

(2004) 02 KL CK 0041
In the High Court Of Kerala
Case No : O.P. No. 2255 of 1994

George Issac

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 19-02-2004

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 2, 23

Citation : (2004) CriLJ 3508 : (2004) 2 KLT 644

Hon'ble Judges : K.A. Abdul Gafoor, J;J.M. James, J

Bench : Division Bench

Advocate : Party in person, for the Appellant; T.K. Latheef, Government Pleader and T.D. Rajalakshmi, for the Respondent

Judgement

K.A. Abdul Gafoor, J.—In all these cases, the petitioners are faced with a threat of prosecution under the Prevention of Food Adulteration Act, 1954, for short "the Act". We will take O.P.No. 2255/1994 as the leading case.

2. It is submitted that the petitioners are the manufacturers of "Pickles in Oil". They seek a declaration that the Sub-clause (m) of Clause (ia) of Section 2 of the Act as constitutional. They also challenge entry A. 16.16 in Appendix B to the Prevention of Food Adulteration Rules, 1955, hereinafter referred to as "the Rules". They submit that compulsory imprisonment envisaged in terms of Section 16 of the Act is unreasonable, and therefore, unconstitutional. Exts.P4 and P4(a) in O.P.No. 2255/94 and similar communications produced in other cases are also under challenge. In these communications, the Food Inspector concerned has intimated them about the report by the Public Analyst, informing that they can make use of the provisions under the Act to get another sample of food article collected analysed, as prosecution is launched against them. Other incidental prayers are also sought for.

3. The challenge against Sub-clause (m) of Clause (ia) of Section 2 of the Act is on the ground that the quality or purity of the food article is not with reference to adulteration of food which shall always be to the prejudice of the consumer.

Deterioration in quality or purity does not amount to adulteration as is evident from Sub-clause (a) of " Sub-section (ia). So, Sub-clause (m) including within the definition of Adulteration, any food stuffs below the quality or purity of the prescribed standards is unconstitutional, and it is arbitrary.

4. We are not concerned with the grammatical meaning of the word "adulterated" contained in the dictionary. As per Section 2(ia), it has been ascribed a legal meaning taking several situation as dealt with in Clauses (a) to (in). So, the definition has been so construed to include variation in quality and purity as well, when a food article is found below the prescribed standard or constituents thereof are present in quantities not within the prescribed limits of variability. In such circumstances, the variation in quality or purity also will come within the definition of "adulterated". This is a law meant as a protection for the consumers so that their life shall not be endangered while consuming the edible articles sold in shops. So, we are of the view that Sub-clause (m) of Section 2(ia) of the Act is not in any way unconstitutional. The definition is so structured to suit the purpose of the legislation.

5. Entry A. 16 in Appendix B of the Rules is in respect of fruit products. As per entry A.16.16, "PICKLE" means preparation made out of sound, clean, raw or sufficiently mature fruits or vegetables, or a combination thereof. It is also taken with the Fruits products. Pickle shall be preserved in salt, acid, sugar or any combination of the three. So, for the purpose of Pickle, the preservatives statutorily made mention of are salt, acid, sugar or any combination thereof. Oil is not mentioned as preservative there. On the other hand, edible oil is one among the constituents of the "pickle in oil". The second sentence in Entry A. 16.16 makes it clear that "pickle may contain onion, garlic, ginger, sugar, jaggery, edible oils, spices, spice extract or oil of turmeric, pepper, chillies, fenugreek, mustard seed or powder, vegetable ingredients asafoetida, bengal gram, lime juice, lemon juice, green chillies, vinegar of acetic acid, citric acid, dry fruit including resins and fruit nuts". Article involved in these cases in "pickle in oil", it is admitted by the counsel on either side. So, it is a fact conceded. The oil, is therefore, a constituent of the pickle in oil, and not a preservative.

6. When pickle is in oil, it shall have to conform to the standard under Clause (ii) of entry A. 16.16 of the rules, which reads as follows:- :

"(ii) Pickles in oil - The fruit or vegetable percentage in the final product shall not be less than 60 per cent. The pickle shall be covered with oil so as to form a layer of not less than 0.5 cm above the contents or the percentage of oil in pickle shall not be less than 10 per cent".

7. It is contended that oil is only a preservative rather Class I preservative in terms of R.52 of the Rules. Going by the definition contained in Section 2(ia)(k) of the Act, a food article will be deemed to be adulterated, "if the article contains any prohibited preservative or permitted preservative in excess of the prescribed limits". As is seen from the analyst report, oil contained is less than the required

quantity. Therefore, going by Section 2(ia)(k), deficiency in oil content cannot be adulteration. It is further submitted that Entry A. 16.16 concerning pickles forms part of Appendix B to the Rules. Appendix B also, is therefore, a part of the Rules. Section 23 of the Act empowers the Government to lay down rules after consultation with the committee concerned. As defined in Section 2(iii) of the Act. "Committee" means the Central Committee for Food Standards constituted u/s 3. Before prescribing standards for pickles, there shall be scientific study. Rules do not reflect that any consultation had been made before the standard, as mentioned in entry A.16.16, has been prescribed under Appendix B, nor is there any consultation with the committee or scientific standard had been taken note of.

8. Certainly, Appendix B, being a part of the Rules, it has got the full sanctity of the Rules themselves. As held by the Supreme Court in the decision reported in L. Hazari Mal Kuthiala Vs. The Income Tax Officer, Special Circle, Ambala Cantt., , even if there was no consultation, the rules cannot be said to be vitiated. It cannot be taken that the Central Government, when it is made obligatory on them to frame Rules in consultation with the committee, that they would not have so consulted. Even then, as held by the Supreme Court, the absence of consultation will not make the law totally unenforceable. It cannot also be taken that the Government would not have taken scientific assistance from the Scientists in prescribing the limits mentioned in entry A. 16.16.

9. Any offence, violating the provisions relating to the standards prescribed in the Act, shall have to be seriously dealt with in a country like India, where more than 102 crores of people are living, majority of whom are in rural side. They will be carried away, especially, in the present days by the flavouring advertisements in visual media, which tempts the consumers to purchase various, articles. They will not be much conscious of the ingredients forming part of the food. In such circumstances, it is always advisable while dealing with the persons who violate the law regarding adulteration of food, prescribing compulsory imprisonment for violation of the standards regarding the food articles sold to public. Therefore, taking into account, the social circumstances now available in India, Section 16 which compulsorily prescribes imprisonment as a mode of punishment cannot be stated to be arbitrary.

10. It is further contended before us that what are the standards adopted by the Public Analyst to test the food article concerned is not divulged to the petitioners. They do not know, how they tested the content of the oil in the pickles concerned. The contents of the oil available in pickles, if taken from out of a sample, will depend upon how the bottle was placed, whether it is shaken or whether it is upside down. If the bottle is shaken, the oil part may not always be at the top. In such circumstances, it is possible that the oil content may go below 0.5 cm.

11. Oil level in the top of the pickles to the extent of 0.5 cm is only a standard prescribed alternatively to the total content of the oil which shall be 10%

minimum. Going by Ext.P4(a), the percentage by weight is only 7%. So, even if the shaken bottle is used, the content of the oil from the sample shall always be 10%. The analyst report on the other hand, shows that it is below the prescribed rate of 10%.

12. If at all, the petitioners have got any dispute with respect to Ext.P4(a) Analyst report, they can avail of the services of the Central Food Laboratory to test the other samples now kept with the local authority concerned. The contention that the sample collected in three bottles from out of the common bottle may vary in oil content, and therefore, no useful purpose will be served by sending the sample available with local authority to the Central Food Laboratory is one for the petitioners to take up before the Magistrate Court, when the prosecution is launched.

13. If the standard of analysis as done by the Public Analyst is not divulged to the petitioners, they can summon the analyst and cross examine him as to what was the standard adopted by him, and can built their defence case on that basis. Therefore, there is no reason to quash Exts.P4 or P4(a) in O.P.No. 2255/1994 or similar communications in other cases.

Accordingly, challenge against the statutory provisions as well as the analyst report, and the threat of prosecution contained in Ext.P4 and similar letters fails. Any how, the observations contained in this judgment shall not preclude the respective petitioners to take whatever contentions in their defence at the time of prosecution. Further, it is made clear that anything contained in the judgment cannot be taken as detrimental to the petitioners in urging point of defence, when they are tried in the competent court.