

Ram Singh Vs. State and anr.

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Court : Allahabad

Decided On : Apr-28-1966

Reported in : 1968CriLJ240

Judge : Gyanendra Kumar, J.

Appellant : Ram Singh

Respondent : State and anr.

Judgement :

ORDER

Gyanendra Kumar, J.

1. It will be convenient to dispose of all the six Criminal Revisions together. They are from Agra involving similar questions of fact and law. All the applicants are milk-sellers and have been convicted under Section 7/6 of the Prevention of Food Adulteration Act. The complaints against these applicants were either filed by Dr. L.N. Saxena or Dr. Niranjan Prasad, who were at the relevant time under the employ of Nagar Mahapalika, Agra, as will be clear from the following statements:

Criminal Revn. No. Complaint filed Date of by instituting Complaint. 1522 of 1W64 (Behari Dr. L.N. Saxena 31.7.1961. Lal v. State). 1523 of 1864 (Behari Dr. L.N. Saxena 9.8.1962. Lal v. State). 1152 of 1984 Mehtab Dr. Niranian 4.10.1962. Singh v. State). Prasad 1591 of 1964 (Nibboo Dr. Niranian 30.11.1962. v. State).

Prasad1552 of 1964 (Shyam Dr. Niranian 1.1.1963.Lal v. State). Prasad1235 of 1964 (Ram Dr. Niranian 1.1.1963.Singh v. State). Prasad

2. The main objection of the applicants in each case is that the complaint had not been signed and instituted by a proper authority; and as such, their prosecution and conviction was illegal. In other words, Dr. L.N. Saxena and Dr. Niranian Prasad had not been duly appointed as Nagar Mahapalika Swasthya Adhikaris, nor had they been authorized to lodge complaints under Section 20 of the Prevention of Food Adulteration Act (hereinafter referred to as the Act).

3. Section 20(1) of the Act provides:

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 authorized in this behalf by the State Government or a local authority.

By means of Notification No. 10305/XVI (P.H.)-461-52, dated 16th December, 1955, published in U.P. Gazette, dated 24.12.1955, the State Government had authorized all Municipal Medical Officers of Health in Uttar Pradesh to institute or to give written consent for instituting prosecution under the Prevention of Food Adulteration Act in respect of Municipal areas within their jurisdiction.

4. With effect from 1.2.1960 came into force the U.P. Nagar Mahapalika Adhiniyam, 1959 (hereinafter tailed the Adhiniyam). In Section 580(1) of the Adhiniyam, it is provided:

If any difficulty arises in giving effect to the provisions of this Act or, by reasons of anything contained in this Act, to any other enactment for the time being in force, the State Government may, as occasion requires, by order direct that this Act shall (during such period as may be specified in the order but not extending beyond the expiry of four years, from the date of coming into operation of this section) have effect subject to such adaptation whether by way of modification, addition or omission as it may be deemed to be necessary and expedient.

Likewise in Section 577(a) of the Adhiniyam it is provided that 'any appointment or notification made under the U.P. Municipalities Act, 1916, or any other law in force

in any local area immediately before the appointed day shall, in so far as it is not inconsistent with the provisions of this Act, continue in force until it is superseded by any appointment or notification made under this Act. Sub-section (e) of the above Section further provides:

all officers and servants in the employ of the Municipality...immediately before the appointed day shall, notwithstanding anything in Sections 106 and 107, be officers and servants employed by the Mahapalika in a temporary capacity under this Act.

5. Therefore, by means of the U.P. Nagar Mahapalika (Kathinaion ko dur karne ki (Chaturth) Agya), 1960, the following Clause (ee) was added to Section 577 of the Adhiniyam:

(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....

(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 Swasthya Adhikari or as Nagar Swasthya Adhikaris under the Act.

6. Now the admitted facts are that Dr. Bal Krishna was the Municipal Medical Officer of Health, Agra, on 30.1.1960. After the coming into force of the Adhiniyam, the Mukhya Nagar Adhikari, Agra, by his order dated 1.2.1960, designated Dr. Bal Krishna as Nagar Swasthya Adhikari. By means of notification issued by the Director of Medical and Health Services, U.P., dated 11.2.1961, Dr. Bal Krishna was transferred from Agra to Bareilly and in his place Dr. L.N. Saxena was transferred from Bareilly as 'Municipal Medical Officer of Health, Agra', where he

took over charge with effect from 23.2.1961. With the coming into force of the Adhiniyam and the Municipalities Act having been repealed, the old designation of the Municipal Medical Officer of Health (under Section 57 of the U.P. Municipalities Act) had also ceased to exist.

Therefore, the description of Dr. L.N. Saxena in the notification dated 11.2.1961 transferring him as 'Municipal Medical Officer of Health, Agra' was wholly wrong and misleading, The new designation of such officers created by Sections 106 and 107 of the Adhiniyam was 'Nagar Swasthya Adhikari' who could be appointed to that post by the Nagar Pramukh; in the alternative, any officer of the State Health Service nominated by the Government in this behalf to function as 'Nagar Swasthya Adhikari' irrespective of the nomenclature employed with regard to him. Thus, in spite of the fact that in the Gazette notification dated 11.2.1961 Dr. L.N. Saxena was described as 'Municipal Medical Officer of Health, Agra', he shall function as the 'Nagar Swasthya Adhikari, Agra', by virtue of the provisions of Section 577(ee)(2) of the Adhiniyam.

7. Nevertheless this error in nomenclature seems to have been rectified by means of the subsequent notification published in the U.P. Gazette dated 11.10.1961, which reads as under:

No. 2885-1/XVI.-The following transfers of the officers of the Uttar Pradesh Public Health Service were made in public interest:

1. Dr. Bal Krishna, Swasthya Adhikari, Nagar Mahapalika, Agra-To be Municipal Medical Officer of Health, Bareilly.
2. Dr. L.N. Saxena, Municipal Medical Officer of Health, Bareilly To be Swasthya Adhikari, Nagar Mahapalika, Agra.

It is true that even in the above notification the designation of Dr. L. N. Saxena is 'Swasthya Adhikari, Nagar Mahapalika, Agra, instead of 'Nagar Swasthya Adhikari'. But the omission of the prefix 'Nagar' appears to have been made by sheer oversight.

8. By Gazette notification dated June 7, 1962, Dr. Niranjan Prasad was transferred from Mussoorie to Agra as 'Municipal Medical Officer of Health' vice Dr. L.N. Saxena appointed Assistant Director of Public Health. It is strange that although by an earlier notification dated 11th October, 1961, in respect of Dr. L.N. Saxena, the Government had described his appointment as 'Swasthya Adhikari' of the Nagar Mahapalika, Agra, yet in the notification dated 7th June 1962 relating to Dr. Niranjan Prasad, his designation was again misdescribed as 'Medical Officer of Health, Agra'. Dr. Niranjan Prasad took over charge of his new office with effect from 30.6.1962. In fact the old designations were so deep-rooted in the minds of the persons concerned that in the charge certificate dated 30.6.1962 Dr. Niranjan Prasad also described the office of which he had taken charge, as 'Medical Officer of Health, Nagar Mahapalika, Agra'. But as already seen above, the officers nominated by the Government in this behalf were to function as 'Nagar Swasthya Adhikari' irrespective of the designation employed with regard to them. However, with a view to correct the designation, the Government seems to have issued another notification No. 2012/XVI-ii-1601 (19)-62 dated 13.6.1963, which reads-

The following transfers amongst officers of the U.P. Health Service-I were offered in public interest:

(1) Dr. Niranjan Prasad, Medical Officer of Health, from Mussoorie to Agra as Nagar Swasthya Adhikari, Nagar Mahapalika, vice Dr. L.N. Saxena.

(2)...

9. On behalf of the applicants it has not been suggested that apart from Dr. L.N. Saxena and Dr. Niranjan Prasad there was any other person who, at the relevant time, was the head of the Deptt. of Health in the Nagar Mahapalika, Agra. As mentioned earlier, the Mukhya Nagar Adhikari, by his order dated 1.2.1960, had already changed the designation of Dr. Bal Krishna from 'Municipal Medical Officer of Health' to 'Nagar Swasthya Adhikari'. As such, his successors, Dr. L.N. Saxena and Dr. Niranjan Prasad should also be deemed to carry the same designation. It is significant that Dr. L.N. Saxena had signed the two complaints against Behari Lal, applicant, as Nagar Swasthya Adhikari'. Likewise, Dr. Niranjan Prasad had also signed the other four complaints in question as 'Nagar Swasthya

Adhikari'. At worst, the casual description of Dr. L.N. Saxena as 'Municipal Medical Officer of Health' in the Gazette notification dated 11.2.1961 and that of Dr. Niranjana Prasad in the notification dated 7.6.1962 was merely wrong denomination of their office by ascribing nonexistent designation to them. In fact and law, after the repeal of the U.P. Municipalities Act by the U.P. Nagar Mahapalika Adhiniyam, there was no question of their being called 'Municipal Medical Officer of Health, Agra'.

10. As stated above, the two doctors were really functioning as Nagar Swasthya Adhikaris of the Nagar Mahapalika, Agra, during their respective tenures. It was only a case of false demonstration or wrong description. In the case of Nagar Mahapalika of Kanpur v. Sri Ram : AIR1964 All270 , it was held as under by a Division Bench of this Court, of which I was a member:

The above view can be upheld on the recognized maxim *falsa demonstratio non nocet cum de corpore constat* (mere false description does not vitiate if, there be sufficient certainty as to the object). In Broom's Legal Maxims, 8th Edn., the rule as to *falsa demonstratio* has been laid down as below:

Falsa demonstratio means an erroneous description of a person or a thing in a written instrument; and the above rule respecting it signifies that where the description is made up of more than one part, and one part is true, but the other false, there, if the part which is true describes the subject with sufficient legal certainty, the untrue part will be rejected and will not vitiate the devise: the characteristics of cases within the rule being that the description, so far as it true, applies to one only. The rule as to *falsa demonstratio* has sometimes been stated to be that 'if there be an adequate and sufficient description with convenient certainty of what was meant to pass, a subsequent erroneous addition will not vitiate it.

11. In the above case as well the Nagar Swasthya Adhikari, Nagar Mahapalika, Kanpur, was described as Medical Officer of Health, Municipal Board, Kanpur. It was held by the Division Bench that the false description of the officer concerned gave 'an adequate and sufficient description with convenient certainty' of the person making the complaint, which was held to be valid. Therefore, the first

objection advanced on behalf of the applicant has no force.

12. The other objection of the learned Counsel for the applicants is that even if Dr. L.N. Saxena and Dr. Niranjana Prasad be deemed to have been functioning as Nagar Swasthya Adhikaris, they had still no authority to file complaints against the applicants under Section 7/16 of the Prevention of Food Adulteration Act, inasmuch as the prosecution has failed to prove that after the commencement of the Adhiniyam with effect from 1.2.1960 the Nagar Swasthya Adhikaris, or for the matter of that, Dr. L.N. Saxena and/or Dr. Niranjana Pd. had been authorized by the State Government or the Mahapalika concerned to file such complaints within the meaning of Section 20 of the Act.

13. In reply Mr. B.C. Saxena has placed reliance on notification No. 10305/XVI (P.H.)-461-52, dated 16.12.1955, which runs as follows:

In exercise of the powers conferred by Sub-section (1) of Section 20 of the Prevention of Food Adulteration Act, 1954 (Act XXXVIII of 1954), the Governor has been pleased to authorize the following officers to institute or to give written consent for instituting prosecutions under the said Act in respect of offences committed under the Act in the areas noted against each: 1. All Municipal Medical officers The Municipal of Health in Uttar Pradesh areas within their jurisdiction.

In order to make the above notification applicable to the instant cases, Mr. Saxena relies upon the provisions of Section 8 of the U.P. General Clauses Act, which lays down:

Where an 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.' There can be no manner of doubt that if an earlier statute has been repealed and substituted by a new enactment, the re-enacted provision takes the place of corresponding provision of the repealed enactment, unless a contrary intention is expressed in the new Act. See *Moradhwaj v. Bhudar Das* : AIR 1955 All 353, *Raja Virendra Shah v. State of U.P.* 1964 All LJ 868, and *Mohan Chowdhary v. Chief*

Commissioner Union Territory of Tripura : 1964 CriLJ132 .

14. In Mohan Chowdhary's case : 1964 CriLJ132 , their Lordships' of the Supreme Court had again to consider the ambit and scope of the expression 'instrument' as used in Section 8 of the General Clauses Act, as also the scope and applicability of this section as such, in the following circumstances: On October 26, 1962, the President of India having been satisfied that a grave national emergency exists, whereby the security of India was threatened by the Chinese aggression, issued a proclamation declaring the emergency, under Article 352 of the Constitution. After the proclamation of emergency, as the Parliament was not in session and as the President was satisfied that circumstances existed which rendered it necessary for him to take immediate action for the exercise of the powers conferred by Clause (1) of Article 123 of the Constitution, he promulgated the Defence of India Ordinance (IV of 1962) on the same date, 26.10.1962. By Section 3 of the Ordinance, the Central Government had been empowered to make rules as appear to be necessary or expedient for securing the defence of India and civil defence, public safety, etc., by notification in the Official Gazette. In exercise of those powers the Central Government promulgated the D.I.R., 1962, by notification in the Official Gazette, Extraordinary, dated November 5, 1962. The relevant portion of Rule 30 is as follows:

The Central Government or the State Government, if it is satisfied with respect to any particular person that with a view to preventing him from acting in any manner prejudicial to the defence of India and civil defence...it is necessary so to do, may make an order:

(b) directing that he be detained.

15. During the operation of the proclamation of emergency, the President issued, on November 3, 1962, the following order suspending the right to move any Court for the enforcement or rights conferred by Articles 21 and 22 of the Constitution:

In exercise of the powers conferred by Clause (1) of Article 359 of the Constitution the President hereby declares that the right of any person to move any Court for the enforcement of the rights conferred by Article 21 and Article 22 of the

Constitution shall remain suspended for the period during which the proclamation of emergency issued under Clause (1) of Article 352 thereof on the 26th October 1962, is in force, 'if such person has been deprived of any such rights under the Defence of India Ordinance, 1962 (IV of 1962) or any rule or order made thereunder'. (The underlines here in ' ' are mine.

In the above case the Supreme Court was called upon to decide whether the underlined words of the President's order were 'instrument' within the meaning of Section 8 of the General Clauses Act. On the above point their Lordships observed:

The General Clauses Act does not define the expression 'instrument'. Therefore, the expression must be taken to have been used in the sense in which it is generally understood in legal parlance. In Stroud's Judicial Dictionary of Words and Phrases (3rd Edn., Vol. 2, p. 1472), 'instrument' is described as follows:

An 'instrument' is a writing and generally imports a document of a formal legal kind. Semble, the word may include an Act of Parliament....

The expression is also used to signify a deed inter parts 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 or subordinate legislation or any document of a formal character made under constitutional or statutory authority. We have no doubt in our mind that the expression 'instrument' in Section 8 was meant to include reference to the order made by the President in exercise of his constitutional powers. So construed, the President's Order would, even after the repeal of the ordinance aforesaid, continue to govern cases of detention made under Rule 30 aforesaid under the ordinances....

A proper construction of the provisions of Section 48 of the Act, which has replaced the ordinances aforesaid, read in the light of the provisions of Section 8 of the General Clauses Act leaves no room for doubt that the detention order passed against the petitioner was intended to be continued even after the repeal of the ordinances which were incorporated in the Act (LI of 1962). That being so

the order of the President must have the effect of suspending the petitioner's right to move this Court for a writ of Habeas Corpus under Article 32 of the Constitution. After the petitioner had been deprived, for the time being, of his right to move this Court, it is manifest that he cannot raise any questions as regards the vires of the ordinances or of the rules and orders made thereunder.

Applying the above dictum to the notification dated 16.12.1955 made under Section 29 of the Act, it is abundantly clear that the notification is an 'instrument' and would apply to the corresponding provisions of the Adhiniyam, after the repeal of the U.P. Municipalities Act. Even Section 57(2) of the U.P. Municipalities Act dealt with the appointment of Municipal Medical Officers of Health. It provided that every Board with an income of Rs. 50,000/- per annum or over shall, unless the State Government otherwise directs, employ a Medical Officer of Health, who belongs to the U.P. Public Health Service.

16. The corresponding provisions in the Adhiniyam are contained in Sections 106 and 107 thereof. Section 106, inter alia, prescribes that Mahapalika may from time to time create one or more of the posts of Nagar Swasthya Adhikari. Section 107 provides that, inter alia, the appointment to the posts of Nagar Swasthya Adhikaris shall be made by the Nagar Pramukh and that such appointment shall preferably be made out of officers of the Public Health Department of the State, whom the Government may be agreeable to send on deputation.

17. In the instant case, by means of various Gazette notifications discussed above, the State Government had agreed to send on deputation Dr. L.N. Saxena and Dr. Niranjana Prasad for appointment as Nagar Swasthya Adhikaris of the Nagar Mahapalika, Agra, though at times they were misdescribed as 'Municipal Medical Officers of Health, Agra. Reading the instrument of notification dated 16.12.55 in the light of the provisions of Section 8 of the General Clauses Act, the reference to 'Municipal Medical Officers of Health' in the U.P. Municipalities Act, since repealed, would apply with equal force to the corresponding officers now designated as 'Nagar Swasthya Adhikaris' in the repealing Adhiniyam. In fact the powers of Municipal Medical Officers of Health and Nagar Swasthya Adhikaris are similar under the new Act. It appears to be a case of only change of nomenclature

and designation from English into Hindi. Previously the Officer in charge of the Health Department in the Municipal Board was known as 'Municipal Medical Officer of Health'. Under the Adhiniyam the Officer-in-charge of the Health Department of the Mahamlika is to be known as 'Nagar Swasthya Adhikari'.

18. Mr. Tejpal Singh, who has argued this case on behalf of the applicants, with ability, has invited my attention to the following authorities:

Ballabhdas Agarwala v. J.C. Chakrayarty : 1960 CriLJ752 ; Gour Chandra Rout v. Public Prosecutor Cuttack : AIR 1963 SC1198 ; Ahmedabad . v. S.G. Mehta : [1963]48ITR154(SC) ; State of Uttar Pradesh v. Singhara Singh : [1964]4SCR485 . In the first case of Ballabhdas Agarwala : 1960 CriLJ752 , it was found by two of the learned Judges of the Supreme Court out of three that the Health Officer of Howrah Municipality was not duly empowered, as the delegated authority, to institute criminal proceedings under the Calcutta Municipal Act on the date on which he had made a complaint against the accused. It was under the above circumstances that the Supreme Court took the view that the conviction of the accused on the basis of the complaint filed by the Health Officer could not be sustained and that the absence of a proper complaint was not a mere defect or irregularity curable under Section 537, Cr.P.C. In the instant case, I have taken the view that Dr. L.N. Saxsena and Dr. Niranjana Prasad were really Nagar Swasthya Adhikaris of the Nagar Mahapalika, Agra at the relevant times, and had merely been misdescribed as Municipal Medical Officers of Health. I have further held that the Government notification dated 16.12.55 read in the light of Section 8 of the U.P. General Clauses Act, would equally apply to the Nagar Swasthya Adhikaris, who shall have full authority to file complaints under the Act. Therefore the maxim laid down by the Supreme Court in Ballabhdas Agarwala's case : 1960 CriLJ752 , has no application to the instant case.

19. The second case of Gour Chandra Rout : AIR 1963 SC1198 , is wholly distinguishable from the present one. In that case a complaint under Sections 500 and 501 I.P.C. was proposed to be filed against the accused in respect of an alleged defamatory publication made in a newspaper regarding the Governor. Section 198(3)(a) Cr.P.C. requires that the Public Prosecutor can file a complaint

only on the sanction accorded by a Secretary to the Government, who has been authorized by the Governor in this behalf. It was emphasized that in such a case the Governor had first to consider for himself whether the alleged defamatory statement is of a kind of which he should take notice. Such a decision has to be taken by the Governor himself, and he cannot leave the same to some other person or authority like the Government to decide whether a complaint should or should not be lodged. Such is not the case here. In the instant case, the Nagar Swasthya Adhikari concerned had to file a complaint, which has been done.

20. Another argument advanced on behalf of the applicants is that general authority to institute complaints in respect of offence under the Act could not have been delegated by the State Government to the Municipal Medical Officers of Health in U.P. in respect of the areas within their jurisdiction by means of a general notification dated 16.12.55. This argument is devoid of substance. As far back as 1899 it was held by Six Judges' Full Bench of this Court in *M.G. Powell v. Municipal Board of Mussoorie* (1900) ILR 22 All 123 (FB), that Section 69 of the then Municipalities Act, 1883 conferred power on the Municipal Boards to delegate generally their authority to make complaints in respect of Municipal offences; and this general application included not merely the giving of authority to do the formal Act of presenting a complaint to a Court, but the exercise of discretion as to whether in any given case a complaint shall or shall not be made. This case from Allahabad was followed by the High Court of Kerala in *Municipal Health Officer v. Arthala Tea Estate Co.* : AIR1961 Ker84 .

21. In the third case of *Ahmedabad* . : [1963]48ITR154(SC) , it was held that a statute which is not declaratory to a pre-existing law nor a matter relating to procedure but affects vested rights cannot be given a greater retrospective effect than its language renders necessary. It was further pointed out by Hidayatullah and Raghubar Dayal JJ. that under ordinary circumstances an Act does not have retrospective operation on substantial rights which have become fixed before the date of the commencement of the Act. But this rule is not unalterable. The legislature may affect substantial rights by enacting laws which are expressly retrospective or by using language which has that necessary result. And this language may give an enactment more retrospectively than what the

commencement clause gives to any of its provisions. When this happens, the provisions thus made retrospective, expressly or by necessary intendment, operated from a date earlier than the date of commencement and affect rights which, but for such operation, would have continued undisturbed.

22. The above ruling does not in terms apply to the facts of the instant case. Here the Adhiniyam is not said to be applied retrospectively. What has happened in this case is that in the Gazette notifications relating to the transfer of the two doctors to the Nagar Mahapalika, Agra, they were initially described as Municipal Medical Officers of Health. However, under the subsequent notification dated 11th October, 1961, in respect of Dr. L.N. Saxena, it was stated that his transfer was made in public interest as Swasthya Adhikari, Nagar Mahapalika, Agra; while in the case of Dr. Niranjana Prasad it was stated in notification dated 13.6.63 that his transfer was offered in public interest as Nagar Swasthya Adhikari, Nagar Mahapalika, Agra.

By the aforesaid two notifications it was necessarily implied that the services of the aforesaid two doctors had been transferred to the Nagar Mahapalika, Agra as 'Nagar Swasthya Adhikaris' from the date of their respective taking over charge. In other words, the initial misdescription of these doctors as Municipal Medical Officers of Health was sought to be rectified by calling them Swasthya Adhikari or Nagar Swasthya Adhikari ever since their respective appointments in the Nagar Mahapalika, Agra. There appears to be no bar to such a notification giving retrospective effect to a particular designation or description of an office.

23. It is true that under Article 21 of the Constitution of India a person cannot be deprived of his right or personal liberty except according to the procedure established by law. According to the then prevailing procedure of law a person could not be prosecuted under the Act, except on the complaint of the Medical Officer of Health of that area. I have already held above that it was only a case of the use of wrong nomenclature or false description of the designations of Dr. L.N. Saxena and Dr. Niranjana Prasad, when they were notified as Municipal 'Medical Officers of Health', instead of being called 'Nagar Swasthya Adhikaris'. I have already shown that the complaints in question had been signed by them under the

designation of Nagar Swasthya Adhikari. But even if they had signed the complaints as Municipal Medical Officers of Health, Agra, they could not be said to have been lodged illegally or without jurisdiction, inasmuch as the functions of Nagar Swasthya Adhikari and Medical Officers of Health are one and the same or at any rate similar in nature, he being the head of the Health Department, Nagar Mahapalika, Agra. Therefore when Dr. L.N. Saxena and Dr. Niranjana Prasad had signed the complaints in question, they were functioning as Nagar Swasthya Adhikaris, Nagar Mahapalika, Agra. In this view of the matter, this ruling does not help the applicants.

24. This takes us to the last case of Singhara Singh : [1964]4SCR485 . It was a case in which a second class Magistrate had recorded confession of the accused under Section 164 Cr.P.C.

when he had no authority to do so. He was produced as a witness to prove the contents of the confessional statement. In these circumstances it was held that a thing has to be done in the way it should have been done or not at all. There can be no quarrel with the above dictum of law as laid down by their Lordships of the Supreme Court. But it could hardly apply to the present case. I have shown above that Dr. L.N. Saxena and Dr. Niranjana Prasad had their appointments with the Nagar Mahapalika Agra as Nagar Swasthya Adhikaris and not as Municipal Medical Officers of Health, which designation had ceased to exist with the repeal of the U.P. Municipalities Act with effect from 1.2.60. The two officers had also signed the complaints in question describing themselves as Nagar Swasthya Adhikaris. So, here a thing has been done in the way in which it should have been done. Thus, Singhara Singh's case : [1964]4SCR485 , also does not help the applicants.

25. In the result I find that in all the six revisions complaints were duly instituted by the officers, who had authority to file the same. As such, the offences have been fully established against the applicants. They have, therefore, been rightly convicted.

26. So far as the question of sentence is concerned, it cannot be considered to be excessive in the cases of Mehtab Singh, Shyam Lal and Behari Lal (in both the

criminal revisions). But the Courts below have awarded enhanced punishments to Ram Singh and Nibboo applicants on the ground that their respective offences in question were second offences within the meaning of Section 16(1)(a)(ii) of the Act. Learned Counsel for these two applicants contends that it is not so.

27. The facts relevant to the above controversy in Nibboo's case were that on 1.8.1961 he was found selling milk without licence. So he was sent up to stand his trial on the above count, which gave rise to Criminal Revision No. 1771 of 1962. 30th December, 1963 was fixed for delivery of judgment in that case. However, during the pendency of the aforesaid trial a sample of Nibboo's milk was taken on 11.8.62, which was found to be adulterated. So he was sent up to stand his trial giving rise to Criminal Revision No. 1671 of 1962. In this case the statement of the accused under Section 342 Cr.P.C. was recorded on 24.12.63. On that very date a defence witness was also examined and 30.12.63 was fixed for delivery of judgment. In Case No. 1771 of 1962 the Magistrate delivered the judgment convicting the applicant, but in case No. 1671 of 1962 (giving rise to the present revision) he did not deliver the judgment. On the contrary he recorded an additional statement of Nibboo accused under Section 342 Cr.P.C. on that very date, asking him as to what he had to say about his conviction recorded the same day in Criminal Revision No. 1771 of 1962. It is significant to note that the charge was not amended that day before passing the sentence, as required by the last para of Section 221 Cr.P.C.

28. In the case of Ram Singh the position was that a sample of milk was taken from him on 4.1.1960, which was found to be adulterated. This case gave rise to Criminal Revision No. 1649 of 1962, wherein he was convicted on 24.12.62. However, during the pendency of the above case, another sample in question was taken from him on 30.4.62, which was also found to be adulterated. So he was sentenced to a severe punishment within the meaning of Section 16 of the Act, as it was treated to be a second offence.

29. The question which, therefore, arises for consideration is whether the Courts below were justified in inflicting enhanced punishments on these two applicants on the ground that the offences in question were their second offences. In order to

answer this question it is necessary to consider as to what is meant by the words 'second offence'. These words have been the subject matter of judicial decisions both in this Court as well as in other High Courts e g. Daya Ram v. State 1959 All LJ 751; Chuttan v. State : AIR1960 All629 ; State v. Badri and Jagdish Prasad v. State of U.P. : 1966 CriLJ194 .

30. In 1959 All LJ 751, (supra) Desai, J. (as he then was) had held that Clause (ii) of Section 16(a) of the Act does not take into consideration the date of conviction of the first offence, and that the date of commission of an offence does not depend upon the date on which the conviction is recorded for it. Desai, J. had emphasised that an offence committed on a certain date is an offence committed on that date regardless of the date on which the offender is convicted for it. It may be essential for the accused to have been convicted for the previous offence and the conviction may be the only proof of its commission, but no other purpose is to be served by the conviction and the date of it is wholly irrelevant. The relative order of offences depends upon the dates on which they are committed, It is the fact of a first offence and not a first conviction that attaches the increased punishment to the second offence under Section 16(1)(a)(ii) of the Act.

31. It transpires that Desai, J. (as he then was) somewhat modified his above view in : AIR1960 All629 , supra, wherein it was observed by him Clause (ii) applies for a second offence, i.e. for repeating the offence for committing it second time. The offence is not repeated Unless it was committed once before; it follows that for the applicability of Clause (ii) the previous offence must be one punishable under Section 16 of the Act. The offence must be repeated and not the Act... Clause (ii) would not be applicable unless Clause (i) had been applied once, i.e. there had been a previous conviction under this very Act.

32. The above two cases of the Allahabad High Court were considered by a Division Bench of Rajasthan in Badri's Case , supra, in which an English decision in King v. Licensing Justices of the South Shields 1911-2 KB 1, was also examined, which was concerned with a similar question in another enactment. It was observed by Lord Chief Justices:

The enactment aims at a persistent breach of the law after a previous conviction, and though this section does not in terms say that the offence to be punished with the heavier penalty must be one committed after a previous conviction for a similar offence, it is not reasonable to say that where a person commits three offences under the section on the same date, a different penalty attaches to each of these offences.

33. The learned Judges of the Rajasthan High Court, therefore, came to the conclusion that the principle underlying this provision of the law of awarding enhanced punishment is that if the offender does not reform himself even after his conviction, he is exposed to the enhanced penalties under the law, and that the phrase 'the second offence' should be construed as that offence which has been committed after the offender had been convicted for the first offence, and similar meaning should be given to 'the third and subsequent offences'.

34. In Jagdish Prasad's case : 1966 CriLJ194 , supra, which went from this Court and was a case under Section 16(1) of the Act, their Lordships of the Supreme Court observed:

The words 'second offence' must, therefore, mean any Act which is an offence under any of the clauses in the sub-section which has been done later in point of time after a conviction for an offence under the Act, no matter whether the acts or omissions constituting the two offences are of the same type or not.

35. Applying the above dictum to the cases of Nibboo and Ram Singh applicants, we find that the offences for which they have been convicted in the instant cases cannot be termed; as 'second offences', inasmuch as they were not committed in point of time subsequent to their previous convictions recorded for similar offences. In this view of the matter the enhanced punishment awarded to these two applicants was wholly illegal and must be modified.

36. By way of enhanced punishment, Ram Singh was sentenced to undergo one year's rigorous imprisonment and a fine of Rs. 500/- or in default to undergo further four months' rigorous imprisonment, while Nibboo was likewise sentenced to six months' rigorous imprisonment and a fine of Rs. 600/- or in default to

undergo further R.I. for three months. It is to be noted that in the special circumstances mentioned in the judgment of the Magistrate these two offenders were not given the maximum punishment awardable to them for the second offence. A perusal of the record shows that Ram Singh applicant had done a little more than one month in jail but his counsel states that he has not been able to deposit his fine so far. Similarly Nibboo had also done about one month in jail but his counsel states that he has already deposited his fine. In the totality of circumstances, I think, the ends of justice would be met if the substantive sentences of imprisonment of these two applicants are reduced to the period already undergone. I order accordingly. However, their sentences of fine are maintained. Ram Singh is granted one month's time to deposit the amount of his fine. They are on bail.

They need not surrender to their bail bonds which are hereby discharged.

37. I further direct under Section 545 Cr.P.C. that out of the fines, if realised, in the aforesaid revisions, half of the amount shall be paid to the Nagar Mahapalika, Agra towards the expenses defrayed by it in prosecution of these cases.

38 With the above modifications the revisions are hereby dismissed.

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