

Girish Chandra Nandy Vs. the State

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Court : Kolkata

Decided On : Feb-19-1952

Reported in : AIR1952Cal565,56CWN335

Judge : Chakravartti and ; Sinha, JJ.

Acts : Calcutta Industrial Area Rationing Regulations, 1943; ; Bengal Rationing Order, 1943 - Rule 3

Appeal No. : Criminal Revn. No. 943 of 1951

Appellant : Girish Chandra Nandy

Respondent : The State

Advocate for Def. : J.M. Banerjee, Adv.

Advocate for Pet/Ap. : Durgesh Prasad Das, Adv.

Disposition : Revision allowed

Judgement :

Chakravartti, J.

1. The petitioner Girish Chandra Nandy has been convicted under section 7(2)(3) of the Essential Supplies Act, 1946, read with clause 10(2) of the Calcutta Industrial Area Rationing Regulations, 1943. The charge against him was that he

had obtained 'rationed articles by the use of ration cards in his own name and the name of his minor son Ranjit Nandy, aged 14, up to 9-5-51, although both were living in a residential Establishment, namely. East Bengal Santi Niketan and dining in the said Establishment'. It will be noticed that the charge comprised both residing in the residential establishment and dining there.

2. The prosecution case, in brief was that on the 12th May, 1951, on a search being made of the premises of the East Bengal Santi Niketan of which the petitioner was the owner four ration cards were recovered from his possession. The prosecution case further was that the petitioner had drawn rations on two of those cards, one standing in his own name and the other standing in the name of his minor son, Ranajit Nandy and that by doing so, he had contravened clause 10(2) of the Industrial Area Rationing Regulations. No question arises in this case with regard to the other two ration cards which may be left out of account.

3. The defence of the petitioner was that although he was the owner of the residential establishment concerned, he did not take his meals as a member of that establishment but had his meals cooked separately. The contention which he intended to put forward by that defence obviously was that his own establishment was a separate and a private establishment which had no connection with the boarding arrangements for the residential establishment and consequently, he was entitled to draw rations for himself and members of his family on cards standing in their own names.

4. A number of prosecution witnesses were examined in support of the charge and the petitioner, on his part, examined some defence witnesses. In addition to the oral evidence, a Register of the residential establishment seems also to have got into the record in some manner or other, although the learned Magistrate correctly points out that it was never put in evidence. The learned Magistrate took the view that the Register would be the most relevant piece of evidence from which one could ascertain whether the petitioner was or was not a member of the residential establishment kept by him for his lodgers, but since that Register had not been legally proved it was not possible to come to a definite conclusion as to whether the petitioner took his meals as a member of the East Bengal Santi Niketan

Establishment. The learned Magistrate, however, thought that the difficulty about ascertaining whether the petitioner did or did not take his meals as a member of the establishment did not affect the prosecution case, inasmuch as apart altogether from whether he took his meals as a member of the establishment or not, he would be liable under clause 10(2) of the Regulations, if he only resided in the establishment, as he admittedly did, and drew rations on cards standing in his name. It will be better to quote in this connection the learned Magistrate's own words in which he expressed the basis for his decision. His observation is to the following effect:

'As however, it is admitted that the accused lives in the hotel, whether he eats in the hotel establishment or not, he cannot under clause 10(2) of the Calcutta Industrial Area Rationing Regulations, 1943 have a separate ration card and obtain ration against it. The intention of this clause is that whoever resides in a hotel must take his meals in the hotel establishment.'

5. Now, it is true that clause 10(2) of the Rationing Regulations does say that:

'No person residing in a residential establishment shall obtain or attempt to obtain any rationed article by the use of any ration card issued in his name and every such person shall forthwith surrender the ration card to the Rationing Officer by whom it was issued.'

The learned Magistrate seems to have thought that the use of the word 'residing' in clause 10(2) was conclusive on the question which he had to decide and that once it was established that a person resided in a residential establishment, he was to be held to be altogether disqualified from drawing rations on a card standing in his own name. I am entirely unable to agree that such can be the true meaning of clause 10(2). The clause speaks of residing in a residential establishment and the ordinary grammatical meaning of the word 'residing' is undoubtedly 'living'. But one has to consider the context in which the verb has been used in the clause and the true meaning will appear only if one bears in mind the object with which these Rationing Regulations were framed.

6. The enquiry must be what the framers of the Regulations intended when they referred to a person 'residing in a residential establishment' 'Residential Establishment' is not defined in the Rationing Regulations, but clause 2(1) (a) of the Regulations says that all expressions, used but not defined therein which have also been defined in the Bengal Rationing Order, 1943, have the same meaning as in the said Order. That clause, therefore, directs us to the Bengal Rationing Order, 1943, and a definition of the term 'Residential Establishment' is to be found in clause 3(4) (iii) of that Order. The definition is in the following terms:

"Residential establishments' mean boarding houses, apartment houses, residential hotels, residential clubs, hostels, nurses' homes, schools and include all other establishments of a like nature but do not include private households.'

Closely analogous to this definition is the definition of the catering establishments' which is to be found in clause 3(i) of the Order and that definition covers hotels, eating houses and cafes and all other places where food or refreshments are consumed or are procurable. It is true that the definition of 'residential establishments' contains no express reference to food or refreshments, but it seems to me that when the framers of the Regulations purported to forbid members of residential establishments to draw rations on cards standing in their own names, they did so on the basis that such persons would be in receipt of rations as members of those establishments. The whole object of these Regulations is to prevent duplication or multiplication in the matter of drawing rations by the same persons, for, in an area where food supplies are scarce and the State has undertaken the responsibility of feeding the people, it has undertaken to feed them only once and not to provide food for the same person many times over. It is on that basis, I conceive, that persons residing in residential establishments have been prevented from drawing rations on cards standing in their own names. 'Residing' therefore must mean in the particular context in which the word has been used, both residing and taking meals in a residential establishment, in other words, the expression contemplates persons who are supplied with both board and accommodation by the establishments of which they are members.

7. If such be not the true meaning of the clause, the strange result would follow that although a residential establishment might supply no meals to its members, the latter would nevertheless be prevented from procuring rations for themselves on cards standing in their own names. Such establishments are not unknown. There are again establishments which provide only the morning tea and the breakfast and leave the members to procure the major meals elsewhere. It could not have been the intention of the Regulation to prevent even persons, who were not supplied with meals by the establishments of which they were members, from drawing rations in their own right on cards standing in their own names. They also must eat. The effect of the interpretation which the learned Magistrate has put upon clause 10(2) would be to compel every person residing in a residential establishment to take his meals there and to make it impossible for him to secure food for himself, even though the establishment concerned might supply no meals at all. I find myself altogether unable to agree that by framing the Rationing Regulations the authorities were intending to benefit the hotel-keepers and to compel every person who takes up his residence in a residential establishment to take his meals in the establishment or to go hungry.

8. For the reasons I have given, I am perfectly clear in my mind that the word 'residing' in clause 10(2) of the Calcutta Industrial Area Rationing Regulations, 1943, cannot possibly mean mere residence, but means residence, together with taking of meals. Since the learned Magistrate has found the petitioner guilty under section-7 (2) (3) of the Act, read with clause 10(2) of the Regulations, without also finding that he took his meals in the residential establishment, the conviction in my opinion, cannot stand.

9. It was, however, contended by Mr. Banerjee that whether or not the learned Magistrate had come to a finding as to the petitioner taking his meals in the residential establishment, there was evidence on the record on which he could legitimately ask us to find for ourselves that the petitioner was in fact, taking his meals in the East Bengal Santi Niketan. In the alternative, he suggested that we might send the case back to the Magistrate so that he might come to a finding on that point. I am not prepared to adopt either of those two courses. I have glanced through the evidence and I find that while two of the prosecution witnesses did

state that the petitioner took his meals in the residential establishment, one admitted that he had left the establishment some time ago and it was not elicited from him how long ago he had left the establishment. The other witness made the significant admission that the petitioner took his meals in his own room behind a partition which, if anything, would suggest that the defence case of a separate kitchen where the petitioner's food was separately cooked was the likelier one. There are again defence witnesses who include the Manager of the establishment, the cook and an ex-cook. All say that the petitioner did not take his meals as a member of the residential establishment, but had his own private kitchen.

10. In that state of the evidence, we are of opinion that it has at least not been proved beyond reasonable doubt that the petitioner was taking his meals as a member of the residential establishment. That being so, it seems to us that the prosecution cannot fairly ask us, for a remand of the case in order that the Magistrate might now find what he had not found earlier, or can they expect us to convict the petitioner on such evidence as there is on the record.

11. For all the reasons given above, this Rule is made absolute. The conviction of the petitioner and the sentence passed upon him are set aside. The fine, if paid, will be refunded.

Sinha, J.

12. In this case, we have to construe clause 10(2) of the 'Calcutta Industrial Area Rationing Regulations, 1943'. Under that clause, a person residing in a 'Residential establishment within the Calcutta industrial area, is not permitted to draw his rations, on the strength of a ration card issued in his individual name. In such a case, the establishment as a whole is issued with a permit, and no individual residing therein is permitted to possess an individual card. The object is to avoid duplication in the issue of rationed food-stuff. The expression 'Residential establishments' is defined in rule 3(iii) of the Bengal Rationing order, as Boarding Houses, Apartment Houses, Residential Hotels, Residential clubs, Hostels, Nurses' Homes, schools and all other establishments of a like, nature tout does not include private households. The expressions 'Boarding Houses', 'Apartment

Houses' etc., have however not been defined, and the question arises as to whether such an establishment will be included within the definition, even if it does not cater for food. A 'Boarding house' in its primary sense is a house which provides 'Board', that is to say meals. But in this country, we have boarding houses of all sorts, some of which do cater for food and others are purely residential without any arrangement for providing meals. In the latter case, the result of including such an establishment within the definition of 'Residential establishments', as laid down in the Bengal Rationing Order, would be to compel the inmates to go without food or feed themselves only in public Hotels or restaurants. The system of 'Apartment Houses' prevailing in European countries, is again not to be found in India. Houses which are let out in part to different tenants, are seldom if ever equipped with facilities for catering. It would therefore create very great hardship if apartment Houses of any description should be held to fall within the above definition.

13. Regard being had to the object of the legislation, it would be reasonable to hold that only such Boarding Houses, Apartment Houses etc., are included in the definition as cater, for food and not those which have no such arrangement and in respect of which there can arise no possibility of duplication.

14. The next question is as to whether if such an establishment does as a rule provide for food, it is possible for an individual to say that he does reside in it but has a special arrangement whereby he avails himself of the residential facilities only, leaving himself free to prepare his own meals. That clearly is not permissible. Once an establishment of the description mentioned in rule 3(iii) of the Bengal Rationing Order, is found to cater for food, it comes within the mischief of clause 10(2) of the Calcutta Industrial Area Rationing Regulations, 1943, and no individual residing in it can possess an individual ration card.

15. The 'Bengal Santi Niketan Boarding House' is situated at 58 Mirzapore Street and does cater for food. If the accused resided therein, he could no longer possess an individual ration-card and draw his rations thereon. But the mere fact that the accused resided in a portion of 58 Mirzapore Street, does not necessarily establish that he resided in the boarding house. He is not shown as a boarder in

the register, at least there is no evidence to that effect. It has not been shown that he paid any money to the boarding house, by way of rent or catering charges. All that has been proved is that the accused, took his meals in a portion of the dining room separated by a partition. The manager of the boarding house has given evidence to say that the accused is not a boarder but is really the owner of the hotel. The fact of his being the owner is how-ever irrelevant because an owner may reside in his own hotel or boarding house and in that event he can no longer have a separate ration card. But there is nothing to prevent a person from running a boarding house in a portion of a building and living separately in another portion.

16. The real point is that there is not sufficient evidence to prove that the accused resided in the boarding house either in the sense of living therein, or taking his meals there. The result is that his conviction cannot be supported. I therefore agree with the order made.

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