

DIn Dayal Vs. State

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Court : Allahabad

Decided On : Jan-10-1956

Reported in : AIR1956All520; 1956CriLJ1031

Judge : Roy, J.

Acts : [Constitution of India](#) - Articles 12, 14 and 19; Uttar Pradesh Pure Food Act, 1950 - Sections 10, 10(2) and 47; Uttar Pradesh Pure Food Rules, 1952 - Rule 18; [Evidence Act, 1872](#) - Sections 3 and 4

Appeal No. : Criminal Revision No. 752 of 1954

Appellant : DIn Dayal

Respondent : State

Advocate for Def. : A.G.A.

Advocate for Pet/Ap. : S.N. Dwivedi, Adv.

Disposition : Application allowed

Judgement :

ORDER

Roy, J.

1. This application in revision raises a question of considerable importance, namely, whether the provisions of Section 10(2) of the U. P. Pure Food Act, No. 32 of 1950, are ultra vires of the Constitution in so far as they lay down that in any proceeding under the Act a certificate of a Public Analyst given under Sub-section (1) of that section shall be conclusive evidence of the facts stated therein. The applicant Din Dayal has been convicted under Section 42 of that Act read with Section 4.

The charge against him was that on 3-7-1953, he sold adulterated ghee to the Food Inspector holding it out as pure ghee and that the article was not of the substance, nature and quality demanded by the purchaser. The Food Inspector, it is alleged, found the accused selling ghee as pure ghee. He purchased a quantity of the ghee and sampled it out in three phials and sealed them, and handed over one of the sealed phials to the accused. One phial was sent to the Public Analyst for analysis; and the report of the Public Analyst was that it was 'grossly adulterated'.

The accused was prosecuted for contravention of Section 4 of the U. P. Pure Food Act, which enjoins that no person shall sell, offer, or expose for sale, food which is not of the substance or of the nature or quality demanded by the purchaser, which contravention was made punishable under Section 42 of the Act, and he was sentenced to rigorous imprisonment for a period of six months and to pay a fine of Rs. 40/- or in default to suffer further one month's rigorous imprisonment. The evidence against the applicant consisted of the testimony of two witnesses and the conviction was based principally upon the report of the Public Analyst.

2. It has been contended on behalf of the applicant that the ghee in question was pure ghee and, since Section 10(2) of the U. P. Pure Food Act of 1950 made the facts stated in the certificate of the Public Analyst conclusive evidence of the matter, the law precluded the applicant from challenging the report of the Public Analyst, either by summoning him and subjecting him to cross-examination in order to show that the report was erroneous, or by having the article examined by some other expert with a view to point out that the certificate of the Public Analyst was wrong.

Learned counsel for the applicant has argued that Section 10(2) of the U. P. Pure Food Act offends against Article 14 and Article 19(1)(g) of the Constitution. His submission is that in giving such arbitrary powers to the public Analyst in making out a certificate which may to all intents and purposes be erroneous, the section denies the accused the equal protection of the laws and it further takes away the right to practice his profession of the sale of pure ghee which would inevitably be the result if the conviction of the applicant is allowed to be based upon such a certificate of the Public Analyst.

3. In order to appreciate this question I may first refer to the provisions of Section 10(2) of the U. P. Pure Food Act. It provides that in any proceeding under the Act a certificate of the Public Analyst given under Sub-section (1) shall be conclusive evidence of the facts stated therein.

This provision is alleged to be discriminatory and hostile upon the assumption that if a Public Analyst chooses to be dishonest in one case and if the report of his analysis is bona fide wrong in another case, in either event the law by making his certificate conclusive evidence of the facts stated therein makes the whole thing discriminatory and hostile and does not give the citizen equal protection of the laws.

4. It is not contended in the present case that the section is discriminatory in the sense that it provides for class legislation. Article 14 of the Constitution provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

The meaning of 'equality before the law' or 'equal protection of laws' has been expounded in a number of decisions of the Supreme Court or U.S.A. and also in several decisions of the Supreme Court and the High Courts of India. Although in actual application of principles to concrete dispute there is still considerable room for differences of views, certain principles may be regarded as settled in regard to the connotation of the conception of 'equality before the law.'

The conception does not involve the idea of absolute equality among human beings, which is a physical impossibility. Equality before the law means that

among equals the law should be equal and should be equally administered and that the like should be treated alike. The inhibition of the Article that the State shall not deny to any person equality before the law or the equal protection of the laws was designed to protect all persons against legislative discrimination amongst equals, and to prevent any person or class of persons from being singled out as a special subject for discriminating and hostile legislation.

5. A Legislature empowered to make laws on a wide range of subjects must of necessity have the power of making special laws to attain particular objects and must for that purpose possess large powers of distinguishing and classifying the persons or things to be brought under the operation of such laws, provided the basis of such classification has a just and reasonable relation to the object which the Legislature has in view.

As has been pointed out by the Supreme Court in the *State of West Bengal v. Anwar All Sarka* : 1952 CriLJ510 , if a legislation is discriminatory and discriminates one person or class of persons against other similarly situated and denies to the former the privileges that are enjoyed by the latter, it cannot but be regarded as hostile in the sense that it affects injuriously the interests of that person or class. Of course if one's interests are not at all affected by a particular piece of legislation, he may have no right to complain.

But if It is established that the person complaining has been discriminated against as a result of legislation and denied equal privileges with others occupying the same position, it is not incumbent upon him before he can claim relief on the basis of his fundamental rights to assert and prove that in making the law the Legislature was actuated by a hostile or inimical intention against a particular person or class.

6. Equality before the law and equal protection of the laws include the conception that the law being what it is its application should be universal in every case which answers the description of the legislation. This raises the question whether there is a violation of Article 14 of the Constitution where an officer of the State is guilty of discriminatory conduct in his official capacity when carrying out the provisions of an Act which are not themselves discriminatory.

On this question it must be noted that the term 'the State' as defined in Article 12 includes the executive authority. Hence discrimination practised by an executive or administrative body or officer in carrying out an Act would seem to be a violation of the injunction under this Article as much as a legislative enactment which discriminates between different classes in an unconstitutional manner. In : 1952 CriLJ510 , referred to above, Mukherjea, J. of the Supreme Court, at p. 92, observed as follows:

'It appears to be an accepted doctrine of American Courts that the purpose of the equal protection clause is to secure every person within the States against arbitrary discrimination, whether occasioned by the express terms of the Statute or by their improper application through duly constituted agents.

This was clearly laid down in *Sunday Lake Iron Co. v. Wakefield*, (1918) 247 U. S. 350 (B). In this case the complaint was against a taxing officer, who was alleged to have assessed the plaintiff's properties at their full value, while all other persons in the county were assessed at not more than one-third of the worth of their properties. It was held that the equal protection clause could be availed of against the taxing officer; but if he was found to have acted bona fide and the discrimination was the result of a mere error of judgment on his part, the action would fail.

The position therefore is that when the Statute is not itself discriminatory and the charge of violation of equal protection is only against the official, who is entrusted with the duty of carrying it into operation, the equal protection clause could be availed of in such cases; but the officer would have a good defence if he could prove bona fides.

But when the Statute itself makes a discrimination without any proper or reasonable basis, the Statute would be invalidated for being in conflict with the equal protection clause, and the question as to how it is actually worked out may not necessarily be a material fact for consideration.'

7. In *Kathi Raning Rawat v. State of Saurashtra* : 1952 CriLJ805 , the same learned Judge again, at page 131, observed as follows:

'It is a doctrine of the American Courts, which seems to me to be well founded on principle, that the equal protection clause can be invoked not merely where discrimination appears on the express terms of the Statute itself, but also when it is the result of improper or prejudiced execution of the law: vide Weaver on Constitutional Law, page 404.'

8. Similarly, In *Kedar Nath v. State of West Bengal* : 1953 CriLJ1621 , Patanjali Sastri, C. J., expressing the majority view of the Court, in his judgment observed:

'If it be shown in any given case that the discretion (entrusted to the Executive) has been exercised in disregard of the standard or contrary to the declared policy and object of the legislation, such exercise could be challenged and annulled under Article 14 which includes within its purview both executive and legislative acts.'

9. Thus, according to the authorities, deliberate or systematic discrimination practised by an executive or administrative officer or body in carrying out the provisions of an Act which are themselves fair is within the prohibition of Article 14.

10. In *Patton v. Mississippi*, (1948) 332 U. S. 463 (465) (E), it was observed that any discrimination which occurs in practice in the working of such an Act owing to a bona fide error and in the absence of any deliberate or systematic discrimination practised by the officers concerned is not treated as a breach of the equal protection clause.

11. It cannot for a moment be doubted that if the Legislature does not lay down or indicate any standard for the guidance of the Executive or of an officer, but confers absolute, naked and arbitrary powers on the Executive or upon the officer, the validity of such an Act will be open to challenge under Article 14.

In the present case it has to be seen whether the Legislature has laid down any standards for the guidance of the public Analyst or whether it has conferred absolute, naked and arbitrary powers upon him. Rule 18 of the U. P. Pure Food Rules, 1952, framed under Section 47 of the U. P. Pure Food Act, 1950, lays down the standard which is expected of pure ghee. The standard is different in the case

of ghee prepared from different products.

The Rule provides that the ghee shall have a saponification value of not less than 222 and a Reichert-Woliny value in the case of ghee prepared from milk of the cow, goat or yew of not less than 24, in the case of ghee prepared from buffaloes milk of not less than 30, and in the case of ghee prepared from mixed milk of not less than 28. The Rule further provides that no ghee shall contain more than 0.5% of water.

The Rule says that where in a sample of ghee the proportion of water exceeds 0.5 per cent, it shall, unless the contrary is proved, be deemed for the purposes of the Act that the ghee is not of the prescribed standard by reason of the excessive amount of water therein. It further says that where in any sample of ghee the saponification value and or Reichert-Wollny value are less than those specified above, it shall, unless the contrary is proved, be deemed for the purposes of the Act that the ghee is not of the prescribed standard by reason of the addition thereto of extraneous fat or oil.

The words 'unless the contrary is proved' are important and they indicate that if on the side of the prosecution proof is given that the ghee is not of the prescribed standard, that proof may be rebutted by the accused by other evidence showing that the evidence led by the prosecution on that point is erroneous or defective. Now, how is the accused to lead that evidence if the provisions of Section 10 of the Act which lay down that in any proceeding under this Act a certificate of a PublicAnalyst given under Sub-section (1) of that section 'shall be conclusive evidence of the facts stated therein'.

These words are construed to mean that whatever the Public Analyst expresses in the certificate is conclusive proof of the matter, not susceptible of being rebutted by any other evidence. The words 'conclusive evidence' have not been defined. 'Evidence' has been defined in Section 3 of the Indian Evidence Act; and 'conclusive proof' has been defined in Section 4 of that Act. The definition of 'conclusive proof' is as follows:

'When one fact is declared by this Act to be conclusive proof of another the Court shall, on proof of the one fact, regard the other as proved and shall not allow evidence to be given for the purpose of disproving it'.

An artificial probative effect is thus given by the law to certain facts and no evidence is allowed to be produced with a view to combating that effect. These cases generally occur when it is against the policy of Government or the interests of society that a matter may be further open to dispute. Illustration of it may be had from various enactments.

Section 41 of the Evidence Act provides that judgments of certain Courts are conclusive proof of the matters stated in them. In several instances certificates or other such documents are by special Acts made, conclusive evidence of the facts stated in them, for example, Section 114 of the Companies Act (1913), Section 381 of the Succession Act (1925), Section 61 of the Christian Marriage Act (1872), and Section 11 of the Oaths Act (1873). Can Section 10 of the U.P. Pure Food Act, 1950, (Act No. XXXII of 1950) be classed as a legislation of a similar type?

At first sight the provisions of Section 10 would strike one as indicating that the Public Analyst's report is the last word on the subject, but really speaking the intention of the Legislature was never so. This may be gathered from the provisions of Section 10 read with Rule 18 of the Rules framed by the Government under Section 47 of the Act. This Rule lays down that unless the contrary is proved, the ghee will not be regarded of the prescribed standard, namely, the standard laid down in the Rule.

In other words, if Section 10 makes the presumption flowing out of the certificate of the Public Analyst conclusive or irrebuttable, the Rule framed by Government under the scope of the Act makes it rebuttable. Modern Courts of Justice are slow to recognise presumptions as irrebuttable and disposed rather to restrict than extend their number. By an arbitrary rule a party from adducing evidence, which if received would compel a decision in his favour, is an Act which, can only be justified by the clearest expediency and soundest policy.

The fact that in spite of Section 10 of the Pure Food Act the Government framed Rules under Section 47 and laid down that the result of the Public Analyst is rebuttable indicates that the words:

'Conclusive evidence of the facts stated therein'

In Section 10(2) would import that where the certificate of the Public Analyst is given, which must of course specify the data on which the conclusion of the Analyst may be founded, the correctness of the report need not be proved by formal evidence, but may be regarded as evidence of facts stated therein without formal proof. Reading Section 10 of the Act alongside Rule 18 of the Rules, the apparent inconsistency can be reconciled only on this hypothesis and on no other. Obviously the presumption flowing out of the certificate of the Public Analyst is not a conclusive presumption but a rebuttable presumption, and in this view of the matter Section 10 of the Act read along with Rule 18 does not lay down anything which is opposed to the principles of natural justice or against the fundamental rights envisaged in Articles 14 and 19 of the Constitution.

12. A very important question of law arises in this case, namely, what is the weight as evidence to be attached to the written report of the Public Analyst. Where the report of the Public Analyst does not give any data of the quantitative analysis, as in the present case, the report cannot be adequately tested and must be rejected.

The 'ipse dixit' of the Public Analyst that a certain sample of ghee is 'adulterated' or 'grossly adulterated' and does not conform to the standard, ought not to be accepted by a Court unless and until the Public Analyst gives the data from which it can be ascertained, in what respects the sample is different from the standard: No person ought to be put in peril of a punishment on such a written report which fails to furnish the data and which is not given on oath and untested by cross-examination.

13. The weight to be attached to the report of the Chemical Examiner used in evidence under Section 510, Criminal P. C. came to be considered by a Division Bench of this Court in 'Happu v. Empero : AIR1933 All837 . In that case the question was whether a lethal dose of arsenic --that is two grains or more -- had

been administered. The report of the Chemical Examiner on which the trial court placed reliance was simply this, namely, that arsenic was 'detected' in the viscera of the deceased. That was not enough to prove death by arsenic poisoning.

When the appeal was brought to this Court a quantitative analysis report by the Chemical Examiner was produced at the Court's request. The Chemical Examiner reported that he had found 0.182 of a grain of arsenic in those portions of the viscera that was submitted to him.

In considering the question as to what weight was to be attached to the written report of the Chemical Examiner used in evidence under Section 510, Cr. P. C., which was not made on oath and not tested by cross-examination, it was held that having regard to the circumstances of that case no weight were to be attached to it, and since Section 510 used the word 'may' and not 'shall' the Court has a discretion in the matter, and for the ends of justice whenever the Court thinks necessary to call the Chemical Examiner in evidence, it should exercise the right so that he may be examined on oath and be subjected to cross-examination.

The same may be said . 'mutatis mutandis' to the report of the Public Analyst, having regard to Section 10 of the U. P. Pure Food Act and Rule 18 of the U. P. Pure Food Rules, 1952. The report Of the Public Analyst in the present case which did not indicate upon what data and in what particulars the ghee was 'adulterated' or 'grossly adulterated' could not, therefore, form the basis of the conviction in order to justify the conclusion that the ghee did not conform to the standards laid down in Rule 18.

14. For reasons stated above the application in revision is allowed and the conviction and sentence of the applicant are set aside. The applicant is on bail. He need not surrender and his bail-bond is discharged.

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