
(1964) 10 AHC CK 0022
In the Allahabad High Court
Case No : Special Appeal No. 2 of 1964

Buddha Pitai

APPELLANT

Vs

Sub-Divisional Officer, Malihabad, Lucknow and others

RESPONDENT

Date of Decision : 19-10-1964

Acts Referred:

Constitution of India, 1950 — Article 226
Prevention of Food Adulteration Act, 1954 — Section 16, 2, 2(1), 7
Prevention of Food Adulteration Rules, 1955 — Rule 28
Uttar Pradesh Panchayat Raj Act, 1947 — Section 5A
Uttar Pradesh Panchayat Raj Rules, 1947 — Rule 13

Citation : (1964) 10 AHC CK 0022

Hon'ble Judges : M.C.DESAI, CJ; N.U.BEG, J and R.N.SHRMA, J

Final Decision : Allowed

Judgement

Desai, C.J.

1. This is an appeal from a judgment of Misra, J. dismissing the appellants petition for certiorari for the quashing of an order passed by an Additional SubDivisional Officer setting aside under S. 12C of the U.P. Panchayat Raj Act, 1947 read with R. 25 of the Panchayat Raj Rules the election of the appellant to the office of Pradhan of a Gaon Sabha. This special appeal came up for hearing before two of us who referred it to a larger bench because of certain questions of importance involved in it.

2. The appellant was convicted on 27762 under S. 16 read with S. 7 of the Prevention of Food Adulteration Act and fined Rs. 100/. He had been found guilty of mixing a prohibited colour in sweets sold to a customer. Subsequently he, Naumi Lal respondent No. 2 and two others, who are respondents 3 and 4 contested election for the office of Pradhan of a Gaon Sabha and the appellant was declared elected as Pradhan. Naumi Lal filed a petition under S. 12C of the Panchayat Raj Act questioning the election on the ground that the appellant was disqualified for being chosen or nominated or for holding any office in a Gaon Sabha on account of his being convicted under S. 16 read with S. 7 of the

Prevention of Food Adulteration Act on 27762. Under S. 5A of the Act a person is disqualified for being chosen or nominated or for holding any office in a Gaon Sabha if he

"(h) has been convicted of an offence involving moral turpitude."

The contention of the respondent was that the offence of S. 16 read with S. 7 of the Prevention of Food Adulteration Act is an offence involving moral turpitude and that the appellants nomination was improperly accepted because he was disqualified for being chosen or nominated or for holding any office in a Gaon Sabha. Under S. 12C the election of a person as Pradhan of a Gaon Sabha can be called in question on the ground that the result of the election has been materially affected by the improper acceptance of any nomination. The Additional SubDivisional Officer accepted the contentions of the respondent and held that the offence of S. 16 read with S. 7 of the Prevention of Food Adulteration Act is an offence involving moral turpitude, that the appellant was consequently disqualified for being nominated and for holding any office in a Gaon Sabha, that his nomination was, therefore, improperly accepted and that the result of the election was affected by the improper acceptance. He allowed the respondents petition and set aside the appellants election and directed the District Magistrate to take steps to fill up the vacancy of Pradhan in the Gaon Sabha.

3. The appellant applied for certiorari for the quashing of the Additional SubDivisional Officers order on the ground that the offence of S. 16 read with S. 7 of the Prevention of Food Adulteration Act is not an offence involving moral turpitude. Our brother Misra did not agree and refused certiorari.

4. When a person is convicted he is convicted for doing an act (or acts) which amounts to an offence which is punishable under a statutory provision. The provision describes the offence for which a person can be convicted and if an act done by a person comes within the ambit of it he is convicted of it. In deciding whether a person is convicted of an offence involving moral turpitude there are two ways of looking at the matter, one of considering the nature of the act done and the other of considering the nature of the offence punished under the statutory provision, S. 5A speaks of "an offence involving moral turpitude" and suggests that what is to be seen is the nature of the offence which is made punishable by the statutory provision and not that of the act which is brought within its ambit. It must be the offence, i.e. the ingredients of the offence prescribed by the statutory provision, and not the act actually done, which must involve moral turpitude. The stress is on the abstract, not on the concrete facts. The ingredients prescribed by the Statute must involve moral turpitude. Section 16(1) of the Prevention of Food Adulteration Act describes seven distinct offences but here we are concerned with the offence described in cl. (a). Even cl. (a) describes several distinct offences and we are concerned with the offence of selling "any article of food in contravention of any of the

provisions of this Act." The appellant sold an article of food (laddus) in

contravention of S. 7 of the Act, which lays down that no person shall himself or by any person on his behalf sell" any adulterated food." "Adulterated food" is defined in S. 2 to include an article which contains"any colouring matter other than that prescribed in respect thereof." "Prescribed" means prescribed by rules made under the Act. Rules 23 to 31 made under the Act deal with colouring matters. Rule 23 prohibits the use of any colouring matter in any article of food except as specifically permitted by the rules. Rule 26 specifies certain colouring matters which can be used in an article of food and metanile yellow is not one of them. Rule 27 prohibits the use of any inorganic colouring matter and pigment in an article of food. Rule 28 prohibits the use of any coal tar dye in food barring certain dyes specified therein but Metanile yellow is not one of them. It is an azodye derived from metanilic acid used in wool dyeing, paper staining and carpet printing according to Websters Dictionary. Its use is not permitted by R. 28 or R. 26 and is expressly prohibited by R. 27. Consequently an article of food which contains it is adulterated food. The result is that the appellant was convicted of the offence of selling an article of food which contained a colouring matter other than that prescribed in respect thereof in contravention of the provision of S. 7 prohibiting sale of such an article and the question is whether this offence involves moral turpitude. I do not think that this particular offence can be said to involve moral turpitude. There is nothing inherently immoral in using a colouring matter other than that prescribed in respect of the article in which it is used. It is only a prohibited act and it is an offence simply because it is a prohibited act. It is not enough to say that the use of the colouring material is prohibited; otherwise it would not be an offence at all. In addition to the fact that the use of the colouring matter is prohibited there must be some immorality attached to the act of using it and I find no immorality in the act of using the colouring matter.

5. Metanile yellow, which was the colouring matter used by the appellant is a poisonous colouring matter but the offence does not consist of using a poisonous colouring matter; it consists of using a colouring matter other than the prescribed one. The offence would exactly be the same even if metanile yellow were nonpoisonous or another prohibited colouring matter, which is not poisonous were used. As the nature of the offence does not depend upon whether the colouring matter used is poisonous or not, in deciding whether the offence involves moral turpitude or not one must completely disregard the fact that metanile yellow is a poisonous substance. When the poisonous nature of the colouring matter used is not an ingredient of the offence it cannot be considered in deciding whether the offence involves moral turpitude or not. For using a poisonous colouring matter the appellant might have committed another offence but he is not convicted of that offence and we are not concerned with the question whether that offence involves moral turpitude or not.

6. Selling an article of food containing a colouring matter other than that prescribed in respect thereof is really an offence against the Government rule that only a certain colouring matter can be used in a particular food article.

Whether using a particular colouring matter in a food article is an offence or not depends upon the rules made by the Government. It is an offence if the rules do not permit its use. It cannot be said that disobeying or going against a rule made by the Government inherently involves moral turpitude. Rules made by the Government are not always based on the idea of what is moral or what is not moral and a rule made by the Government is a rule made by an authority dominated by a political party. Disobedience of its rule may be made punishable but cannot be said to be immoral. The question which colouring matter should be permitted to be used in a food article and which should not be does not depend upon any idea of morality and disobeying a rule laid down in this respect cannot be said to involve moral turpitude. A person does not degrade himself morally by disobeying it. There are several reasons, which have nothing to do, with morality, on account of which the Government may prohibit the use of a certain colouring matter, such as that it is of foreign manufacture, or is manufactured by a particular manufacturer who does not deserve patronage or that it is not readily available and the number of colouring matters permitted is enough. That the use of a colouring matter is immoral is not the only reason for prohibiting its use. The legislature has not laid any guidance for the Governments selecting colouring matters to be permitted or to be prohibited. There is an illuminating editorial note on "Crimes Involving Moral Turpitude" in (192930) 43 HLR 117. The common law distinguished between felony and misdemeanour or between crimes *mala in se* and *mala prohibita* or between *crimen falsi* and infamous crimes. These classifications were objectionable and legislators drafting civil statutes that referred to criminal offences needed a classification less tenuous and employed the general term "crimes involving moral turpitude." It is not clear whether this established a new criterion or was merely a synthesis of previously recognized classifications. Stealing, embezzlement, burglary, receiving stolen property, cheating, perjury, filing of false income tax return, or of false information to the comptroller of currency or pension office are included among the crimes involving moral turpitude but it is uncertain whether adultery and bigamy are obnoxious. It is stated by Professor P.H. Winfield in his article on "Ethics in English Case Law" in 45 (193132) HLR 112 at p. 130 that "moral" generally refers to some duty or conduct not capable of legal enforcement or cognizance and the conclusion drawn by him at page 120 is that it is difficult to cite cases "in which the administration of law has turned upon morality and upon absolutely nothing else." Roscoe Pound writes in Jurisprudence vol. II at page 261 that :

"In order to maintain the social interest in the general security, to prevent conflict, and to maintain a legal order in the place of private war, the law must deal with many things which are morally indifferent." and at page 278 :

Security has also to be kept in mind, and if its dictates have to be tempered by morals and morality theirs have to be tempered by those of security and measured by what is practicable in a legal order.

" So an act which is not immoral may be punished as an offence. The duty not to

use metanile yellow as a colouring matter in a food article arises exclusively from a statutory provision and there is no element in it which can be said to be not capable of legal enforcement or cognizance. It follows that there is nothing immoral in the use of metanile yellow in a food article. In re"P" An Advocate, A.I.R. 1963 S.C. 1313 Gajendragadkar, J., laid down at page 1316 that wherever conduct is opposed to good morals or is unethical it may be safely held that it involves moral turpitude.

7. There is no element of cheating or making a false representation in the offence punishable under Section 16. If a person mixes in an article of food a prohibited colouring matter and denies having mixed it or states that the colouring matter used is one permitted under the rules he may be guilty of cheating but that would be an offence entirely different

from that punishable under Section 16 of the Prevention of Food Adulteration Act and the appellant has not been convicted of it. There are various other offences published by Section 16 and some of them may involve moral turpitude but that would not make the specific offence of which the appellant has been convicted one involving moral turpitude. I consider it illogical to hold that every offence made punishable under the Act involves moral turpitude just because the object behind the Act is to prevent adulteration of food. Every act of mixing a substance with an article of food is not necessarily immoral. Whether it is or not would depend upon the motive; if the motive is greed it may be immoral but not if it is simply to make the article more attractive or more delicious, when a person mixes a prohibited colouring matter in an article of food he may do it only to make it more attractive or more delicious. Even if the colouring matter is poisonous it cannot be said that his motive is to poison the people; he will lose in business if he does so. Nobody would be bold enough to assert that every offence made punishable by the Indian Penal Code involves moral turpitude because of the object behind the enactment of the Code. That the colouring matter used in the instant case was poisonous is wholly irrelevant because as I said earlier, we have to look to the ingredients of the offence under which the act of mixing it in a food article is made punishable. The appellant would have committed the same offence even if metanile yellow were nonpoisonous. It was contended on the authority of Durga Singh v. State of Punjab, A.I.R. 1957 Pun. 97 and Shiva Nand v. The SubDivisional Officer, Chunar 1961 R. D. 186 (All) that an offence involves moral turpitude if the act punished by it is a departure from the standards of conduct laid down by the society or from accepted social norms, or is antisocial in character, or is regarded by the society with disapprobation. But a legislature or a Government should not be confused with the society; otherwise every offence created by the legislature or consisting of breach of a Government order will involve moral turpitude. Merely because a legislature or a Government prohibits a certain act it cannot be said that it is a departure from the standards of conduct laid down by the society or from accepted social norms or is frowned upon by the society. The society may not even know of a prohibited colouring matter, or of its baneful effect and if so it would be impossible to say

that it frowns upon its use.

8. Even if the use of a certain colouring matter in an article of food were immoral it cannot be gainsaid that the use of other colouring matters, though prohibited, cannot be said to be immoral. The offence under discussion is one of using a prohibited colouring matter and the only effect of holding that the use of certain colouring matters is immoral would be that the offence includes within its scope acts which involve moral turpitude and other acts which do not. The use of every prohibited colouring matter comes within the offence whether it is immoral or not. When an offence in the abstract may or may not include acts involving moral turpitude it cannot be said that it is an offence (always) involving moral turpitude. If in some cases (when the use of a prohibited colouring matter is not immoral) the offence cannot be said to be one involving moral turpitude it cannot be said to be an offence involving moral turpitude within the meaning of Section 5A(h). The acts in a particular case of conviction are not to be considered when deciding whether the offence involves moral turpitude or not.

9. The offence of selling an article of food containing a prohibited colouring matter does not require mens rea. The defence of metis rea is not available to a person accused of such an offence except in very limited circumstances mentioned in S. 19. If his case is not covered by the circumstances S. 16 imposes strict liability upon him and he is liable to be convicted regardless of the state of his mind provided he has done the act voluntarily. Voluntarily doing the act requires all the mens rea, if any, required for conviction. The circumstances mentioned in S. 19 did not exist in respect of the offence committed by the appellant and, therefore, no defence of absence of mens rea was open to him. It is difficult to conceive of an offence involving moral turpitude in which the defence of mens rea is not available. To say that an offence involves moral turpitude would be inconsistent with the saying that the defence of absence of mens rea is not available to a person charged with it. I do not agree with Sri Jauhari that the defence of absence of mens rea is not ruled out in a case under S. 16.

10. I must reject the appellants contention that no offence punishable under S. 16 can be said to involve moral turpitude because it punishes a person even for an act committed by his servant or agent. The offence of selling an article of food in contravention of any provision of the Act is committed by a person whether he sells it himself or by a servant or agent; even if his servant or agent sells an article of food in contravention of any provision of the Act he is guilty regardless of all circumstances. It may be said that an offence of doing an act by a servant or agent can never involve moral turpitude but in the instant case the appellant has been convicted for an act done by himself and not by his servant or agent. An offence committed by a servant or agent may not involve moral turpitude but it does not follow that an offence committed by the convicted person himself also does not involve moral turpitude.

11. The contention advanced on behalf of the appellant that the offence of which

he was convicted does not involve moral turpitude because he was fined Rs. 100/ only must be rejected. Whether an offence involves moral turpitude or not does not depend upon the punishment inflicted on conviction for it. Even for an offence involving moral turpitude a person may be fined or may be admonished or released on probation. There is no law laying down that an offence involves moral turpitude only when it is punished with imprisonment of at least six months. Under S. 13D of the Uttar Pradesh Municipalities Act, 1916, and S. 6K (g) of the U.P. Town Areas Act, 1914, a person is disqualified for being chosen as a member of a board or a town area if he has been sentenced to imprisonment for a term exceeding six months for an offence which is declared by the State Government to imply such moral turpitude as to render him unfit to be a member. These provisions are different from the provision in S. 5A(h) of the Panchayat Raj Act and have no bearing in the interpretation of the words "an offence involving moral turpitude."

12. Even if one were to take into consideration the facts constituting the offence, I find nothing immoral in the appellants act of using metanile yellow as a colouring matter in the sweets sold by him. It is immaterial that it is a toxic substance. It has not been shown that he used it in such a large quantity as to produce toxic effect on the consumer.

13. In the result I find that the appellant was not convicted of an offence involving moral turpitude and was not disqualified for being nominated and that his nomination was not improperly accepted.

14. Section 5A(h) laying down that a person is disqualified for being nominated if he has been convicted of an offence involving moral turpitude is subject to the proviso that :

"The period of disqualification. shall be five years from such date as may be prescribed;

?????..Provided also that a disqualification under Cls. (d), (g), (h) may, in the manner prescribed, be removed by the State Government."

The whole is one provision; the disqualification for being nominated is subject to the provisos that the period of disqualification is five years from the prescribed date and that it may be removed by the State Government. The two provisos form part of the sentence disqualifying a person for being nominated for the election. The meaning of the first proviso is that the period of disqualification is five years and that it is to begin from a prescribed date. Rule 13 of the Panchayat Raj Rules reads as follows :

"The date from which the period of five years for removal of disqualification under Cls. (d), (g), (h) of S. 5A of the Act shall be counted, will be as follows :

Clause (h) (i)

(ii) In the case of sentence of fine, from the date of payment or recovery thereof."

Rule 13A is to the effect that an application for removal of the disqualification under Cl. (h) of S. 5A, shall be presented to the SubDivisional Officer on a prescribed form and that he may after such enquiry as he deems fit remove the disqualification or reject the application. Rule 13 is supposed to be the rule prescribing the date from which the fiveyear period of disqualification is to run but what it lays down is somewhat different. It does not lay down that the fiveyear period of disqualification will run from the date of payment or recovery of the fine. What it lays down instead is that the date of payment or recovery of the fine is the date from which the period of five years for removal of disqualification is to be counted. What is meant by "five years for removal of disqualification" is not understood at all. Removal of disqualification is dealt with in the third proviso, whereas the date to be prescribed is that mentioned in the first proviso. Only the manner of removal of disqualification is to be prescribed by the State Government and the prescribed manner of removal of disqualification has absolutely no concern with the date on which the period of disqualification is to commence. Disqualification automatically comes to end on the expiry of five years from the prescribed date; if it is to be removed it must be removed before the expiry of five years. There can be no question of its removal after it has ended on the expiry of five years. It is nothing but meaningless to talk of "the period of five years for removal of disqualification."

15. There is no warrant for interpreting Section 5A to mean that a person is disqualified from the date of his conviction upto the expiry of five years commencing on the prescribed date. This is certainly not what is laid down in Section 5A(h) read with the first proviso. There are no words in this provision which can be interpreted to mean that the disqualification is to commence on the date of conviction and is to end on the expiry of five years to be counted from the prescribed date. Had Section 5A(h) stood alone without the proviso it would have certainly meant that the person is disqualified from the moment of his conviction. To say that a person is disqualified for being nominated if he has been convicted of an offence involving moral turpitude means that at any time after the conviction he remains disqualified. But the position here is that the provision about disqualification stands not in isolation but subject to the proviso that the period of disqualification is five years. The obvious meaning of the proviso is that the disqualification cannot last for more than five years. "The period of disqualification" means the entire period of disqualification and cannot mean only a part of it. The first proviso cannot be interpreted to mean that five years period is a part of the total period of disqualification. It states the length of the period of disqualification and also the date from which it is to be computed. If the legislature had intended that the disqualification should go on for five years from a certain date which may not be the date of its commencement it would not have laid down that the period of disqualification is five years. As the proviso stands, the period of disqualification fixed at five years and the only question is of the date of its commencement. Regardless of the date on which it commences it

must expire after five years. If rule 13 is accepted as the rule prescribing the date on which the period of five years is to commence, it means in the instant case that the appellant is disqualified for being nominated for a period of five years from the date of the payment or recovery of the fine. If the fine has not been paid or recovered the period of his disqualification has not commenced at all. It is certainly absurd that the period of disqualification is to run from the date of payment or recovery of fine and that he is free to be nominated so long as he does not pay the fine but the absurdity is created by the legislature in cooperation with the State Government and can be removed by it. If rule 13 is not treated as the rule prescribing the date mentioned in the proviso there is no other rule prescribing it and the result would be that the period of disqualification has not started running at all. This again is an absurdity and the responsibility for it lies entirely upon the legislature. If the legislature intended that the disqualification should commence on the date of conviction and should run till the end of five years from a prescribed date it has failed to carry out its intention. What it has enacted is quite different. It is not open to this Court to make a wild guess at its intention and to give effect to it in the absence of an enactment. To say that the proviso interpreted according to the words used in it results in an absurdity, that the legislature could not have intended this result and that the Court should reform the proviso not only is fallacious but also involves judicial legislation. A legislature is competent to enact an absurd law just as it is competent to enact an unreasonable law and a Court cannot refuse to enforce a law on the ground that it is absurd. Just as it cannot correct an unreasonable law to make it reasonable, it cannot correct an absurd law to make it rational or sensible. It is not open to a Court to say that the legislature could not have intended a certain result because it is competent to do so. It cannot reconstruct a statute because it has no power to legislate. Moreover what the legislature intended by enacting a certain provision is to be inferred either from its language or from other provisions in the statute. If the language is capable of only one interpretation the Court cannot infer another intention merely because the intention to be inferred from the language would result in an absurdity. If the language used by it is ambiguous, i.e., capable of two meanings, the Court would certainly be under a duty to give that meaning which carries out its intention, but the Court cannot give effect to its intention without any enactment. The Court is concerned with what the legislature has enacted and not with what it intended to enact. If an anomaly or absurdity results from the enactment the Court must still give effect to it; it would be for the legislature to amend the enactment so as to remove the absurdity or anomaly. The Court can avoid an absurdity or anomaly only by interpreting the enactment in a different manner, and it can interpret it in a different manner only if the words used are capable of bearing the other meaning. The Court cannot legislate when the legislature has failed to do so.

16. In *Mohindar Singh v. The King* (1950) AC 345, Lord Greens said at page 356 :

"They fully appreciate the importance of avoiding, so far as the words and context fairly and reasonably permit, a construction which would lead to

anomalous or patently unreasonable results. On the other hand, it is to be remembered that the desirability of avoiding such results must not be allowed to give to the language used a meaning which it cannot fairly and reasonably bear. If the legislature has used language which leads to such results it is for the Court to give effect to it. The function of the Court is interpretation, not legislation. The limits thus imposed on the Court prevent the twisting of words and phrases into a sense that they cannot fairly and reasonably bear."

Woods, J., observed in *Thornley v. United States* (1883) 28 Law Ed 999 at p. 1000 that "where the meaning of a statute is plain, it is the duty of the courts to enforce it according to its obvious terms"; to give it another meaning would be legislation and not interpretation.

"The province of construction lies wholly within the domain of ambiguity" as observed by Day, J. in *United States v. Lexington Mill and Elevator Co.* (1913) 58 Law Ed 658 at p. 682. In *Crooks v. Harrelson* (1930) 75 Law Ed 156, Sutherland, J. stated at p. 175 :

".....to justify a departure from the letter of the law upon that ground the absurdity must be so gross as to shock the general moral or common sense. And there must be something to make plain the intent of Congress that the letter of the statute is not to prevail"

and

"But an application of the principle so nearly approaches the boundary between the exercise of the judicial power and that of the legislative power as to call rather for great caution and circumspection in order to avoid usurpation of the latter. It is not enough merely that hard and objectionable or absurd consequences, which probably were not within the contemplation of the framers, are produced by an act of legislation, laws enacted with good intention, when put to the test, frequently, and to the surprise of the law maker himself, turn out to be mischievous, absurd or otherwise objectionable. But in such case the remedy lies with the law making authority, and not with the courts."

As regards the intention of the legislature I respectfully agree with the following observations of Duff J., In re, *George Edwin Gray*, (1918) 57 Canada SC Rep 150 at p. 169 :

"It is the function of a Court of law to give effect to the enactments of the legislature according to the force of the language which the legislature has finally chosen for the purpose of expressing its intention. Speculation as to what may have been passing in the minds of the members of the legislature is out of place."

In *Swartz v. Wills* (1935) SC Rep (Canada) 628, he said at p. 629 :

"?... to gloss the plain and unmistakable words of a statute, by paraphrases based upon surmises or suppositions as to the purpose of the legislature, is.....a rash procedure."

Frankfurter, J., said in *Local 1976, UBC and J. v. NLRB*, (1958) 2 Law Ed 2nd 1186 at p. 1194 :

"The judicial function is confined to applying what congress has enacted after ascertaining what it is that Congress has enactedMost relevant, of course is the very language in which Congress has expressed its policy and from which the Court must extract the meaning most appropriate."

17. In *Baldi Singh v. Sukhdeo Prasad*, 1959 All LJ 477, R. Dayal and A.P. Srivastava, JJ., observed at p. 478 that the first proviso to S. 5A "limited the period of disqualification to five years from a certain date to be prescribed" and that if no date has been prescribed "the disqualification on the ground of a conviction is operative so long as the conviction remains in force" because "the proviso does not say that the period of disqualification will begin from a prescribed date." The view taken by the learned Judges seems to be that if a date is prescribed the period of disqualification is five years from that date and that if no date is prescribed the period of five years cannot be computed and "the main disqualification has its effect on account of the provision of cl. (h) of S. 5A." With great respect I am unable to agree. The proviso certainly does not lay down in so many words that the period of disqualification will begin on the prescribed date; but it does fix the period of disqualification and states that it is to be computed from the prescribed date. If the period of disqualification is five years and it is to commence on the prescribed date it follows that there is no disqualification prior to the prescribed date. If the proviso does not provide for the commencement of the period of disqualification it also does not provide for its termination; it does not lay down that the period will end on the expiry of five years from the prescribed date. There is but one provision and it is not possible to split it up into the parts as done by the learned Judges. The period of disqualification on the ground of conviction is five years from the prescribed date; there is no other provision laying down when the disqualification commences and when it ends. I, therefore, dissent from the view taken in this case.

18. In the result the appeal should be allowed and the order passed by the Additional SubDivisional Officer on 30/10/1963 setting aside the appellants election is quashed. The appellant will get his costs of this appeal from Respondent No. 2 who had contested it.

19. N.U. BEG, J. : I have read the judgment prepared by my Lord, the Chief Justice with the care and consideration that it deserves. I, however, regret my inability to agree with the view taken by him.

20. The present reference to the Full Bench arises out of the following facts :

On the 16th January, 1962, at about 1.30 P.M., one Buddha was caught by Sri D.J. Ghandwani, Food Inspector, Nagat Maha Palika, Lucknow, selling sweets coloured with metanil yellow. It may be mentioned that metanil yellow is a poison and belongs to a species of dyes, the mixture of which in foodstuff is

prohibited under rule 28 of the Rules framed under the Prevention of Food Adulteration Act, 1954 (No. XXXVII of 1954) hereinafter called the AntiAdulteration Act. Accordingly, Buddha was prosecuted under S. 7/16 of the AntiAdulteration Act in the Court of the Special Magistrate, first class, Lucknow. He was found guilty of having committed the said offence, and on the 27th July, 1962, he was convicted in respect of it and sentenced to pay a fine of Rs. 100/ or, in default, to undergo three months simple imprisonment. On the 14th September, 1962, Buddha made an application before the Additional SubDivisional Officer, Malihabad, for removal of his disqualification under S. 5A of the U.P. Panchayat Raj Act (hereinafter called the "Act") read with rule 13A framed under the Act. This application was rejected on the 17th September, 1962.

21. Subsequently, Buddha stood as a candidate for election to the office of Pradhan of the Gaon Sabha, Chakkauna, tahsil Malihabad, district Lucknow. The opposing candidates were Naumi Lal, Asharfi and Maiku. The election was held on the 31st September, 1962, and, as a result of it, Buddha was declared elected. Thereafter Naumi Lal moved an election petition

before Sri D.N. Taudon, Additional SubDivisional Officer, Malihabad, Lucknow, under S. 12C of the Act for setting aside the election of Buddha on the ground that he had been convicted of an offence involving moral turpitude and was, therefore, disqualified or being nominated or appointed to the office of Pradhan. This election petition was allowed on the 30th October, 1963, on the ground that Buddha had been convicted of an offence involving moral turpitude. His election was, accordingly, set aside with a direction to the District Magistrate to take necessary steps for filling up the vacancy caused in the office of Pradhan as a result thereof. Thereafter Buddha filed a writ petition in this Court impleading the SubDivisional Officer, Malihabad, Lucknow, as opposite party no. 1 Naumi Lal as opposite party no. 2, Asharfi as opposite party no. 3, Maiku as opposite party no. 4 and the District Magistrate, Lucknow, as opposite party no. 5, dated the 30th October, 1963, setting aside his election. This application came up for hearing before Misra, J. The learned single Judge agreed with the view of the Election Tribunal that the offence under the provisions of S. 7/16 of the AntiAdulteration Act involved moral turpitude and summarily dismissed the writ petition by his order dated the 8th November, 1963.

22. Against the said judgment Buddha filed the present special appeal. This appeal came up for hearing before a Division Bench. The points were argued before it. The first was that an offence under S. 7/16 of the AntiAdulteration Act does not involve moral turpitude. The second point was that the provision in S. 5A of the Act in this regard is bad in law being absurd and meaningless, in view of the importance of the questions raised the Division Bench referred the case to a larger Bench. This special appeal, accordingly, came up before us for hearing and both the points that were argued before the Division Bench were reiterated before us.

23. The first question that arises in the present case is whether the conviction of

a person under S. 7/16 of the AntiAdulteration Act disqualifies him from being nominated or elected to the office of Pradhan on the ground that the offence in question involves moral turpitude. According to clause (h) of S. 5A of the Act, a person "convicted of an offence involving moral turpitude. would be disqualified from being chosen, nominated or appointed to the office of Pradhan. The initial question that has to be answered is as to what is the meaning of the expression "moral turpitude." The expression "moral turpitude" does not appear to have been defined in any Act. In Aiyars Law Lexicon, 1940 Edition, its meaning is stated as follows :

"Moral turpitude. Anything done contrary to justice, honesty, principle, or good morals; an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. (Ame. Cyc.)"

The meaning of "morality" is stated as follows :

"Morality. Morality is defined by Paley to be that science which teaches men their duty/and the reason of it. To make a contract against morals void as being against public policy, it must be against sound morals, and not merely against the morals of the times."

24. In AIR 1963 SC 1313, Gajendragadkar, J. (as he then was) while discussing the meaning of "moral turpitude" in connection with the conduct of an advocate observed as follows :

"In dealing with this aspect of the matter, however, it is of utmost importance to remember that the expression "moral turpitude or delinquency" is not to receive a narrow construction. Wherever conduct proved against an Advocate is contrary to honesty, or opposed to good morals, or is unethical, it may be safely held that it involves moral turpitude."

25. In the case of 1961 R D 186 (All) the meaning of the expression as used in S. 5A of this very Act came up for consideration before this Court. In this case one Shiva Nand, who was convicted of an offence punishable under the Public Gambling Act, was elected to the office of Pradhan of a Gaon Sabha. An election petition was moved against him by Avadh Narain, a contesting candidate on the ground that conviction for an offence under the Public Gambling Act involves moral turpitude. The SubDivisional Officer upheld the contention of Avadh Narain and set aside the election of Shiva Nand and declared a casual vacancy. Shiva Nand filed a petition under Art. 226 of the Constitution challenging the validity of the order of the SubDivisional Officer and praying for a writ of certiorari to Quash that order. This petition was dismissed by a learned single Judge on the ground that the view which the SubDivisional Officer took of the conviction of the appellant under the Gambling Act was not such an unreasonable view as to entitle him to interfere in the matter by way of writ and to quash the order. A special appeal against this order was filed by Shiva Nand. This special appeal

came up for hearing before a Bench consisting of Mootham, C.J. and Raghubar Dayal, J. The two learned Judges took different views on the matter. Mootham, C.J. held that a conviction for an offence under the Public Gambling Act does not involve moral turpitude. On the other hand, the other learned Judge took a contrary view. The question was referred to a third Judge, Mukerji. The judgment of Mukerji, J. contains certain instructive and relevant observations, in this regard. While referring to the Public Gambling Act. He observed that the said Act was meant to provide punishment for species of acts "which caused common injury, danger or annoyance to the public. The enactment, therefore, was meant to subserve a social end or, what may be called in modern forensic language, a type of social legislation.". He further observed as follows :

"It is fairly well known that practically every civilised country now has laws either prohibiting gambling in certain forms or regulating gambling." Subsequently, he made the following observation :

"Ideas of morals often undergo changes in different periods of a country's history. It is also true that different peoples of the world sometimes differ as to whether a particular act is moral or immoral. Whenever a question has to be considered as to whether a certain act is moral or immoral, one has to consider as to how that act is viewed by the society or the community, as the case may be, and if the society or the community views such act as involving moral turpitude, then even though some particular individual may not consider it so will not make the act a moral one or a praiseworthy act. Therefore, whether an act involves moral turpitude or does not, has to be determined not necessarily on abstract notions of the rights and wrongs involved or the harm or good coming out of the act but how that act is looked upon by the society where the act has been committed." Subsequently, he observed as follows :

"A gambler has never been looked upon with favour. He always incurred the calumny of his fellow men. Such being the position a person, who has suffered punishment however small it may have been and however far back into the past it may have been, must be held to be guilty of a moral wrong and, therefore, his conviction must, in my opinion, be held to have involved moral turpitude within the meaning of clause (h) of S. 5A of the U.P. Panchayat Raj Act.

26. In *Mangali v. Chakki Lal*, AIR 1963 All 527, A.P. Srivastava, J. held that no absolute standard can be laid down for deciding whether a particular

offence is to be considered one involving moral turpitude. The question will necessarily depend on the circumstances in which the offence is committed. It is not every punishable act that can be considered to be an offence involving moral turpitude. The tests which should ordinarily be applied and which should in most cases be sufficient for judging whether a certain offence does or does not involve moral turpitude appear to be (1) whether the act leading to a conviction was such as could shock the moral conscience of society in general, (2) whether the motive which led to the act was a base one and whether on account of the act

having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society. (Vide headnote A).

27. In *Baleshwar Singh v. District Magistrate*, AIR 1959 All 71, J.K. Tandon, J. observed that the expression moral turpitude is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general. If therefore the individual charged with a certain conduct owes a duty, either to another individual or to the society in general, to act in a specific manner or not to so act and he still acts contrary to it and does so knowingly, his conduct must be held to be due to vileness and depravity. It will be contrary to accepted customary rule and duty between man and man. (Vide headnote E).

28. Similarly in AIR 1957 Punj 97 it was observed that the term moral turpitude is rather a vague one and it may have different meanings in different contexts. The term has generally been taken to mean to be a conduct contrary to justice, honesty, modesty or good morals and contrary to what a man owes to a fellow man or to society in general. It has never been held that gravity of punishment is to be considered in determining whether the misconduct involves moral turpitude or not. (Vide headnote C).

29. The question whether the offence under S. 7/16 of the Anti Adulteration Act involves moral turpitude may now be approached in the light of the definition of the said expression as expounded above. The first point that strikes one is that this offence is to be found in an Act which is entitled "The Prevention of Food Adulteration Act, 1954 (No. XXXVII of 1954)". The progress of a nation depends upon its efficiency; and its efficiency depends upon its health. Purity of food is the bedrock of all national health, and, therefore, the foundation of a nation's welfare, progress and happiness. Any Act seeking to prevent adulteration is, therefore, a social legislation of vital importance to the nation as a whole. The title of the Act itself eloquently speaks of the nature, purpose and scope of the Act. The statement of objects and reasons of the Anti Adulteration Act as given in the Gazette of India, 1950, Part II, S. 2, page 522, runs as follows :

"Adulteration of foodstuffs is so rampant and the evil has become so widespread and persistent that nothing short of a somewhat drastic remedy provided for in the Bill can hope to change the situation. Only a concerted and determined onslaught on this most antisocial behaviour can hope to bring relief to the nation. All remedies intended to be effective must be simple. I believe this Bill meets these requirements."

30. In *S.C. Prashar v. Vasautsen Dwarkadas*, AIR 1963 SC 1358 it was held

that..... the statement of objects and reasons can be referred to for ascertaining the circumstances which led to the legislation in order to find out what was the mischief which the legislation aimed at.

31. Dealing with the heinous nature of the mischief sought to be suppressed by the Act, Mathurs Commentary on the Prevention of Food Adulteration Act, 1954 (4th Edition) states at page 2 as follows :

"4. Checking the Evil. The offence under the Act is now a cognisable offence and a great many Sections have been brought in after consultation with all the States and after close scrutiny of the existing measures in the States in order to see that it becomes easier for the State Governments to deal with companies or individuals who go in for the terrible crime of adulterating food because it is a crime against humanity to adulterate food. The Act will go a long way towards checking the evil. Though legislation alone cannot get rid of dishonesty, deterrent punishment does have some effect. Parliamentary Debates, Rajya Sabha Vol. VII, No. 8, dated 1st September, 1954 at p. 1009)."

Under the heading "Scope and Object" in the same book at pages 3132, it is stated as follows :

"The object of the Act is to prevent adulteration and misbranding as defined therein. The provisions of the Act are directed for the purpose of securing purity of food and to inform purchasers of what they are buying and they (i.e. those provisions) must be construed to affect such purpose."

The object of the Act appears to be to provide for adequate punishment of food adulterators and to make definition of the offence so comprehensive as to make it impossible for them to escape on technical grounds. No piece of legislation can be perfect or be so all embracing as to provide for all cases of its infringement but all that could be done appears to have been so far as this Act is concerned. (Parliamentary Debates Rajya Sabha, Vol. VII, No. 8, dated 1st September, 1954 at p. 1985)."

32. According to the opening portion of the AntiAdulteration Act. It is "an Act to make provision for the prevention of adulteration of food." The term "adulterated" is defined in Section 2(i) of the Act as follows :

"In this Act unless the context otherwise requires

(i) "Adulterated" an article of food shall, be deemed to be adulterated

(a) if the article sold by a vendor is not of the nature, substance or quality demanded by the purchaser and is to his prejudice, or is not of the nature, substance or quality which it purports or is represented to be;

(b) if the article contains any other substance which affects, or if the article is so processed as to affect, injuriously the nature, substance or quality thereof ;

(c) if any inferior or cheaper substance has been substituted wholly or in part for

the article so as to affect injuriously the nature, substance or quality thereof ;

(d) if any constituent of the article has been wholly or in part abstracted so as to affect injuriously the nature, substance or quality thereof ;

(e) if the article had been prepared, packed or kept under insanitary conditions whereby it has become contaminated or injurious to health ;

(f) if the article consists wholly or in part, of any filthy, putrid, disgusting, rotten, decomposed or diseased animal or vegetable substance or is insectinfested or is otherwise unfit for human consumption; if the article is obtained from a diseased animal;

(h) if the article contains any poisonous or other ingredient which renders it injurious to health;

(i) if the container of the article is composed, whether wholly or in part, of any poisonous or deleterious substance which renders its contents injurious to health;

(j) if any colouring matter other than that prescribed in respect thereof and in amounts not within the prescribed limits of variability is present in the article;

(k) if the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits;

(1) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability."

An analysis of the various clauses of the above definition indicates that a criminal or wrongful intent is the common feature of all offences relating to adulteration. The mens rea as implied in clause (a) is that of misrepresentation and fraud. Clause (b) implies deception. Clause (u) implies dishonesty and cheating. Clauses (d) to (1) imply a wilful disregard of the safety of all human life or a deliberate violation of the rules prescribing maintenance of certain minimum standards in the preparation of foodstuffs in the interests of health, wellbeing and preservation of the community as a whole. The commission of each one of the acts enumerated in clauses (a) to (1) is regarded as highly blameworthy and shocking to the moral conscience of the society with the result that an offender indulging in them is regarded not only the enemy of the individual victim of the offence but of human society as a whole. Generally, the underlying purpose of the offender in such offences is to exploit the public in order to satisfy his private lust for greed and gain. Adulteration is by its very nature a covert attack on the life of the victim leaving him defenceless and unprotected. A person selling adulterated foodstuff derives monetary gain from the buyer at the expense of his health. Persons guilty of the species of offences comprised under adulteration are, therefore, regarded by society as akin to murderers.

33. A perusal of the other provisions of the AntiAdulteration Act and the rules framed thereunder discloses that a comprehensive scheme was devised by the

Legislature for the eradication of this antisocial activity. The statute seeks to establish a large array of authorities including "Central Food Laboratory". Central Committee for Food Standards, Food (Health) Authority, Public Analysts and Food Inspectors for the implementation of the said scheme and achievement of its salutary purpose.

34. "Central Food Laboratory" is defined in Section 2(ii) as any laboratory or institute established or specified under Section 4. "Committee" has been defined in Section 2(iii) as the Central Committee for Food Standard constituted under Section 3. "Food" is defined in Section 2(v) as follows :

"(v) Food means any article used as food or drink for human consumption other than drugs and water and includes

(a) any article which ordinarily enters into, or is used in the composition or preparation of human food, and

(b) any flavouring matter or condiments."

"Food (Health) Authority" under S. 2(vi) means the Director of Medical and Health Services or the Chief Officer in charge of Health administration in a State by whatever name he is called. "Misbranded" in S. 2(ix) is defined as follows :

"(iv)"Misbranded an article of food shall be deemed to be misbranded

(a) if it is an imitation of, or is a substitute for or resembles in a manner likely to deceive, another article of food under the name of which it is sold and is not plainly and conspicuously labelled so as to indicate its true character;

(b) if it is falsely stated to be the product of anyplace or country;

(c) if it is sold by a name which belongs to another article of food;

(d) if it is so coloured, flavoured or coated powdered or polished that the fact that the article is damaged is concealed or if the article is made to appear better or of greater value than it really is;

(e) if false claims are made for it upon the label or otherwise;

(f) if, when sold in packages which have been sealed or prepared by or at the instance of the manufacturer or producer and which bear its name and address, the contents of each package are not conspicuously and correctly stated on the outside thereof within the limits of variability prescribed under this Act;

(g) if the package containing it, or the label on the package, bears any statement, design or device regarding the ingredients or the substance contained therein, which is false or misleading in any material particular or if the package is otherwise deceptive with respect to its contents;

(h) if the package containing it or the label on the package bears the name of a fictitious individual or company as the manufacturer or producer of the article;

- (i) if it purports to be, or is represented as being, for special dietary uses, unless its label bears such information as may be prescribed containing its vitamin, mineral or other dietary properties in order sufficiently to inform its purchaser as to its value for such uses;
- (j) if it contains any artificial flavouring, artificial colouring or chemical preservative without a declaratory label stating that fact, or in contravention of the requirements of this Act or rules made thereunder;
- (k) if it is not labelled in accordance with the requirements of this Act or rules made thereunder."

Misbranding and adulteration are sister offences hence the same Act covers both of them. Misbranding is akin to adulteration and, as the above definition, indicates, the acts on which it is founded also involve an element of cheating, deception, fraud, false representation or wilful and deliberate violation of provisions or rules made to subserve social welfare or human good.

35. Section 3 relates to the establishment of the Central Committee for Food Standards.

Section 4 relates to the establishment of a Central Food Laboratory.

Section 5 prohibits import of any adulterated or misbranded food.

Section 7 prohibits manufacture or sale of any adulterated or misbranded food.

Section 8 relates to the appointment of Public Analysts.

Section 9 relates to the appointment of Food Inspectors.

Section 10 relates to the powers of Food Inspectors.

Section 11 relates to the procedure to be followed by the Food Inspector when he takes sample of food for analysis.

Section 14 relates to the appointment of persons to exercise powers of Food Inspectors in air ports, railway stations, etc.

Section 15 requires medical practitioners practising in any local area specified in its notification issued

by the State Government to report all occurrences of food poisoning coming within their cognizance.

36. Section 16 prescribes penalties for the various offences defined therein. Section 16(1)(a) makes it punishable for a person to manufacture for sale, or store or sell or distribute any article of food in contravention of any provisions of the Antiadulteration Act or any rule made thereunder. Under it, a person is liable to enhanced penalty for second, third and subsequent offences. Further under SubS. (2) of S. 16, if a person is found guilty of subsequently committing a like offence, it would be open to the Court to cause the offenders name and place of

residence and the offence and the penalty imposed on him to be published at the offenders expense in such newspapers or in such other manner as the Court may diner.

37. Section 17 relates to offences by Companies.

Section 18 relates to the forfeiture of property.

Section 19 relates to the defences which may or may not be allowed in prosecution under the Anti Adulteration Act.

Section 21 relates to the Magistrates power to impose enhanced penalties.

Section 23 relates to the power of the Central Government to make rules and Section 24 relates to the power of the State Government to make rules.

38. After consultation with the Central Committee for Food Standards the Central Government have made rules dated the 12th September 1955, called the Prevention of Food Adulteration Rules, 1955. Rule 28 lays down that no coal tar dyes or a mixture thereof with the exception of those specified therein shall be used in food, Metanil Yellow is not one of those exceptions. The obvious reason for that is that metanil yellow is a poison. In the New Websters Dictionary it is described as

"A poisonous yellow azo dyestuff derived from metanilic acid and used in wool dyeing, paper staining, carpet printing etc. : called also Victoria yellow."

39. Rule 23 lays down that the addition of a colouring matter to any article of food except as specifically permitted by these rules, is prohibited.

40. A perusal of the entire AntiAdulteration Act and the Rules framed thereunder clearly indicates that the purpose of the said Act was to ensure a supply of pure and unadulterated food to the public so as to promote the general health of the community and to prevent poisoning of the public at the hands of dealers who may want to exploit an unwary purchaser for their selfish ends. It is on the face of it a social legislation, within the meaning of the said expression as used by Mukerji, J. in Shiva Nands case mentioned above. The conduct of a person guilty of an offence under the Anti Adulteration Act is contrary to honesty or opposed to good morals and is clearly unethical within the meaning of the said expression as used in the judgment of their Lordships of the Supreme Court in the aforementioned case AIR 1963 SC 1313. Further, indulgence in such activities would also be obviously contrary to honesty and good morals and would connote a depravity in private and social duties which a man owes to his fellow men and a breach of customary rules of right and duty, thereby bringing it within the definition of the expression "moral turpitude" as given in Aiyars Law Lexicon. Any person, therefore, who has been convicted of an offence under the Anti Adulteration Act, lowers himself morally as well as socially in the estimation of public. I have, accordingly, no hesitation in holding mat the conviction of the appellant under Section 7/16 of the Anti Adulteration Act did involve moral

turpitude so as to disqualify him from being nominated, elected or appointed to the office of Pradhan.

41. On behalf of the appellant, however, it is argued that there is nothing inherently immoral in using a colouring matter other than that prescribed for mixing in an article of food. In this connection, it is argued that the offence does not consist in using, a poisonous colouring matter but in using a prohibited colouring matter. The prohibited colouring matter may not be poisonous. It is further argued that the poisonous nature of the colouring matter is not an ingredient of an offence, nor is the element of cheating or making a false representation an essential element of the offence under Section 16(1) of the AntiAdulteration Act of which the appellant was convicted. All the above arguments, to my mind, ignore the fact that what clause (h) of Section 5A of the Act lays down is not that moral turpitude should be an ingredient of an offence. All that it lays down is that the offence should be one "involving moral turpitude." The word "involve", according to Murrays Dictionary, is derived from the Latin word *involvere* which means to roll into or upon, to wrap up, envelop, surround, entangle. The meaning assigned at No. 4 is To envelop or (in later use, more usually) entangle (a person) in trouble, difficulties, perplexity, etc.; to embarrass to engage, in circumstances from which it is difficult to withdraw. Its further meaning given at No. 6 is To include, to contain, to imply of a person, or with reference to personal action; to include covertly in or under something, to wrap up. At No. 6(c), its meaning is given as To contain implicitly, to include as a necessary (and therefore unexpressed) feature, circumstance, antecedent condition, or consequence; to imply, entail. At No. 6(d) its meaning is given as To include or affect in its operation.

42. Bearing in mind the above meaning of the word "involve", the expression "Offence involving moral turpitude" in clause (h) of Section 5A of the Act to my mind merely means that the offence should be such as to have the effect of embarrassing a man socially by lowering him in public estimation. If an offence is such that the community regards a person convicted of such an offence as one who has committed a breach of social duties or obligations which a man owes to his fellow men or one who has acted dishonestly or against the established moral standards of honesty and integrity of accepted rules of good conduct, then conviction for such an offence would involve moral turpitude. The important question, therefore, is not what the ingredients of the offence are but how the community at large views the offence. I have already cited the aims and objects of the AntiAdulteration Act. It is, as observed above, not only a crime against an individual but also a crime against humanity at large. Under the circumstances I find it difficult to accept the contention that because the ingredients of the offence do not include an immoral act, therefore, the offence does not involve moral turpitude. Further, I am also of opinion that there is an element of immorality involved in the commission of the offence. As pointed out above, the definitions of "adulteration" as well as "misbranding" given in the AntiAdulteration Act embrace acts which are akin to cheating, deception, fraud

and false representation or a wilful violation of the provisions and rules framed for the preservation of human health and efficiency. All these acts are inherently immoral or wrongful in their nature. In this connection it may also be noted that the term "moral" as appended to "turpitude" is not used in a narrow sense. As stated earlier, it is broad enough to include any act which constitutes a breach of the social obligations which one man owes to another. Thus, any act involving a breach of any rule of good conduct or dereliction from principles of honesty, integrity and fairness in business matter would involve "moral turpitude."

43. The argument of the learned Counsel for the appellant is that a mere breach of a Government rule or a provision of an Act might not be immoral or dishonest. It may be so in an abstract sense. The question, however, has to be approached not in an abstract fashion, but bearing in mind the practical implications of the particular offence. What is to be remembered is that the appellant was not convicted for a breach of a Government rule but for a breach of a rule made under the AntiAdulteration Act. Viewed from the abstract point of view, a breach of a provision of law or a rule might or might not involve moral turpitude. The answer would depend upon the question as to what is the nature, object and purpose of the Act or the rules for the violation of which the offender is found guilty. In the present case the Act happens to be the Prevention of Food Adulteration Act and the Rules framed thereunder, and, as shown above, any breach of any provision of such an Act or any rule made thereunder is regarded as shocking to the moral conscience of the community or society. In any case, so far as the present case is concerned the colouring matter used by the appellant was admittedly poisonous. The colour was used obviously to make the poisoned sweets look more attractive to the public for the purpose of boosting their sale and getting more profits. In other words, the purpose was to obtain monetary gain by an indiscriminate poisoning of innocent and unwary men, women and children.

44. It is also argued that the appellant might have committed the offence in ignorance of the rule. I, however, find it difficult to accept this plea. A sale of foodstuffs to the public without caring to apprise oneself of the restrictions imposed by the rules regarding the ingredients of foodstuffs to be sold itself discloses a reckless disregard for public welfare and health and is to be regarded as highly blameworthy. Neither in the criminal case launched against the appellant nor in the election petition filed against him was this plea taken by the appellant. In fact, in the criminal case he admitted having committed the offence. Every one is presumed to know the law. In any case, ignorance on the part of a person that a certain set of acts would constitute an offence has no bearing on the question of moral turpitude. As observed already, the relevant question is not how the criminal himself views the offence but how the offence in question is viewed by the society at large. Once it is accepted that the ignorance of the offender removes the taint of moral turpitude attaching to the offence, in every case the offender would take the plea that he was ignorant of the law relating to the offence and, therefore, the offence committed by him did

not involve moral turpitude. The result would be that no offence, however immoral or antisocial it might be, would be held to involve moral turpitude unless it is proved that the offender had knowledge of the law relating to the same. This view on the face of it, appears to be an unreasonable one.

45. Another argument which was advanced on behalf of the appellant was that in any case, so far as this particular case is concerned, it has not been shown that the colouring matter was of such a large quantity as to produce toxic effect on the consumer. As a matter of fact there is no evidence in the present case to indicate whether the amount of poison mixed was small or large. Presuming, however, that it was small in amount, poison remains a poison and it is difficult to understand how the fact that poison is administered by a person in small doses rather than large ones with the result that the process of poisoning is a slow one rather than a quick one can serve as a mitigating factor. Moreover, even if the poison mixed was small, if the poisoned foodstuff is swallowed in a large quantity or by sensitive persons, say children or infirm persons, it may prove dangerous.

Further this argument also ignores the fact that in determining the question whether the offence involves moral turpitude or not the Court is not concerned with the effect of the act on a particular consumer; but the impression that the act is likely to create in the mind of a person who views the act from the point of view of morality, good conduct and honesty. What has to be seen is the nature of the offence as viewed by the community at the time when the question has arisen. The meaning of the expression "moral turpitude" might itself vary from time to time. Prior to the Anti-Adulteration Act, there were various laws enacted by the States. The evil became so rampant that the Central Government had to step in for the purpose of consolidating the various State laws and enacting a full-fledged all embracing law for the purpose of eradicating an evil which had become a menace to the nation.

45A. A similar argument was advanced in *Shiva Nands* case and it was argued that the offence of gambling proved in the case was of a petty nature. Dealing with this argument Mukerji, J. observed as follows :

"My Lord the Chief Justice was of the opinion that by using the word turpitude the legislature did not have in mind "Petty misdemeanours involving only a minor degree of moral culpability". With great respect, I am unable to hold that the legislature made any gradation in regard to moral culpability for in my opinion the phrase moral turpitude refers to acts of baseness, acts which have an element of vileness or acts which are harmful to society in general on contrary to the accepted rules of right and duty between man and man; it may be that some acts involve moral culpability in a larger degree than other acts; but nevertheless all such acts do involve moral culpability. In my view what the legislature wanted to penalise was all acts involving moral turpitude whether their degree was large or small." The act of selling adulterated food is itself a culpable one per se irrespective of the degree of harm suffered by the consumer and irrespective of

the question as to whether the consumer is apprised of the fact of adulteration or not. A similar point arose in the case of *Rakhal Chandra v. Purna Chandra*, AIR 1930 Cal 273. In that case the accused who was charged with selling adulterated mustard oil pleaded that he had put up a sign board informing the public that he was selling adulterated mustard oil. Dealing with this offence Suhrawardy, J. observed at p. 274 as follows :

"As I have said it is no defence to say that because it was advertised as mixed oil the seller though he sells the article for human consumption is entitled to plead that he had told the purchaser that it was not pure in defence in a prosecution under the Act. As the Act is intended for the safety of the people, in my judgment it should be construed liberally."

A consumer may want to kill himself and he may like to buy poisoned or adulterated food. That would not, however, serve as a mitigating feature and take the act of the seller from the category of an offence or make the offence itself less heinous or blameworthy. In my opinion, therefore, the fact that the amount of poison mixed in the sweets was a negligible one or that the consumer might not have objected to it is a matter which is absolutely immaterial in determining the question as to whether the offence in question involves moral turpitude. What we are concerned with is the act of the seller and the impression that is likely to create on a member of the public viewing the matter from the point of view of ordinary rules or good conduct prevailing in the society at a particular period of time. The crime committed is not against the individual but against the society.

46. It is argued that the purpose of the Government in framing a rule might be that they do not want to patronise a particular manufacturer. Rules might be framed for similar other reasons or purposes which have nothing to do with public interest or the health and welfare of the community. This argument appears to be misconceived for three reasons. In the first place, if any such rules were to be framed for purposes foreign to the Act or for other ulterior purposes, they could be struck down as bad on the ground that they impose restrictions on the fundamental right of a person to carry on his trade or business and that the restrictions imposed thereby are either not in public interest or are unreasonable within the meaning of cl. (6) of Art. 19. Their validity might also be assailed on the ground that they are discriminatory within the meaning of Art. 14 or in excess of the powers conferred by the Act. Secondly, in the present case it is not argued that the rule in question is ultra vires or invalid on any such ground, hence the presumption is that the rule in question was made to fulfil the sanitary purposes envisaged by the framers of the Act and was in public interest. Thirdly, metanil yellow is admittedly poison and, therefore, the purpose underlying its exclusion is obvious on the face of it with the result that the fact that stares one in the face is that the appellant was, in this particular case convicted of selling sweets mixed with a prohibited poison and further his application for the removal of his disqualification submitted to the Government under R. 13A are with the

third proviso was also rejected by the Additional SubDivisional Officer on the 17th September 1962, on merits.

47. For the above reasons, I have no doubt in my mind that the offence of which the appellant was found guilty did involve moral turpitude and would operate as a disqualification to his being elected as a Pradhan.

48. The second question that arises in the present case is whether the provisions relating to disqualification on the ground of moral turpitude in Section 5A of the Act read along with the rules framed thereunder are so absurd and contradictory as to result in their becoming meaningless and in effective. Before discussing this question it would be helpful to reproduce Section 5A and Rules 13 and 13A framed in this connection. Section 5A of the Act runs as follows :

"Section 5A. Disqualification for holding office under Gaon Sabha or Nyaya Panchayat : A person shall be disqualified for being chosen, nominated or appointed to, and for holding any office in the Gaon Sabha or the Gaon Panchayat, or the Nyaya Panchayat constituted under Section 42, if he

- (a) is for the time being not a member of the Gaon Sabha concerned;
- (b) holds any office of profit under a State Government or the Central Government or a local authority (other than a Gaon Sabha or Nyaya Panchayat);
- (c) is a salaried servant of a Gaon Sabha or a Nyaya Panchayat;
- (d) has been dismissed from the service of a State Government, the Central Government or a local authority or a Nyaya Panchayat for misconduct;
- (e) is in arrears of any tax, fee, or rate due by him to the Gaon Sabha for such period as may be prescribed;
- (f) is suffering from leprosy;
- (g) is an undischarged insolvent;
- (h) has been convicted of an offence involving moral turpitude;
- (i) has been ordered to give security for good behaviour under Article 109 or 110 of the Code of Criminal Procedure, 1898;
- (j) has been sentenced to imprisonment for a term exceeding six months or to transportation for contravention of any order made under the Essential. Supplies (Temporary) Powers Act, 1946, or the U.P. Control of Supplies (Temporary Powers) Act, 1947.
- (k) is convicted of an election offence;
- (l) is convicted under the U.P. Removal of Social Disabilities Act, 1947 or the Untouchability Offences Act, 1955;
- (m) is blind or dumb; or

(n) has been removed from office under subclause (iii) or (iv) of clause (g) of SubSection (1) of Section 95 unless such period as has been provided in that behalf in the said Section or such lesser period as the State Government may have ordered in any particular case has elapsed :

Provided that the period of disqualification under clauses (d), (g), (h), (i), (j), (k) or (1) shall be five years from such date as may be prescribed :

Provided further that the disqualification under clause (e) shall cease upon payment of arrears :

Provided also that a disqualification under clauses (d), (g), (h), (i), (j), (k) or (1) may, in the manner prescribed, be removed by the State Government." Rule 13 runs as follows :

"13. The date from which the period of five years for removal of disqualification under clauses (d), (g), (h), (i), (j), (k) and (l) of Section 5A of the Act shall be counted will be as follows :

Clause (d) From the date of dismissal.

Clause (g) From the date on which the insolvent is discharged.

Clause (h)(i) In the case of sentence of imprisonment, from the date of expiry of the period of sentence.

(ii) In the case of sentence of fine, from the date of payment or recovery thereof.

(iii) In the case of sentence of both imprisonment and fine, from the date of expiry of sentence or the payment or recovery of fine whichever is later.

Clause (i) From the date of expiry of the period for which the security has been taken.

Clause (j) From the date on which the period of sentence expires.

Clause (k) (i) In the case of a sentence of imprisonment from the date of expiry of the sentence.

(ii) In the case of a sentence of fine, from the date of payment or recovery thereof.

(iii) In the case of sentence of both imprisonment and fine, from the date of expiry of sentence or the payment or recovery of fine, whichever is later.

Clause (1) (i) In the case of a sentence of imprisonment, from the date of expiry of the sentence.

(ii) In the case of a sentence of fine, from the date of payment or recovery thereof.

(iii) In the case of a sentence of both imprisonment and fine, from the date of expiry of the sentence or the payment or recovery of fine, whichever is later."

Rule 13A provides as follows :

"13A. Removal of disqualifications under S.5A. (1) An application for removal of the disqualification under Cls. (d), (g), (h), (i), (j), (k) or (l) of S. 5A of the Act, shall be in such form as the Director of Panchayats may specify from time to time and shall show the ground upon which the applicant claims the removal of the disqualification.

(2) The application shall be presented to the SubDivisional Officer of the SubDivision concerned.

(3) The SubDivisional Officer may, after such enquiry as he deems fit, either accept the application and remove the disqualification or reject the application.

4. A copy of the order passed removing the disqualification shall be sent to the Secretary of the Sabha and to the Panchayat Inspector."

49. So far as cls. (d), (g), (h), (i), (j), (k) and (l) are concerned, a perusal of the relevant portion of S. 5A of the Act along with Rule 13 and 13A indicates that the Legislature in the above provisions wanted to provide for two contingencies. The first is the commencement or the beginning of the disqualification. The second is the termination or the end of this disqualification. So far as the commencement or the beginning of the disqualification incurred thereunder is concerned, provision is made therefor in the main part of S. 5A i.e. in cls. (a) to (n). So far as the termination of the disqualification is concerned, provision therefor is made in the three provisos appended to the main portion of the Section and in Rules 13 and 13A framed thereunder. The broad scheme underlying the Act and the Rules framed thereunder in this regard is that certain enumerated acts are characterised as fastening the liability of disqualification on a person. Once the period of this disqualification has started, it would continue unless it comes to an end by any of the methods prescribed in the provisos or the Rules framed thereunder. In the present case we are concerned with cl. (h) which relates to the conviction of a person of an offence involving moral turpitude. Under the main portion of S. 5A, the disqualification would begin to operate from the moment of his conviction. Similarly in the case of the remaining clauses, namely (d), (g), (i), (j), (k) and (l) the disqualification commences the moment the contingency or the event referred to therein has occurred. The commencement of the disqualification having been prescribed in the main portion of S. 5A, the only thing that remains to be prescribed is the method of computation of the period of the termination of this disqualification. If the first proviso had not existed at all, then it must be conceded that the period of disqualification would have commenced from the date of conviction and would never have terminated by lapse of time. In other words, it would be permanent unless of course it is removed by an application given in that regard under the third proviso, which is based on a ground quite independent of the ground relating to lapse of time. It would, therefore, appear that there are two methods of removal of disqualification. The first is by lapse of time. The method of computation of this

period is prescribed by the first proviso read with Rule 13. The second is by an application by a party. This method of termination is prescribed in the third proviso read with Rule 13A. As observed by Mukerji, in Shiva Nands case at page 190 :

"It is clear from what has been now provided in S. 5A itself in two of the provisos thereto, namely, the first proviso and the last proviso, that the disqualification which a person incurs under cl. (h) of S. 5A could under the third proviso be removed by the State Government and under the first proviso the State Government could prescribe a date after five years of which the disqualification could cease to operate."

50. The fallacy in the argument on behalf of the appellant is that the word "period of disqualification" in the first proviso, according to the appellants Counsel, relates to the moment of the commencement of this disqualification. This is obviously a mistaken approach to the question. The first proviso does not speak of commencement of disqualification at all. The point of time when the disqualification commences has already been specified in the main part of the Section, i.e. in cl. (h). According to cl. (h), it would be the date of conviction of the person. The expression "the period of disqualification" in the first proviso must therefore, relate not to the commencement of the period of disqualification but to the method of computation of the termination of the period of disqualification which has already commenced under cl. (h). The method prescribed for computation of this period is "five years from such date as may be prescribed". The words "five years from such date" in the first proviso indicate not the method for computing the period of commencement of disqualification but of the method of computing the period of termination of disqualification which has already commenced from the date of conviction. Further the first proviso is to be read not only with cl. (h) but also with R. 13. If all three of them, viz. cl. (h), proviso No. 1 and R. 13 are read together, then the necessary result would be that proviso No. 1 would be read as follows :

"Provided that the period of disqualification which has already commenced running under cl. (h.); and is continuing to run since the date of conviction); under clause.....(h).....shall be five years from such date as may be prescribed; (i.e., a further period of five years from the date prescribed under R. 13)."

The first portion underlined (here into) and bracketed has to be imported from clause (h) and the second portion underlined (here into) and bracketed has to be imported from R. 13.

51. Further, according to the learned counsel for the appellant, the first proviso indicates the total period of disqualification. If that had been the intention one would have expected the adjective "total" to have been put by the Legislature before the word "period." There is no such word, and in its absence, it would not be permissible to add this word before the word "period." Further, if the intention of the legislature was to prescribe a total period of five years, then instead of

using the words "from such date as may be prescribed, the easiest thing would have been to use the words "from the date of conviction." Again the very fact that R. 13 lays down a date after the date of conviction shows that the intention was to prescribe a period longer than five years. Moreover, the first proviso has got to be read in the context of the main Section as well as along with the rules framed in that connection. If the period of disqualification under the first proviso is taken to be the total period of disqualification and five years are counted from the prescribed date then obviously there would be a conflict between the main portion of the section on the one hand and the proviso read with R. 13 on the other. The cardinal rule of construction is that while interpreting a provision of law the Court should make an attempt to harmonise the various provisions with a view to arrive at a consistent and workable meaning of the Act. If the word "period" is interpreted to mean "total period" then a conflict would be created between the proviso and the main part of the Section, and the whole provision of law would become absurd and meaningless. On the other hand, if the proviso is interpreted not as meaning the total period of disqualification but as prescribing only a method of computing the period determination of disqualification which has already commenced from the date of conviction, then there is no conflict between the main portion of the Section and the proviso. This interpretation would also bring the rules into harmony with the main portion of S. 5A as well as with the first proviso.

52. On behalf of the appellant, it is argued that, the first proviso deals with the commencement of the period of disqualification. I find it difficult to accept this argument because, as I have already pointed above, the date of commencement has already been indicated in the main portion of the section and the expression "period of disqualification" in the first proviso must be interpreted as referring to the disqualification which has already commenced. In other words, the term "period of disqualification" refers to

the continuance of the period of disqualification, the disqualification already having commenced on the date of conviction.

53. The second argument on behalf of the appellant is that R. 13 is absurd because it states the period for the removal of disqualification, whereas the method of removal of disqualification has been prescribed not in the first proviso but in the third proviso and in R. 13A. It appears to me that both the provisos, namely the first as well as the third proviso, prescribe two methods of removal of disqualification. The method prescribed by the first proviso and R. 13 relates to the automatic removal of disqualification by lapse of time. The second method is provided by the third proviso and R. 13A. It relates to the removal of disqualification at the instance of the party affected. This is done by preferring an application in the manner prescribed in R. 13A.

54. Thirdly, it is argued on behalf of the appellant that, according to R. 13 the period of five years is to be counted from the date of payment of fine with the result that a person would become subject to disqualification after the payment

of fine whereas he would not be subject to disqualification if he did not pay the fine. This absurdity does no doubt result, if the interpretation contended for on behalf of the appellant is accepted and the proviso is interpreted as prescribing five years as the total period of disqualification and as laying down the entire period of disqualification from the date of its commencement to the end. This absurdity can, however, be easily avoided provided that the interpretation suggested on behalf of the respondent is accepted, and it is held by the Court that the first proviso to S. 5A and R. 13 relate not to the entire period of disqualification but to the method for the computation of the period of termination of disqualification which has already commenced from the date of conviction and which would be continued till the period of five years has elapsed after the expiry of the period of sentences or after the date of the payment of fine whichever is later.

Interpreted in this way, the main part of the Section as well as the first proviso and R. 13 relating thereto are capable of a perfectly consistent meaning and no absurdity is created.

55. Moreover, the meaning suggested on behalf of the respondents would fulfil the object and purpose of the Act. The object and purpose of the Act obviously is to make conviction for an offence involving moral turpitude mark the beginning of a period of disqualification. The effect of accepting the contention of the learned Counsel for the appellant would be to create just the contrary result. A person could be convicted of an offence involving moral turpitude and yet he would never be subject to any disqualification. This is certainly not what was intended by the law makers and would obviously defeat their purpose.

58. The interpretation placed on behalf of the respondents should, therefore, be acceptable for a number of reasons, in the first place, it harmonises the main part of the Section with the first proviso as well as with R. 13. Secondly, it has the effect of making the Act workable and giving this provision of law a meaning which is sensible. On the other hand, the interpretation suggested on behalf of the appellant not only creates an absurdity and makes this provision of law meaningless but also results in making it ineffective and unworkable. Thirdly, the interpretation suggested on behalf of the appellant has not only the effect of defeating the object of the statute but also on the other hand, results in producing consequences which are just the contrary. The Court should try to place a harmonious construction on the various provisions of a statute. Further, the Court should be reluctant to attribute absurdity to the Legislature, and should, if possible avoid a construction which would render the statute meaningless or ineffective. Further, the Court should, if possible, place such a construction on a statute as would subserve and fulfil the purpose which the framers of the statute wanted to achieve thereby. The above method of construction would be supported by the rules of interpretation of statutes laid down by their Lordships of the Supreme Court in a large number of cases reference to which at this stage would be relevant.

57. So far as the principle of harmonious construction is concerned, in AIR 1963 SC 1356 it was held by S.K. Das, J. that in construing a statute an attempt should be made to avoid conflict rather than create it. The interpretation suggested on behalf of the respondents avoids conflict whereas that suggested on behalf of the appellant has the effect of creating it.

58. In *Raj Krushna Bose v. Binod Kanungo*, AIR 1954 SC 202 it was observed that whenever it is possible to do so, it is the duty of the Court to construe provisions which appear to conflict so that they harmonise with each other.

59. In *Bengal Immunity Co. Ltd. v. State of Bihar*, (S) AIR 1955 SC 961, the principle of harmonious construction was defined thus :

"It is a cardinal rule of construction when there are in a Statute two provisions which are in conflict with each other such that both of them cannot stand, they should, if possible, be so interpreted that effect can be given to both, and that a construction which renders either of them inoperative and useless should not be adopted except in the last resort. This is what is known as the rule of harmonious construction."

60. In *Veluswami Thevar v. Raja Nainar*, AIR 1959 SC 422 it was held that when on a construction of a statute, two views are possible one which results in an anomaly and the other not, it is the duty of a Court to adopt the latter and not the former, seeking consolation in the thought that the law bristles with anomalies.

61. The second rule of interpretation relevant in the present case is that the Court should, if possible, so interpret a statute as to avoid any part of it becoming absurd, meaningless or ineffective. Reference in this connection may be made to *Shiv Bahadur Singh v. State of Vindhya Pradesh*, AIR 1953 SC 394 in which it was held that it is incumbent on the Court to avoid a construction, if reasonably permissible on the language, which would render a part of the statute devoid of any meaning or application.

62. In *Tirath Singh v. Bachittar Singh*, (S) AIR 1955 SC 830 the following observations are relevant :

"But it is a rule of interpretation well established that, Where the language of a Statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence."

The present case is a stronger one because no modification of the meaning of the words or even the structure of any sentence is needed to enable the Court to give a meaning to the provisions of the Statute. On the other hand, the interpretation suggested on behalf of the appellant results in the addition of the word "total" before the word "period."

63. The principle of interpretation laid down in *SirajulHaq Khan v. Sunni Central Board of Waqf*,

U.P. AIR 1959 SC 198 is summarised thus in headnote (b) :

"It is well settled that in construing the provisions of a statute Courts should be slow to adopt a construction which tends to make any part of the statute meaningless or ineffective; an attempt must always be made so to reconcile the relevant provisions as to advance the remedy intended by the statute. In such a case, it is legitimate and even necessary to adopt the rule of liberal construction so as to give meaning to all parts of the provision and to make the whole of it effective and operative."

64. The third rule of interpretation relevant in this case relates to the intention and object of the Legislature. In *Commissioner of Incometax Delhi v. S. Teja Singh*, AIR 1959 SC 352 headnote (c) runs as follows :

"A construction which would defeat the object of the Legislature must, if that is possible, be avoided; *Curtis v. Stovin*, (1889) 22 QBD 513 and *Whitney v. Commrs. of Inland Revenue*, (1925) 10 Tax Cas 88 (110), Rel. on."

65. In *Aswini Kumar Chose v. Arbinda Bose*, AIR 1952 SC 369 it was laid down as follows :

"It is one of the settled rules of construction that to ascertain the legislative intent, all the constituent parts of a statute are to be taken together and each word, phrase or sentence is to be considered in the light of the general purpose and object of the Act itself."

(Vide headnote h).

66. On behalf of the appellant, an attempt is made to isolate the first proviso and to read it as divorced from the main part of the Section as well as R. 13. This is an obviously fallacious method. On the other hand, on behalf of the respondents it is argued that all the three should be read together each giving meaning to the other and all of them fulfilling the common purpose of the statute.

67. Fourthly, so far as the proviso is concerned, there are a number of authorities of their Lordships of the Supreme Court to the effect that Court should so interpret the proviso as to harmonise it with the principal part of the Section.

68. In *Abdul Jabar Butt v. State of J. and K.* (S) AIR 1957 SC 281, it was laid down that it is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso, and should, therefore, be construed harmoniously with the main part of the provision to which it is attached as a proviso.

69. In *Tahsildar Singh v. State of U.P.* AIR 1959 SC 1012, it was held that the cardinal rule of construction of the provisions of a Section with a proviso is to apply the broad general rule of construction, which is that a Section or

enactment must be construed as a whole, each portion throwing light on the rest. The true principle undoubtedly is that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso, taken and construed together is to prevail, it was further observed that

" a sincere attempt should be made to reconcile the enacting clause and the proviso and to avoid repugnancy between the two."

70. Read in the above fashion, I am of opinion that S. 5A, cl. (h), and the first proviso as well as R. 13 are capable of bearing a meaning that is consistent. This meaning fulfils the obvious purpose of the statute and has the further advantage of saving the statute from being thrown out as unworkable, absurd or meaningless.

71. Lastly, there is another reason why the contentions advanced on behalf of the appellant in the present case should not be accepted. The question before us has arisen at the writ stage. Even if it be presumed that the view taken by the Election Tribunal regarding the interpretation of the expression "moral turpitude" is not correct, it cannot be said to be a view that is not reasonably possible. Where two possible views can be taken and the authority having jurisdiction in the matter interprets the statute by adopting one of the two possible views, it cannot be said that order of the authority in question suffers from any error of law that is manifestly wrong. Further, the question whether an offence involves moral turpitude cannot be even said to be a pure question of law. It has to be determined in the light of the facts and circumstances of each particular case. Moreover, in the present case the view taken by the Election Tribunal was also upheld by a learned Single Judge. What would warrant interference in writ proceedings is not, a mere error of law but a manifest error of law; or, in other words, an error apparent on the face of the record.

72. Similarly, so far as the second question which relates to the interpretation of cl. (h) of S. 5A of the Act, the first proviso appended thereto and R. 13 framed thereunder is concerned, it can at least be said that the view suggested on behalf of the respondents is a view that is reasonably possible. At any rate, the matter is at least a highly arguable one and both the questions mooted before us require lengthy arguments to establish the error. According to the view expressed by their Lordships of the Supreme Court in a number of cases a writ of certiorari should, not be issued in this situation. In the wellknown case of Hari Vishnu Kamath v. Ahmad Ishaque, (S) AIR 1955 SC 233, the principle governing such cases is laid down in these words :

"It may therefore be taken as settled that a writ of certiorari could be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record."

73. In Satyanarayan Laxminarayan v. Mallikarjuns Dhavanappa, AIR 1960 SC 137, their Lordships of the Supreme Court while dealing with a judgment of the Bombay High Court, which had interfered with a case in which no error apparent

on the face of the record existed, observed as follows :

"If it is clear that the error if any is not apparent on the face of the record, it is not necessary for us to decide whether the conclusion of the Bombay High Court on the question of notice is correct or not. An error which has to be established by a long, drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. As the above discussion of the rival contentions shows the alleged error in the present case is far from selfevident and if it can be established, it has to be established, by lengthy and complicated arguments. We do not think such an error can be cured by a writ of certiorari according to the rule governing the powers of the superior Court to issue such a writ."

Their Lordships, accordingly, set aside the judgment of the Bombay High Court in the above case. Reference in this connection might also be made to two other cases, namely *Kaushalya Devi v. Bachittar Singh*, AIR 1960 SC 1168 and *Prem Singh v. Deputy Custodian General, Evacuee Property*, (S) AIR 1957 SC 804. Bearing in mind the principles laid down in the aforementioned cases, the error, if any, cannot be said to be a manifest error of law. On this ground as well, therefore, I am of opinion that interference in writ jurisdiction is not called for in the present case.

74. For the above reasons, I am constrained to come to the conclusion that this special appeal has

no force, I would, accordingly, dismiss it with costs.

75. R.N.SHARMA, J. : I have the advantage of perusing the judgments of my Lord the Chief Justice and my brother Beg, J. With all respect I concur in the final order proposed by the Chief Justice. However I will like to state my own reasons for arriving at the conclusion.

76. The facts have been fully set out in the judgment of my brother Beg, J., and I need not repeat them. Only two questions are involved in this special appeal, namely, (1) whether the offence of which the appellant was convicted involves moral turpitude, and (2) whether a disqualification was incurred by him under cl. (h) of S. 5A of the U.P. Panchayat Raj Act and whether this disqualification attached to him at the time of his nomination and election.

77. I will first deal with question No. (1). The expression moral turpitude has not been defined anywhere in any statute. In *Websters New International Dictionary*, Vol. 2, Second Edition, at page 1593, the definition of moral turpitude is given as follows :

"The quality of a crime involving grave infringement of the moral sentiment of the community as distinguished from statutory mala prohibita."

78. In *Aiyars Law Lexicon of British India*, 1940 Edition at page 832, the following is given as the meaning of moral turpitude.

"Anything done contrary to justice, honesty, principle, or good morals; an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man or to society in general, contrary to the accepted and customary rule of right and duty between man and man."

Further Aiyar says that it is

"A term not clearly defined and what constitutes moral turpitude or what will be held such, is not entirely clear..... Everything done contrary to justice, honesty, modesty, or good morals is done with turpitude, no that embezzlement involves moral turpitude."

79. In American Jurisprudence Vol. 14, 1962 Reprint, at page 757, it was considered as to when a criminal act involves moral turpitude and it is said that

"An act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow men or to society in general may evidence moral turpitude. An act involving the violation of a rule of public policy and morals may involve moral turpitude."

80. In Corpus Juris Secundum, Vol. 55, at page 104 it is said that what crimes involve moral turpitude has been the subject of vast contention, extending from the view that moral turpitude inheres in every wilful breach of a criminal statute to the position that only those crimes that present such vileness and depravity as arouse the abhorrence of all mankind are intended. A Scriptural inhibition has been thought sufficient by some Courts conclusively to ascribe moral turpitude to an act. It may not be so in a secular state as ours. Further on it is stated in Corpus Juris Secundum that the expression has been defined as an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man or to society in general, contrary to the accepted and customary rule of right and duty between man and man.

81. The interpretation given to the expression moral turpitude by various writers and in various judicial decisions is more or less the same. In a single Judge decision of this Court, AIR 1959 All 71, Tandon, J., observed as follows :

"The expression moral turpitude is not defined anywhere. But it means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doing of any private and social duty which a person owes to his fellowmen or to the society in general."

Srivastava, J. observed in AIR 1963 All 527 that

"no absolute standard can be laid down for deciding whether a particular offence is to be considered one involving moral turpitude. The question will necessarily depend on the circumstances in which the offence, is committed. It is not every

punishable act that can be considered to be an offence involving moral turpitude. The tests which should ordinarily be applied and which should in most cases be sufficient for judging whether a certain offence does or does not involve moral turpitude, appear to be (1) whether the act leading to a conviction was such as could shock the moral conscience of society in general, (2) whether the motive which led to the act was a base one and whether on account of the act having been committed the perpetrator could be considered to be of a depraved character or a person who was to be looked down upon by the society."

In the case before Srivastava, J. the respondent belonged to a district where prohibition was not in force. He purchased lawfully in that district a small quantity of bhang under medical advice and carried it with him when he had to go to a district in which prohibition was in force and was there convicted under S. 60 of the Excise Act, The learned Judge held that the respondent had no base motive leading to the crime. The act did not also show any depravity in the character of the respondent nor had the respondent done anything which was considered base or demeaning by society in general. The learned Judge further held that in those circumstances the conviction of the respondent was really a technical one and could not be considered to be in respect of an offence involving moral turpitude.

It may be stated here that in both cases aforesaid the question of an offence involving moral turpitude arose in connection with disqualification incurred for holding office under the U.P. Panchayat Raj Act.

82. It was held in AIR 1957 Punj 97 that the term, moral turpitude is rather vague one and it may have different meanings in different contexts. The term has generally been taken to mean to be a conduct contrary to justice, honesty, modesty or good morals and contrary to what a man owes to a fellow man or to society in general.

83. The case of 1961 R D 186 (All) was referred to a third Judge on difference of opinion between the Chief Justice and Dayal, J. The question involved in that case was whether the conviction of the appellant under S. 13 of the Public Gambling Act constituted a disqualification within the meaning of cl. (h) of S. 5A of the U.P. Panchayat Raj Act. The third Judge, Mukerji, J., observed as follows :

"Ideas of morals often undergo changes in different periods of a countrys history. It is also true that different peoples of the world sometimes differ as to whether a particular act is moral or immoral. Whenever a question has to be considered as to whether a certain act is moral or immoral, one has to consider as to how that act is viewed by the society or the community, as the case may be, and if the society or the community views such act as involving moral turpitude, then even though some particular individual may not consider it so will not make the act a moral one or a praiseworthy act. Therefore, whether an act involves moral turpitude or does not, has to be

determined not necessarily on abstract notions of the rights and wrongs involved

or the harm or good coming out of the act but how that act is looked upon (by) the society where the act has been committed.. .. A gambler has never been looked upon with favour. He always incurred the calumny of his fellowmen. Such being the position of a person, who has suffered punishment however small it may have and however far back into the past it may have been, must be held to have been guilty of a moral wrong and, therefore, his conviction must, in my opinion, be held to have involved moral turpitude within the meaning of cl. (h) of S. 5A of the U.P. Panchayat Raj Act."

84. In AIR 1963 SC 1313 this expression came in for interpretation by the Supreme Court. Their Lordships observed as follows :

"In dealing with this aspect of the matter the expression "moral turpitude or delinquency" is not to receive a narrow construction. Whenever conduct is proved against an Advocate is contrary to honesty, or opposed to good morals or is unethical, it may be safely held that it involves moral turpitude."

85. The generally accepted view therefore is that any act constituting an offence which is contrary to honesty or good morals or is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow man or society in general should be deemed to be an offence involving moral turpitude. One of the tests for determining the nature of the offence is to see whether it shocks the conscience of or is scorned at by, the public or the society at large. Whether an offence involves moral turpitude will depend on its nature and the circumstances in which it is committed. An offence of a certain class may generally be considered to involve moral turpitude but it may not be so if committed in particular circumstances, for example, an offence of murder may ordinarily involve moral turpitude but if it is committed in a spirit of patriotism or with a laudable object, it may not shock the public conscience and instead of being decried by the public, the offender may be considered a hero. It may be recalled that in the national independence movement of this country patriots of the revolutionary type used to commit murders of alien rulers and the murderers used to be applauded as heroes. In their case the Indian society did not consider their act to be a crime much less a crime involving moral turpitude. A man may kill B just to avenge the molestation by him of A's wife or a close female relation. The public conscience would, not be shocked by such crime and there may be a large number of people who may applaud the act of the murderer. Again, an offence of theft will generally be considered mean, vile and antisocial and a thief would be simply scorned at. However, if a starving and emaciated person steals food is caught, prosecuted and convicted, people will take a charitable and sympathetic view of the offenders conduct and his offence may not be considered as involving moral turpitude. Thus the case of every offence will have to be judged in the light of the circumstances in which it is committed. It is not the gravity of the offence or the quantum of punishment imposed on a person which will determine such question. In the case of Durga Singh, AIR 1957 Punj 97 (supra) the learned judge observed that it has never been held that gravity of punishment is to be

considered in determining whether the misconduct involves moral turpitude or not.

87. It is no doubt true that adulteration of food stuffs is very much rampant these days and a person who, for example, mixes chalk in wheat flour, water in milk, animal fat in clarified butter and so on, will be considered a villain of the first degree and such an offence committed by him will be scorned at and decried by the society. Such an offence will involve moral turpitude. In the instant case however the facts are different. The appellant was convicted under, S. 16 read with S. 7 of the Prevention of Food Adulteration Act for contravening R. 28 of the Prevention of Food Adulteration Rules, 1955. This rule lays down that no coal tar dyes or a mixture thereof except those enumerated therein shall be used in food. The appellant was found to be selling laddoos in which coal tar dye known as metanil yellow was used. This was not one of the permitted dyes. The rules give a list of the permitted colours, with their common names, the colour index and the chemical class. These common names are technical and a layman may not be aware of the technicalities. I do not mean to say that merely because a layman may not be aware of the technicalities, he should not be deemed to have committed an offence if he has used a colour other than one permitted by this rule. Ignorance of law is no excuse and every citizen is expected to know the law and the rules for the time being in force. If a sweets vendor has used a dye which is not permitted under R. 28, he will technically be liable for breach of the rule. There is a possibility that he committed the breach in ignorance of the rule. It may be that when he went to purchase a particular colour he did not take sufficient care to familiarise himself with the rule and made sure that he was purchasing only the permitted dye. For breach of a provision of the Prevention of Food Adulteration Act or rules made thereunder, the question of mens rea is not relevant. A person shall be deemed to have committed the offence if he has contravened any provision of the Act or the rules. He will be liable to punishment merely because he has been found to have committed an act of contravention. At the same time, his action will not necessarily be deemed to be vile, base or depraved merely because he happens to contravene a provision of this Act or the rules made thereunder. I am conscious of the need of enforcement with the utmost strictness the laws for prevention of adulteration of food and generally speaking an offence for adulteration of food should be deemed to involve moral turpitude. It is an offence against the society at large because by passing on adulterated food to the public, the offender may do physical harm to a large number of people. But, as I have said above, every case will have to be judged in the light of its own circumstances. It is one thing to mix water in milk and chalk in wheat flour but it is quite different if an offender is found to have used a certain prohibited colour in a food stuff. So far as the colouring of food stuff, for example, laddoos in this case, goes, it would have made no difference if the appellant had used one of the permitted yellow colours. There is nothing before us to indicate that the metanil yellow colour used by the appellant could have made the laddoos more attractive or that this colour cost less than the permitted

colours. It is possible that the appellant purchased metanil colour without actually knowing that it was a prohibited colour, it may be that he was not conversant with the, technical names of the colours. In my view, the act of the appellant in using metanil yellow colour cannot be deemed to be vile, base, or depraved to the extent of making his offence as one involving moral turpitude.

88. Now coming to the second question, it appears to me that the disqualification, if any, did not commence at all in the case of the appellant. Section 5A of the U.P. Panchayat Raj Act reads as follows :

"Disqualification for holding office under Gaon Sabha of Nyaya Panchayat. A person shall be disqualified for being chosen, nominated or appointed to, and for holding any office in the Gaon Sabha or the Gaon Panchayat, or the Nyaya Panchayat constituted

under S. 42, if he????????????????????.....

(h) has been convicted of an offence involving moral turpitude.

??..

Provided that the period of disqualification under clauses (d), (g), (h), (i), (j), (k), or (l) shall be five years from such date as may be prescribed :

? ? ? ? ?

Provided also that a disqualification under clauses (d), (g), (h), (i), (j), (k) or (l) may, in the manner prescribed, be removed by the State Government."

To me the language of the section read along with its provisos appears to be plain enough. The main part of the section lays down the disqualifications which can be incurred on certain grounds and one of those grounds numbered as (h) is that he has been convicted of an offence involving moral turpitude. After laying down the disqualifications which will disqualify a person for being elected and nominated etc., the first proviso restricts the period of disqualification to five years. In other words, while the main part of Section lays down that what are to be the disqualifications, the first proviso limits the period to five years for which the disqualification shall remain in force and such period of five years is to be counted from such date as may be prescribed. According to Section 2(p),"prescribed" means prescribed by this Act or rules made thereunder. The intention of the Legislature therefore was that the disqualifications mentioned in clause (h) and others of the Section shall be limited to a period of five years and the State Government will make rules prescribing the data from which the period of five years will incase of each disqualification run. One argument before us was that the disqualification comes into existence immediately by virtue of the provisions of the main S. 5A and in the case of person convicted of an offence involving moral turpitude, the disqualification attaches to him as soon as he is convicted. If this interpretation is to be accepted as correct, the period of disqualification may extend even beyond five years. The State Government may

prescribe a date different from the date of conviction in the case of clause (h) and such other different dates in the case of other clauses and thereby the period of disqualification would be extended beyond five years because the period between the date of the conviction and the date which may differently be prescribed will have to be added to the period of five years by the first proviso. Obviously this was not the intention of the Legislature. The intention seems to have been that the period of disqualification should be strictly limited to five years and this period of five years will be counted only from the date as may be prescribed. The words used in the first proviso are "the period of disqualification" which mean the entire or total period of disqualification and not the period of disqualification to commence from the prescribed date and still adding to the period of five years the period commencing from the date of original conviction.

89. It is well settled rule of interpretation that a proviso restricts the general provision of the Section. A proviso is a part of the Section itself. It was observed in AIR 1959 SC 1012 that the cardinal rule of construction of the provisions of a Section with a proviso is to apply the broad general rule of construction, which is that a Section or enactment must be construed as a whole, each portion throwing light if need be on the rest. Further their Lordships said that the true principle undoubtedly is that the sound interpretation and meaning of the statute, on a view of the enacting clause, saving clause, and proviso taken and construed together, is to prevail. Unless the words are clear, the Court should not so construe the proviso as to attribute an intention to the legislature to give with one hand and take away with another. To put it in other words, a sincere attempt should be made to reconcile the enacting clause and the proviso and to avoid repugnancy between the two.

90. The obvious intention of the Legislature in enacting the proviso to S. 5A was to restrict the period of disqualification to five years. If there was no such proviso, a person would have been disqualified for nomination or election for ever on incurring any of the disqualifications mentioned under this Section. Further, if the intention of the Legislature were to make the period of disqualification more than five years, they could have well said that a person would at once be considered disqualified if any of the clauses of the Section were found applicable to him and then the disqualification would cease on the expiry of five years from such date as may be prescribed. The intention of the Legislature was, however, otherwise. It was envisaged that different dates would have to be prescribed for computing the period of five years disqualification in cases of different clauses (d), (g), (h), (i), (j), (k) and (l), and so they left it to the rule making authority to prescribe appropriate dates for each clause.

91. The difficulty has, however, been created by rule 13 of the U.P. Panchayat Raj Rules. This rule finds place in Chapter 1C under the heading "Disqualifications". Instead of prescribing the date from which the period of disqualification under clauses (d), (g), (h), (i), (j), (k) and (l) shall be computed, it has been laid down in this rule that "the date from which the period of five years for removal of

disqualification under clauses (d), (g), (h), (i), (j), (k) and (I) of Section 5A of the Act shall be counted, will be as follows ;" The Section does nowhere lay down the period within which the period of five years for removal of disqualification should be counted. The third proviso to Section 5A simply laid down that a disqualification under clause (d) etc, may in the manner prescribed be removed by the State Government. Thus the State Government by this rule only prescribes the manner in which a disqualification may be removed. It is open to the State Government to remove the disqualification at any time and the Section does not envisage the prescribing of a time within which a disqualification may be removed. A disqualification is to last only for five years and it will automatically be removed on the expiry of that period. If, on the other hand, the State Government wants to remove a disqualification, it can do so at any time within the period of five years and there is no restriction on its powers with reference to a period of time. Even if rule 13 may be read as prescribing the date from which the period of five years disqualification will be counted, the matter becomes preposterous. Clause (h)(ii) of Rule 13 is as follows.

"In the case of sentence of fine, from the date of payment or recovery thereof."

A plain meaning of this provision would be that the period of five years disqualification will be counted or will commence from the date of payment or recovery of fine in the case of a sentence of fine. No other words, a person will incur the disqualification only when he chooses to pay the fine. He can prevent disqualification from attaching to him by not paying the fine. He can get himself nominated and elected by not paying the fine because without paying the fine, the disqualification will not operate. The least that can be said is that the rule is absurd and it does not at all implement the intention of the Legislature. The effect of such absurdity is that the rule does not exist for the purposes of the first proviso to Section 5A. In other words, the date as contemplated by the first proviso has not been prescribed and when the date has not been prescribed, the disqualification which was to commence from the prescribed date does not commence and does not apply to the appellant. It is not proved that he has paid the fine or that it has

been realised from him. He was not thus disqualified for being chosen or nominated to an office under the Gaon Sabha or the Gaon Panchayat.

92. Our attention was drawn to a Division Bench decision of this Court in 1959 All LJ 477. The relevant observations of the Bench read as follows :

"The first proviso to Section 5A, U.P. Panchayat Raj Act introduced under U.P. Act No. 19 of 1957 does not say that the period of disqualification will begin from a prescribed date. It says that the period of disqualification will be in all for a period of five years from a certain date. If that date is not specified that five years period cannot be computed and the main disqualification has its effect on account of the provision of clause (h) of Section 5A and is operative so long as the conviction remains in force." With all respect I am unable to agree with this

view. I have already shown how the disqualification does not come into existence independently of the first proviso. It has to commence from a date to be prescribed. The decision in Baldis case presumes that the disqualification in clause (h) comes into operation just on the date of conviction so that without a valid provision for restricting its period, the disqualification operates for ever. This was never the intention of the Legislature and there is an obvious fallacy in this argument. A disqualification can remain operative for ever only when it has actually come into operation and when it has not come into operation at all, there is no question of its continuing for ever.

93. The order of the Additional SubDivisional Officer holding the appellant disqualified and for that reason setting aside his election was wholly wrong and cannot be maintained and it must be quashed. Consequently, I allow the appeal and quash the order of the Additional SubDivisional Officer dated the 30th of October, 1961. The appellant should get his costs of this appeal from respondent No. 2.

BY THE COURT

94. The appeal is allowed and the order passed by the Additional SubDivisional Officer on 30101963 is quashed. The appellant shall get his costs of the appeal from respondent No. 2.

Appeal allowed.