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**(1973) 01 P&H CK 0017**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Letters Patent Appeal No. 259 of 1972

Kewal Krishan Mehra, etc.

APPELLANT

Vs

The State of Punjab, etc.

RESPONDENT

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**Date of Decision :** 31-01-1973

**Acts Referred:**

Criminal Procedure Code, 1898 (CrPC) — Section 57

Penal Code, 1860 (IPC) — Section 21

Prevention of Food Adulteration Act, 1954 — Section 10, 10(1), 10(2), 10(3), 10(4)

Prevention of Food Adulteration Rules, 1955 — Rule 50, 50(1), 8, 9

**Citation :** (1975) 2 ILR (P&H) 63

**Hon'ble Judges :** Harbans Singh, C.J.; Bal Raj Tuli, J

**Bench :** Division Bench

**Advocate :** H.L. Sibal and Laxmi Grover, for the Appellant; J.S. Wasu, Advocate-General and S.K. Syal, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Harbans Singh, C.J.—This appeal under Clause 10 of the Letters Patent is directed against the decision of the learned Single Judge rejecting the writ petition (C.W. 1310 of 1972) filed by Kewal Krishan and five other Government Food Inspectors against an order of the Director of Health Services, Punjab, directing them to only confine themselves to the conduct of prosecution cases in the Court of law and not to exercise their power to seize sampled, which power vested in them under the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act).

2. By virtue of the powers under Section 9 of the Act read with Rule 8 of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the Central Rules), the State Government appointed Petitioners Nos. 1 to 5 by an order, dated 29th April, 1958 (copy Annexure "A") and Petitioner No. 6 by an order, dated 15th October, 1958 (copy Annexure "B") as Food Inspectors. These whole time Food Inspectors are generally designated as Government Food Inspectors. By a notification, dated 13th October, 1966, the President of India,

who had at that time taken over the administration of the State of Punjab, appointed all the Chief Medical Officers, all the Deputy Chief Medical Officers and all the Medical Officers Incharge District, Sub-Divisional and Tehsil Hospitals, Primary Health Centres, Primary Health Units and Rural Dispensaries as Food Inspectors for the entire area of the district of their posting. These medical officers, who were so appointed as Food Inspectors by virtue of the office held by them, are known as Authorised Food Inspectors. It may be stated here that the six Petitioners on appointment were posted in different districts and they were to exercise their powers conferred on them under the Act within the local limits of those respective districts. The powers that can be exercised by Food Inspector are detailed in Section 10 of the Act and Sub-section (1) of this section runs as follows:

10. (1) A Food inspector shall have power--

(a) to take sample of any article of food from:

(i) any person selling such article;

(ii) any person, who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee;

(iii) a consignee after delivery of any such article to a him; and

(b) to send such sample for analysis to the Public Analyst for the local area within which such sample has been taken;

(c) with previous approval of the Health Officer having jurisdiction in the local area concerned, Or with the previous approval of the Food (Health) Authority, to prohibit the sale of any article of food in the interest of public health.

3. Thus the main power given under this sub-section is to take Samples and to send them for analysis and with the approval of the Health Officer, having jurisdiction in the local area concerned, to prohibit the sale of any article of food. Sub-section (2) of Section 10 provides that any Food Inspector may enter and inspect any place where any article of food is manufactured, etc. and take samples of such articles of food for analysis. Sub-section (3) relates to the cost that is to be paid for the sample taken. Sub-section (4) lays down that if any article intended for Food appears to any Food inspector to be adulterated, etc., he may seize and carry away or keep it in safe custody. Under Sub-section (5) it is made clear that the power conferred by Section 10 also includes the power to break open any package in which any article of food may be contained or to break open the door of any premises where any article of food may be kept for sale, subject to certain proviso which it is not necessary to detail. Sub-section (6) empowers the Food Inspector to seize any article which is lying in any premises and which appears likely to be used for adulteration. Sub-section (7) provides for the presence of one or more persons at the time of taking the samples and exercising some of the powers under this section. Sub-section (8) authorises the Food Inspector to exercise the powers of a police officer u/s 57 of

the Code of Criminal Procedure for the purpose of ascertaining the true name and residence of the person from whom a sample is taken. Sub-section (9) provides that if a Food Inspector exercises the powers under the Act vexatiously and without any reasonable grounds of suspicion in seizing any article of food or commits any other act to the injury of any person, without having reason to believe that such an act is necessary for the execution of his duty, shall be guilty of an offence under this Act, which is punishable with fine which may extend to five hundred rupees.

Section 20 of the Act provides as follows:

(1) No prosecution for an offence under this Act shall be instituted except by, or with the written consent of the Central Government or the State Government or a local authority or a person authorised in this behalf, by general or special order, by the Central Government or the State Government or a local authority.

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4. Section 23 of the Act empowers the Central Government, "after consultation with the Committee and subject to the condition of previous publication," to make rules inter alia for (a) specifying the articles of food for the import of which a licence is required; (b) defining the standards of quality for, and fixing the limits of variability permissible in respect of, any article of food; (c) laying down special provisions for imposing rigorous control over the production, distribution and sale of any article or class of articles of food, etc., and,--vide Clause (e), defining the qualifications, powers and duties of Food Inspectors and Public Analysts.

5. Section 24 of the Act gives power to the State Government to make rules, after consultation with the Committee and subject to the previous publication, but such rules can be made "for the purpose of giving effect to the provisions of this Act in matters not falling within the purview of Section 23". Sub-section (2) (a) of this section provides that, in particular and without prejudice to the generality of the foregoing power, such rules may "define the powers and duties of the Food (Health) authority and local authority". "Food (Health) Authority" is defined in Clause (vi) of Section 2 and for the State of Punjab it means the Director of Health Services.

6. It may be stated here that the Petitioners, who are. Appellants before us, as Government Food Inspectors as well as the Authorised Food Inspectors u/s 20 of the Act were authorised to institute prosecutions against the persons committing any offence under the Act, within the limits of their respective areas.

7. From the above it is clear that the Petitioners, by virtue of their appointment as Food Inspectors under the Act and by virtue of the authorization given to them u/s 20 of the Act were invested with the powers detailed in Section 10 and also to institute prosecution against the persons, who had committed any offence under the Act. The Authorised Food Inspectors were similarly invested with the

same powers. Thus the result is that within the same local area, i.e., the district, there were some Government Food Inspectors and some Authorised Food Inspectors all invested with identical powers.

8. The Central Rules made by the Central Government u/s 23 of the Act provided for qualifications for appointment of the Food Inspectors and the duties to be performed by them. Rule 9 of these Rules runs as under:

It shall be the duty of the food inspector--

(a) to inspect as frequently as may be prescribed by the Food (Health) Authority or the local authority all establishments licensed for the manufacture, storage or sale of an article of food within the area assigned to him;

(b) to satisfy himself that the conditions of the licences are being observed;

(c) to procure and send for analysis, if necessary samples of any articles of food which he has reason to suspect are being manufactured, stocked or sold or exhibited for sale in contravention of the provisions of the Act or rules framed there under;

(d) to investigate any complaint which may be made to him in writing in respect of any contravention of the provisions of the Act, or rules, framed there under;

(e) to maintain a record of all inspections made and action taken by him in the performance of his duties, including the taking of samples and the seizure of stocks, and to submit copies of such record to the health officer or the Food (Health) Authority as directed in this behalf;

(f) to make such enquiries and inspections as may be necessary to direct the manufacture, storage or sale of articles of food in contravention of the Act or rules framed there under;

(g) to stop any vehicle suspected to contain any food intended for sale or delivery for human consumption;

(h) when so authorised by the health officer, having jurisdiction in the local area concerned of the Food (Health) Authority, to detain imported packages which he has reason to suspect contain food, the import to sale of which is prohibited.

(i) to perform such other duties as may be entrusted to him by the health officer having jurisdiction in the local area concerned of the Food (Health) Authority;

(j) to send by hand or registered post, a copy of the report received in Form III from the public analyst to the person from whom the sample was taken, in case it is found to be not conforming to the Act or rules made thereunder, as soon as the case is filed in the Court.

9. The impugned order was passed by the Director, Health Services, Punjab, being the Food (Health) Authority on 19th April, 1972, (copy Annexure "G") and it had the following effect:

The power of Food Inspectors to seize samples which were vested in them under the Prevention of Food Adulteration Act, are hereby freezed. You may, therefore, henceforth only conduct prosecution of cases in the court of law. \* \* \*.

This was challenged by the Petitioners in, the writ petition out of which the present appeal has arisen.

10. The contention of the Petitioners before the learned Single Judge as well as before us in short was that once a person has been appointed as Food Inspector under the Act, he is clothed with the powers detailed in Section 10 and these powers having been conferred under the Act of the Parliament could not be taken away by the State Government or any person who has been delegated the powers of the State Government, namely, the Food (Health) Authority. The only way in which the powers of a Food Inspector appointed under the Act can be circumscribed is by limiting the local area within which he is to exercise these powers. The learned Counsel for the Appellants, however, did not dispute the fact that within the same local area there can be more than one Food Inspectors. If there can be more than one Food Inspectors within the same local area, then, it was urged on behalf of the Respondent--State Government that it was open to the supervising authority to which these Food Inspectors were subordinate to regulate their working and inter alia direct that one of the Food Inspectors will carry on some of the duties for the performance of which he has been empowered u/s 10 on 20 of the Act and direct the other Food Inspector or Food Inspectors to do some other duties and that it is not necessary that each Food Inspector must perform all the duties, which he has been empowered to do under the Act, at one and the same time so as to lead to overlapping and possible conflict between the working of the various Food Inspectors.

11. The gravamen of the argument of the learned Counsel for the Appellants was that as Food Inspectors, the Petitioners-Appellants have been clothed with the powers by the Parliament u/s 10 of the Act read with Rule 9 of the Central Rules, and by directing them only to confine their activities to the conduct of prosecution of cases in Courts, the power given by the Parliament has been withdrawn by the Food (Health) Authority and that this could not be done by him even though it is assumed that he has been legally and properly delegated the functions of the State Government under the Act. There is no power given in the Act to the State Government or its delegate to withdraw or otherwise in any manner tinker with the powers with which the Food Inspectors are clothed under the Act or the Rules made u/s 23 of the Act. It is clear from the wording of Section 24 of the Act that a State Government cannot even make rules on matters which have to be dealt with the Central Government u/s 23 of the Act.

12. Sub-section (2) of Section 9, as amended by Act No. 49 of 1964, clearly provides that every Food Inspector, who is to be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code, "shall be officially subordinate to such authority as the Government appointing him, may specify in this behalf". It was a common case between the parties that all Food Inspectors,

including the Government Food Inspectors like the Petitioners are officials subordinate to the Food (Health) Authority, namely, the Director, Health Services, Punjab (hereinafter referred to as the Director).

13. According to the return filed by the Director, who was Respondent No. 2 "what Respondent No. 2 has done by the impugned order is to divide different duties between the Government Inspectors and the Authorised Food Inspectors, namely that the Government Food Inspectors will conduct prosecutions in Courts of law and the Authorised Food Inspectors will seize samples of food". In the return it was further stated as follows:

Even before this, the Health Officers have been exercising the power of seizing samples in the course of the performance of their duties as Food Inspectors \* \* \* it is not a case where powers have been conferred upon the Food Inspectors by the Act and the authority under the Act has withdrawn the same, but is a case where different duties have been allocated to different sets of Food Inspectors validly appointed under the Act. Under the law, no employee of the State has a right to ask the employer to entrust to him to do one particular duty and not others or that he should be allowed to do all of them. The employer is within his right to allocate different duties to different sets of employees. There is no legal right vesting in the Petitioners to come to this Hon"ble Court on the side of its extraordinary jurisdiction.

14. Thus the contentions on behalf of the State were as follows:

(1) Section 10 clothed the Food Inspectors with certain powers and these powers have been conferred on them to enable them to perform their duties as Food Inspectors so as to further the objects of the Act. Similarly, Section 20 authorises the State Government to initiate proceedings or for the State Government to authorise some other persons to do so. In the present case, the State Government has authorised all the Food Inspectors, including the Petitioners, u/s 20 to initiate proceedings. These powers conferred under Sections 10 and 20 of the Act read with Rule 9 of the Central Rules do not in any way confer any inalienable private right on the Petitioners which they can enforce through a writ petition. These powers have been given to them only in the interest of the working of the Act.

(2) Within the same local area, namely, within a district there are a number of Food Inspectors, both Government Food Inspectors and Authorised. Food Inspectors, who are clothed with all the powers under Sections 10 and 20 of the Act read with Rule 9 of the Central Rules. If their work is not regulated by the Food (Health) Authority to whom they are subordinate, there is a likelihood of overlapping of work and possible conflict. The Authorised Food Inspectors not being whole time Food Inspectors are not suited for initiating and conducting prosecution cases in the Courts of law and consequently, it was open to the supervising authority to regulate their work and direct that Government Food Inspectors will concentrate on the initiation and the conduct of prosecution cases

whereas the Authorised Food Inspectors would perform the other duties.

(3) This regulation of the duties or the sphere of work of various Food Inspectors, according to the exigencies of the work, cannot be said to mean that the powers of the Petitioners as Food Inspectors conferred on them by the Act or the Rules have been withdrawn. The Petitioners still are clothed with these powers but the supervising authority has, in the interest of the work, directed them to confine their attention only to one of the duties or powers, i.e., conduct of prosecution cases in Court of law, which cannot be said to be an unimportant work.

15. We feel that there is a good deal of force in the argument of the learned Advocate-General. After all, the powers have been conferred on the Petitioners, who are public servants, not for their personal benefit, but in the interest of carrying out the objects of the Act. They have been clothed with the powers to enter the premises where food is being stored; to break open the packages containing food, to inspect manufacturing processes; to remove food which is suspected to be adulterated; to seize and remove any article which is suspected to be used for adulteration; to seize samples of the adulterated articles and to send them for analysis, etc., etc. All these powers are for carrying out the objects of the Act. Some of these powers conferred u/s 10 have been clearly stated to be exercisable only with the prior approval or consent of the supervising authority, namely, the Food (Health) Authority. Under Rule 9 of the Central Rules, the Food (Health) Authority can even direct the Food Inspector to perform a duty assigned by him. Thus there is no manner of doubt that the Food (Health) Authority, as a supervising officer, can assign different duties to different Food Inspectors, the only restriction being that the duty so assigned must be within the ambit of the powers conferred by the Act. If each Food Inspector could insist that he must necessarily exercise all the powers conferred on him by the Act and that he is not liable to be regulated by his supervising authority, that will create chaos in the work. For example, if there are five Food Inspectors and they can insist that they will seize sample from one and the same shop. It will not only mean wasteful overlapping, but would also lead to confusion in the administration of the Act. Once it is conceded, as it has been done, that there can be more than one Food Inspectors within the same local area, the necessity of regulating their work inter se would follow as a natural consequence, for the purpose of facilitating administration of the Act and to avoid overlapping and conflict. In directing that the Government Food Inspectors should confine their energies to the conduct of prosecution in Courts of law, the Food (Health) Authority has only defined, for the time being, the area of their working and later, if this Authority finds that all the Government Food Inspectors are not require for the purpose of looking after the prosecution work, he would be equally competent to direct, for example, that out of three Government Food Inspectors, two should do the work of looking after the prosecution and the third one should do some other work. Even amongst those Food Inspectors who are to perform duties, other than looking after the prosecution work, one can imagine

the necessity of direction being given by the Food (Health) Authority that some of them should look after the manufacturers so that there may be no adulteration in the articles manufactured by them, while some others may look after the confectioners and Halwais and still others may look after the other shopkeepers, all in the same local area. To say that this amounts to withdrawing the powers given to them by the Parliament, would be incorrect.

16. The learned Counsel for the Appellants placed reliance on a Full Bench decision of the Kerala High Court in *Rajasekharan Nair v. City Corporation of Trivandrum* and Anr. (1965) 9 M.L.J. (CrL.) 126. Under Sub-section (1) of Section 23 of the Act, the Central Government, after consultation with the Committee and subject to the condition of previous publication, could make rules, inter alia,--

\* \* \*

(f) prohibiting the sale or defining the conditions of sale of any substance which may be injurious to health when used as food or restricting in any manner its use as an ingredient in the manufacture of any article of food or regulating by the issue of licences the manufacture or sale of any article of food;

(g) defining the conditions of sale or conditions for licence of sale of any article of food in the interest of public health;

\* \* \*

Sub-section (2) of Section 23 of the Act provided that all rules made by the Central Government under the Act were to be laid before both the Houses of Parliament. Under the latter part of Clause (f) and under Clause (g) of Section 23(1) of the Act, Rule 50 of the Central Rules was made by the Central Government. This rule is to the effect that no person shall manufacture, sell, stock, distribute or exhibit for sale any of the articles of food specified therein except under a licence. Clauses (a) to (k) of this rule specified various articles of food. Clause (1), however, did not mention any article specifically but stated "any other article of food \* \* \* which the State Government may by notification specify". The State Government, under this Clause (1) of Rule 50(1), by a notification, dated 11th January, 1962, included "tea" as one of the articles which could not be manufactured, sold, etc., except under a licence. This notification and Clause (1) of Rule 50(1) on being challenged were held by the Full Bench to be ultra vires the Act. The relevant part of the head note runs as under:

The choice of the articles of food the sale of which is to be regulated by the issue of licences, involves the exercise of discretion and judgment and is not a mere ministerial or mechanical act. It is clear from Section 23 of the Prevention of Food Adulteration Act, 1954, that this choice must be made by rule. That involves three things, (1) the choice must be made by the Central Government in exercise in consultation with the expert Committee constituted u/s 3 of the Act which would be in a position to advise it as to whether it is necessary or not in

the public interest to bring a particular article of food within the regulation and (3) it can take a final decision only after "previous publication". There is a fourth, namely, the laying of the Rules before both Houses of Parliament enjoined by Sub-section (2) of the section. But it can be left out of account since failure to do that might not render the rule invalid. But, under Clause (1), the choice is to be made by the State Government in the exercise of its own judgment, without consulting the committee and without previous publication. Quite apart from any question of delegation by a delegate--and it is quite clear from the language and from the content of Section 23 as also from Section 24, which expressly confines the rule-making power of the State Government to matter not falling within the purview of the rule-making power conferred on the Central Government by Section 23, that there is no power of delegation of the power to choose, conferred on the Central Government either expressly or by implication--it is quite apparent that this is in contravention of Section 23 and that the clause is, therefore, bad.

\* \* \*

the Central Government could not delegate its power to some other person or body regarding the choice of the article of food to which the licencing provisions envisaged by Section 23 should apply and such a delegation is not valid. \* \* \* \*.

17. It is clear from the above that the facts of this case have absolutely no bearing on the point before us. There Section 23 authorised the Central Government to make rules with regard to the articles which could be sold only under a licence. This power was conferred only on the Central Government and that too, after consultation with the expert Committee and after prior publication. Instead of doing so, the Central Government delegated the power to the State Government and the State Government included "tea" in the articles of food which could not be sold except under a licence. In doing so, the Central Government did not exercise its own judgment. Neither the expert Committee was consulted nor prior publication was made. Obviously, therefore, Clause (1) went far beyond the scope of Section 23 of the Act.

18. In the present case, however, there is no question of any rule or order being ultra vires the Act. As already indicated, there is no withdrawal, by the impugned order, of the powers conferred u/s 10, Rule 9 or Section 20 read with the authorization made by the State Government. The Food Inspectors continue to be clothed with all these powers and the only thing that has been done is that in regulating their respective spheres of functioning the supervising authority has directed the Petitioners that they should confine their attention only to one of the duties assigned to them, i.e., looking after the conduct of prosecution in Courts of law.

19. Support for this view can, also be derived from a decision of the Nagpur High Court in Corporation of the City of Nagpur v. Sukhdeo 1951 N.L.J. 31, the facts of which have been noted in the Commentary on the Prevention of Food

Adulteration Act, 1954, by Moti Ram and Sukhdev, 5th Edition, at page 139. There under the orders of the supervising authority, the Health Officer or in his absence the Sanitary Inspector was authorised to take samples. The Sanitary Inspector took a sample and objection was taken that he had no jurisdiction to take such a sample, because the Health Officer was on duty on that date. The Court came to the conclusion that what was meant by this order was that if the Health Officer and the Sanitary Inspector are present at one and the same place, then the Sanitary Inspector is not to take sample but the mere fact, that the Health Officer was in station, would not stand in the way of the Sanitary Inspector taking a sample. This decision does go to support the fact that though more than one Food Inspectors may be fully clothed with all the powers, yet by an order regulating their inter se duties, some of the powers of one of them can remain under, what we may say, "animated suspension". If, this can happen, though for a short period, when two Food Inspectors happen to be present at one and the same time and place, then, on the parity of reasoning, the supervising authority can direct one Food Inspector, for the time being, to confine his activities to one of the duties assigned to him and not to bother about the other duties. It may be that, in the opinion of the supervising authority, a particular duty assigned to a Food Inspector is a whole time job and that the performance of that duty would suffer if he gives attention to some of the other duties. This is exactly what has been done by the Food (Health) Authority in the present case and we feel that the learned Single Judge came to a correct conclusion that the impugned order was merely regulatory and in no way takes away the powers of the Petitioner Appellants conferred on them by the Act.

20. For the reasons given above, we find no force in this appeal and dismiss the same with no order as to costs.