

(1945) 07 CAL CK 0007

In the Calcutta High Court

Case No : Criminal Revn. Nos. 124 and 125 of 1945

Corporation of Calcutta

APPELLANT

Vs

Pranabesh Bhowmick

RESPONDENT

Date of Decision : 05-07-1945

Acts Referred:

Citation : (1945) 07 CAL CK 0007

Judgement

Derbyshire, C.J.—On 5th February 1945 this Court granted a rule at the instance of the Corporation of Calcutta calling upon Pranabesh Bhowmick, the opposite party, to show cause why the order of acquittal made in his favour by the Municipal Magistrate of Calcutta on 20th November 1944 in respect of charges under Ss. 424 and 488, Calcutta Municipal Act, should not be set aside and the matter dealt with as might seem fit and proper to this Court.

2. Pranabesh Bhowmick was the manager of a food shop owned by the Government of Bengal where foods that were rationed under the Bengal Rationing Order of 1943 were sold. On 19th July 1944, Dr. R. Chandra, who was a Food Inspector employed by the Calcutta Corporation, visited the shop managed by the respondent at E3/18 College Street Market, Calcutta. Dr. Chandra asked the respondent to sell him a sample of wheat atta for analysis pursuant to the provisions of certain sections of the Calcutta Municipal Act. The sample demanded was six chittaks which is about 12 ozs. The usual price for such an amount, annas two, was tendered. The respondent refused to sell the sample of atta demanded on the ground that he was forbidden to do so under the provisions of the Bengal Rationing Order of 1943. Shortly, those provisions prohibit the supply of rationed foodstuffs by retailers except for human consumption and against a ration document, commonly known as a ration card. As a result of the refusal these proceedings were brought by the Calcutta Corporation against the manager of the shop, the respondent.

3. It appears that Dr. Chandra was acting in the course of his duties as a Food Inspector of the Calcutta Corporation and was duly authorised by the Health

Officer of the Calcutta Corporation to inspect the College Street Market. The respondent was acting according to what he thought was his duty and rights. The prosecution is really in the nature of a test case between the Corporation and the Government of Bengal. The provisions of law dealing with the inspection of foodstuffs in Calcutta are contained in the Calcutta Municipal Act of 1923. Section 424 (1) provides:

If the Health Officer, or any person authorised by him in this behalf, requires the sale to him of any food or drug exposed or intended for sale, and tenders the price for a quantity not more than is reasonably requisite for division and disposal under sub-ss. (4) and (5), any person in possession of or exposing the same for sale shall be bound to sell such quantity.

4. Sub-section (2) provides:

The Health Officer, or any person authorized by him in this behalf, may require, on tendering the price for it, the sale to him during the process of manufacture, of any quantity of (i) any food, or (ii) any drug, or (iii) any ingredients used in the manufacture of any food or drug, not being more than is reasonably requisite for division and disposal under sub-s. (4) and sub-s. (5), and any person in possession of the said food, drug or ingredients shall be bound to sell such quantity.

5. Sub-section (3) provided:

The Health Officer, or any person authorised by him in this behalf, may likewise require the surrender to himself, for the purpose of analysis of such quantity as is reasonably requisite for such process, of any food which is in course of transit in Calcutta or stored in any place in Calcutta for sale as an article for human consumption, and any person in possession of the same shall be bound to surrender such quantity; and in every such case the price of the food so surrendered shall be payable by the Health Officer or by the person authorised by him, to the owner of the same, if claimed by such owner within one month from the date of the said surrender.

6. Sub-section (4) provides :

When any sale under sub-s. (1) or sub-s. (2) is completed, or when any food is surrendered under sub-s. (3) the Health Officer, or the person authorised by him in this behalf, or any purchaser who wishes to have an article of food analysed under S. 423 shall forthwith notify to the seller or his agent selling the article or the person in possession thereof, as the case may be, his intention to have the same analysed and shall divide the article into three parts, to be then and there separated and each part to be marked and sealed or fastened up in any manner which its nature will permit.

7. Sub-section (5) provides :

The Health Officer, or the person authorised by him in this behalf, or the

purchaser referred to in sub-s. (4) shall deliver one of the said parts to the seller or his agent, shall retain another for future comparison, and may send the third to a public analyst.

8. Section 488 provides:

Whoever commits any offence by-(a) contravening any provision of any of the sections, sub-sections, clauses of sections, provisos or rules of this Act mentioned in the first column of the following table, or (b) contravening any provision of any rule made under any of the said sections, sub-sections, clauses, or provisos, or (c) failing to comply with any direction lawfully given to him or any requisition lawfully made upon him under any of the said sections, sub-sections, clauses, provisos or rules, shall be punished with fine which may extend to the amount mentioned in that behalf in the third column of the said table.

9. The table itself provides as regards S. 424, sub-ss. (1), (2) and (3)-Refusal to sell or surrender articles of food or drug required for purposes of analysis shall be punished with a fine which may extend to Rs. 100. It was under the provisions of S. 424 that Dr. Chandra, the Food Inspector in this case was employed by the Health Officer to demand the six chittaks of atta and tender the two annas. Section 554, Calcutta Municipal Act, provides:

Every Councillor or Alderman, every municipal officer and servant..... shall be deemed to be a public servant within the meaning of S. 21, Penal Code.

10. The Corporation say that the respondent by refusal to sell the sample of atta demanded has been guilty of an offence. The answer made on behalf of the respondent is that he is in charge of a Government shop which sells rationed food and that he is subject to the provisions of the Bengal Rationing Order of 1943. That order was made by the Government of Bengal on 2nd November 1943 in exercise of the powers conferred by R. 81, Defence of India Rules, made pursuant to S. 2, Defence of India Act, 1939. The Rationing Order which applies to Bengal provides in clause (6) :

No appointed retailer or appointed establishment proprietor shall, on and after the rationing date, supply or offer or attempt to supply, or knowingly permit to be supplied by any agent or servant of such retailer or proprietor, any rationed article in any rationed area in which such article is rationed except for household consumption or establishment consumption and except under and in accordance with the provisions of this order and of the regulations made thereunder.

11. Clause (7) provides :

No person shall, on and after the rationing date, in a rationed area in which an article is rationed obtain or attempt to obtain such rationed article except for household consumption or for establishment consumption or in connection therewith and except under and in accordance with the provisions of this order and of the regulations made thereunder.

12. Clause (9) provides :

Except as otherwise provided by this order, a rationed article shall be obtained, on and after the rationing date, only by means of a ration document available for lawful use and lawfully used, and only up to the quantity in relation to that article as specified or as represented by the units specified on the ration document.

13. The respondent says shortly, "I am forbidden by cl. 6 to supply atta except for household or establishment consumption and except as against a ration document and you, the Food Inspector, do not require the food for consumption and you have no ration document." The respondent also says that the provisions of the Calcutta Municipal Act referred to above have no operation in the present case by reason of the provisions of S. 3, Defence of India Act, 1939, which provides:

Any rule made under S. 2, and any order made under any such rule, shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or in any instrument having effect by virtue of any enactment other than this Act.

14. The Corporation, however, rely upon R. 4 of the Rules, made under the Defence of India Act of 1939 which provides as follows:

No prohibition, restriction or disability imposed by or under these rules shall apply to anything done by or under the direction of any member of His Majesty's forces or any public servant acting in the course of his duty as such member or public servant.

15. The Corporation say that the Food Inspector was a public servant acting in the course of his duty and making a direction which he was entitled to give under S. 424, Calcutta Municipal Act, upon the respondent requiring him to sell a sample of atta and that in consequence of R. 4, Defence of India Rules, the prohibition contained in cls 6, 7 and 9, Bengal Rationing Order of 1943, does not apply. The matter has been argued on both sides. It concerns certain provisions of law which have been made in the Calcutta Municipal Act for the protection of the public of Calcutta as regards the quality and wholesomeness of the food supplied to it. There are no other provisions of law under which the public of Calcutta can be protected and it is important that the public should be protected. The rationing scheme has been set up for the purpose of ensuring that people may get food. It is equally important that the food they get should be wholesome food. If the provisions of the Calcutta Municipal Act in question are properly acted upon and enforced they are a measure of protection to the public as regards the quality of its foodstuffs. I have come to the conclusion that the contention of the Calcutta Corporation in this matter is correct.

16. It is quite true that the respondent is prohibited under cls. 6, 7 and 9, Bengal Rationing Order, 1943, from selling or supplying atta except for human consumption and against a ration document, but that Rationing Order being

made under the provisions of R. 81, Defence of India Rules, is subject to the provisions of R. 4, Defence of India Rules. The effect of that is to add to cls. 6, 7 and 9 an exception in the case where a public servant acting in the course of his duty as a public servant and duly authorised by the Health Officer of the Corporation directs a shop keeper to supply him with a sample of the foodstuff concerned for analysis pursuant to S. 424, Calcutta Municipal Act. Once it is realised that there is this exception added to cls. 6, 7 and 9 by R. 4, Defence of India Rules, it seems to me that there is no in-consistency between the provisions of the Bengal Rationing Order and the provisions of the Calcutta Municipal Act in question.

17. I am, therefore, of the opinion that Dr. Chandra was within his rights in asking for the sample of the atta and that the respondent, though he acted honestly and did what he thought to be his duty, was wrong in refusing to supply the sample. In my view, the Magistrate in this case misdirected himself in law. This rule is, therefore, made absolute and the matter is remitted to the Magistrate for retrial in the light of the observations we have made. The other rule obtained by the Calcutta Corporation against the accused P. K. Sarkar (Revision NO. 125 of 1945) in a similar case is also made absolute, and the case is remitted to the Magistrate to be dealt with in the light of the observations we have made.

Ellis, J.

18. I agree.