
(1978) 02 GUJ CK 0003
In the Gujarat High Court

Martand Balvant Risaldar and Another	APPELLANT
Vs	
Chhaganlal Ambalal Gandhi and Others	RESPONDENT

Date of Decision : 27-02-1978

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 10, 11, 13

Citation : (1978) CriLJ 1032 : (1978) GLR 487

Hon'ble Judges : A.M. Ahmadi, J;A.D. Desai, J

Bench : Division Bench

Judgement

A.D. Desai, J.—This group of 4 appeals has been referred to the Division Bench as they involve a question of interpretation of Rule 9 (j) of the Prevention of Food Adulteration Rules, 1955 (hereinafter referred to as the Rules). As the question is one of interpretation of the said rule, the facts of the cases need not be stated.

2. The Prevention of Food Adulteration Act, 1954 came into force on June 1, 1955. There was no provision in the said Act or the Rules framed thereunder requiring the Food Inspector or any other authority to send a copy of the report of the Public Analyst to the person from whom the sample was taken, u/s 10 of the Food Adulteration Act, 1954 (hereinafter referred to as the Act) and Rule 9 framed thereunder, a Food Inspector had only a duty to send a sample taken according to the provisions of law to the Public Analyst for analysis. Rule 9 of the Rules was amended by notification No. GSR 1523 dated July 8, 1968 and Rule 9(j) was added. Rule 9(j) thus added provided that it was also a duty of the Food Inspector 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 was found to be not conforming to the Act or Rules made thereunder as soon as the case was filed in the Court. By inclusion of Rule 9(j), a duty was cast upon the Food Inspector to send a copy of the report of the Public Analyst to the person from whom the sample was taken in case the report indicated any adulteration. The Food Inspector had to supply a copy of the report of the Public Analyst to the person from whom the sample was taken as soon as the case was

filed in the Court. It appears that the provisions of this rule were more often not complied with and persons prosecuted for the offences under the Act were not supplied with a copy of the Public Analyst as soon as the case was filed against them. The Government, therefore, amended R, 9 (j) by notification No. 1364 dated November 6, 1973 and it was provided that it shall be the duty of the Food Inspector 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 within 10 days of the receipt of the report from the Public Analyst. The Government again amended Rule 9(j) by notification No. 205 dated February 23, 1974 effective from May 23, 1974 and the said rule so far relevant is as under:

9. Duties of Food Inspector : - It shall be the duty of the Food Inspector...(j): to send by registered post, a copy of the report received in Form III from the public analyst to the person from whom the sample was taken within ten days of the receipt of the said report. However, in case the sample conforms to the provision of the Act or Rules made thereunder, then the person may be informed of the same and report need not be sent.

3. The question is one of interpretation of this rule. It may be noticed that prior to the last amendment in Rule 9(j), it was a duty of the Food Inspector to send a copy of the report of the Public Analyst either by hand delivery or by registered post to the person from whom the sample was taken. Under the amended Rule 9(j), a duty is cast upon the Food Inspector to send a copy of the report of the Public Analyst by registered post to the person from whom the sample had been taken. In short, it is now no longer the duty of the Food Inspector to send a copy of the report of the Public Analyst by hand delivery. In the present appeals, it is an admitted fact that a copy of the report of the Public Analyst had not been sent to the accused by registered post. It is also an admitted fact that the accused in all the appeals received a copy of the report of the Public Analyst by hand delivery. It is contended that as the copy of the report of the Public Analyst had not been sent by registered post, there is non-compliance of mandatory Rule 9(j) of the Rules, which must result in the acquittal of the accused. On the other hand it is contended that the provisions of rule 9 (j) requiring the Food Inspector to send by a registered post a copy of the report of the Public Analyst to the person from whom the sample was taken is directory.

4. Now Rule 9 (j) of the Rules can be divided in two parts. The first and the main provision thereof lays a duty on the Food Inspector to send a copy of the report received from the Public Analyst to the person from whom the sample was taken within 10 days of the receipt of the said report. The second and subsidiary provision of the said rule requires the Food Inspector to send a copy of the report of the Public Analyst to the person from whom the sample was taken by registered post and this part of the rule is obviously a procedural one. Whether the first part of the provision which lays a duty on the Food Inspector to send a copy of the report of the Public Analyst to the person from whom the sample is taken is mandatory or directory is not the question raised for our decision, The

contention is that the requirement of the said rule laying a duty on the Food Inspector to send a copy of the report of the public analyst by registered post is mandatory and to support this contention threefold arguments are advanced. The first argument is that the legislature has used the word "shall" in the rule and ordinarily when such a word is used the legislative intention is to issue a mandate and the mandate has to be complied with strictly. The second argument is that when the legislature requires a thing to be done in particular manner, it must be done in that manner only, The third argument is that in the last amendment in rule 9(j) the words "by hand" have been omitted and this clearly indicates that the requirement of the rule to send a copy of the report of the Public Analyst to the person from whom the sample was taken by registered post is mandatory, Now ordinarily the words used in the statute have to be construed in their ordinary meaning; but there are cases where judicial approach finds that the simple device of adopting ordinary meaning of the words does not meet the ends of fair and reasonable construction. The question whether a particular provision of a statute which on the face of it appears mandatory inasmuch as it uses the word "shall" or is merely directory cannot be resolved by laying down any general rule and depends upon the facts of each case and for that purpose the object of the statute in making the provision is the determining factor. The purpose for which the provision has been made and its nature, the intention of the legislature in making the provision, the serious general inconvenience or injustice to persons resulting from whether the provision is read one way or the other, the relation of the particular provision to other provisions dealing with the same subject and other considerations which may arise on the facts of a particular case including the language of the provision, have all to be taken into account In arriving at the conclusion whether a particular provision is "mandatory or directory", vide *Raza Buland Sugar Co. Ltd. Vs. Municipal Board, Rampur*, . In order to place a proper construction, it Is necessary to find out the consequence which the statute has laid down as a result of non-compliance with the direction. The consequence may be penal, the consequence may be that a particular order (that) is passed is invalidated, the consequence may be that a particular right is not acquired or a particular obligation is imposed, or the consequence may be not stated in the law at all. When no consequence is apparent in the law it is reasonable to take the view that although the legislature has used the expression "shall" it may be construed as directory or procedural rather than mandatory in the strict sense of the term. The legislature may be anxious that a particular procedure may be followed. But it does not follow that merely because a particular procedure is not followed, it must result to acquittal. Now Rule 9(j) of the Rules lays down no penalty for its non-compliance. When a statute requires that a thing should be done in a prescribed manner or form but does not set out the consequences of non-compliance, it is reasonable to construe the same as directory. Sections 11 and 13 of the Prevention of Food Adulteration Act, 1954 have been materially altered by Act 34 of 1976. In the appeals with which we are dealing, admittedly the provisions of unamended sections 11 and 13 of the Act apply. Under unamended Section 11 a Food

Inspector is required to deliver one part of the sample to the person from whom the same was taken. Under the unamended provisions of Sub-section (2) of Section 13, after the institution of a prosecution, the accused-vendor or the complainant is given an opportunity to make an application to the Court for sending the sample produced in the Court to the Director of Central Food Laboratory for a certificate. The reason for which the legislature enacted Rule 9(j) is that the accused can get the sample given to him analysed by an analyst of his choice or he may make an application to the Court to send the sample produced in the Court analysed by the Central Food Laboratory and obtain a certificate of the Director of the Central Food Laboratory. This being the object of the rule the question as to how a copy of a report of the Public Analyst is to be supplied to the person from whom the sample was taken is definitely directory and procedural because the object can be achieved when a copy of the report of the Public Analyst is made available to the accused either by hand delivery or by registered post. It is no doubt true that rule 9 (j) of the Rules has been amended from time to time but that does not change the procedural character of that part of the rule and it still remains directory as the object in enacting the rule continues to be the same. It will not be proper to accept a proposition of law that the accused is entitled to acquittal merely because the Food Inspector had not sent a copy of the report of the Public Analyst to him by registered post even though the same was given to the accused by hand delivery, The main object of the legislation is to put down food adulteration with a heavy hand. The object of rule 9(j) of the Rules is to promote private interest of an individual and the person affected can always waive the same. For the reasons aforesaid the provisions of rule 9(j) of the Rules with regard to the manner in which a copy of the report of the Public Analyst is to be sent to the person from whom the sample is taken, cannot be held to be mandatory,

5. Now several decisions were cited before us to support the contentions raised by either party. The only decision directly in point at issue is that of a Single Judge of the Bombay High Court in *The State of Maharashtra Vs. Jesti Dosa*, . The view taken in this decision is that the intention of the legislature was that after amendment of the rule the only mode of sending the copy of the report which was recognised was by registered post. In taking this view the learned Judge merely relied upon the legislative change in rule 9(j) of the Rules. Now there are various reasons for the legislature to change the rule and one cannot speculate or base his conclusion only on such changes. The rule as it exists must be construed in the light of the object of the Act, the purpose for which the rule is enacted and serious general inconvenience resulting to persons concerned, if it is construed in one way or another and other relevant considerations. Of course an alteration in the statute has to be taken notice of but that cannot be the sole basis of construction of a statutory provision. We have pointed out earlier the object of the Act and the purpose for which rule 9(j) has been enacted. If the rule is construed as directory it would not result in any serious Inconvenience to the person concerned as the purpose and object of the rule and the relevant

statutory provisions is to see that the accused has an opportunity to effectively meet the report of the Public Analyst which is an evidence against him and this object or purpose can be achieved if the accused or the person from whom the sample is taken receives a copy of the report of the Public Analyst relating to the sample by hand delivery, For the reasons aforesaid with great respect, we are unable to agree with the decision of the Bombay High Court in Jessu Dosa (supra),

6. The result is that for the reasons hereinbefore, we hold that the provisions of Rule 9 (j) of the Rules which cast a duty on the Food Inspector to send by registered post a copy of the report of the Public Analyst are directory and if substantially complied with as in the cases under consideration, it cannot result in acquittal of the accused. The question referred to us is answered accordingly.