

State Vs. Lachmi Chand

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Court : Allahabad

Decided On : Feb-21-1957

Reported in : AIR1957All548; 1957CriLJ915

Judge : Roy and ;Sahai, JJ.

Acts : Uttar Pradesh Prevention of Adulteration Act, 1912 - Sections 17; Uttar Pradesh Pure Food Act, 1950 - Sections 50; [Constitution of India](#) - Article 19(1); Uttar Pradesh Butter, Ghee and Fat Licensing Rules, 1930 - Rules 3 and 11

Appeal No. : Govt. Appeal No. 545 of 1954

Appellant : State

Respondent : Lachmi Chand

Advocate for Def. : S.N. Dwivedi, Adv.

Advocate for Pet/Ap. : Govt. Adv.

Disposition : Appeal allowed

Judgement :

Roy, J.

1. This is an appeal by the State against an appellate order dated the 23rd of October, 1953, passed by the learned Additional Sessions Judge of Etawah by

which he set aside the conviction and sentence of Lakshmi Chand passed by a Magistrate on the 17th of July 1953, under Section 17 of the U. P. Prevention of Adulteration Act (No. VI of 1912). The sentence was a sentence of fine of Rs. 100/- only. The learned Magistrate found that on the 2nd of January, 1953. Lakshmi Chand was found selling and storing ghee for sale without a license, the license having been required under Section 16 of the U. P. Prevention of Adulteration Act (No. VI of 1912) as amended by Acts 1 of 1956, 2 of 1930 and 13 of 1932 and under Rules which have been framed by the local Government under that Act.

The Additional Sessions Judge was of the view that the U. P. Prevention of Adulteration Act (No. VI of 1912) was repealed by the U. P. Pure Food Act (No. XXXII of 1950), (wrongly quoted by the Judge as Act No. XXIII of 1950), and that since the judgment of the Magistrate was pronounced on the 17th of July, 1953, after the U.P. Pure Food Act of 1950 came into force, the conviction for an offence under an enactment which on the date of the conviction did not exist, was illegal. The learned Additional Sessions Judge allowed the appeal upon that technical point alone and he did not consider the matter upon the other grounds that were set out in the grounds of appeal.

2. After hearing learned counsel for the parties we are of opinion that the view taken by the learned Additional Sessions Judge was erroneous and that the attention of the learned Additional Sessions Judge was not drawn to Section 50 of the U. P. Pure Food Act of 1950 which itself provides that any proceedings instituted for other thing done under the provisions of the U. P. Prevention of Adulteration Act, No. VI of 1912, shall not be invalidated by the repeal but shall have effect as if it had been made, passed or given under a corresponding provision, and in the case of any legal proceeding it may be continued and appealed against as if U. P Act No. XXXII of 1950 had not been passed.

3. Section 16 of the U. P. Prevention of Adulteration Act, No. VI of 1912, is as follows:

'The State Government may by notification prescribe that no person shall sell or offer or expose for sale or manufacture or store for sale, any specific article of food

or drug unless under a license containing such conditions and given by such authority as the State Government may, by the said notification prescribe.'

The authority of the Municipal Board to grant a license is derived under Section 16 of the U. P. Prevention of Adulteration Act (No VI of 1912) as amended by Acts I of 1916, 2 of 1930 and 13 of 1932 and under Rules which have been framed by the Local Government under that Act and which are called 'Butter, Ghee and Pat Licensing Rules, 1930.'" The Butter Ghee and Fat Licensing Rules, 1930, are thirteen in number, but we are concerned with Rule 3 which says that no person shall sell or offer or expose for sale or manufacture or store for sale butter, ghee and fat which are articles of food, except under license granted by the local authority.

Section 16 of the U. P. Prevention of Adulteration Act and Rule 3 which is framed thereunder expressly and in clear terms take away the right of a person to sell ghee according to his wish and such an article can only be sold under a license granted by a local authority. The obligation under Rule 3 is laid upon the person who wishes to sell ghee and the Rule puts upon him a liability that he can sell it if, and only if, he could secure a license from the local authority. It will be further noticed that under Rule 11 of the Butter, Ghee and Pat Licensing Rules. 1930, by which licensing fee can be charged no obligation is laid to issue a license if the fee is offered.

The power to grant the license under Rule 3 given to a local authority is not an express power, but it arises by implication and this power which arises by implication also carries with it by implication, a power to refuse license and does not become an obligation to issue a license as a matter of course. Based upon these considerations Mr. Dwivedi appearing on behalf of the respondent has advanced an argument to the effect that the provisions of the Rules aforesaid should be held to be void as imposing an unreasonable restriction upon freedom of trade and business guaranteed under Article 19(i)(g) of the Constitution and not coming within the protection afforded by Clause (6) of the Article.

In support of his argument he has relied upon a decision of this Court in *Amir Chand v. State*, 1956 All LJ 836: ((S) AIR 1956 All 562) (A), to which one of us

was a party. There the provisions of Clause 6 (a) of the Cotton Textiles (Control) Order of 1948 read with Clause 11 of that Order and Clause 4 of the U. P. Controlled Cotton Cloth and Yarn Dealers Licensing Order, 1948, read with Clause 11 of that Order came to be considered and it was held that those provisions were void as imposing an unreasonable restriction upon freedom of trade and business guaranteed under Article 19 of the Constitution and not coming within the protection afforded by Clause (6) of that Article.

There was specific provision in those Orders which was to the effect that the Textile Commissioner may without assigning any reason refuse to grant a license to any person and his decision shall be final. In the present case there is no express provision of that nature in the Rules which govern the grant of a license for the sale of ghee. The power given to the local authority under the Rules which we have got to deal with in the present case is a discretionary one and so long as the discretion is not exercised arbitrarily, unjustly or oppressively it is not open to challenge.

The Rules if correctly interpreted do not impose any obligation upon the Municipal Board or the local authority to issue a license when in the interest of public health they do not consider it proper to do so. The restriction which may by implication be imported into the matter would be a reasonable restriction protected by Clause (6) of Article 19 of the [Constitution of India](#). We are therefore unable to uphold the contention advanced by Mr. Dwivedi..

4. The decision of the lower appellate court cannot be supported. The appeal must therefore go back to that court for hearing and for decision according to law. We accordingly allow this State appeal, set aside the order dated 23-10-53 of the lower court and direct that the case be sent back to the lower appellate court for hearing Criminal Appeal No. 224 of 1953 of that court in the manner provided by law.

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