

(1995) 02 KL CK 0014

In the High Court Of Kerala

Case No : W.A. No's. 1616, 1621 and 1622 of 1994

Devan Foods

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 22-02-1995

Acts Referred:

Constitution of India, 1950 — Article 19(1)
Prevention of Food Adulteration Act, 1954 — Section 2, 23(1), 23(1A), 3
Prevention of Food Adulteration Rules, 1955 — Rule 3, 5

Citation : (1995) 02 KL CK 0014

Hon'ble Judges : P. Shanmugam, J;K. Sreedharan, J

Bench : Division Bench

Advocate : S.A. Nagendran and Premjit Nagendran, for the Appellant; George C.P. Tharakan, Sr. Central Government standing Counsel for Respondent Nos.1 and 3 and P.K. Behanan Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedharan, J.—These appeals arise from four Original Petitions disposed of by a common Judgment. Issues raised in these appeals are same. They relate to the validity of the standard prescribed for curry powder and synthetic vinegar in Appendix B to Rule 5 of the Rules framed under the Prevention of Food Adulteration Act, hereinafter referred to as "the Rules". The Appellants contend that the standards prescribed for curry powder and synthetic vinegar have no connection with the object of the Act and the Rules, namely sale of wholesome food to the public. It is the argument of the counsel that the uniform standard prescribed for these articles in the Appendix to Rule 5 has been done without reference to the tastes of people in different parts of the country. Variation in the contents of crude fibre in curry powder will not in any way be injurious to the health of the consumer and so the standard fixed for curry powder to have crude fibre not more than 15 percent by weight on dry basis is arbitrary. In the case of synthetic vinegar, it is argued that deficiency in acetic acid content is not injurious to health and standard fixed for the same without taking note of this

aspect is arbitrary and unsustainable.

2. Appellants in Writ Appeals 1616, 1620 and 1621 of 1994 are manufacturers of curry powder. They pray for a declaration that the prescription of a uniform standard for curry powder throughout India as mentioned in Item A-05.21 of Appendix B of the Rules is arbitrary and inoperative so far as Kerala State is concerned. They also pray for a declaration that the said standard is violative of fundamental rights of the Appellants to carry on business in curry powder as it offends Article 19(1)(g) of the Constitution. They further pray for quashing the prosecution launched by the respective Food Inspectors against them for having sold curry powder which did not conform to the standard prescribed in Appendix B to Rule 5 of the Rules.

3. Learned Counsel representing the Appellants advanced an argument that the object in enacting the Prevention of Food Adulteration Act, hereinafter referred to as "the Act", was to ensure the sale of wholesome food to the people. Wholesome foods are those which are conducive to bodily health. Any food which is not injurious to bodily health cannot be considered as unwholesome. The purpose of the enactment, according to counsel, can only be to make available non-injurious articles of food to the consumers. If the food is not injurious, then it cannot be said as unwholesome coming within the purview of the Act. Adulteration, according to counsel, should be confined to debase the article of food by adding inferior materials or elements. The adulteration must thereby make the article of food impure. In other words, the adulteration must be to reduce the quality or value. If an ingredient in the article of food does not go to reduce its quality or value, according to counsel, the said article of food can never be considered as adulterated, coming within the purview of the Act. If a standard is prescribed for an article of food and the variation of one ingredient in that will not in any way be injurious to the health of the consumer, then the fixation of that standard can never be considered as one for prevention of adulteration of the food. In other words, according to counsel, for an article of food to become adulterated must necessarily be injurious to health. If it is not that article of food can never be considered as adulterated. Learned Counsel went a step further and argued that the Parliament has no competence to legislate on articles of food which are not injurious to health. The argument was that Entry 18 in the Concurrent List allows the Parliament to legislate on "adulteration of food stuffs and other goods". Under this Entry, the Parliament can legislate only in respect of adulteration of food as commonly understood. The word "adulteration" should get its import or meaning as given in the various dictionaries on English. It cannot be given an extended meaning or a meaning which is outside those given in the English dictionaries.

4. Definition of "adulterated" given in Section 2(ia) of the Act has different clauses. Clause (a) states that if the article sold by the vendor is not of the nature, substance or quality which it purports or is represented to be, then that article will be treated as adulterated. Clauses (b) to (i) deal with articles which

contain substances which will be injurious to the health. As per Clause (j), an article of food will be deemed to be adulterated if any colouring matter other than that is prescribed is present in the article or if the matter are not within the prescribed limits of variability. An article of food which contains a prohibited preservative or permitted preservative in excess of the prescribed limit is considered as adulterated under Clause (k). According to Clause (1) of the definition, an article of food shall be deemed to be adulterated if the quality or purity of it falls below the prescribed standard or its constituents are present in quantities outside the limits of variability, which renders it injurious to health. Clause (m) of the definition, according to counsel, enlarges the meaning of the word "adulterated" beyond the common meaning of the word. As per this clause, if the quality or purity of the article falls below the prescribed standard, the article will be treated as adulterated. So also if the constituents of the article of food are not within the prescribed limits of variability but which do not render it injurious to health, then also the article will be treated as adulterated. Clause (m) takes in circumstances which do not make the article of food injurious to health. Thereby, the Parliament has given an extended definition to the word "adulterated". That extended definition, according to counsel, is beyond the competence of the Parliament and so Clause (m) of the definition has to be struck down.

5. Parliament has enacted the Act invoking the power in Entry 18 of List III of Seventh Schedule of the Constitution of India. It is enacted to curb the widespread evil of food adulteration. It is a legislative measure for social defence. It has been well settled by authoritative pronouncements that the Act is intended to suppress a social and economic mischief, an evil which attempts to poison, for monetary gains, the very sources of sustenance of life and well-being of the community vide *Dineshchandra Jamnadas Gandhi Vs. State of Gujarat and Another*, . When the enactment falls squarely within the Entry 18 of List III of Seventh Schedule, the plea raised by the learned Counsel on the competency of the legislature has only to be stated to be rejected. Where the legislative competence of Parliament to enact a particular statute is questioned, one has to look into the several Entries in last II of Seventh Schedule to find out whether the said statute is relatable to any of those Entries. If the statute does not relate to any of the Entries in List II, it is not necessary to have any further enquiry into the competency of the Parliament. It must be held that the Parliament is competent to enact that statute. This legal position has been approved by a Bench of nine Judges of the Supreme Court in *Attorney General for India and Others Vs. Amratlal Prajivandas and Others*, Parliament enacted the Prevention of Food Adulteration Act under Entry 18 in List III of Seventh Schedule. So, the attack on the legislative competence of the Parliament has only to be ignored and we do so.

6. When Parliament legislates on a subject and the legislative competence is beyond dispute, can they define an offence which may not be an offence under ordinary circumstances? When the Parliament defines an offence, that definition

has to be given effect to, provided the words are clear and plain. In understanding a statute, the primary test is the language employed in the Act. When the words used by the Parliament are clear and plain, the Court is bound to accept them and the expressed intention of the legislature must be given effect to. A Constitution Bench of the Supreme Court in *Hariprasad v. A.D. Divelkar* AIR 1957 S.C. 121, Stated:

There is no doubt that when the Act itself provides a dictionary for the words used, we must look into that dictionary first for an interpretation of the words used in the statute. We are not concerned with any presumed intention of the legislature, our task is to get at the intention as expressed in the statute.

In the instant case, while defining "adulterated" in Sub-clause (m) of Clause (ia) of Section 2 of the Act, legislature had given expression to its intention. That intention, expressed in clear and unambiguous terms, should be given effect to. The Courts are not to adopt a pedantic approach and to defeat the actual intention of the legislature. Since the language used in the section is unambiguous and plain, we do not find any ground to do violence to the words used by the Parliament and to scuttle the purpose of the enactment.

7. The question next arises for consideration is whether the standard prescribed for curry powder and synthetic vinegar are to be interfered with by this Court. Section 3 of the Act authorises the Central Government to constitute a Committee called the Central Committee for Food Standards to advise the Central Government and the State Governments on matters arising out of the administration of the Act and to carry out the other functions assigned to it under the Act. u/s 23(1)(b) of the Act, Central Government may, after consultation with the Committee and subject to the condition of previous publication, make rules defining the standards of quality for, and fixing the limits of variability permissible in respect of any article of food. In exercise of this power, Government have framed Rule 5 authorising standards of quality of the various articles of food specified in Appendix B to the Rules. In accordance with these provisions, any article of food which does not conform to the standards specified in the Appendix is said to be adulterated. u/s 2(ia) of the Act, an article of food which does not conform to the standard is said to be adulterated 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. When such standards have been fixed, any person who deals in articles of food which do not conform to them contravenes the provisions of the Act. Consequently, he is liable to punishment prescribed thereunder.

8. The effect of fixation of standard was considered by the Supreme Court in *M.V. Joshi Vs. M.U. Shimpi and Another*, *Subba Rao, J.* (as His Lordship then was) observed:

If the prescribed standard is not attained, the statute treats such butter, by fiction, as an adulterated food, though in fact it is not adulterated. To put it in

other words, by reason of the fiction, it is not permissible for an accused to prove that, though the standard prescribed is not attained, the article of food is in fact not adulterated. The non-conformity with the standard prescribed makes such butter an adulterated food.

This means that when the standard has been prescribed for an article of food, the standard has to be conformed. If the article of food sold is one not conforming to the standards prescribed, then the person selling the article is said to be committing an offence under the Act. He cannot be heard to contend that article is not adulterated and it is not injurious to the health and so is outside the purview of the Act. If the article sold is not found to conform to the standards the article becomes an adulterated food, the dealer in such a case cannot adduce evidence to prove that notwithstanding the deficiency in the standard it is not adulterated. In Jagdish Prasad alias Jagdish Prasad Gupta Vs. State of West Bengal, , Their Lordships categorically observed:

It appears to us, therefore, that standards having been fixed as aforesaid any person who deals in articles of food which do not conform to them contravenes the provisions of the Act and is liable to punishment thereunder.

9. A contention was raised by the learned Counsel appearing in the case that if the article of food is not injurious to health, that article cannot be considered as adulterated. We are not impressed with this argument. Section 2(ia)(m) provides that an article of food shall be deemed to be adulterated if the quality or purity of the article falls below the prescribed standard but which does not render it injurious to health. In view of this definition, an article of food can safely be treated as adulterated if the quality or purity of the article falls below the prescribed standard even if it is not injurious to health vide State of Maharashtra Vs. Baburao Ravaji Mharulkar and Others, .

10. Another contention that was raised by the learned Counsel appearing on behalf of the Appellants is that the fixation of standard for curry powder and synthetic vinegar affects the fundamental rights of the Appellants under Article 19(1)(g) of the Constitution. We fail to appreciate this argument. How can a party contend that the Act is one interfering with his fundamental right to carry on business or trade provided by Article 19(1)(g) of the Constitution? Article 19(1)(g) inter alia gives right to carry on any trade or business. That right cannot be claimed for trading on adulterated food. Person who wants to trade on articles of food must sell wholesome food. The provisions of the Act do not confer arbitrary authority upon any of those who are to administer the Act. As stated by Their Lordships in Municipal Corporation of Delhi Vs. Kacheroo Mal,

The Act has been enacted to curb and remedy the widespread evil of food-adulteration, and to ensure the sale of wholesome food to the people. It is well settled that wherever possible, without unreasonable stretching or straining, the language of such a statute should be construed in a manner which would suppress the mischief, advance the remedy, promote its object, prevent its subtle

evasion and foil its artful circumvention.

Under the cover of Article 19(1)(g), Appellants are not to trade in adulterated articles of food. The provisions of the Act are to be interpreted in a manner to oppose the mischief aimed by the legislation and to advance the remedy. So, we do not find any merit in the contention that the Act interferes with the Appellants' fundamental right guaranteed under Article 19(1)(g) of the Constitution.

11. Yet Anr. argument that was advanced by the learned Counsel appearing on behalf of the Appellants was that the Central Government had not fixed any method for analysis of the articles of food. According to counsel, u/s 23(1-A) (hh), Rules must have been framed defining the methods of analysis. Since such Rules are not prescribed, it is contended that the provisions of the Act and the Rules cannot be worked out. Rule 3 of the Rules deal with the functions of laboratory. Clause (2) provides that the laboratory specified in column (1) of the table attached to shall carry out the functions entrusted to it by the Act and the Rules in respect of the local areas specified in the corresponding entry. For the State of Kerala, Central Food Laboratory is that in Pune. The laboratory has been fixed by the Central Government for carrying out the function entrusted to it under the Act and the Rules. By naming the laboratory, we are of the opinion that the Central Government has discharged its obligations. The methods of analysis are to be determined by the laboratory and in case the person aggrieved by the analysis wants to question the method of analysis, he is at liberty to do the same. That cannot in any way go to show that the Act and the Rules are not workable.

12. Lastly it was contended by the learned Counsel that the taste of Keralites may differ from that of persons staying in northern India. Appellants are manufacturing curry powder to suit the tastes of Keralites. For the said purpose, they are having the required ingredients in the article of food. That cannot be considered as adulterated. This argument cannot be countenanced. When standard has been fixed for a particular article of food, that standard has to be complied with. If the Appellants do feel that the standard cannot be complied with, it will be better for them to desist from the manufacture of that food. If they want to manufacture curry powder and market the same, they must conform to the standard. Any violation of the standard will expose them to prosecution under the Act. In case they maintain that curry powder cannot be manufactured complying with the standard at least for sale in Kerala, their only remedy is to appeal to the Parliament and not to this Court. The statutory provisions in the Act and the Rules are to be construed according to the ordinary grammatical and natural meaning. If the Appellants feel that adherence to the standard fixed for curry powder cannot suit the taste of Keralites and the standard has to be re fixed, then their appeal must be to the Parliament and not to this Court.

In view of what has been stated above, we find no merit in these appeals. They

are accordingly dismissed.

Immediately after Judgment was pronounced, the learned Counsel representing the Appellants prayed for leave to appeal to the Supreme Court. We do not find any substantial questions of law of general importance in this case for decision by the Supreme Court. Hence the request for leave to appeal to the Supreme Court is declined.