
(1980) 04 DEL CK 0019

In the Delhi High Court

Case No : Criminal Revision Appeal No. 13 of 1977

New Delhi Municipal Corporation

APPELLANT

Vs

Hardev Singh and Others

RESPONDENT

Date of Decision : 08-04-1980

Acts Referred:

Citation : AIR 1980 Delhi 224

Hon'ble Judges : Yogeshwar Dayal, J;Prithvi Raj, J;O.N. Vohra, J

Bench : Full Bench

Advocate : B.J. Nayar, R.K. Malik, R.C. Sharma, S.P. Gupta, D.C. Mathur, N.K. Parmar and K.K. Sharma, for the Appellant;

Judgement

Prithvi Raj, J. (Concurring)

(1) Hardev Singh son of Gulab Singh, respondent No. 1, was tried by Shri R. D. Aggarwal Metropolitan Magistrate, New Delhi, on a complaint filed by the petitioner u/s 7 read with sections 16 and 17 of the Prevention of Food Adulteration Act, 1954, (hereinafter called "the Act") on the allegation that the sample of Atta sold by him as vendor on behalf of M/s. Punjabi Hotel respondent No. 3, to Food Inspector, M. S. Chadha, on 5th November. 1974, was found to be adulteries due to presence of insect infestation. Respondent No. 2, Ranjit Singh, was impleaded as an accused alleging that he was the working partner of M/s. Punjabi Hotel, respondent No. 3, supervising and managing the day-to-day working of the Hotel. As per allegations in the complaint, the Atta was exposed/meant for preparation of Chapatis being sold and intended for human consumption at the premises of respondent No. 3. The trial Court on evaluation of evidence, holding that the Atta was declared adulterated on account of presence of insects but it having not been proved that it was rendered unfit for human consumption and that before Chapatis were to be prepared, it was to be cleaned by sieving and further that the Atta from which the sample was lifted was not meant for sale as such, following the decision in M.C.D. v. Kacheru Mal. 1975 (IT) F.A.C. 223, by its impugned judgment dated 13th October. 1975,

discharged the respondents.

(2) The petitioner challenges the correctness of this view in present revision petition. The revision petition came to be heard by one of us (Yogeshwar Dayal J.). The learned Judge repelling the contention sought to be urged on behalf of the respondents that "weevils" are not insects" and that at any rate five weevils "would not render the sample insect infested, by his order dated 12th September, 1978. held that "weevil" is an "insect" which is "very injurious", and taking note of the fact that the minimum standard of purity prescribed for the Atta as per Rule A. 18.01 of the Prevention of Food Adulteration Corporation Rules, 1955 (hereinafter called "the Rules") framed under the Act, was of the view that on a prima facie appreciation of the facts of the case, the sample of Atta was "insect infested". The learned Judge noticing the testimony of the Public Analyst, Shri Bhatnagar, and Dr. N. K. Paul, Assistant Medical Officer of Health, took the view that the Atta, sample whereof was taken by the Food Inspector, was unfit for human consumption. He, however, in view of the other submission sought to be urged on behalf of the respondents that they were not dealers in Atta and that the Food Inspector was not entitled to draw the sample, did not express final opinion in the matter. The learned Judge further noticing that in some of the decisions relied upon before him, observations of the Supreme Court in *Municipal Corporation of Delhi Vs. Laxmi Narain Tandon and Others*, , were not being correctly understood, in so far as those cases held that their Lordships in the above-cited case have over-ruled their earlier decision in *Food Inspector, Calicut Corporation v. Charukattil Gopalan* and another 1972 Fac 9 , felt that the matter was required to be dealt with by a larger Bench.

(3) It may bear mention here that it was also contended before the learned Single Judge that there was no evidence against respondents 2 and 3 and Therefore the impugned order of the trial Court was not liable to be set aside qua them. The learned Judge taking note of the fact that that aspect had not been urged before the trial Court, was of the view that it would not be appropriate for him to go into that question observing that it would be proper for the said respondents to argue that point before the trial Court in case the matter was ultimately remanded.

(4) The matter was accordingly placed before a Division Bench of this Court, V. D. Mishra and F. S. Gill, JJ., who, on examining the case law, held that the decision of the Supreme Court in *Laxmi Narain Tandon's case* (supra) does not expressly over-rule its earlier decision in the case of *Food Inspector, Calicut Corporation*. The Bench, however, felt that the decision of a Full Bench of this Court in *Madan Lal v. State* 1972 F.A.C. 481, needs a reconsideration. The Bench accordingly directed that the matter be placed before the Hon'ble the Chief Justice for constituting a larger bench.

(5) This is how the matter has been placed before us.

(6) The first question that falls for consideration is whether the Supreme Court in

its decision rendered in Laxmi Narain Tandon's case has over-ruled either in terms or even implied the ratio of its decision in Food Inspector. Calicut Corporation's case It would. Therefore, be appropriate to notice these cases. In the latter case, the appellant challenged the correctness of the view of the trial as well High Court in acquitting the respondents of a charge against them u/s 16(l)(a)(i) of the Act. In that case, the second respondent was the owner and licensee of a tea-stall of which the first respondent her husband, was the manager. The Food Inspector bought from him 600 grms of sugar on payment of its price for analysis. The sample was taken from the stock of sugar kept in the tea-stall to be used in the preparation of the tea sold at the stall. The analysis revealed that the sample sugar contained artificial sweetener Sachharin equivalent to about 7 per cent of sugar- cane. The sample accordingly was declared adulterated. On the basis of that report, the Food Inspector filed a complaint against the respondents. The trial Court acquitted them holding that the prosecution had failed to prove that the sugar was kept by the respondents for sale as such in the tea stall. In that view of the matter, the respondents were acquitted. In appeal, the High Court agreeing with the trial Court held that the purchase by the Food Inspector of the sugar from the respondents could not be considered to be a purchase under the Act so as to make them liable of the offence of which they were charged. Before the Supreme Court it was contended that the view taken by both the Courts that the respondents were not guilty as they were not dealers in sugar as such was erroneous as once the article of food was sold to a Food Inspector for analysis, it was of no consequence that the said article was not intended to be sold as such by the accused, as a sale of an article of food under the Act attracted all the consequences that flow from such sale as provided under the Act. Their Lordships on examining the definitions of expressions "food" and "sale" used in section 2(1) of the Act, observed that sugar at any rate is an article Which ordinarily enters into and is used in the composition and preparation of human food and since sale of an article of food for analysts comes within the definition of the expression "sale" the sample of sugar purchased by the Food Inspector satisfied the definition of sale. In the premises, it was held that any person who sells any article of food which was adulterated shall be punishable in accordance with section 16(1) of the Act as section 7 of the Act deals with not only with manufacture, sale, storing or distributing but also selling. Their Lordships further observed that they were unable to find any indication in the Act that when a food inspector purchases an article of food from a person, the latter must be a dealer in that article as such. It was accordingly held that when there is a sale to a food inspector under the Act of an article of food, which is found to be adulterated, the accused will be guilty of an offence punishable u/s 16(l)(a)(i) read with section 7 of the Act and that the article of food purchased by the Food Inspector need not have been taken out from a larger quantity intended for sale and the person from whom the article of food is purchased by the food inspector need not be a dealer as such in that article.

(7) It is no doubt true that in the above-cited case there was a willing sale of the article of food and the Supreme Court examined the question of applicability of the penal provisions of the Act to a person who "sells" an article of food for analysis, which, on analysis, is found to be adulterated, notwithstanding his being not a dealer in the article. In that context, it was observed that where there is a willing sale of an article of food which was adulterated, the vendor shall be punished in accordance with section 16(1) of the Act, as section 7 of the Act deals with not only with manufacture, sale, storing or distributing but also selling..

(8) The Supreme Court in Laxmi Narain Tandon's case was dealing with an entirely different question. Therein their Lordships were considering the judgment of a Full Bench of this Court in M.C.D. v. Laxmi Narain Tandon and Associated Hotels of India Ltd., reported as 1972 Fac 283 , holding that sale made by an employee of the Hotel to the Food Inspector for analysis was not sale within the ambit of the expression "sale" used in the Act as the food supplied by the Hotel to its guests could not be termed as food meant for sale. The Bench in so holding, accepted the argument advanced on behalf of the respondents that the consolidated charge by the Hotel was for services as a whole and no portion of it could be regarded notionally as price of food even though the hotelier must have also taken into account the cost of food to be supplied by him in fixing the consolidated charge to be made from guests staying in the Hotel. It was in that context that the Bench held that the food so supplied to its guests by a hotelier was not meant for sale, sample whereof could not be taken by the food inspector. The basic question under consideration in that case before the Supreme Court was whether on the facts, the sample of the article of food taken by the food inspector from an employee of the Hotel was sale or not. The Supreme Court did not sustain the view taken by this Court and in fact held that there was sale within the meaning of the Act and remanded the case for further decision. It is no doubt true that the Supreme Court in paragraph 14 of its above-cited judgment have observed that sub-section (2) of section 10 of the Act makes it clear that if an article of food is in the possession of a person who does not fulfill the character of a seller, conveyer, deliverer, consignee, manufacturer, or storer for sale such as is referred to in sub-section (1)(a) and (2) of the section, food inspector would not be competent under the law to take a sample and on such sample found adulterated, to validly launch prosecution but the fact remains that the Supreme Court in Laxmi Narain Tandon's case had occasion to refer to the case of Food Inspector, Calicut Corporation and had their intention been to over-rule its earlier decision, there was no bar in doing so, and in fact the said decision had not been over-ruled either in terms or even impliedly. The Supreme Court referred to the said decision only for the purposes of going into the question whether acquittal should be converted into conviction. I am accordingly in respectful agreement with the view taken by my learned brother, Yogeshwar Dayal, J. in his reference order dated 12th September, 1978, and with the view of the learned Judges of the Division Bench (V. D. Misra

and F. S. Gill, JJ.) in their referring order dated 6th February, 1979, that the decision of the Supreme Court in Laxmi Narain Tandon's case does not over-rule its earlier decision in the case of Food Inspector, Calicut Corporation, though it was noticed in the judgment for a different purpose. Despite the observations of the Supreme Court in paragraph 14 of Laxmi Narain Tandon's case, the law laid down in case of Food Inspector, Calicut Corporation, that once a person fulfills the character of a seller, the sample of food sold him would come within the ambit of "sale" under the Act. and if the sample on analysis is found adulterated, the vendor is liable to prosecution. It need hardly be stated that section 7 of the Act, inter alia, prohibits selling of any adulterated food. Once a person fulfill the character of a seller of adulterated food and sells it knowingly for the purposes of analysis, his case would be covered by section 10(I)(a). That being so, in such a case there is no need to consider whether the case would be covered by sub-section (2) of section 10 or not.

(9) The position of law being well-settled cases, H. J. Rawal, Food Inspector, Municipal Corporation, Surat and others v. Shashikant Amar Sinbhai Aimer and others 1977 (2) Fac 101 (Guj) ; Manindra Narayan Sen Gupta and another v. State of Assam 1977 (2) Fac I (Gau) (7) ; State of Maharashtra v. Udayram Rupram Oza 1977 (2) Fac 213 (Bom) (8); and Municipal, Council, Jaipur v. Mangal Ram 1977 (1) Fac 114 (Raj) (9) holding that Laxmi Narain Tandon's case over-rules the earlier decision in Food Inspector, Calicut Corporation, do not lay down good law and I say so with respect to the learned Judges as the decision in these cases goes contra to the well-settled position in law in case, Food Inspector, Calicut Corporation.

(10) The ratio of the case, Food Inspector, Calicut Corporation, is squarely applicable to the instant case before us as the article of food "Atta" in fact had been sold to the Food Inspector which on analysis was found adulterated being insect infested.

(11) Shri D. C. Mathur, the learned counsel for the respondents, vehemently questioned the competency of the Food Inspector to take the sample of Atta contending that the respondents had not stored the Atta for sale as such. According to him before the sample of an article is taken from a person, his business activity has also to be taken into consideration. In the instant case, the respondents, the learned counsel submitted, did not deal in" Atta and that being Ec, the Food Inspector was not competent to take its sample.

(12) Although We are not required to go into this question in the instant case, there being a willing sale of Atta by the respondent No. I without any demur, yet with a view to appreciate the above submission it would be relevant to examine the provisions of law as it stood on 5th November, 1974, the date when the sample of Atta was taken.

(13) Section 7 as it stood prior to the amendment of the Act by Act No. 34 of 1976, prohibited the manufacture, sale, etc., of certain articles of food and read

as under :

" NO person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute (i) any adulterated food; (ii) any misbranded food; (iii) any article of food, for the sale of which a license is prescribed except in accordance with the conditions of the license; (iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority in the interests of public Health; or (v) any article of food in contravention of any other provisions of this Act or of any rule made there under."

"Food" according to section 2(v) means any article used as food or drink for human consumption other than drugs and water and includes (a) any article which ordinarily enters into, or is used in the composition or preparation of cooked food, and (b) an flavouring matter or condiments.

(14) It would also be advantageous to note the de

(15) "PREMISES" according to section 2(xi) include any shop, stall or place where any article of food is sold or manufactured or stored for sale. u/s 2(xiii) "sale" with its grammatical variations and cognate expressions means the sale of any article of food whether for cash or credit or by way of exchange and whether by wholesale or retail, for human consumption or use, or for analysis, and includes an agreement for sale, an offer for sale, the exposing for sale, or having in possession for sale of any such article, and includes also an attempt to sell any such article. According to section 2(xiv) "sample" means a sample of any article of food taken under the provisions of this Act or of any rules made there under.

(16) Powers of a Food Inspector are prescribed in section 10. The relevant part of the said section prior to the amendment read as under :

"(1)A Food Inspector shall have power (a) to take samples 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 him; (b) to send such sample for analysis to the public analyst for the local area within which such sample has been taken; (2) Any food inspector may enter and inspect any place where any article of food is manufactured, stored or exposed for sale and take samples, of such articles of food for analysis."

Now "food" as defined in section 2(v) means any article used as food or drink for human consumption other than drugs and water, and includes any article that ordinarily enters into or is used in the composition or preparation of human food. According to the prohibition envisaged by section 7(i) of the Act no person shall himself or by any other person on his behalf manufacture for sale or store, sell or distribute any adulterated food which in my opinion would include any ingredient of food, which ordinarily enters into or is used in the composition or preparation of food. Respondents sell cooked meals to its customers. Atla from which Cliapatis were prepared by the respondents being an ingredient of the cooked

food sold by them, sample of it could be taken notwithstanding the fact that it was not sold as such.

(17) On a fair analysis of the provisions of law, noted above, and on a harmonious construction being put on the said provisions, it cannot be said that the Food Inspector was not competent to take the sample of Atta by taking shelter under sub-clause (i) of clause (a) of section 10 on the ground that the respondents were not selling Atta as such. What has to be kept in mind is the mischief that the Act seeks to curb. The preamble of the Act unmistakably shows that the Act aims "to make provisions for the prevention of adulteration of food". If the contention sought to be urged on behalf of the respondents that the Food Inspector was not competent to take the sample of Atta as they were not selling Atta as such, is accepted, it will amount to encouraging an unscrupulous person to use adulterated ingredients which may even be filthy, putrid, disgusting, rotten or decomposed, in the food sold by him, thus defeating the very purpose of the Act. It is settled law that harmonious construction has to be put on the various provisions of an enactment so as to advance its purpose, rather than frustrating it.

(18) Examining the provisions of section 10 of the Act along with the provisions envisaged by section 7(i) read with section 2 of the Act, there can be no escape from the fact that the article of food referred to in clause (a) of sub-section (1) of section 10 includes any article of food used in the composition or preparation of human food regardless of the fact that the party from whom sample of the component of the article of food is taken, is not sold by that party as such. To hold otherwise would tantamount to frustrating the aim of the Act by encouraging unscrupulous persons to use adulterated components in the article of food sold by them with a view to make sizeable profits at the cost of the health of the nation. I am accordingly of the opinion that the Food Inspector has the power to take a sample u/s 10(1) of the Act from a person who either sells the article as such or uses that article in the preparation of another article of food which he sells as such.

(19) In *Madan Lal v. State*, 1972 Fac 481, a Full Bench of this Court has clearly brought out the legal position in this respect in paragraph 16 of the judgment at page 494 as under :

" IF a person is a dealer in an article of food as such and he sells it to a Food Inspector for the purposes of analysis and the sample is found to be adulterated, he is guilty of an offence under the Act. If a person who is a dealer in an article of food as such, refused to sell it to a Food Inspector, the latter has the power u/s 10(1) of the Act to take a sample of the article of food for the purposes of analysis and the dealer cannot prevent him from taking such a sample. His unwillingness to accept the price of the sample will thus be wholly immaterial. He would still be guilty of an offence under the Act. If a person, who is not a dealer of an article of food as such and who keeps it only for the preparation of another article of food meant for sale, sells such an article to the Food Inspector for the

purposes of analysis and if the sample is found to be adulterated, he is again guilty of an offence under the Act. Even if he does not sell such an article of food to the Food Inspector and even if he does not accept the price tendered by the Food Inspector, section 10(1) of the Act empowers the Food Inspector to take a sample of such an article of food and that all that the Food Inspector is required to do in such circumstances is to tender payment of the price of the sample. It does not matter whether the person from whom the sample is taken accepts such payment or not. If such article of food is found to be adulterated, even then the person from whom such sample was taken will be guilty of an offence under the Act."

Summing up of position of law by the Full Bench in the above-cited (case is in no way rendered nugatory by the observations of the Supreme Court in Laxmi Narain Tandon's case (supra). In that case the only question under consideration by the Supreme Court was whether food supplied by the hotelier to its guests amounted to sale of food to its guests or not. While dealing with the said question, the Court after recapitulating the broad scheme of the Act as pointed out in paragraph 14 of the judgment, reversing the judgment of this Court, held that food supplied by the hotelier to its guests amounted to sale of food within the ambit of the expression "sale" used in the Act, and accordingly remanded the case to this Court with a direction for disposing of it in accordance with law. It is significant here to remember that among articles of food, samples whereof were taken in that case, were, milk, curd and butter which articles of food were not being sold as such by the hotelier. Had their Lordships intended to hold that samples of articles of food which were not sold by the hotelier as such could not be taken by the Food Inspector, it would have specifically stated so in the judgment and there would have been no question of remanding the case, putting the parties to unnecessary expense, besides prolonging the litigation. The argument that section 10 of the Act prohibits a Food Inspector from taking sample of an article of food which is not sold by a party as such is repugnant to the very aim sought to be achieved by the Act, which seeks to prevent adulteration of food and ensure supply of food according to the standard prescribed in the Act in respect of various articles of food in the interest of the health of the nation. The Act does not encourage anti-social activities of an unscrupulous person to use adulterated constituents in the preparation of an article of food sold by him as such and escape the consequences with a smile on his face on his achievement in immobilising the health agency of the State from catching him for his anti-social activity.

(20) The view of the Full Bench of this Court, in Madan Lal's case does not run contra to the law laid down by the Supreme Court in Laxmi Narain Tandon's case and does not call for a second look. In my opinion, the Full Bench of this Court in Madan Lal's case has laid down the law correctly.

(21) In fairness to the learned counsel for the respondents, cases on which he placed reliance may be noted here. In State of Maharashtra v. Udayram Rupram

Oza 1977(11) Fac 213, sample of milk was taken from the respondent which he had kept for use in the tea sold by him. The appeal filed against his acquittal was dismissed by Jahangirda'r J. following observations in paragraph 14 of the judgment of the Supreme Court in Laxmi Narain Tandon's case on twin grounds. Firstly, the learned Judge felt that Supreme Court in the above-cited case had over-ruled its earlier decision in Food Inspector, Calicut Corporation's case which view, with great respect to the learned Judge, is not warranted by the decision in Laxmi Narain Tandon's case. Secondly, the acquittal was maintained on the ground that if milk is stored or kept in the restaurant for the purpose of using that milk as an ingredient, keeping or storing that milk would not amount to storage under the Act. In the premises, the learned Judge held that if a sample is taken by a Food Inspector u/s 10(2) of the Act of an article thus kept in a restaurant or hotel, it would not be. a valid exercise of power under the said section, and that, if that is so, it must follow that the forced sale made by the owner of such restaurant -and hotel would not amount to a sale within the meaning of section 2(xiii) of the Act. With great respect to the learned Judge, I express my inability to concur in this view which is contra to the view of the Full Bench of this Court in Madan Lal's case In H. J. Raval, Food Inspector, Municipal Corporation, Surat, and others v. Shashikant Amarsinh-di Ajmera and others 1977(11) Fac 101, sample of chilly powder was brought for analysis from respondent No. 1 who ran a boarding house where he served cooked food to his customers. He was not a dealer in condiments or spices. The said respondent had purchased the chilly power from respondent No. 2. The question before the Division Bench of the Gujaia High Court in the above-cited case was whether mere storing of an article of food by a person who was not selling the article as such could be- said to contravene the provisions of section 7(i) of the Act. The Bench following the decision of the Supreme Court in Laxmi Narain Tandon's case held that mere storing of an adulterated article of food for purposes other than sale would not constitute an offence u/s 16(1)(a). The Division" Bench took this view on the assumption that the Supreme Court in Laxmi Narain Tandon's case has overruled its earlier decision in Food Inspector, Calicut Corporation's case. This is apparent from the Bench's observations made in the case to the effect that it would have been quite an interesting field of enquiry as to how to reconcile the judgment in Laxmi Narain Tandon's case, with the earlier judgment in Food Inspector. Calicut Corporation's case, especially when on the one hand it is held that where the article of food found to be adulterated was merely stored by the person who was not a distributor or seller thereof and who had not manufactured it for sale, would not come within the inhibition of section 7(i) because the expression "store" takes its colour from the expression preceding and succeeding it and it would only mean "store for sale", while, on the other hand, in all such cases when a Food Inspector .takes a sample which the person having the article of food is bound to sell and in every such case. it can be said that apart from the person, from whom the sample is taken, not being a seller or the article, and he had stored it for his own consumption, yet once he sold the sample, which in law he was bound to sell to the Food Inspector, his action of

selling the article would attract section 7(i) read with section 16(1)(a). The Court did not probe the matter further as the learned counsel for the appellant, Mr. Thakur, was not prepared to pursue the legal battle any longer.

(22) Now it is evident that the Division Bench in the above-cited case proceeded on the assumption that Laxmi Narain Tandon's case over-rules the earlier decision in Food Inspector, Calicut Corporation's case, which position is not correct. In any case the learned Judges proceeded on the assumption that the respondent had stored the chilly powder for his own use and had not stored it for sale. Certainly, if chilly powder was stored for the personal use of respondent No. I, there was no question of taking a sample from it for analysis. Besides, the legal battle was not pursued further. This case, Therefore, is of no assistance to the respondents.

(23) Municipal Council, Jaipur v. Mangal Ram 1977(1) Fac 114, is equally of no assistance. On facts of that case it was held that mere possession of large quantity of milk in a container, without anything more, could not lead to the inference that the respondent was a seller, actual or potential.

(24) In State of Maharashtra v. Munshi Kumar Arora 1979(1) Fac 288, case Food Inspector, Calicut Corporation, was distinguished on the ground that although according to the definition contained in section 2(xiii), a sale for analysis, is a sale of an article of food but that has to be looked into, in conjunction with section 7 and 10 of the Act, as according to section 7 there is no prohibition against any person to manufacture for sale etc., etc., of adulterated and misbranded articles of food. The prohibition, it was observed, covers the storing or distribution, the main idea is of giving delivery to others by way of sale. In the premises, it was held that storing an article of food other than for sale would not constitute an offence u/s 16(1)(a) of the Act. It may bear mention here that the point under consideration in this case was not in consideration in that case. Accordingly, the observations made therein that if mere taking of a sample for analysis was to be looked upon as a sale then the Food inspector can enter any private kitchen, take sample for analysis and the man who knows nothing about the article being adulterated and had not stored the article for sale could be proceeded under the Act which could never be looked upon as the intention of the Act, are not determinative of the question under consideration in the instant case.

(25) In N.D.M.C. v. Subash Malhotra and others 1978(2) Fac 118, the decision proceeded on its own facts holding that prosecution could not be launched as no sale was made by respondent No. I to the Food Inspector.

(26) Case Manindra Narayan Sen and another v. State of Assam 1977(2) Fac 1 is distinguishable on its own facts. In that case the oil in the tin from which sample was taken was not kept in the shop but was brought out by the petitioners from another room of their shop house and the petitioners had told the Food Inspector that the oil was meant for lighting the lamps at the time of Diwali and was not

meant for sale.

(27) The learned counsel for the respondents then sought to contend that Atta from which the sample was taken was not exposed for sale and that being so, the Food Inspector was not competent to take its sample. The precise submission was that the dictionary meaning of the word "expose" is "to lay forth to view", to make bare", "to disclose", etc., etc., and the Atta being not kept at the counter, laying forth to view, sample thereof could not be taken. *Mr. Nair v. Terroni* 1915(1) L R (K.B.) 526, on which strong reliance was placed by the learned counsel for the petitioners was sought to be distinguished on the ground that the milk, sample from which was sought to be taken in that case, was kept in a pan on the counter of the respondent's shop which was not the position in the instant case. This decision proceeds on the basis of food being exposed for sale which is not the position in the instant case. Besides, the submission sought to be urged by the learned counsel for the respondents is not relevant for the decision of the controversy before us.

(28) This brings me to the merits of the case. According to the report of the Public Analyst, Exhibit Pf, five weevils were found present in the sample. "Weevil", as pointed out by Yogeshwar Dayal, J in his referring order dated 12th September, 1978, is defined in Webster's Third New International Dictionary" Volume Iii, at page 2592. It is an insect and although of small size may be very injurious. The minimum standard for purity of Atta does not contemplate any insect infestation. The sample of Atta was found to be insect infested. The Public Analyst and the Assistant Medical Officer of Health of the Local Authority have categorically stated that the sample of Atta was unfit for human consumption. According to Shri N. K. Pal, Assistant Medical Officer of Health, Weevils as such can cause gastric irritation and nausea and vomiting if consumed with any food article. That being so, it has to be held that the sample of Atta was prima facie adulterated and the order of discharge was not called for.

(29) In view of the position of law settled above, I accept this revision petition and setting aside the impugned order dated 13th October, 1975, remand the case to the trial Court for disposing it of in accordance with law.

Yogjeshwar Dayal, J. (Concurring)

(30) I have had the advantage of going through the judgment prepared by my learned brother Prithvi Raj, J. and I fully agree with him that the Supreme Court in the case of *Municipal Corporation of Delhi Vs. Laxmi Narain Tandon and Others*, neither expressly nor impliedly over-ruled its decision in the case of *Food Inspector, Calicut Corporation v. Charukattii Gopalan and another* 1972 F.A.C. 9. This was my tentative view when I had made reference of the revision petition to the larger bench in this case by my order dated September 12, 1978. The reference was, however, necessitated in view of the decisions of other High Courts to the contrary noticed in the order of reference.

(31) When the reference came up before the Division Bench consisting of Vyas

Dev Misra and F. S. Gill, JJ., the Division Bench was also of the view that Laxmi Narain Tandon's case (supra) did not over-rule the earlier decision in the case of Food Inspector, Calicut Corporation. But, the Division Bench, at the same time, made an observation that the decision in the case of Madan Lal v. State 1972 Fac 481 decided by a full bench of this Court, of which Vyas Dev Misra, J. was also a member, "does seem to need a reconsideration".

(32) I also agree with my learned brother Prithvi Raj, J. that" the judgment of the full bench in Madan Lal's case (supra) does not require any re-consideration. I would, however, like to give my reasons for this view.

(33) The full bench in Madan Lal's case (supra) at page 494 in paragraph 16 of the report observed as under :

"16.If a person is a dealer in an article of food of such and he sells it to a Food Inspector for the purposes of analysis and the sample is found to be adulterated, he is guilty of an offence under the Act. If a person who is a dealer in an article of food as such, refuses to sell it to a Food Inspector, the latter has the power u/s 10(1) of the Act to take a sample of the article of food for the purposes of analysis and the dealer cannot prevent him from taking such a sample. His unwillingness to accept the price of the sample will thus be wholly immaterial. He would still be guilty of an offence under the Act. If a person, who is not a dealer of an article of food as such and who keeps it only for the preparation of another article of food meant for sale. sells such an article to the Food Inspector for the purposes of analysis and if the sample is found to be adulterated, he is again guilty of an offence under the Act. Even if he does not sell such an article of food to the Food Inspector and even if he does not accept the price tendered by the Food Inspector, section 10(1) of the Act empowers the Food Inspector to take a sample of such an article of food and that all that the Food Inspector is required to do in such circumstances is to tender payment of the price of the sample. It does not matter whether the person from whom the sample is taken accepts such payment or not. If such article of food is found to be adulterated, even then the person from whom such sample was taken will be guilty of an offence under the Act. Exception was. however, taken to the portion which I have underlined above.

(34) It was submitted by Mr. D. C. Mathur, learned counsel for the petitioner, that the aforesaid underlined portion was against the dictum of the law as enunciated in para 14 of the judgment of the Supreme Court in the case of Laxmi Narain Tandon (supra). It was submitted that the aforesaid view of the full bench of this Court is also contrary to the scheme of the Act and the scheme of the Act does not contemplate any power in the Food Inspector to take sample from a person whose activity of business is to use an article of feed as an ingredient in the sale of another article of food in which the person may be dealing or indulging in as a business activity. It was also submitted that the view of the full bench would cover even the case of an article of food kept by any person for his private consumption.

(35) I will deal with the last part of the argument first. It will be noticed that this fear was also expressed before the full bench in Madan Lal's case as well but the full bench in paragraph 15 of their judgment observed :

" FOR instance ,the Food Inspector cannot take a sample of an article of food from a person who neither sells it as such nor keeps it for the preparation of any article of food which he sells. For instance, if a dealer in rice keeps in his shops a certain quantity of sugar which he requires for his domestic consumption, the Food Inspector has no power to take a" sample from the sugar for the purposes of analysis. The power of the Food Inspector to take a sample u/s 10(1) of the Act is restricted to taking such samples from a person who sells such article of food in the sense that he either sells it as such or uses it in the preparation of another article of food which he sells."

Therefore, there is no merit in the last part of the argument of Mr. Mathur and the fear is unfounded.

(36) Coming to the earlier submission of Mr. Mathur, it will be noticed that the underlined portion of the judgment of the full bench in Mandan Lal's case finds support from the judgment of the Supreme Court in the case of Food Inspector. Calicut Corporation (supra) wherein Vaidialingam, J. speaking for the Court in paragraphs 21 and 22, of the judgment pertinently observed as under :

"21.Mr. Mehta referred us to two decisions. The Public Prosecutor Vs. Kandasamy Reddiar, , and In Re: V. Govinda Rao, in support of his contention that the article of food purchased by the Food Inspector must be shown to have been kept by the accused for purposes of sale as such. In other words, according to the learned counsel the person "from whom an article of food is purchased by the Food Inspector must be a dealer in such article". In the Public Prosecutor v. Kandasamy Reddiar (supra) the findings of the two courts were that the accused was carrying the milk taken from his own buffalo for his own use. This decision does not assist the respondents. But it must be stated that the said decision does not consider the legal effect of a sale to a Food Inspector under the Act and its consequences. But we may point out that u/s 10(1)(a) the Food Inspector has got power to take samples of any article of food from the persons enumerated in sub-clauses (i) to (iii). It will be seen in particular from sub-clause (ii) of section 10(1)(a) that the Food Inspector can take samples from any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee."

"22.In the case before us if the accused had purchased the sugar and it was in the process of being conveyed to be delivered to the accused, the Food Inspector could have taken the sample u/s 10 from any person in the course of conveying the article for delivery. Similarly, even if the sugar had been delivered to the accused, under sub-clause (iii) of Section 10(1)(a) the Food Inspector could have taken the samples from them as consignee of the article."

(37) Once the Supreme Court concedes the power to the Food Inspector to draw

sample u/s 10(1)(a) of an article of food from a "consignee after delivery of any such article to him", there is no question of denying the power to the Food Inspector to draw a sample of an article of food from a person with which the full bench was dealing.

(38) This is clear from the fact that clause (a) of Section 10(1) of the Act opens with the expression "to take samples of any article of food" and a reading of the three sub-clauses of section 10(1)(a) shows that power is being conferred on the Food Inspector to take samples of any article of food from three categories of persons, namely, (i) any person who actually sells an article of food; (ii) any person in the process of delivering or preparing to deliver; and (iii) a consignee after delivery of any article of food to him. The expression "consignee" occurring in sub-clause (iii) of Section 10(1)(a) does refer to a person who carries on the activity of sale of the article of food as such or uses it as an ingredient. The expression "consignee" therein cannot be limited merely to a person who carries on the activity of sale of article of food as such only. Any person who is storing an article to be used as an ingredient for the preparation of another article of food which he may sell would certainly be covered by sub-clause (iii) or clause (a) of Section 10(1) of the Act.

(39) This position also finds support from the observations of the Supreme Court in the case of Laxmi Narain Tandon (supra) in paragraph 14 of the judgment wherein it was observed :

" THE three sub-clauses of sub-section (1) (a) apply only to a person who answers the description of a seller or conveyer, deliverer, actual or potential, of an article of food to a purchaser or consignee or his consignee after delivery of such an article to him."

In fact, as I read para 14 of the judgment in Laxmi Narain Tandon's case (supra), I find that it, in fact, supports the taken earlier by the Supreme Court in the case of Food Inspector, Calicut Corporation.

(40) Mr. Mathur. learned counsel for the petitioner, submitted that Laxmi Narain Tandon's case, particularly the earlier portion of paragraph 14 of the judgment, over-rules the earlier decision of the Supreme Court in the case of Food Inspector, Calicut Corporation. The portion relied upon by the learned counsel in para 14 of the judgment reads as under :

"UNDERthat section, the Food Inspector, whom the Act assigns a pivotal position for the enforcement of its provisions, is authorised to take samples of an article of food only from particular persons indulging in a specified course of business activity. The immediate or ultimate end of such activity is the sale of an article of food. The section does not give a blanket power to the Food Inspector to take samples of an article of food from a person who is not covered by any of the sub-clauses of sub-section (1) (a) or sub-section (2)."

(41) I am afraid, I cannot agree with the submission of the learned counsel. The

passage has to be read as a whole and read as such the expression "indulging in specified course of business activity" merely refers to a person who is indulging in the activity of sale of an article of food as such or a business activity where he is using an article of food as an ingredient for his business activity of sale of other article of food or storing it for sale or exposing it or exhibiting it for sale etc. as opposed to keeping it for personal consumption or any other trade.

(42) Mr. Mathur also relied upon the provisions of Section 10(2) of the Act (as amended by Act 34 of 1976) and brought to our notice the amended provision which includes "any article of food.....for the manufacture of any other article of food for sale" and submitted that it is only as a result of the amendment that the Food Inspector has been permitted to take a sample of an article of food which is used by any person for the sale of another article of food. It appears to me that this amendment is in the nature of a clarificatory piece of legislation similar to the Explanation added by the amending Act for purposes of sub-clause (iii) of clause (a") of Section 10(1) of the Act and does not for the first time confer a power in the Food Inspector to draw a sample. In fact, this power did exist earlier also u/s 10(1) (a) itself.

(43) I am, Therefore, of the view that the underlined portion in paragraph 16 of the judgment of the full bench of this Court in Madan Lal's case also lays down the law correctly and requires no re-consideration whatsoever.

(44) I may mention that M. L. Jain, J. in a case decided recently and reported as *Abbey Ram v. State* 1980 F.A.C. 206. February Part, was persuaded to agree with the view that *Laxmi Narain Tandon's* case over-rules the view of the Supreme Court in *the case of Food Inspector, Calicut Corporation*. But, it appears that the order of reference of the Division Bench in the present case was not brought to the notice of the learned Judge.

(45) For reasons given by my learned brother Prithvi Raj, J. I respectfully express my dissent from the view taken by M. L. Jain, J. in the above cited case,

(46) I also agree with the reasoning and the conclusion arrived at by Prithvi Raj, J. in the order proposed by my learned brother.

O.N. Vohra, J. (Concurring)

(47) I also agree.