
(1963) 09 RAJ CK 0005

In the Rajasthan High Court

Case No : Criminal Revision No"s. 4, 5 and 6 of 1962

Ratanlal and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 20-09-1963

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 2, 20, 20(1)
Rajasthan Municipalities Act, 1959 — Section 78

Citation : AIR 1964 Raj 123 : (1964) CriLJ 702 : (1963) RLW 634

Hon'ble Judges : D.M. Bhandari, J;B.P. Beri, J

Bench : Division Bench

Advocate : S.N. Prosad, for the Appellant; B.C. Chatterji, Dy. Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Bhandari, J.—These three Revision Applications have been referred by a Single Judge to a Division Bench. In all these cases common questions of law are involved. We shall first deal with Cri. Revision No. 3 of 1962 Ratanlal v. State. The Sub-Divisional Magistrate, Baran convicted Ratanlal accused u/s 16(a) of the Prevention of Food Adulteration Act, 1954 (Act No. 37 of 1954) (hereinafter called "the Act") for selling adulterated ghee in the town of Baran which has a Municipality. A complaint was filed against the accused after obtaining permission of the Vice-Chairman of the Municipality who was acting as Chairman in his absence. The accused admitted his guilt. The learned Sub-Divisional Magistrate sentenced the accused to three months" rigorous imprisonment and payment of Rs. 500/-/- as fine. An appeal was filed by the accused in the Court of the Additional Sessions Judge, Baran. The learned Judge of the lower appellate Court maintained the sentence of imprisonment but reduced the fine from Rs. 500/-/- to Rs. 300/-/-. Thereupon the accused filed the present Revision Application which came up for hearing before Bhargava, J., who has referred it to a Division Bench as certain important questions of law are involved.

2. The following points were urged by the learned counsel for the petitioner in support of this Revision application: -

(1) That the Baran Municipality was not declared a local area by the State Government and therefore, the Municipal Board, Baran, could not be the local authority for giving a valid written consent for the prosecution of the petitioner:

(2) That even if the Municipal Board, Baran, is the local authority then the Vice-Chairman of the said Municipal Board, though he may be discharging executive functions of the Board u/s 67(d) of the Rajasthan Municipalities Act could not give a valid consent as he was not, authorised in this behalf by the said local authority as required by Section 20 of the Act;

(3) That the provisions of Section 67(d) of the said Act are subject to the provisions of Section 78, and under the latter section the said Board had not expressly delegated the power to grant consent to the Vice-Chairman and as such he could not give a valid written consent.

3. For the determination of some of the points it is necessary to refer to Section 2(vii) and 2(viii) of the Act which define "local area" and "local authority" respectively, and also to the notification issued by the State Government declaring "local area" for the purposes of the Act. Section 2(vii) and (viii) run, as follows:

(vii) "local area" means any area, whether urban or rural, declared by the State Government by notification in the Official Gazette, to be a local area for the purpose of this Act:

(viii) "local authority" means in the case of--(i) a local area which is -

(a) a municipality, the municipal board or municipal corporation;

(b) a cantonment, the cantonment authority;

(c) a notified area, the notified area committee;

(2) Any other local area, such authority as may be prescribed by the State Government under this Act."

4. Notification No. F. 16-A(4) MI/53, dated 28-11-1956 published in the Rajasthan Rajpatra, Part IV (C) of the 20th of December, 1956, "declared the territories of five administrative Divisions of Ajmer, Jodhpur, Bikaner, Udaipur and Kotah to be the five local areas. The contention on behalf of the petitioner is that the Baran Municipality was not declared to be a local area by the notification of the Government, as such Baran Municipal Board could not be deemed to be the local authority within Section 2(viii) of the Act. It is unfortunate that the notification issued by the State Government declared five administrative regions of the State as local areas. A number of Municipalities are included in these areas. The better course would have been to declare each Municipality in these areas a separate local area. This course, if adopted would not have created any

confusion in the application of law and would have been in consonance with the scheme of the Act. For example had the Baran Municipality been declared a local area, there would have been no difficulty to find out which was the local authority contemplated u/s 2(viii) of the Act and there would not have arisen any controversy on this point. Be that as it may, it is not possible to say from the notification as it stands that the Municipal Board, Baran, was the local authority for the area within, the limits of Baran Municipality.

5. It is difficult to construe Section 2(vii) as laying down that the local area by the State Government must always be declared in such a manner | that a municipality, cantonment or a notified area j must always be referred to as a separate unit. Section 2(vii) does not say so. It leaves to the State Government to declare any area as local area. The words, "whether urban or rural" used in Section 2(vii) have in our opinion, not such force as to make it incumbent on the part of the Government to declare any urban area a local area as a separate unit. The force of these words is that the Government may not only declare as urban area as a local area but also a rural area. It might have been felt that the problem of adulteration of food may have to be tackled in both the areas and the State Government was given the power to declare even a rural area a local area. While declaring any area as local area, the State Government may combine in one declaration any urban area with a rural area. Such a combination would not make the declaration of the State Government invalid. It cannot be said that the local authority cannot be determined in such a case by looking to the definition of such authority in Section 2(viii).

The words "local area" in Section 2(viii)(i) may be read as meaning a local area or any part thereof. If this is done, then for the municipal area, the local authority is the municipal board, for the cantonment board, the cantonment authority and for the notified area the notified area committee, then applying Section 2(viii)(2), we may reach the conclusion that for any other area which is not covered by Section 2(viii), the local authority is the authority prescribed by the State Government. We are not doing any violence to the language of Section 2(viii) by interpreting it thus. Evidently the whole includes a part. If this interpretation is adopted there is no difficulty in carrying out the intention of the Legislature even when the State Government has declared an area as local area which includes several municipalities, cantonments or notified areas and also rural areas. We have already said that this is not the proper way of doing things but we cannot say that this is not legal.

6. In adopting this method of interpretation we are assuming that the State Government has declared some area as a local area u/s 2(viii). If the State Government has not declared any area as a local area, there might be some difficulty in holding that still all municipal, cantonment and notified areas in the State must be treated as local areas by force of the language of Section 2(viii) itself. The view taken by the Division Bench of the Allahabad High Court in Municipal Board, Lucknow Vs. Ram Autar, is that u/s 2(viii) all municipal areas

become local areas. It is not necessary for us to comment on the correctness of the decision of the Allahabad High Court but with due respect we may say that we have our own doubts on this point. In the instant case, however, we are of the opinion that the Municipal Board, Baran was rightly held to be the local authority by the Courts below.

7. The second question that arises for consideration is whether the Chairman of the Municipal Board, Baran could give a valid consent for prosecution u/s 20 of the Act. The proviso to Section 20(1) runs, as follows: -

"Provided that a prosecution for an offence under this Act may be instituted by a purchaser referred to in Section 12, if he produces in Court a copy of the report of the public analyst along with the complaint."

Under Sub-section (1) a local authority or a person authorised in this behalf by a local authority can give consent for prosecution. (See *The State of Bombay Vs. Parshottam Kanaiyalal*, Now, under the *Rajasthan Municipalities Act, 1959* (Act No. 38 of 1959), the duties cast on the chairman are enumerated in Section 67. We may reproduce the relevant portion of Section 67.

"It shall be the duty of the chairman of a board:

* * *

(d) subject to the provision of section 78 and of the rules for the time being in force, to perform such other executive functions as may be performed by or on behalf of the board over which he presides."

* * *

In our humble opinion, granting of written consent for prosecution is performance of executive function by a chairman. Section 20(1) of the Act casts a duty to grant and withhold written consent on a local authority. The provisions of the Act show that the Parliament reposed its confidence on local authorities in this matter. In England, the Food and Drugs Act, 1955 which deals with the adulteration of food and drugs is to be administered by the local authorities.

"The "food and drugs authorities" charged with responsibility for administering the Act are, in London, the Common Council of the City and the Metropolitan borough councils. Outside London, they are county borough councils, the councils of boroughs and urban districts with a population of 40,000 according to the last published census, and elsewhere the county councils."

(Hart's Introduction to the Law of Local Government and Administration -- 7th (1962) Edition, p. 472):

In India even when the provisions relating to adulteration of food were made stringent from time to time by various statutes, the administration of the Act so far as urban area is concerned, was left in the hands of the local authority. Thus, the local authority is to provide machinery for the administration of the Act.

Granting or withholding permission for prosecution in case of breach of the provisions of the Act or rules made thereunder is the discharge of executive function of a local authority.

8. The argument of the learned counsel for the petitioner is that u/s 67 of the Rajasthan Municipalities Act, the Chairman can only perform such executive functions as are mentioned in that Act and not those under any other law. In such case either the local authority must itself act or it must delegate its power to the Chairman or some other person expressly. In our humble opinion, the local authority shall be deemed to be acting itself if it is acting in the manner laid down under any law under which it is constituted. In the instant case, Baran Municipal, Board was constituted under the Rajasthan Municipalities Act, 1959, and it could act through its Chairman by virtue of Section 67 (d) in granting written consent for prosecution u/s 20 of the. Prevention of Food Adulteration Act.

9. Now we come to the third point. We have to examine whether Section 78 of the Act or any of the Rules made thereunder take away the authority of the chairman granted u/s 67 of the Rajasthan Municipalities Act. There, are no rules on this point and we have only to consider Section 78. Section 78(1) which is relevant section runs, as follows:

"78. Powers, duties and functions which may be delegated.-- (i) Any powers, duties or executive functions which may be exercised or performed by or on behalf of the board may be delegated, by the board to the chairman or to the vice-chairman or to the executive officer or to the secretary or to the chairman or any committee or to one or more stipendiary or honorary officers, without prejudice to any powers that may have been conferred on any committee by or u/s 73; and each person, who exercises any power or performs any duty or function so delegated shall be paid all expenses necessarily incurred by him therein."

10. It is urged by the learned counsel for the petitioner that the chairman is to perform any executive function which is delegated to him by the board and in the absence of any such delegation he cannot perform any executive function. We regret we cannot accept this interpretation. The Chairman is of course to perform any of the duties, and functions which may be delegated to him. Even in the absence of any specific delegation so far as the executive functions are concerned, he has been given the power to perform them u/s 67 (d).

Section 78 does not in any way affect the power conferred upon the Chairman u/s 67. For example, u/s 67(3), he is to convene and preside over on all meetings of the board. This power is there even if there is no delegation by the board. Similarly he is to watch over the functions and executive administration of the board and bring to the notice of the board any difficulty therein as set out in Section 67 (b). This power is there without there being any delegation. In our opinion, the words "Subject to the provision of Section 78 and of the rules for the time being in force", occurring in Section 67 (d) only mean "unless there is

anything to the contrary in Section 78 or in the rules". They do not mean that "unless there is express delegation u/s 78" the chairman cannot perform any executive function. This is the view taken by Bhargava, J. in *Birdhi Chand v. The State*, 1962 RLW 352. Modi, J. has also arrived at a similar conclusion in *Leela Jain v. State of Rajasthan* 1959 RLW 134. We are in respectful agreement with the learned Judges of this Court on this point.

11. We may point out that in this case, the vice-chairman of the Baran Municipal Board has granted his written consent and there is no dispute that he could do so as u/s 69 of 1 the Rajasthan Municipalities Act, 1959, he could exercise the powers and perform the duties of the Chairman in the absence of the Chairman.

12. In our humble opinion, all the contentions raised by the learned counsel for the petitioner have no force. The Revn. No. 4 of 1962, is rejected. In the other two Revn. Petns. (Nos. 5, of 1962--*Tulsiram v. State* and 6 of 1962--*Nanlal v. State*) the points are the same as in the Revision Application we have just dismissed. They are also dismissed for the same reasons.