

(1982) 10 SHI CK 0004
In the High Court Of Himachal Pradesh

Durga Dass Bansal

APPELLANT

Vs

The State of Himachal Pradesh

RESPONDENT

Date of Decision : 06-10-1982

Acts Referred:

Drugs and Cosmetics Act, 1940 — Section 23(3), 27

Citation : (1983) CriLJ 419 : (1982) 11 ILR HP 622

Hon'ble Judges : V.D. Misra, C.J

Bench : Single Bench

Judgement

Vyas Dev Misra, C.J.—This judgment will dispose of Criminal Misc. petitions (Main) Nos. 298 and 316 of 1981 as well as 160 of 1982 since common questions of law and fact have arisen.

2. The relevant facts are these. The Controller of Stores, Himachal Pradesh, Nigamvihar, Simla, invited tenders for various stores including the rate contract for bleaching powder. The petitioner, who carries on his business under the name and style of M/s. Manak Textile Mills, Delhi, submitted his tender for the supply of bleaching powder. It may be noticed that the petitioner does not deal in chemicals but he undertook to supply the article from the local dealers of "KCI" manufacturers. It may also be noticed that the article was described as "trade group-chemical Code No. C-10." The petitioner had described the article in his tender as "Bleaching powder Stable DCM of KCI manufacturer conforming to specification No. 1065-1971 (with amendment) in packing of : (i) 50 kgs. G. I. and M. S. Drums, (ii) 25 kgs. in High Density Polythene Bags." The petitioner also stated "DCM or KCI manufactures to be supplied in original packing." The tender of rate contract of the petitioner was accepted and the Chief Medical Officers of various districts were Informed about it. The Chief Medical Officers of Bilaspur, Kulu, and Mandi placed orders with the petitioner to supply the bleaching powder as per terms of the contract. The petitioner supplied various quantities. Samples for analysis were duly taken by the Drug Inspectors from the supplies made according to the rules. The samples were sent for analysis. The

report of the Government Analyst was that the samples were adulterated. The Drug Inspectors thereafter filed complaints alleging contraventions of Section 18 (a) and 18 (c) of the Drugs and Cosmetics Act (referred to as the Act) which is punishable u/s 27 of the Act. The petitioner was summoned in all the cases to stand trial. By these petitions the petitioner challenges the order summoning him as an accused.

3. The first contention of the learned Counsel for the petitioner is that no standard has been laid down for bleaching powder under the Act. It is Section 3 (b) which defines the "drug" thus:

drug" includes-

(i) all medicines for internal or external use of human beings or animals and all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of disease in human beings or animals; and

(ii) such substances (other than food) intended to affect the structure or any function of the human body or intended to be used for the destruction of vermin or insects which cause disease in human beings or animals, as may be specified from time to time by the Central Government by notification in the Official Gazette." Section 16 of the Act reads;- "Standards of quality;- (1) For the purposes of this Chapter, the expression "standard quality" means-

(a) in relation to a drug, that the drug complies with the standard set out in the Second Schedule, and

(b) in relation to a cosmetic, that the cosmetic complies with such standard as may or prescribed.

(2) The Central Government, after consultation with the Board and after giving by notification in the Official Gazette not less than three months notice of its intention so to do, may by a like notification add to or otherwise amend the second Schedule for the purposes of this Chapter and thereupon the Second Schedule shall be deemed to be amended accordingly.

4. Now the Second Schedule lays down the standards which are required to be complied with for drug manufactured for sale, sold, stocked or exhibited for sale or distributed, it is the contention of the learned Counsel for the petitioner that the Drug supplied by the petitioner falls under Sub-clause (ii) of Clause (b) of Section 3 and, therefore, it is item No. 4 in the Second Schedule which covers the case. It may be noticed that item No. 4 of the Second Schedule is the exact reproduction of the relevant part of this sub-clause. Admittedly no standard has been prescribed for bleaching powder by the Central Government. But the question which arises for determination is; "Does bleaching powder fall under the aforementioned Sub-clause (ii)?" The definition given in Sub-clause (i) refers not only to medicines but to "substances" also. Therefore, if a substance is intended to be used for prevention of disease in human beings or animals, it will fall under the definition of Sub-clause (i)

5. The pharmacopoeia of India. 1966, Second Edition, gives the "main title of each drug, preparation or substance" in English (page 1). synonym, if any, is also mentioned. On page 119 the main title of the drug is given as "chlorinated drug." Its synonym is given as "Bleaching Powder". The category is described as "Germicide".

6. "Martindale, The Extra Pharmacopoeia", Twenty-seventh Edition, on page 511, describes the uses of chlorinated lime (Bleaching Powder) thus;

Chlorinated lime has the bactericidal actions....

XX XX XX XX Chlorinated lime is used in the preparation of Surgical Chlorinated Soda Solution which has been employed as a wound disinfectant, usually by the Carrel-Dakin method of continuous or frequent irrigation. Infected wounds are rapidly cleansed and disinfected but the solution must be renewed at least every 2 hours, and the irrigation may give rise to localised oedema and delayed healing. The surrounding skin must be protected by smearing with soft paraffin to prevent irritation. Diluted with 20 to 40 parts of water or saline it may be used as an irrigation solution for infections of the bladder and vagina, and with 3 to 4 parts of water as a gargle in tonsillitis. It is also used as a footbath for the prophylaxis of fungous infections of the feet.

Chlorinated Lime and Boric Acid Solution is used as a general disinfectant, usually as a lotion or on gauze wrung out and applied without a protective dressing. It has been used undiluted for the treatment of ulcers, gangrene, pyorrhoea, alveolaris, and follicular tonsillitis. In a wound, superficial bleaching may occur with some irritation, if pain is produced, the solution should be diluted with saline. It is not used for wound irrigation since it may prove irritant to the tissues.

7. The aforementioned uses show that bleaching powder is used for the treatment, mitigation, as well as prevention of disease in human beings. It will, therefore, fall within the ambit of Sub-clause (i). The substance referred to in Sub-clause (ii) is not meant for this purpose. The purpose described in Sub-clause (ii) is the destruction of vermin or insects which cause diseases in human beings or animals. The Oxford Advanced Learner's Dictionary of Current English gives the following relevant meaning of the word "vermin";

1. wild animals (e. g. rats, weasels, foxes) harmful to plants, birds and other animals.

2. parasitic insects (e. g. lice} sometimes found on the bodies of human beings and other animals." The same dictionary gives the relevant definition of the word "insect" thus:

sorts of small animal, e. g. ant, fly, wasp, having six legs and no backbone and a body divided into three parts (head, thorax, abdomen).

8. I have, therefore, no hesitation in holding that bleaching powder falls within

the definition of Sub-clause (i) and not under Sub-clause (ii). Therefore, item No. 5 of the second Schedule, which lays down the standards of "other drugs", will apply. This item specifically provides that for drugs included in the Indian Pharmacopoeia it will be the "standards of identity, purity and strength specified in the edition of the Indian Pharmacopoeia for the time being in force and such other standards as may be prescribed.

9. It is then contended that the sample was not taken properly, it is submitted that Section 23 of the Act provides the procedure for taking the samples by the Inspectors. Under Sub-section (3) of this section the sample has to be divided into four portions. The Inspector is required to "effectively seal" the same. Under Clause (iii) of Sub-section (4)" one of the samples is to be sent to the "person, if any, whose name, address and other particulars have been disclosed u/s 18-A." It is submitted that no part of the sample was sent to the petitioner.

10. Now the samples were taken from the Chief Medical Officers. Section 18-A requires the disclosure of the name of the manufacturer, etc. It reads

Every person, not being the manufacturer of a drug or cosmetic or his agent for the distribution thereof, shall if so required, disclose to the Inspector the name, address and other particulars of the person from whom he acquired the drug or cosmetic.

When the samples were taken the Chief Medical Officers gave the name of D. C. M. Chemicals as the supplier of the Drug. This was done because the petitioner had so intimated to the Chief Medical Officers Therefore. the Inspector sent the third sample to the D. C. M. and not to the petitioner. In these circumstances there was no contravention of Clause (iii) of Sub-section (4) of Section 23.

11. It is also contended that there is no compliance of the provisions of Sub-section (3) of Section 25 of the Act. The relevant part of this section reads:

(2) The inspector on receipt thereof shall deliver one copy of the report to the person from whom the sample was taken and another copy to the person, if any, whose name, address and other particulars have been disclosed u/s 18-A, and shall retain the third copy for use in any prosecution in respect of the samples,
(3) Any document purporting to be a report signed by a Government Analyst under this chapter shall be evidence of the facts stated therein, such evidence shall be conclusive unless the person from whom the sample was taken or the person whose name, address and other particulars have been disclosed u/s 18-A has. within twenty days of the receipt of a copy of the report, notified in writing to the Inspector or the Court before which any proceedings in respect of the sample are pending that he intends to adduce evidence in controversion of the report.

(4) Unless the sample has already been tested or analysed in the Central Drugs Laboratory, where a person has, under Sub-section (3), notified his intention of adducing evidence in controversion of the Government Analyst's report, the

Court may of its own motion or in its discretion at the request either of the complainant or the accused, cause the sample of the drug or cosmetic produced before the Magistrate under Sub-section {4) of Section 23 to be sent for test or analysis to the said Laboratory, which shall make a test or analysis and report in writing signed by, or under the authority of, the Director of the Central Drugs Laboratory the result thereof, and such report shall be conclusive evidence of the facts stated therein.

12. It is submitted that since the petitioner was not supplied a copy of the report of the Government Analyst, his right to have the sample tested or analysed in the Central Drugs Laboratory has been taken away. Since the facts vary, I will now take each case separately.

Cr. M. P. (M) No. 316 of 1981.

13. In this case the Chief Medical Officer, Kulu, gave the sample. It was on 17th Feb., 1981, that the sample was taken. It was sent for analysis on 20th Apr., 1981. On 4th June, 1981 the report was received. According to the report of the Government Analyst chlorine was found to be 23.84 per cent instead of 30 per cent as laid down in the Indian Pharmacopoeia. A copy of the report and a part of the sample were sent to the petitioner vide letter dated 26th June, 1981 but he never notified in writing to the Inspector or the Court that he intends to adduce evidence in controversion of the report. He also did not request the Magistrate to exercise his discretion to have the sample sent for test or analysis to the Central Drugs Laboratory. The complaint was filed on 6th July, 1981 and the petitioner was summoned for 21st August, 1981. It was on 21st Sept. 1981 that the petitioner put in his appearance in this case,

14. In these circumstances the petitioner cannot be said to have been deprived of his right.

Cr. M. P. (M) NO. 160 of 1982.

15. This case relates to the sample taken from the Chief Medical Officer Mandi. The sample was taken on 17th Oct. 1960. It was sent to the Government Analyst Punjab, Chandigarh, on 28th Oct. 1980. It was analysed on 27th Nov. 1980. According to the report the chlorine contents were found nil and it did not comply with the stability test. A copy of this report was sent to the D. C. M. Chemical Works as well as to the petitioner. A part of the sample was sent to the D. C. M.

16. I may at this stage record that unfortunately the prosecution is left to the Drug Inspector, who is the complainant and who is not well versed with the procedure. I find that the complaints are cyclostyled with the blanks left in to be filled by the Drug Inspector. The result is that the Drug Inspector does not seem to realise that these forms may have to be varied or further facts may have to be stated depending on the circumstances of each case.

17. The complaint was filed in the court on 23rd May, 1981 and the petitioner was summoned for 13th July, 1981. However, his presence could not be secured. He

has not yet put in appearance in this case.

18. However, in the circumstances mentioned above it does not lie in the mouth of the petitioner to say that there has been any contravention of Sub-section (3) of Section 25.

Cr. M. P. (M) No. 298 of 1981.

10. The sample was taken from the Chief Medical Officer, Bilaspur, on 16th Oct. 1980, It was sent to the Government Analyst on 20th Oct. 1980. it was found to be adulterated because the chlorine was found to be 24.8 per cent instead of 30 per cent as required by the Indian pharmacopoeia limit. It also did not comply with the stability test. A copy of the report was sent to the D. C. M. Chemical Works, New Delhi, on 16th Dec. 1980 along with a part of the sample. On the same day a copy of the report was sent to the petitioner. There is thus no contravention and now it does not lie in the mouth of the petitioner to say that the copy of the report was not sent to him and he was, deprived of his right to have the sample analysed by the Central Drug Laboratory. It may be noticed that the petitioner has not requested the Magistrate for sending the sample for analysis to the Central Drugs Laboratory in terms of Sub-section (4).

20. It is true that the complaint only discloses that the sample was not sent to the D.C.M. Chemical Works, New Delhi. However, the complainant has filed a copy of the letter sent to the petitioner in respect of this report,

21. The petitioner was summoned for 6th Jan. 1981. However, it was only on 11th Oct. 1981 that the petitioner's presence could be secured.

22. Another common contention raised by the learned Counsel for the petitioner is that the sample was not kept in a proper container and so the chlorine contents had become less or had completely evaporated. It is stated before me that the petitioner had supplied the substance in ordinary bags from which the samples were taken. It is also submitted that the samples were out in proper bags and sent to the Government Analyst immediately and so there was no defect in taking and packing of the samples. Under Sub-section (3) of Section 23 of the Act, it is the duty of the inspector to effectively seal each portion, of the sample. There is nothing on the record to show that it was not done. Nor does the report of the Government Analyst show that the samples received by him were not effectively sealed.

23. It is then submitted that no case is made out u/s 18 (c) of the Act. Section 18 prohibits the manufacture for sale of certain drugs. Sub-section (c) requires that no person shall himself or by any other person on his behalf:

manufacture for sale, or sell, or stock or exhibit for sale, or distribute any drug or cosmetic, except under, and in accordance with the conditions of a licence issued for such purpose under this chapter.

24. Rule 23 of the Drugs and Cosmetics Rules, 1945 exempts the drugs specified

in Schedule "K" from the provisions of Chapter IV of the Act and the rules made thereunder to the extent and subject to the conditions specified in that Schedule. Section 18 of the Act falls under Chap. IV of the Act. Item 12 of Sch. "K" exempts "substances intended to be used for destruction of vermin or insects which cause disease in human beings or animals, viz. insecticides and disinfectants.

25. Since I have already held bleaching powder not to be a substance intended to be used for the destruction of vermin or insects, the exemption claimed by the learned Counsel for the petitioner does not cover the case.

26. The result is that the petitions are dismissed. The petitioner is directed to appear before the Chief Judicial Magistrate, Bilaspur, on 25th October, 1982, before the Chief Judicial Magistrate, Mandi, on 26th October, 1982, and before the Chief Judicial Magistrate, Kulu, on 27th October, 1982.