

Gajraj Vs. State and ors.

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Court : Allahabad

Decided On : Oct-13-1981

Reported in : 1982CriLJ726

Judge : H.N. Seth and; M. Wahajuddin, JJ.

Appellant : Gajraj

Respondent : State and ors.

Judgement :

H.N. Seth, J.

1. Being of opinion that the decision of Harkauli, J. in criminal revision 1952(or 1953) of 1978 Gaya Prasad v. State -and that of J. P. Chaturvedi, J. in the case of Hanif v. State of U. P. Criminal Revision 1504 of 1980, decided on 2-2-1981' require reconsideration, Bakshi, J. has referred two questions arising in this revision application for decision by a larger Bench. This is how the case has been put up for orders before us.

2. The first question relates to Section 11(1)(c) Prevention of Food Adulteration Act, 1954, which runs thus:

When a Food Inspector takes a sample of food for analysis, he shall -

(a) & (b)....

(c)(i) send one of the parts for analysis to the Public Analyst under intimation to the Local (Health) Authority; and

(ii) send the remaining two parts to the Local (Health) Authority for the purposes of Sub-section (2) of this section and Sub-section (2-A) and (2-E) of Section 13.

(2)

(3) when a sample of any article of food or adulterant is taken under Sub-section (1) or Sub-section (2) of Section 10, the Food Inspector shall, by the immediately succeeding working day, send a sample of the article of food or adulterant or both, as the case may be in accordance with the rules prescribed for sampling to the Public Analyst, for the local area concerned....

and it arises in circumstances mentioned below.

3. On 17th of Oct. 1977 Food Inspector collected samples of cow milk which according to the prosecution was being sold by accused Gajraj. He sent two parts of the samples taken by him from Gajraj to the local Health Authority, in accordance with law. But one part of the sample was not directly taken to the Post Office for being despatched to the Public Analyst for analysis. Instead, it was deposited in the office of Nagar Swastha Adhikari on that very day and was eventually despatched for analysis by a Public Analyst on 19th of Oct. 1977.

4. learned Counsel appearing for Gajraj contended before the learned single Judge that the provision of Section 11(1)(c)(i) which lays down that when a Food Inspector takes a sample of food for analysis, he shall send one of the parts for analysis to the Public Analyst under intimation to the Local Health Authority is a mandatory provision, any contravention of which would render applicant's conviction illegal. According to him in the instant case contravention of the said provision consisted in the Food Inspector not despatching one part of the sample to the Public Analyst directly the same day and in depositing the same in the office of Nagar Swastha Adhikari. In support of his contention, learned Counsel relied upon the observations made by Harkauli, J, in the case of Gaya Prasad v. State, Criminal Revision 1952(or 1953) of 1978, decided on 18th of Aug. 1979 wherein

Harkauli, J. had observed that Section 11(1)(c)(i) and (ii) of the Act was mandatory, Bakshi, J. however, came to the conclusion that even though the provisions contained in Section 11(1)(c)(i) of the Act are mandatory but then so far as the provisions contained in Section 11(1)(c)(i) of the Act were concerned, a substantial compliance with those provisions would be sufficient. According to him there had been substantial compliance with the provisions of Section 11(1)(c)(i) of the Act and the conviction of the accused was not vitiated for that reason. However, in view of the observations made by Harkauli, J. in the case of Gaya Prasad (1979 All Cri R 497)(supra, he invited an opinion from a larger Bench on this question.

5. Section 11(1)(c)(i) read along with Sub-section (3) of Section 11 lays down that when a Food Inspector takes a sample of food for analysis he has to send one part of the same for analysis to the Public Analyst under intimation to the local Health Authority by the immediately succeeding working day. The section nowhere lays down that the Food Inspector has to after collecting the sample immediately proceed to the Post Office and to despatch the same to the Public Analyst. Sub-section (3) of Section 11 clearly envisages that the sample can be despatched by the Food Inspector by the immediately succeeding working day, Naturally after the sample has been collected it has to be kept somewhere before it is despatched to the Public Analyst. We see no objection to the Food Inspector keeping the sample so collected in proper condition either with him or in his depositing the same for safe custody at the office where he is working. The judgment of the learned single Judge indicates that the office of the Food Inspector forms part of the office of Nagar Swastha Adhikari. In the circumstances, if the sample meant for being forwarded to the Public Analyst for analysis was, before being so forwarded, kept in the office of Nagar Swastha Adhikari, Kanpur, it did not result in any contravention of the provisions of Section 11(1)(c)(i) of the P.F.A. Act.

6. It is true that Sub-section (3) of Section 11 of the Act requires that the sample collected by the Food Inspector shall, by the immediately succeeding working day be sent to the Public Analyst for analysis and that in this case although the sample in question was, after being collected on 17th Oct., 1977, despatched to the Public

Analyst on 19th of Oct., 1977 i. e. with one day's delay. The question that arises for consideration is whether this one day's delay on the part of the Food Inspector to send the sample for analysis to the Public Analyst vitiates his action in obtaining the report from the Public Analyst.

7. There can be no manner of doubt that the provision in Sub-section (3) of Section 11 requiring that the Food Inspector must forward the sample collected by him for analysis to the Public Analyst by the immediately succeeding working day casts a duty on the Food Inspector. The Food Inspector has been so saddled with this duty with a view that the sample sent by him may be effectively analysed by the Public Analyst and any delay on his part may not interfere with its proper analysis. The legislative intention in making the aforesaid provision clearly is not to confer any right on the person from whom the sample has been obtained or to give him an immunity from prosecution if the sample is not despatched for analysis by the immediately succeeding working day. Quite clearly the idea in imposing the obligation upon the Food Inspector was to see that the interest of the prosecution was not jeopardised by the Food Inspector acting lethargically and sending the sample collected by him for analysis late and with a view to avoid such changes taking place in the sample which may interfere with its proper analysis. The Rule of interpretation in such a case seems to be that where a public officer is directed by a statute to perform a duty within a specified time, the provisions as to time are only directory and in deciding whether a provision is mandatory or directory, the possibility of justice suffering from a too rigid application of time limit should be taken into account. See *P. M. A. Vellappa Chettiar v. S. N, Subrahmaniyam Chetty* AIR 1915 Mad 920).

8. Although the Act requires the Food Inspector to forward the sample collected by him for analysis by the immediately succeeding working day, in a particular case the Food Inspector may not be able to do so for a variety of reasons. The legislative intention could never be that if the sample of food was not sent by the immediately succeeding working day but was sent a day or so thereafter, the report given by the Public Analyst should be ignored even though no factor has intervened which may interfere with proper analysis of the food.

9. We are accordingly of opinion that the action of the Food Inspector in depositing the sample of food collected by him in the office of the Nagar Swastha Adhi-kari before despatching the same to the Public Analyst for analysis did not result in any contravention of the provisions contained in Section 11(1)(c)(i) of the Act. Furthermore, the provisions contained in Sub-section (3) of Section 11 of the Act laying down that the Food Inspector shall send the sample of food collected by him for analysis to the Public Analyst by the immediately succeeding working day are directory in nature. So long as the sample of food has been forwarded to the Public Analyst for analysis expeditiously and in circumstances where the conditions interfering with proper analysis of the sample do not occur the provisions of S. 11(1)(c)(i) and Sub-section (3) of Section 11 of the Act would stand substantially complied with. We answer the first, question, referred to us by Bakshi, J, accordingly.

10. The facts leading to the second question referred to us by Bakshi, J. briefly stated are that after collecting the sample of milk on 17th of Oct., 1977, Food Inspector Sri R. C. Gupta forwarded the same for opinion to Dr. S. B. Singh, Public Analyst U. P. Lucknow who gave his report on 1st Dec, 1977. It was submitted on behalf of the accused-applicant that Dr. S. B. Singh, Public Analyst, U. P. Lucknow was not the Public Analyst for the local area within which the place from where the sample was collected by Sri Gupta lay. Accordingly his report was without any authority and could not be taken into account. In this connection reliance was placed on two notifications dt. 23rd of June, 1972 and 15th of Feb., 1975 issued by the State Government Under Section 8 of the P.F.A. Act, 1954. The two notifications run thus:

1. Notification No. 2415(4)/XVI-X-112/ 71 dated 23rd of June, 1972.

In supersession of Government Notification No. (III) XVI-I-59/70, dt. Aug-7, 1970 and in exercise of the powers Under Section 8 of the Prevention of Food Adulteration Act, 1954(Act No. 37 of 1954) the Governor is pleased to appoint Dr. S. B. Singh, M.Sc. Pd.D. as Public Analyst to Government for the whole of Uttar Pradesh which shall be regarded as one single local area for the purposes of the said Act, with effect from the afternoon of March 31, 1972.2. Notification No. 570

(1)/XVT/X-1'314/ 72 dated 15th of Feb., 1975. In continuation of Government notification No. 2415(4)/XVI-X-112/72, dt. June 23, 1972 and in exercise of powers Under Section 8 of the Prevention of Food Adulteration Act, 1954 (Act No. 37 of 1954), the Governor is pleased to appoint for the purposes of the said Act Sri. B. S. Garg, Assistant Public Analyst, as Public Analyst to Government, Varanasi Region (comprising districts of Varanasi, Ghazipur, Mirzapur, Jaunpur and Ballia) and Allahabad Region (comprising districts of Allahabad, Fatehpur, Kanpur, Farrukhabad and Itawah) which shall be deemed as one single local area for the purposes of the said Act with effect from the date of publication of this notification in the Official Gazette.

11. According to the learned Counsel for the accused the effect of Notification dt. 15th of Feb., 1975 mentioned above was that Sri B. S. Garg became the Public Analyst for Varanasi and Allahabad Regions which were constituted as one local area for the purposes of the P.F.A. Act. As the district of Kanpur fell within Allahabad Region it was only Sri B. S. Garg who was competent to act as a Public Analyst for cases under the P.F.A. Act arising out at Kanpur. The earlier Notification dt. 23rd of June, 1972 became ineffective to the extent covered by the Notification dt. 15th of Feb., 1975 and Dr. S. B. Singh ceased to be the Public Analyst in respect of cases arising out of Varanasi and Allahabad Regions. In support of this submission reliance was placed on a decision of J. P. Chaturvedi, J. in case of Hanif v. State of U. P., Criminal Revision 1504 of 1980, decided on 2nd of Feb., 1981 wherein the learned Judge emphasised the phrase 'shall be deemed as one single local area for the purposes of the Act'; used in the two notifications and held that in view of the second notification Dr. B. S. Garg ceased to have jurisdiction to act as Public Analyst in respect of cases arising in Varanasi and Allahabad Regions.

12. The case of the respondents in this regard, however, is that Dr. S. B. Singh, Public Analyst, U. P. Lucknow is a Public Analyst for whole of U. P. and he is competent to analyse samples collected for analysis anywhere in the State, Merely because Sri B. S. Garg had been appointed as Public Analyst for Varanasi and Allahabad Regions and he had been empowered to analyse the samples collected in specified areas of the State including those collected in the city of Kanpur, it did

not mean that the Public Analyst appointed for whole of the State ceased to be the Public Analyst for Varanasi and Allahabad Regions. The report submitted by 'Dr. S. B. Singh, Public Analyst, Lucknow was, in the circum-stances of the case, absolutely in order.

13. Section 2(vii) of the Act defines 'local area' as meaning any area, whether urban or rural, declared by the Central Government or the State Government by notification in the Official Gazette, to be a local area for purposes of the Act. Section 2(vii) defines 'local authority' thus:.

local authority' means in the case of-

(1) a local area which is-

(a) a municipality, the municipal board or municipal corporation;

(b) a cantonment, the cantonment authority;

(c) a notified area, the notified area committee;

(2) any other local area, such authority as may be prescribed by the Central Government or the State Government under this Act.

14. In the case of Municipal Board, Lucknow v. Ram Autar : AIR1960 All119 a Division Bench of this Court, after considering the definitions of 'local area' and 'local authority' mentioned above observed thus (paras 13 and 14):

We have carefully considered these two definitions and we have come to the conclusion that in order to reach a correct meaning these two definitions should be read together and not singly. If we read only the definition of 'local area' it would appear that a notification by the State Government in the Official Gazette is a condition precedent for declaring any area, whether urban or rural as local area, but if the definition of 'local authority' is also read along with the definition of 'local area' it would appear that certain existing areas were accepted as local areas by the legislature when it enacted the statute. The definitions of 'local area' and 'local authority' supplement each other and we are of the opinion that a Municipality, a Cantonment and a Notified Area were accepted as a local area by the legislature

when it passed this statute. There are two rules of interpretation laid down in Halsbury's Laws of England, (Second Edition, Vol. 31, Lord Hailsham, and they are embodied in Articles 603 and 604 at pages 483 and 484.

These rules are:

603. Notwithstanding that each section of a statute is to be regarded as a substantive enactment, the statute must be read and construed as a whole, regard being had to its scheme so that the language of the statute as a whole may be read as consistent, though one section may bear a wider, another a more limited meaning.

604. Where two co-ordinate sections are apparently inconsistent, an effort must be made to reconcile them. If this is impossible, the latter will generally override the earlier; but a particular enactment, wherever found must be construed strictly as against a general provision.

The legislature when it defined 'local area' and 'local authority' has created such a conflict. It is the duty of the court to see whether this conflict can be resolved, keeping in mind the intention and object of the legislature. We think that this conflict can be resolved and according to the rules of interpretation, the meaning which resolves this conflict should be given to the words used in the two definitions. In our opinion, the legislature made it clear that any area could be declared a 'local area' by notification in the Official Gazette. This definition did not mean that certain areas which were already existing as 'local area' were not to be considered as local areas after the passing of this Act.

As the existence of a local area was a condition precedent which was necessary before the appointment of local authority, the legislature could not have appointed the Municipal Board or the Notified Area Committee or the Cantonment Authority, without accepting the areas placed under their control as 'local areas'. The very fact that the Municipal Board or the Municipal Corporation mentioned as a local authority in the definition of 'local authority' indicates that the legislature accepted a municipality as a local area. This also holds good for a cantonment and a notified area. In other words the legislature accepted these local areas and in

order to make a provision for declaring other areas as 'local areas' it directed that for the purposes of this Act such areas could be declared as local areas by the State Government after a notification in the Official Gazette.

That a 'municipality' was declared to be a 'local area' by the Act itself can be safely inferred by approaching the question from another angle. Was it open to the States not to notify the Municipalities, Cantonments and Notified Areas as 'local areas'? This question must be answered in the negative and so it is apparent that so far as these units were concerned they were declared to be 'local areas' by the Act itself. This interpretation seems to us to be in complete harmony with the intention of the legislature.'

15. From the aforementioned observations it appears that the Act itself has constituted various Municipalities, Cantonments and Notified Areas as different local areas for the purposes of the Act and it enables the State Government to, Under Section 2(viii) declare areas other than Municipalities, Cantonment Board and Notified Areas also as local areas for the purposes of the Act.

16. Section 8 of the P.F.A. Act runs thus:

The Central Government or the State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications to be Public Analysts for such local areas as may be assigned to them by the Central Government or the State Government, as the case may be;

Provided....

Provided further that different Public Analysts may be appointed for different articles of food.

This section envisages the appointment of persons possessing prescribed qualifications as Public Analysts and for assignment to such persons the local areas for which they are to function. There is nothing in the section which precludes the State Government from assigning one local area to two or more Public Analysts. Where one local area is assigned to more than one Public Analyst, each such Public Analyst would be competent to submit a report in

respect of cases arising in that local areas.

17. We now proceed to consider the two notifications dt. 23rd June, 1972 and 15th Feb., 1975 issued by the State Government Under Section 8 of the P.F.A. Act appointing Dr. S. B. Singh as Public Analyst for the whole of U. P. and appointing Sri B. S. Garg as Public Analyst for Varanasi and Allahabad Regions. The Notification dt. 23rd of June, 1972 does following two things:

(i) It appoints Dr. S. B. Singh as Public Analyst to the Government for the whole of Uttar Pradesh, and

(ii) Declares that the whole of Uttar Pradesh shall be regarded as one single local area for the purposes of the Act.

18. Likewise the Notification dt, 15th of Feb., 1975 specifically stated to be in continuation of the Notification dt. 23rd June, 1972 does following two things:

(i) it appoints Sri B. S. Garg as Public Analyst to Government for Varanasi and Allahabad Regions; and

(ii) it declares these two regions to be as one single local area for the purposes of the said Act.

19. The first question that arises for consideration in this connection is as to what the State Government meant by declaring in the Notification dated 23rd June, 1972 that whole of U. P. shall be regarded as one local area for the purposes of the Act and in Notification dt 15th Feb., 1975 that the whole of Varanasi and Allahabad Regions shall be deemed to be one single local area for the purposes of the Act. The decision of this Court in the case of Municipal Board, Lucknow v. Ram Autar : AIR1960 All119 makes it clear that the State Government was not competent to make a declaration with regard to territories covered by various Municipalities, Cantonments and Notified areas within the State of U. P. and constituting them as 'local areas'. Such territories had been, as per provisions contained in the P.F.A. Act, declared and constituted as different local areas. The State Government should be presumed to be aware of aforementioned decision of this Court, and it should not be taken to have issued the two notifications dt. 23rd

June, 1972 and 15th Feb., 1975 in contravention of what had been laid down by this Court in that case.

20. Viewed in this light, the declaration made by the State Government in the two notifications that whole of U. P. as also Varanasi and Allahabad Regions shall be regarded as single local area for purposes of the Act, should, in the context of appointment of Dr. S. B. Singh and Sri B. S. Garg as Public Analysts, be construed as assigning to each of them two different sets of local areas. Each such set for administrative purposes, has to be treated and considered as one unit of local area. It should, in our opinion, not be construed as a declaration contemplated by Section 2(vii) of the Act, constituting particular area in the State as a local area as contemplated by the Act, So construing, the effect of the two Notifications i. e. those dt. 23rd June, 1972 and 15th Feb., 1975 is that whereas Dr. S. B. Singh has been appointed as Public Analyst in respect of all local areas falling within the State of U, P. which stand assigned to him, Sri B. S. Garg has been appointed as Public Analyst for all local areas falling in Varanasi and Allahabad Regions which stand assigned to him. The notification dt. 15th Feb., 1975 has specifically been made in continuation of the notification dt. 23rd June, 1972 and not in supersession or modification thereof. Consequently, so far as the local areas falling within Varanasi and Allahabad Regions are concerned, they, for the purposes of Section 8 of the Act, stood assigned both to Dr. S. B. Singh and Sri B. S. Garg and the remaining local areas in the State stood assigned only to Dr. S. B. Singh. As already stated, the provisions contained in the Act do not prohibit assignment of a particular set or unit of local areas to two different persons. Accordingly both Dr. S. B. Singh, Public Analyst to Government at Lucknow and Dr. B. S. Garg, Public Analyst to Government, Varanasi and Allahabad Regions, were competent to perform the functions of Public Analysts under the Act in respect of cases arising in the local area of Kanpur Municipal Board which fell within Allahabad Region.

21. In the result, we are unable to concur in the view expressed by J. P. Chaturvedi, J. with regard to the scope of the words 'shall be deemed as one single local area' used in two Notifications dt. 23rd June, 1972 and 15th Feb., 1975 and its consequent effect and hold that both Dr. S. B. Singh and Sri B. S. Garg

would have jurisdiction to analyse the samples which were collected within the Varanasi and Allahabad Regions and that both these authorities were competent to analyse the same.

22. Our opinion may now be placed before the learned single Judge who may proceed to dispose of the revision application in accordance with law.

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