C. Upadhyaya, Adv.

Judgement :

Satish Chandra, J.

1. This revision along with its companion revisions have been heard together as they raise some common questions.

2. The petitioners in these revisions have been convicted under Section 10 read with Section 7 of the [Prevention of Food Adulteration Act, 1954](#). The main question raised in these petitions is that the officer who signed the complaint was not competent to do so and as such the prosecution based on such a complaint was not maintainable.

3. To appreciate the contention raised, it will be feasible to state few relevant facts. The Prevention of Food Adulteration Act 1954 makes a specific provision with respect to cognizance and trial of the offences under that Act. The relevant and material provisions of Section 20 of this Act are that no prosecution for an offence under this Act shall be instituted except by or with the written consent of the State Government or a local authority or a person authorised in this behalf by the State Government on the local authority.

4. Thus cognizance and trial of the offences under this Act can be had only when the prosecution is instituted by one or the other mentioned authorities The State Government or a local authority can institute the complaints. They can also authorise any person to institute such complaints. In view of this provision the State Government of Uttar Pradesh issued a Notification No dated 16-12-1958 authorising all Municipal Medical Officers of Health in Uttar Pradesh to institute or to give written consent for instituting prosecutions under the Prevention of Food Adulteration Act in municipal areas within their jurisdiction.

5. The Local Self-Government in this State was carried on inter alia under the U. P. Municipalities Act, 1916. Under the Municipalities Act there were functionaries by the nomenclature of Medical Officers of Health. These Medical Officers of Health became entitled to file complaints for offences under the Prevention of Food Adulteration Act.

6. In 1959 the Uttar Pradesh Legislature enacted the U. P. Nagar Mahapalika Adhiniyam, 1959, (U. P. Act No. 2 of 1959) This Act was in pari materia with the U. P. Municipalities Act, 1916, and by Section 581 it repealed the U. P. Municipalities Act, 1916, with effect from the appointed day a day which with reference to a City was to be appointed by the State Government for the coming into operation of this Act. By the relevant notification dated 18-1-1960 first day of February, 1960, was

nominated as the appointed day for certain Cities including Agra.

7. Section 580 of the Nagar Mahapalika Act conferred on the State Government power to remove difficulties by notified orders. In exercise of this power the U. P. Nagar Mahapalika (Kathinaion ko dur karne ki (Chaturth), Agya, 1960) that is to say Removal of Difficulties (Fourth). Order, 1960 was passed. The following is the text of this order:

'Whereas under the provisions of Clause (e) of Section 577 of the U. P. Nagar Mahapalika Adhiniyam, 1959 all officers and servants in the employ of Municipal Board/ Improvement Trust/Development Board or any other local authority in respect of any local areas merged in the Cities of Kanpur. Allahabad, Varanasi, Agra and Lucknow, as constituted under Section 3 of the Act, shall become officers and servants of the Mahapalika in a temporary capacity under the Act for so long as they are not appointed according to the provision of Clause (f) of Section 577 to posts created under Section 106:

And whereas it will take some time before the qualifications, emoluments and other conditions of service for the posts that might be created under Section 106 are prescribed by the State Government and the appointments under the said Clause (f) are made to those posts.

And whereas in the absence of posts under the designations mentioned in Section 106 difficulty will arise in the performance of the duties and functions by the present officers and staff in accordance with the various provisions of the Adhiniyam.

Now, therefore, in exercise of the powers conferred by Section 580 of the Act the Governor is pleased to make the following order to remove the said difficulty;

1. (1) This order may be called the U.P. Nagar Mahapalika (Kathinaion ko dur karne ki) (Chalurth) Agya, 1960.
2. It shall come into force at once.

3. During the period of one year from the coming into force of this order Section 577 of the Act shall have effect subject to the following modification:

After Clause (e) of Section 577 the following Clause (ee) shall be added:

'(ee) For so long as the posts mentioned in Section 106 of the Act are not created by the Mahapalika and formal appointments are not made thereto as provided in the Act.' 1. The Mukhya Nagar Adhikari shall be competent to make such changes in the designations of the existing officers and servants mentioned in Clause (e) as may be necessary having regard to the provisions of this Act and the rules made thereunder and the officers and servants, so designated, shall be competent to exercise and perform the powers, duties and functions assigned to them under the Act and the said rules:

Provided that a copy of every order of the Mukhya Nagar Adhikari made under this sub-clause shall be sent to the State Government which may make such modification therein as may be necessary or desirable.

2. Such officer or officers of the State Health Service as the State Government may nominate or designate in this behalf shall function as the Nagar Swasthva Adhikari or as Nagar Swasthva Adhakarīs under the Act.

3. Servants of the State Government who are on deputation with the said Municipality, Improvement Trust Development Board or local authority immediately before the appointed day shall, notwithstanding anything contained in Sections 106 and 107 be deemed to be on deputation with the Nagar Mahapalika:

Provided that the State Government may, at any time, of their own accord or on a request being made by the Mahapalika withdraw any such officer or substitute any such officer by a new officer.'

8. The material things to note are that under Section 577 (e) of the Nagar Mahapalika Act the officers in the employ of a municipality before the appointed day became officers employed by the Mahapalika in a temporary capacity Clause 3(1) of the Fourth Removal of Difficulties Order authorised Mukhya Nagar Adhikari to appropriately change the designations of the existing officer as may be neces-

sary having regard to the provisions of the Act and that the officers so designated shall be competent to exercise and perform powers, duties and functions assigned to them under the Act.

9. The Municipalities Act, 1916. and the Nagar Mahapalika Act 1959 are in pari materia. They both seek to regulate Local Self Government Very many posts under the two acts are similar i.e., they carry similar powers duties and functions. The post designated as Medical Officer of Health under the Municipalities Act and the Nagar Swasthya Adhikari under the Nagar Mahapalika Act is such an instance. It may incidently be mentioned that 'Nagar Swasthya Adhikari' is a Hindi name which in the English language would mean the City Officer of Health.

10. The next important provision in the Removal of Difficulties Order is that the State Government can nominate or designate an officer of the State Health Service to function as the Nagar Swasthya Adhikari under the Act, even though such a post has not been established.

11. An important feature of the Nagar Mahapalika Act as well as the Fourth Removal of Difficulties Order is that neither of them authorize the State Government to appoint or designate any officer as 'Medical Officer of Health,' after the repeal of the Municipalities Act and the coming into force of the Nagar Mahapalika Act.

12. Previous to the appointed day, i.e., 1st February, 1960, Dr. Bal Krishna was the Medical Officer of Health in the Municipality of Agra. In exercise of the power conferred by the Clause 3 (1) of the Fourth Removal of Difficulties Order, the Mukhya Nagar Adhikari of Agra Nagar Mahapalika designated Dr. Bal Krishna as 'Nagar Swasthya Adhikari.' with effect from 1-2-1960. Dr. Bal Krishna thus became entitled to exercise and perform the powers, duties and functions of Nagar Swasthya Adhikari under the Nagar Mahapalika Act.

13. On February 11, 1961, a notification No. I. V 323-X/1877 78 was published stating:

'The following transfers are ordered in Public interest with immediate effect. 1. Dr Balkrishna. Municipal Medical Officer of Health. Agra To be Municipal Medical Officer of Health, Bareilly. vice Dr. L. N. Saxena' 2. Dr. L. N. Saxena, Municipal Medical Officer of Health. Bareilly To be Municipal Medical Officer of Health, Agra vice Dr. Bal Krishna.'

14. Pursuant to this order Dr. L.N. Saxena came to Agra and took charge from Dr. Bal Krishna on 23rd February, 1961, and admittedly worked in the employ of the Agra Nagar Mahapalika in place of Dr. Bal Krishna. There being no power in any authority to appoint a Municipal Medical Officer of Health at a place like Agra where the municipality had become extinct and Mahapalika had come into existence on 1-2-1960, the appointment of Dr. L.N. Saxena as Medical Officer of Health. Agra, by this order dated 11th February, 1961, appears to be null and void. He could not be deemed to be a validly appointed Medical Officer of Health.

15. In the U. P. Gazette dated October 21, 1961, notification No. 2885-1/XVI-i dated 11-10-1961 was published. It stated:

'The following transfers of the officers of the U. P. Public Health Services were made in public interest: Dr. Bal Krishna, Swasthya Adhikari, Nagar Mahapalika Agra. To be Municipal Medical Officer of Health Bareilly. Dr. L. N. Saxena, Municipal Medical Officer of Health Bareilly. To be Municipal Medical Officer of Health Bareilly. Dr. L. N. Saxena, Municipal Medical Officer of Health Bareilly. To be Swasthya Adhikari, Nagar Mahapalika, Agra.'

16. By this order Dr. L.N. Saxena was appointed or nominated to be Swasthya Adhikari, Nagar Mahapalika. Agra Learned counsel for the applicant has urged that Dr. L.N. Saxena has not been appointed as 'Nagar Swasthya Adhikari' but only a 'Swasthya Adhikari' and as such this order is not in compliance with the Fourth Removal of Difficulties Order I am not impressed by this argument The omission of the word 'Nagar' before the words 'Swasthya Adhikari' seems to be an oversight. There is no designation like Swasthya Adhikari under the Nagar Mahapalika Act. The word 'Nagar' seems to have been placed instead before the word 'Mahapalika' by some error. From a reading of the order as a whole the intention is obvious that the designation of Dr. L.N. Saxena was intended to be as

'Nagar Swasthya Adhikari' as contemplated by the Fourth Removal of Difficulties Order.

17. The 11-2-1961 order transferred Dr. Bal Krishna from Agra to Bareilly and Dr. Saxena from Bareilly to Agra. The 11-10-1961 order does the same; although, as we have already seen, Dr. Bal Krishna had left Agra on 23-2-1961 and Dr. Saxena had taken over at Agra on that date. The 11-10-1961 order does not deal with reality as existing on this day. The order has in mind the position as it was when the 11-2-1961 order was passed. Dr. Saxena is sought to be transferred from Bareilly to Agra. The order seeks to operate from a point of time when Dr. Saxena was at Bareilly. This was in February 1961. This order has to be deemed to operate from February, 1961 in order to give it a proper legal effect.

18. The 11-2-1961, order stated that transfers 'are' made with immediate effect. The language of the 11-10-1961 order is significantly different. It says that the relevant transfers 'were' made. No specific date when the transfers are to be effective is mentioned. The word used is 'were' indicating that the transfers are not prospective but retrospective in effect.

19. The 11-10-1961 order seeks to rectify the errors and omissions made in the first order of 11-2-1961. The first order designated Dr. Bal Krishna as 'Municipal Medical Officer of Health Agra'. This was not correct. 'With effect from 1-2-1960 the Mukhya Nagar Adhikari Agra had designated him as Nagar Swasthya Adhikari. The second order of 11-10-1961 rectifies this. It designated him correctly. The first order transferred Dr. Saxena to become 'Municipal Medical Officer of Health, Agra'. This was not legally possible. The second order makes amends for this too. It corrects the error. It seeks to transfer Dr. Saxena to Agra as Nagar Swasthya Adhikari. All these matters, lead to the conclusion that the necessary intentment of passing the second Order of 11-10-1961 was to make it operate retrospectively from 11-2-1961. Dr. L. N. Saxena had in fact come to Agra in February, 1961. He was working in the Nagar Mahapalika. The powers, duties and functions of both posts, i.e., the Medical Officer of Health and the Nagar Swasthya Adhikari, are similar. The only defect was in his designation in the public interest, the Executive can legally cure such purely formal irregularities by passing a retrospectively

operating order especially when it does not affect any private interests or rights. I am not deciding the wider question if subordinate legislation can generally be retrospective. In the result Dr. L.N. Saxena functioned in the eve of Law, as the Nagar Swasthva Adhikari, Agra, from the day he took charge, i.e., 23-2-1961.

20. On June, 7, 1962, another order was passed which runs as follows :

'The following transfers of the officers of the U. P. Public Health Service are ordered in public interest:1. Dr. Niranjana Prasad, Municipal Medical Officer of Health, Mus-soorie To be Municipal Medical Officer of Health, Agra, vice Dr. L. N. Saxena appointed assistant Director.2. Dr. S. Manglik, Medical Officer Incharge. Smallpox Eradication Scheme. Luck-now On return from leave to be Municipal Medical Officer of Health, Mussoorie vice Dr. Niranjana Prasad.

Office of the Director of Medical and Health Services, U. P. No. I. F. 323Z/10816.

' On June 13, 1963, another order was passed running as follows :

'No. 2012/XVI-II-1601 (19)-62 dt. June 18, 1963. The following transfers amongst Officers of the U. P. Public Health Services, were ordered in Public interest:

1. Dr. Niranjana Prasad, Municipal Medical Officer of Health, from Mussoorie to Agra as Nagar Swasthva Adhikari. Nagar Mahapalika, vice Dr. L. N. Saxena
2. Dr. S. Manglik. Medical Officer Incharge, National Smallpox Eradication Programme, Uttar Pradesh, Lucknow, to Mussoorie as Municipal Medical Officer of Health, vice Dr. Niranjana Prasad. '

21. A study of both these orders shows the situation as obtained in the two orders involving Dr. Saxena. Dr. Niranjana Prasad, who was the Municipal Medical Officer of Health, Mussoorie, is transferred as Municipal Medical Officer of Health Agra vice Dr. L. N. Saxena The 1963 order also transfers Dr. Niranjana Prasad from Mussoorie to Agra but with the difference that in this order he is transferred as Nagar Swasthva Adhikari, Nagar Mahapalika. Agra. All those aspects which I have discussed above in connection with the two orders involving Dr. Saxena are equally applicable to these two orders. The conclusion is irresistible that the order

dated 13-6-1963 was intended to operate retrospectively from the date the earlier order of 7-6 1962 came into effect. The result is that Dr. Niranjan Prasad from the day he took over charge at Agra functioned as Nagar Swasthya Adhikari, Nagar Mahapalika, Agra.

22. It will be idle for me to speculate on the wisdom of the policy behind the Government's action in passing such kind of orders; by appointing an officer first as Medical Officer of Health of a Nagar Mahapalika a post which is non-existent, and then seeking to rectify the error by designating retrospectively the same officer as Nagar Swasthya Adhikari This has happened not once but repeatedly as seen above.

23. The notification dated 16-12-1955 authorises the Medical Officers of Health in U. P. to institute prosecution under the Prevention of Food Adulteration Act. It is urged that this notification will not enure for the benefit of the Nagar Swasthya Adhikaris. In this connection Section 8 U. P. General Clauses Act, 1904, is relevant. It says :

'Where any (Uttar Pradesh) Act repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any Instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted.'

24. The Nagar Mahapalika Act repeals and reenacts the provisions of the Municipalities Act The post of Nagar Swasthya Adhikari corresponds to the post of the Municipal Medical Officer of Health in its powers, duties and functions Reference in any enactment or in any instrument to Municipal Medical Officers of Health would with the help of Section 8 of the General Clauses Act, be construed as reference to the Nagar Swasthya Adhikaris. The notification dated 6-12-1955 would be applicable to the Nagar Swasthya Adhikaris as well and Nagar Swasthya Adhikaris would be competent to institute prosecutions under the Prevention of Food Adulteration Act.

25. Learned counsel argued that Section 8 General Clauses Act will not apply as it confines its operation to references 'in any other enactment or in any other instrument' and it is urged that the notification dated 16-12 1955 is neither an enactment nor an instrument. Section 20 of the Prevention of Food Adulteration Act empowers the State Government to authorise persons to institute prosecutions under that Act. In exercise of this statutory power the aforesaid notification was issued. The question is whether such a statutory order would be an 'instrument' within meaning of Section 8. The expression 'instrument' is not defined by the General Clauses Act. Therefore, the expression must be taken to have been used in the sense in which it is generally understood in legal parlance. This precise question has recently been considered by the Supreme Court in the case of Mohan Choudhari v. Chief Commissioner Union Territory of Tripura : 1964 CriLJ132 . In that case the President of India in exercise of the powers conferred by Clause 1 of Article 359 of the Constitution issued an order suspending the right to move any Court for the enforcement of the rights conferred by the Articles 21 and 22 of the Constitution for the period during which the proclamation of emergency was in force. The question arose whether that order was an 'instrument' within meaning of Section 8 of the General Clauses Act. The Supreme Court took note of the fact that the expression 'instrument' had not been defined in the General Clauses Act. It considered the definition given in Stroud's Judicial Dictionary of Words and Phrases (Third Edition, Volume 2. Page 1472) and went on to hold that :

'The expression is also used to signify a deed inter parties or a charter or a record or other writing of a formal nature. But in the context of the General Clauses Act, it has to be understood as including reference to a formal legal writing like an order made under a statute of subordinate legislation or any document of a formal character made under constitutional or statutory authority.'

26. It is thus clear that, Section 8 General Clauses Act would apply to the statutory order dated 16-12-1955. So construed the aforesaid notification would, even after the repeal of the Municipalities Act, continue to govern the corresponding functionaries under the Nagar Mahapalika Act, viz., the Nagar Swasthva Adhikaris and the reference to municipal areas in that notification would be construed as

referring to Nagar Mahapalika areas. The prosecutions launched by the Nagar Swasthya Adhikaris would be competent and valid.

27. The contention of learned counsel that the complaints filed by Dr. Saxena and by Dr. Niranjn Prasad, while they were holding the office of Nagar Swasthya Adhikaris at Agra were invalid, is unfounded

28. Learned counsel next urged that the notification dated 16 12-1955 confers a general authority on the named officer to institute prosecutions and that, in view of the provisions of Section 20, Prevention of Food Adulteration Act to the effect that a person authorised in this behalf by the State Government alone can institute the prosecution, such a general authority was not sufficient In order to be valid the authority must be given with reference to each case and to a particular person. I need not dwell at length on this argument as it is completely and fully answered in the negative by a Full Bench of our Court in M. J. Powell v. Municipal Board of Mussoorie (1900) ILR 22 All 123 (FB) This Full Bench decision has been followed by the Kerala : AIR1961 Ker84 and the Mysore (AIR 1963 Mys 157) High Courts

29. Another submission made by the learned counsel related to the competency of Dr. L. N. Saxena to file the complaints after he had been transferred away from Agra and to a post other than a Nagar Swasthya Adhikari. The order dated 7-6-1962 transferred Dr. L. N. Saxena to be Assistant Director and appointed Dr. Niranjn Prasad in his place at Agra. As a result Dr. Saxena ceased to be the Nagar Swasthya Adhikari. The prosecutions instituted at the instance of Dr. L. N. Saxena after 7-6-1962 though purporting to be the Nagar Swasthya Adhikari, Agra, would not be covered by the notification dated 16-12-1955. In the following cases the complaints were instituted after 7-6-1962 though they were signed by Dr. L. N. Saxena as Nagar Swasthya Adhikari, Agra :

Sl.No.No. of Crimina

IRvisions.Applicant's Name.Complainant's name

and designation.Date of institution

of complaint.

1.1037 of 1963 Girraj.Dr. L. N. Saxena, NagarSwasthya Adhikari11-6-1962.2.1087 of 1963 Gayasi Ram.'3-7-1962.3.1100 of 1963 Duli Chand.'3-7-1962.4.1254 of 1963 Pooran Chand.'23-8-1962.5.1495 of 1963 Munshi'8-1962.6.1513 of 1963 Bhoori Singh.'16-10-1962.7.1521 of 1963 Pohap Singh.'3-8-1962.8.1739 of 1963 Laxmi Narayan.'10-8-1962.9.17 40 of 1963 Do.'23-8-1962.10.1839 of 1963 Nathi Lal.'Do11.1840 of 1963 Do.'Do

30. Section 20 of the Prevention of Food Adulteration Act is mandatory. Courts can take cognizance of prosecutions instituted by persons or authorities mentioned therein alone and by none other There is nothing on the record to establish that the Assistant Director of Medical and Health Services was also authorised either by the State Government or by any local authority to institute prosecution. Prosecutions instituted by such a person would be totally incompetent and the Courts cannot take cognizance of such complaints

31. In these above mentioned revisions the Courts had no power to entertain the complaints and the proceedings consequent are liable to be quashed.

32. The next point argued was that in several cases the prosecution was lodged with undue delay This resulted in grave prejudice to the accused applicants Most of these cases are of sale of adulterated milk. It is urged that even though some amount of preservative was added to the sample of milk, a portion whereof was handed over to the applicant, vet after the lapse of years the sample was bound to deteriorate Under Section 13 of the Prevention of Food Adulteration Act the petitioner has a right of appeal against the Public Analyst's report to the Director of the Central Food Laboratory This right of appeal can be exercised under Section 13(2) only after the institution of a prosecution. If the prosecution is launched after a delay of years the likelihood of the sample deteriorating is such that the right of appeal would be rendered illusory as the Director is unlikely to give a proper report owing to chemical changes occurring in the sample

33. The learned counsel for the Nagar Mahapalika on the other hand urged that the proper course for the applicants was to make an application under Section 13(2) and send the sample to the Director, through the Court. If the Director had stated that he was unable to analyse the sample owing to its deterioration by lapse

of time, they could have had a point of grievance. But they not having adopted that course cannot legitimately make a grievance merely because of delay in instituting the prosecution.

34. The Prevention of Food Adulteration Act does not prescribe any time limit within which prosecutions may be launched. But it cannot be denied that articles of food are liable to deterioration and decay with lapse of time. Moreover, it is a cardinal and a fundamental principle of Criminal jurisprudence that if an offence has been committed the prosecution must be instituted without the least delay. The learned counsel for the State or for the Nagar Mahapalika have not invited my attention to anything on the record to explain the delay. In most of the cases the prosecution was launched over a year after the date of the offence in some cases it has been launched more than two years after. It is reasonable to expect an explanation to explain such a delay. Even if it may not be possible to hold that the prosecution is invalid because of delay, this is a material circumstance on the question of sentence.

[The rest of the judgment is not material for reporting].

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