
(1973) 08 KAR CK 0022
In the Karnataka High Court

P.G. Bewoor

APPELLANT

Vs

Ramachandra Ananta Rao and Others

RESPONDENT

Date of Decision : 30-08-1973

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16 (1) (a) (ii), 8 (1) (a)
Prevention of Food Adulteration Rules, 1955 — Rule 50, 9

Citation : (1974) CriLJ 1210

Hon'ble Judges : Santosh, J;Nesargi, J

Bench : Division Bench

Judgement

Nesargi, J.—These appeals are filed by the Sanitary and Food Inspector, Hubli Dharwar Municipal Corporation, Dharwar, against the orders of acquittal of the respondents in all these appeals passed by the J. M. F. C, 1st Court, Dharwar, in C. C. Nos. 2327, 2328, 2329, 2330 and 2331 of 1971 respectively.

2. The appellant had prosecuted the respondents under the provisions of the Prevention of Food Adulteration Act, 1954 (hereinafter referred to as the Act) on the allegations that they were selling articles of food falling within the provisions of the Act, but had not taken any licences for doing so under Rule 50 of the Prevention of Food Adulteration Rules 1955 (hereinafter referred to as the Rules). It was alleged that each one of the respondents had committed offence u/s 7 (iii) of the Act punishable u/s 16 (1) (a) (ii) of the Act.

3. The respondents pleaded that it was not the law that they had to take licences as complained by the appellant because they were doing their business in the Market Yard after taking necessary licences from the Market Committee established under the Mysore Agricultural Produce Marketing (Regulation) Act, 1966. (hereinafter referred to as the Marketing Act). They further contended that they and other business people doing similar business have been operating in the market area since many years and no such licences under Rule 50 of the Rules had been insisted upon and therefore, they were not required to take any such licences as complained by the appellant.

4. The learned Magistrate after looking into the relevant provisions of the Act and the Rules and Section 8 (1) (a) of the Marketing Act, concluded that in view of the non obstante clause in Section 8 (1) (a) of the Marketing Act, it was not incumbent on the respondents to take licences under Rule 50 of the Rules, and, therefore, no offence had been committed by these respondents. It is the correctness of this order that is challenged by the appellant in these appeals.

5. The facts concerned in these appeals are undisputed. It is only the interpretation of different provisions mentioned above that arises in these appeals. Hence, we are disposing of these appeals by a common judgment.

5-A. Rule 50 of the Rules lays down that no persons shall manufacture, sell, stock, distribute or exhibit for sale any of the articles of food mentioned therein except under a licence. Clause (f) of the Rule mentions 1974 P. G. Bewoor v. Ramachandra (Nesargi J.) pulses, grams, nuts, starches, sago, suji, flours, such as maida, besan and articles made out of flour including bakery products. It is undisputed that these respondents have been dealing in pulses, grams, nuts, etc, in their establishments in the market which has been established under the Marketing Act. It is also not disputed that they have not taken licences under this Rule for exhibiting these articles for sale, and that these articles are articles of food falling within the provisions of the Act. The rules framed by the State of Mysore and called as the Mysore Prevention of Food Adulteration Rules, 1960 (hereinafter referred to as the Mysore Rules) are in supplementation of the Rules, Rule 3 of the Mysore Rules states who is the authority to issue licences under Rule 50 of the Rules and provides the necessary procedure. Rule 9 of the Mysore Rules states that no person shall sell, stock and exhibit for sale or distribute any food specified under Rule 50 (1) of the Rules without a valid licence issued under the Mysore Rules. It is therefore, abundantly clear that whenever a person desires to sell, stock or exhibit for sale or distribute any food falling within the provisions of Rule 50 of the Rules it is incumbent upon him to take a licence as provided in Rule 50 of the Rules and Rules 3 and 9 of the Mysore Rules. The respondents having admittedly not taken any such licences, have therefore violated these Rules.

6. Section 7 (iii) of the Act lays down that no person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence. This provision makes it manifest that the respondents have committed an offence by not taking the requisite licences as mentioned above. Section 16 (1) (a) (ii) of the Act lays down that if any person whether by himself or by any other person on his behalf stores, sells or distributes any article of food other than the adulterated or misbranded food or food the sale of which is prohibited by the Food (Health) Authority in the interests of public health in Contravention of any of the provisions of the Act or of any rule made thereunder, is punishable with imprisonment for a term which shall not be less than six months, but which may extend to six years, and with a

fine which shall not be less than one thousand rupees. It has been already shown that these respondents have committed the offence u/s 7 (iii) of the Act by not taking licences under the Rules and the Mysore Rules. This offence is therefore punishable u/s 16 (1) (a) (ii) of the Act. Proviso (ii) to Section 16 (1) of the Act vests certain discretion in exercise of which the Court may for adequate and special reasons to be mentioned in the judgment, impose a sentence less than the one mentioned above.

6 (a). Taking up the contention put forward on behalf of the respondents that in view of Section 8 of the Marketing Act, they are not required to take any such licences under Rule 50 of the Rules and Rule 9 of the Mysore Rules, and therefore, they have not committed any offence as complained by the appellant, we find, as is shown by the material on record in these cases, that the authorities concerned appear to have entertained that view till recently and therefore had not insisted on these respondents and other businessmen similarly situated to take licences under Rule 50 of the Rules and Rule 9 of the Mysore Rules. But what arises for consideration is the correct interpretation of Section 8 of the Marketing Act.

7. Section 8 (1) (a) of the Marketing Act is the relevant provision and it reads as follows:

(1) After the market is established-- (a) no local authority shall notwithstanding anything contained in any law for the time being in force, establish, authorise or continue or allow to be established, authorised or continued any place in the market area for the marketing of any notified agricultural produce:

Provided that a local authority may establish or continue any place for retail sale of any notified agricultural produce subject to the condition that no market functionary shall operate in such place except in accordance with the provisions of this Act, and the rules and the bye-laws and standing orders of the market committee.

The object of the Marketing Act as is clear from the preamble is for better regulation of buying and selling of agricultural produce and the establishment and administration of markets for such agricultural produce. It is not all agricultural produce that would be covered by the provisions of the Marketing Act. Only those items as notified off and on by the State Government that would be covered by the Marketing Act. Before establishing a market, a notification has to be issued u/s 3 of the Marketing Act and then a decision taken. What is to happen on establishment of a market established in regard to the marketing of notified agricultural produce that was being done under the control of the local authority as defined u/s 2 (17) of the Marketing Act, is laid down in Section 8 (1) (a) of the said Act. A plain reading of the above provision makes it crystal clear that after the establishment of the market, a local authority which in these appeals is the Hubli Dharwar Municipal Corporation will be prohibited from establishing, authorising or continuing or allowing the already established

arrangements to continue in regard to any place in the market area for marketing of the notified agricultural produce. In case of retail sales of notified agricultural produce, the local authority is permitted to establish or continue any place for such purpose in the market area, subject to the condition that no market functionary shall operate except in accordance with the provisions of the Marketing Act and the Rules made thereunder and bye-laws and standing orders of the market Committee. It is further plain that the prohibition contained in Section 8 which operates in spite of anything contained in any other law is only in regard to the establishment of any place in a market area for the purpose of marketing the notified agricultural produce falling within the ambit of the marketing Act. That prohibition has nothing to do with the lawful exercise of the powers of the local authority in regard to the issuing of licences, etc., for other purposes. If a person wants to have an establishment in a market area i.e., after the establishment of the market under the Marketing Act, he has under the provisions of the Marketing Act and rules thereunder and also bye-laws and standing orders of the concerned market committee, to take necessary licence or licences from the Market Committee; such licence or licences as is clear from the provisions of the Marketing Act and the rules pertains to establishment of a place of business by such a person in the market area. The licence provided in Rule 50 of the Rules and Rule 9 of the Mysore Rules is only in regard to the sale of articles of food falling within the provisions of the Act to facilitate the enforcement of the provisions of the Act. The object of the Act is to see that proper control is exercised by the concerned authorities functioning under the Act in regard to the articles of food for the purpose of ensuring that adulteration of such articles is not made and if made the offenders are punished. When it is clear that Section 8 of the Marketing Act deals only with the establishment or continuation of the establishment already made, of a place in a market area for the marketing of any notified agricultural produce, we are unable to see how the use of the non obstante clause "notwithstanding anything contained in any other law for the time being in force" in the said Section provides exemption to the respondents from obtaining licences under Rule 50 of the Rules and Rule 9 of the Mysore Rules, especially when such licences have nothing to do with the object contained in the provisions of Section 8 (1) (a) of the Marketing Act. Sri A. K. Lakshmeshwar, learned Advocate appearing on behalf of the respondents, strenuously urged that if a person conducts his business in a market area, he will have to take two licences, one from the Market Committee and another from the local authority, in case he has to sell articles of food, and that would be a great hardship on such a person. He also contended that to ask a person to take two licences for the sale of the same commodity would be an absurd proposition. For the reasons already mentioned in regard to the scope of Section 8 of the Marketing Act and different provisions of the Act, and the Rules thereunder, we do not see any force in this contention. If it so happens that an article, in which a person has to deal, falls within the ambit of different provisions of different Acts and Rules, he has got to comply with those provisions and secure the necessary licences. We do not see any absurdity therein.

8. In view of the foregoing reasons, we are of the opinion that the offence complained of has been satisfactorily proved as against the respondents and they are punishable u/s 16 (1) (a) (ii) of the Act. We have already pointed out that till recently the authorities concerned appear to have been under the impression that it was not necessary for the respondents and other businessmen similarly situated to take licences under Rule 50 of the Rules and Rule 9 of the Mysore Rules as they appeared to be exempted by Section 8 (1) (a) of the Marketing Act. In view of the fact that these persons had gone on conducting their business without taking such licences and especially in view of the further fact that the law did not appear to have been settled till now, we are of the opinion that proviso (ii) to Section 16 of the Act is applicable and a lenient view is to be taken. It is particularly to be taken into consideration that the orders of acquittal passed in favour of the respondents are being set aside nearly about 11/2 years after the said orders. In view of these adequate and special reasons, we hold that the ends of justice would be satisfied if each one of the respondents is sentenced to pay a fine of Rupees 25/- only and in default to undergo simple imprisonment for one week.

9. We, therefore, allow these appeals and set aside the orders of acquittal in each of the said criminal cases. We convict each one of the respondents for having committed the offence u/s 7 (iii) of the Act read with Rule 50 of the Rules and punishable u/s 16 (1) (a) (ii) of the Act. We sentence each one of the respondents to pay a fine of Rs. 25/- and in default to undergo simple imprisonment for one week.