
(1982) 10 AP CK 0019

In the Andhra Pradesh High Court

Case No : Writ Appeal No"s. 314 of 1979 and 17 of 1980

S. Janardhana Rao

APPELLANT

Vs

K. Paul Reddy and Others

RESPONDENT

Date of Decision : 14-10-1982

Acts Referred:

General Clauses Act, 1897 — Section 15
Prevention of Food Adulteration Act, 1954 — Section 2(1), 7, 8, 9
Prevention of Food Adulteration Rules, 1955 — Rule 8

Citation : (1982) 10 AP CK 0019

Hon'ble Judges : Ramaswamy, J;Madhava Reddy, J

Bench : Division Bench

Advocate : E. Kalyanram, for the Appellant; T. Govindayya, Govt. Pleader (for M. and H.) and P.L.N. Sarma, for the Respondent

Judgement

Ramaswamy, J.—These two writ appeals are against the judgment of our learned brother, Ramachandra Rao, J. dated 10-7-1979, made in W.P. No. 367 of 1978. Writ Appeal No. 314/79 was filed by Sri S. Janardhana Rao, the third respondent in the Write Petition who impleaded himself as party-respondent vide orders of this court dated April, 20, 1978 made in W.P. M.P. number 2129/78; and Writ Appeal No. 17/80, was filed by the respondent in the writ petition, viz. The Drug Controller and Food (Health) Authority, Tarnaka, Secunderbad. Our learned brother allowed the Writ Petition and quashed the proceedings in Rc. No. 10069/ F1/77 dated 11-1-1978 of the Ist respondent in the writ petition (appellant in W.A. Number 17/80).

2. To avoid plurality, we adopt the ranking obtained by the respective parties in the writ petition. Sri K. Paul Reddy is the writ petitioner. He is hereinafter called "the writ petitioner". The first respondent in the Writ Petition is the Drug Controller and Food (Health) Authority, Government of Andhra Pradesh and he hereinafter called "the first respondent." The second respondent is the Executive Officer (Local Health Authority). Gram Panchayat, Settenapalli and he is hereinafter referred to as the "second respondent". The third respondent is Sri S.

Janardhan Rao. As stated earlier, he was impleaded himself as a party respondent to the Writ Petition and he is hereinafter described as "the first respondent".

3. The petitioner, Sri K. Paul Reddy filed Writ Petition No. 367/78, seeking to quash the proceedings referred to above, on the following allegations : He is a qualified Sanitary Inspector holding the said post in various Panchayats since, 1969. While he was working under the second respondent, the second respondent addressed the Government Analyst, Hyderabad to give him training under the Prevention of Food Adulteration Act to impart training in food inspection and sampling work. In pursuance thereof, by letter dated April 15, 1972, the Government Analyst, Hyderabad instructed the second respondent to direct the petitioner to join the training at his own cost with effect from 1-5-1972, According, he underwent training at Hyderabad from 1-5-1972 to 14-6-1972. The Government Analyst and Chemical Examiner gave a certificate on 14-6-1972 to that effect. Accordingly, he is having the qualifications of "Food Inspector" and is competent to take samples of articles of food for purposes of analysis to find out whether the articles of food are adulterated or not.

4. On 23-3-1977, he took samples of food, namely, gingelly oil from the shop of the third respondent and found it to be adulterated. After following the procedure prescribed, he laid the complaint against the third respondent in the court of the Judicial Magistrate of First Class, Sattenapalli, in C.C. No. 35 of 1977, u/s 16 read with Section 7 of the Prevention of Food Adulteration Act (Act 37 of 1954), hereinafter referred to as "the Act". The brother of the third respondent, namely, one Sri S. Purushotham filed an application on January 11, 1978 before the first respondent alleging that the petitioner is not qualified to take samples of food for analysis, on the ground that he did not undergo the requisite training. Thereupon the first respondent without giving any notice or opportunity or examining the relevant records, passed the impugned order which reads as follows :

"Sri K. Paul Reddy now working as Sanitary Inspector at Sattenapalli Gram Panchayat was not a Sanitary Inspector or Food Inspector on 8-7-1968. He also not undergone the requisite training as contemplated in the Prevention of Food Adulteration Act and Rules. Therefore he is not qualified to be notified as Food Inspector. He should, therefore, not lift samples any longer under the Prevention of Food Adulteration Act. The Local (Health Authority is directed to act accordingly)."

He alleges that the order of the first respondent is void, without jurisdiction and is violative of the principles of natural justice. According to the petitioner, he is fully competent and qualified to take samples of food for analysis to find out whether the articles of food are adulterated and if they are found to be adulterated, he is competent to lay the prosecution for bringing the offenders to book. After the receipt of the aforesaid communication from the first respondent, he approached the first respondent by his petitions dated 18-1-1978 and 24-1-1978 and requested him to withdraw the impugned letter, but to no avail.

He further stated that impugned letter exposes him to harassment and humiliation and actions of malicious prosecution and loss of status as Food Inspector.

5. The first respondent filed a counter-affidavit. But the crucial of the aforestated allegations made by the petitioner were not denied. The only contention raised by the first respondent was that the rules require that the training for three months is mandatory and that the petitioner did not undergo the said training. The petitioner did not produced any certificate before him, to show that he underwent training for three months. Therefore he is not competent to be "Food Inspector".

6. The third respondent in his application to implead as party respondent has stated that the petitioner did not undergo training for 45 days. Mere obtaining of a certificate that he underwent training for a period of 45 days in taking food samples is not enough and it does not clothe him with any power of the Food Inspector to obtain samples of food from the trader and to launch prosecutions against him under the provisions of the Food Adulteration Act. In C.C. No. 37 of 1973 on the file of the judicial Magistrate of First Class, Sullurpet when the accused were convicted for adulteration of the articles of food, the matter was carried in appeal Criminal Appeal No. 14/73 to the Court of the Session at Nellore, the Additional Sessions Judge found that the petitioner was not competent to take samples of food and accordingly the accused were acquitted. On further appeal to this court in Criminal Appeal No. 700/74 this court upheld the order of acquittal passed by the Sessions Court confirming that the petitioner is not competent to take samples of food and to launch prosecution against the traders. Thus, this court confirmed that the petitioner is not a qualified Food Inspector. It is admitted by the third respondent that his brother filed a petition before the first respondent and on the petition, the first respondent issued the impugned proceedings holding that the petitioner is not competent to take samples of food articles for purposes of analysis etc.

7. Our learned brother, after through consideration of all the contentions raised before him found that the petitioner has fully satisfied the qualifications prescribed Rule 8(iii) of the Food Adulteration Rules, 1955 (hereinafter referred to as "the rules") as amended with effect from 13-5-1974. It was also found that the impugned order was passed without notice to the petitioner and without even affording an opportunity to make his representations, thereby depriving the petitioner of his right to be nominated as a Food Inspector which he is qualified to hold according to the provisions of the Act and Rules. On the basis of the aforesaid findings, our learned brother quashed the impugned proceedings holding that it is wholly illegal and unsustainable. Challenging those findings, the above appeals have been filed.

8. Sri G. Suryanarayana Murthy the learned counsel appearing for the third respondent (appellant in W.A. No. 314 of 1979) raised the following contentions Rule 8(iii) requires that the petitioner should be a qualified Sanitary Inspector

having an experience as such for a minimum period of one year and should receive at least of forty-five days training in food inspection and sampling work. He did not have forty-five days training Though in the certificate it is stated that 45 days training was received by him, but as of fact, he received only for 39 working days since 7th, 14, 21st and 27th May, 1972 and 4th and 11th June, 1972 are public holidays and the petitioner did not receive training during those holidays. Therefore he did not have the minimum 45 days training in food inspection and sampling work. The second contention raised by him is that the Food Inspector shall be appointed by the Central Government or the State Government by a Notification published in the Official Gazette. In this case the petitioner has not been appointed by a notification issued by the State Government nor published in Official Gazette and as such the petitioner is not competent to take samples of food. As a consequence, the prosecution laid by him in C.C. No. 34 of 1977 is without jurisdiction.

9. Sri M. R. K. Chowdary, the learned Government Pleader appearing for the first respondent (appellant in W.A. No. 17/80) while supporting the contentions raised by Sri Suryanarayana Murty further contended that the exigencies of administration require that the petitioner who is not competent to take samples of food is not permitted to continue to discharge the functions of Food Inspector. Accordingly the impugned letter has been addressed by the second respondent. It is not violative of the principles of natural justice. Therefore, our learned brother, Ramachandra Rao, J., is not justified in quashing the impugned proceedings on the ground that it is violative of the principles of natural justice.

10. Sri Sobhanadhri Babu, the learned counsel appearing for the writ petitioner fully supported the reasoning of our learned brother.

11. On the aforesaid contentions raised by the respective counsel, the following questions arise for consideration.

(1) Whether the petitioner Sri Paul Reddy is the qualified Sanitary Inspector, having an experience as such for a minimum period of one year and has received at least forty-five days training in food inspection work;

(2) Whether the petitioner is validly appointed as Food Inspector to discharge the functions as enjoined under the provisions of the (Prevention of) Food Adulteration Act ?

(3) Whether the impugned proceedings are violative of the principles of natural justice.

Before considering these questions, it would be appropriate to extract the relevant, provisions of the Act and the rules.

12. Section 2(1) defines "adulterated" means an article of food shall be deemed to be adulterated if conditions (a) to (l) are satisfied.

13. Section 2(v) defines "food" means any article used as food or drink for

human consumption other than drugs and water and includes the categories mentioned in (a) and (b) thereof :

14. Section 2(vi) defines Food (Health) Authority, means the Director of Medical and Health Services or the Chief Officer-in-charge of Health Administration in a State by whatever name he is called;

15. Section 2(xix) defines "sample" means of any article of food taken under the provisions of this Act or of any Rules made thereunder.

16. Section 9 empowers the Central Government or the State Government to appoint such persons as it thinks fit, having "prescribed qualifications" to be Food Inspector for such local areas as may be assigned to them by the Central Govt. or the State Govt. as the case may be, by a notification in the Official Gazette.

17. Section 10 gives power to the Food Inspector (a) to take samples of any articles of food from.

(i) any person selling such article;

(ii) xx xx xx xx

(iii) xx xx xx xx

(Clauses (ii) and (iii) are not necessary for the purpose of this case)

(b) to send such samples for analysis to the public analyst for the local area within which such sample has been taken.

(c) xx xx xx xx

18. Sub-section (2) of Section 10 empowers the Food Inspector to 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.

(3) xx xx xx xx

19. Sub-section (4) of Section 10 reads thus :

If any article intended for the food appears to any Food Inspector to be adulterated or he may seize and carry away or keep in the safe custody of the vendor such article in order that

(The other sub-sections are unnecessary for the purpose of this case).

20. Section 11 prescribes the procedure to be allowed for taking samples of food for analysis.

21. It is not necessary to consider in detail regarding the procedural steps enquired to be taken in this section.

22. Rule 8 in Part IV of the Prevention of Food Adulteration Rules is the relevant

rule which prescribed the qualifications of the Food Inspector which reads as follows :-

"8. A person shall not be qualified for appointment as Food Inspector, unless he -

(i) xx xx xx xx

(ii) xx xx xx xx

(iii) is a qualified Sanitary Inspector having an experience as such for a minimum period of one year and has received at least forty-five days "training in Food Inspection and sampling work" under the Food (Health) Authority empowered for the purpose by the Central Government; or

(iv) & (v) xx xx xx xx"

At this juncture it may be relevant to mention that prior to 13-2-1974, the rule was that at least three months" training in Food Inspection and sampling work in any laboratories referred to in clause (i) of Rule 6 that was substituted by an amendment introduced through G.S.R. No. 205 dated 13-2-1974, with effect from 23-5-1974 through Gazette of India dated 23-2-1974 at Part-II-3(i) page 414. As a result, at the relevant date viz., 23-3-1977 when the sample of article of food was taken the petitioner was to have qualification of at least 45 days training in Food Inspection and sampling work.

23. Rule 9 prescribes the duties 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 them;

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

(c) to procure and send for analysis, in necessary samples of any article of food has reason to suspect are being manufactured, stored or sold or exhibited for sale in contravention of the provision of the Act or Rules thereunder :-

(d) xx xx xx xx

(e) xx xx xx xx

(Clauses (d) and (e) are not necessary for the purpose of this case).

24. Thus a reading of the aforesaid provisions clearly indicates that for a person to function as a Food Inspector it is necessary that he should be appointed by a notification and that he should be a qualified one as prescribed in Rule 8. It is sine qua non for a valid prosecution that a person who takes samples of articles of food for analysis as food inspector be validly appointed as such. It is also a pre-condition that he should hold the qualification prescribed therefor.

25. In this regard, it is also necessary to keep in mind the object of the Act. Their Lordships of the Supreme Court in Municipal Corporation of Delhi Vs.

Kacheroo Mal, , succinctly stated the objects of the statute thus :-

"The Act has been enacted to curb and remedy the widespread evil of food adulteration, and to ensure the sale of wholesome food to the people. It is well settled that wherever possible, without unreasonably stretching or straining, the language of such a statute should be construed in a manner which would suppress the mischief, advance the remedy, promote its object, prevent its subtle evasion and foil its artful circumvention". Sale of an adulterated article of food is an anti-social activity, deleterious to health of those who would consume them as articles of food and the eradication of it is the prime aim of the Act; effective implementation of the provisions of the Act to preserve the health of the consumer public is the imperative duty of the State through its officers appointed under the provisions of the Act.

26. Therefore it is necessary to see whether the writ petitioner is validly appointed as Food Inspector as contemplated under the provisions of the Act. It is no doubt true as contended by the learned counsel for the third respondent (Appellant in W.A. No. 314/79) that there is no notification as such issued specifically appointing the writ petitioner as Food Inspector, but the question for consideration is whether it is necessary. It is not disputed that the State Government in exercise of its power u/s 9 of the Act issued a notification in G.O. Ms. No. 313. Health, dated 23-2-1956 to the following effect :

"In exercise of the powers conferred by Section 9 of the Prevention of Food Adulteration Act, 1954 (Central Act-XXXVII of 1954) the Governor of Andhra hereby. -

(1) appoints the persons specified in Column (1) of the schedule below to be Food Inspectors for the purposes of the said Act; and

(2) directs that the persons aforesaid shall exercise powers within the local areas specified in the corresponding entries in column (2) of the said schedule :

(See	Schedule	below)	SCHEDULE
-----	-----	-----	Persons. Local
area. -----	-----	-----	(1) (2)
-----	-----	-----	1. Municipal
Health Officer and Municipality having a Municipal Sanitary Inspectors under Health Officer. his control. 2. Commissioner of Municipality Municipality not having a and Sanitary Inspectors under Municipal Health Officer. his control. 3. Sanitary Inspectors. Panchyat having Sanitary Inspector. 4. Executive Officer or Heath Panchayat not having Sanitary Inspector of the range Inspectors."	-----	-----	concerned. -----

27. Thus, in every Gram Panchayat having a Sanitary Inspector, he is appointed as Food Inspector by their official designation. It is not disputed that the petitioner is a Sanitary Inspector and that the Gram Panchayat, Sattenapalli, the second respondent is having a Sanitary Inspector. The writ petitioner is working

in the local area of the said Gram Panchayat as Sanitary Inspector. If that position is conceded, the writ petitioner is having power to exercise the powers of the Food Inspector within the local area of the Gram Panchayat, Sattenapalli. Of course, whether he fulfilled the qualifications prescribed under R. 8 is another aspect which we will deal with later at the appropriate stage. Suffice it to say at this stage that he is having competency to be the Food Inspector. Therefore, it is not necessary to appoint him by a separate notification to be the Food Inspector for the local area, i.e., Sattenapalli. In this regard, it is necessary to consider Section 15 of the General Clauses Act which reads as follows :

"Where by any Central Act or Regulation a power to appoint any person to fill in office or execute any function is conferred then unless it is otherwise expressly provided, any such appointment if it is made after the commencement of this Act, could be made either by name or by virtue of office."

Therefore it is abundantly clear that once an appointment is made by virtue of an office any person competent to discharge the functions of the Food Inspector shall be deemed to have been appointed u/s 9 and no separate notification need be made at every time as and when an officer is either appointed or transferred. It would be only an unnecessary duplication of issue of notifications since the appointment is being made not by name but by virtue of the office he is holding namely, Sanitary Inspector. The case of class appointments by virtue of office had come up for consideration for the first time in this court in Public Prosecutor (Andhra Pradesh) Vs. Narkidimilli Srirambhadrayya and Others, . Therein his Lordship, Sri Justice Jaganmohan Reddy (as his Lordship then was) has extensively considered the scope of appointment of Sanitary Inspector as Food Inspector under the provisions of the Act and held as follows :-

"It is manifest therefore that the general provisions specified in Section 15 of the General Clauses Act is designed to empower the appointment of persons required to fill any office or execute any function under any Central Act to be made either by name or by virtue of office. The Act need not therefore authorise specifically the appointment of any persons by virtue of their office as Food Inspectors."

The Sanitary Inspectors would be deemed to be a class of officers generally by their official titles in the sense in which it was also used in Section 39 of the Code of Criminal procedure. His Lordship ultimately held :

"I have no hesitation therefore, in holding that the Sanitary Inspectors could be appointed by virtue of their office u/s 9. There is nothing in Section 20 of the Act which required that a person should be appointed by the name before he can be authorised to lodge complaints."

With great respect to the learned Judge, we respectfully agree with the above reasoning.

28. Their Lordships of the Supreme Court also considered this aspect of appointment by office in several decisions and it is sufficient if we consider two of

them. In *Sindhi Lohana Chaithram Vs. The State of Gujarat*, their Lordships were considering the provisions of the Bombay Prevention of Gambling Act. In the said case, the learned Magistrate acquitted the accused on the ground that Sri Pandya, the Deputy Superintendent of Police, was not empowered by name to issue a search warrant. On appeal, the High Court held that Sri Pandya, as a Deputy Superintendent of Police, is specially empowered to issue a Search Warrant and the prosecution was entitled to the benefit of presumption u/s 7 of the Act. According, the High Court convicted the appellant of the offence under S. 4, of the said Act. The matter was carried to the Supreme Court and their Lordships, after considering the relevant provisions have held as follows :

"We think that where power is conferred on a person by name or by virtue of his office, the individual designated by name or as the holder of the office for the time being is empowered specially judged by this test, the notification dated January 22, 1955, specially empowered Shri Pandya as the holder of the office of the Deputy Superintendent of Police Porbandar, to issue the search warrant under S. 6."

29. In *Abdul Husein Tayabali and Others Vs. State of Gujarat and Others*, . Similar question arose for consideration under the provisions of the Land Acquisition Act. The contention raised was that though the Master (appointed as Collector under the Land Acquisition Act) held the enquiry and made the report he has not functioned as Collector but in his capacity as Special Land Acquisition Officer, Baroda and therefore, the notifications under sections 4 and 6 were invalid. While repelling that contention, his Lordship, the Hon"ble Sri Justice Shelat, held in paragraph 9 :

"Besides, Section 15 of the General Clauses Act provides that where a Central Act empower an authority to appoint a person to perform a certain function, such power can be exercised either by name or by virtue of office. There would therefore be no objection if the appointment is made of an officer by virtue of his office and not by his name. Therefore even if the meaning of the word "specially" were to be that which is canvassed by Mr. Sanghi, the Government would have issued separate notifications for each of the special land Acquisition Officers authorising them individually to perform the function of the Collector within their respective area of jurisdiction. Instead of doing that if one notification were to be issued authorising each of them to perform those functions there could be no valid objection. Such a notification would have the same force as a separate notification in respect of each individual Special Land Acquisition Officer. Such a notification would mean that the Government thereby appoints each of the existing Special Land Acquisition Officers to perform the function of the Collector within their respective areas."

30. This statement of law declared by their Lordships clearly lend support to our conclusion that it is not necessary that there should be a separate notification to be issued by the State Government appointing Sanitary Inspectors working in each Gram Panchayat by individual name to perform their functions and

discharge their duties enjoined on them under the provisions of the Food Adulteration Act and Rules made thereunder. It is not necessary to multiply the decisions on this aspect arising under the provisions of the Food Adulteration Act in view of the law laid down by his Lordship, Hon^{ble} Sri Justice Jaganmohan Reddy (as his Lordship then was) in Public Prosecutor (Andhra Pradesh) Vs. Narkidimilli Srirambhadrappa and Others, as far as this State is concerned and the law laid down by their Lordships of the Supreme Court in the aforesaid cases. But suffice it to mention a few of them viz., Emperor v. Savalaram AIR 1948 Bom 156 : (1948 Cri LJ 165); The State of Mysore Vs. Danjaya, ; Subbayyan Muthukomaran Vs. State of Kerala and Others, ; Food Inspector Guruvayoor v. Gopalan 1969 MLJ (Cri) 714; The Municipal Council Vs. Shripat Ganeshlal and Another, and Ganpat Rai v. State (1975) FAC 179 at p. 181.

31. Sanitary Inspectors appointed subsequent to the issue of notification in G.O. Ms. No. 313, Health, dated 23-2-1956 also are entitled to discharge the functions of the Food Inspector as enjoined in the provisions of the Act. This question also was considered by a Bench of Delhi High Court in Ganpat Rai v. The State (supra) where it was laid down that the notification issued earlier would ensure to the benefit of the subsequent holders of the office of the Food Inspectors though they were appointed later and no fresh notification appointing them as such is necessary. Therefore it is not necessary that there should be a separate notification to be issued. The question whether the appointments made earlier would be validly continue after the amendment of the Act in 1964 came up for consideration before their Lordships of the Supreme Court in Shambhu Dayal Vs. State of Uttar Pradesh, and it was held :

"The appointment of Food Inspector and Public Analyst made by the State Government under sections 8 and 9 of the original Act continued to be valid in spite of passing of the Amending Act of 1964 and amendments of Sections 8 and 9 by Amending Act. The effect of the Amending Act of 1964 was only to the extent that the Central Government was given concurrent powers to the State Government in the manner of appointment of Public Analyst through notification and the Act of 1964 did not repeal any part of Food Adulteration Act which exist and any amendments in the specific provisions of the original Act were effected by Act of 1964 which have the effect of repeal of any part of the original Act."

Thus, even after the amendment giving concurrent power to the Central Government as well as the State Government the appointment of the Sanitary Inspectors made by the State Government under the notification issued through G.O. Ms. No. 313, dated 23-2-1956, continues to be valid and the Sanitary Inspectors having qualifications prescribed under Rule 8 are empowered to discharge the functions of the Food Inspectors within the local areas to which they are assigned.

32. Thus, on a conspectus of the catena of decisions referred to above, it is abundantly clear that it is not necessary that the petitioner should be appointed by a notification published in the official gazette for his discharging the functions

as a Food Inspector in the local area of Sattenapalli Gram Panchayat, the second respondent. Therefore the contention of Sri G. Suryanarayana-murthy, the learned counsel for the third respondent (appellant in W.A. No. 314/79) is not tenable. Accordingly it is rejected.

33. No doubt, in a letter written by the second respondent to the first respondent, there is a reference made that the name of the writ petitioner was not included in the notification issued and that the first respondent requests to get the notification issued in that regard. But in view of the law laid down as referred to above, it is not necessary for issue of a notification specifically appointing the writ petitioner to be the Food Inspector for the local area of Sattenapalli Gram Panchayat. In this regard it is also necessary to clear one ground namely, in the impugned letter of the first respondent, he has stated that the writ petitioner is not a Sanitary Inspector on 7-8-1978. It is nobody's case that the writ petitioner is not a Sanitary Inspector nor that he had no experience for one year as a Sanitary Inspector. When the petitioner categorically stated in his affidavit filed in support of the writ petition that he has been qualified and now the post of the Sanitary Inspector in various Gram Panchayats (sic) since 1969 that statement has not been disputed in the counter-affidavits filed either by the first respondent or by the third respondent. Therefore it must be taken to have been admitted that the writ petitioner is a Sanitary Inspector and that he has been functioning as such since 1969. Therefore he is having the qualifications of the Sanitary Inspector. During the course of argument either Sri Suryanarayana Murthy, the learned counsel for the third respondent or Sri. M. R. K. Chowdary learned Government Pleader did not dispute that the petitioner not having the qualification of Sanitary Inspector or that he was not appointed as such. The only contention raised by them was that the writ petitioner did not under the requisite training as Food Inspectors enjoined under Rule 8 of the Rules.

34. Therefore the second question for our consideration is whether the writ petitioner has undergone the requisite training for 45 days as enjoined under Rule 8(iii) of the Rules. Before advertng to the contention raised by Sri Suryanarayana Murthy, the learned counsel for the third respondent (appellant in W.A. No. 314/79) it is necessary to advert to the contention raised by Sri M. R. K. Chowdary, the learned Government Pleader. He contends that Rule 8 at the time of appointment of the petitioner requires that he should undergo training for three months as a Food Inspector. He did not undergo such a training. Therefore he cannot be validly appointed as Food Inspector and he is not competent to function as a Food Inspector so that any prosecution laid should not be entailed in acquittal. We are unable to agree with this contention. The crucial question for our consideration is whether as on 23-3-1977 the date on which samples of articles of food were taken from the premises of the third respondent, the writ petitioner fulfilled the qualification prescribed under Rule 8(iii) of the Rules, At that relevant time, the only qualifications prescribed was that the petitioner should have undergone training at least for 45 days in food inspection and

sampling work. The provisional certificate issued by the authority prescribed under the Act clearly shows that the writ petitioner has undergone the sanitary training. A certified copy of the certificate is placed before us. It is profitable to reproduce the contents of the certificate hereunder.

".... Government of Andhra Pradesh Food Inspector's Certificate under Prevention of Food Adulteration Act. Provisional Certificate.

This is to certify that Sri K. Paul Reddy son of Sri Venkata Reddy, Sanitary Inspector of the Gram Panchayat Sattenapalli, Guntur district has undergone 45 days training from 1-5-72 to 14-6-72 in Food Inspection and sampling work at the Food Laboratory, Narayanaguda, Hyderabad as per syllabus laid down and recommenced by the Director General of Health Services, New Delhi President of the CCFS and has satisfied the examiners as regards his competency in the performance of duties as Food Inspector.

Sd. T. Dharma Reddy, 14-6-1972 Government Analyst. Dr. T. Dharma Reddy, B.Sc., M.B.B.S., M.Sc. (Lon.) DIC AELC (Eng.) Government Analyst and Chemical Examiner to Government, Narayanaguda Hyderabad 29 (A.P.)"

35. This certificate categorically says that the petitioner has undergone 45 days training from 1-5-72 to 14-6-1972 in Food Inspection and Sampling work at the Food Laboratory Narayanaguda, Hyderabad as per the Syllabus laid down. Therefore the writ petitioner is fully qualified to be the Food Inspector as provided under Rule 8(iii). It is not necessary to have training for three months.

36. At this juncture it is necessary to consider the contention raised by Sri G. Suryanarayana Murthy the learned counsel for the third respondent (appellant in W.A. No. 314/79). What all he contends is that there intervened six holidays in between 1-5-72 to 14-6-72 and if those six holidays are excluded, the writ petitioner did not complete 45 days clear training. As such the certificate issued is invalid and therefore he has no power or authority to discharge the functions provided under the provisions of the Act and Rules. Therefore, he is incompetent to be the food inspector. The consequential prosecution laid by him is without any authority and is non est. In the affidavit in support of the petition to implead, no averment has been made to the effect that during the interregnum of the training period, six holidays intervened and that the writ petitioner did not undergo training during those six holidays and that therefore he did not complete 45 days period of training. In the absence of such an averment, we cannot expect the writ petitioner to deny that allegation. No doubt this allegations has been made in the grounds of appeal in W.A. No. 314/79. But in view of the certificate issued by the competent authority viz., that the writ petitioner underwent training during the entire period of the specified days, we shall presume that the petitioner has undergone such training. It is not (sic) issued the certificate. At his juncture, Sri Kalyan Ram, during reply has produced a certified copy of the cross-examination of Sri Dr. Dharama Reddy Public Analyst and sought to cast a doubt on the genuineness of the certificate referred to

above. We have carefully gone through the entire evidence of Dr. T. Dharma Reddy the Director, Forensic Science Laboratory, who worked as Public Analyst, Government of Andhra Pradesh. In the Chief Examination he has categorically stated that he knew the writ petitioner who underwent training in sampling work from 1-5-1972 to 14-6-72 in the food laboratory. He issued the certificate Ex. P. 13 and it contained his signature. In the cross-examination what was sought to be made out was that the entries regarding the dates, etc. were not in his handwriting. We cannot expect the officer to complete all the formalities. Obviously, his sub-ordinates filled up those entries and we can presume, after verifying those entries, he put his signature and issued the provisional certificate. Therefore it cannot be doubted that the certificate issued by the Public Analyst Dr. Dharma Reddy is not genuine and that he did not undergo the training for 45 days. It may also be relevant to state that no question had been put to him in the cross-examination that the writ petitioner did not undergo training for 45 days as stated in the certificate. Therefore, we hold that the certificate issued by the Public Analyst is conclusive and the recitals shall be presumed to be correct, since it was issued in the discharge of his official duties as Public Analyst. It was held by their Lordships of the Supreme Court in *Chinta Lingam and Others Vs. Government of India and Others*, that :

"There was moreover a presumption that public officials would discharge their duties honestly and in accordance with rules of law."

It is also to be borne in mind that the authenticity of the certificate or the qualification acquired by the writ petitioner should not be permitted to be challenged in the collateral proceedings. It is a well settled position of law that when a particular Government servant of an authority in the discharge of his public duty is performing the functions entrusted to him or enjoined under the provisions of an enactment the qualifications should not be permitted to be assailed while assailing the correctness or legality of the proceedings taken under the said enactment. If really the persons aggrieved against the qualifications or entertain any grievance or doubt, they should assail the same directly in appropriate proceedings challenging the qualifications as such. A Division Bench of this Court reported in *I.J. Raja Sekhar Vs. G. Immanuel and Others*, held that :-

"If a person desires to attack the validity of an appointment of a Judge he has to do so in proceedings directly connected with the appointment in a proceeding like *quo warranto*. The main reason for this rule appears to be that any decision relating to the validity of appointment of a person should on principles of natural justice be obtained in his presence. That can be done only in proceedings to which he is a party like a writ of *quo warranto*. If a person is permitted to question his appointment in collateral proceedings, it would in effect mean that he is inviting decision as to the appointment of a particular incumbent of an office in his absence."

With great respect, we adopt the same reasoning for the decision in this case.

The third respondent in his bid to avoid prosecution, subterfused the entire process and made his brother to write a letter to the first respondent (Appellant in W.A. 17/80) and the 1st respondent without making any enquiry and without giving any opportunity to the writ petitioner has set at naught the validity of the certificate which we have upheld earlier and held that the writ petitioner is not competent to take samples of articles of food. Thereby he not only disabled the writ petitioner to perform the functions enjoined under the Act but also made the local authority (Gram Panchayat) to have to recourse to appoint separate Food Inspector with its meagre resources to perform the functions of the Food Inspector under the provisions of the Act and the Rules made thereunder and was played into the trick laid by the third respondent. It may also be mentioned here that under the Act or Rules the first respondent has no power to sit over the certificate issued by the Government Public Analyst nor competency to decide its validity.

Admittedly he is only an administrative head as Health Authority. The third respondent should not be permitted to circumvent the process of challenging the validity of appointment of the writ petitioner as Food Inspector to avoid his prosecution in C.C. No. 34/77. For all these reasons, we hold that the writ petitioner is fully competent to be the Food Inspector.

37. The next question for consideration is whether the impugned proceedings are violative of the principles of natural justice. Sri G. Suryanarayana Murthy the learned counsel for the third respondent (appellant in W.A. No. 314/79) did not dispute the position that the impugned proceedings are violative of the principles of natural justice. But Sri M. R. K. Chowdary, the learned Government Pleader strongly defended the impugned proceedings and said that the principles of natural justice do not apply to the facts in this case and that there is no need to issue any prior notice or an opportunity of representation to the writ petitioner before issuing the impugned proceedings. He contends that the writ petitioner being not qualified to be the Food Inspector, any action taken by him under the provisions of the Act and Rules is invalid. Any prosecution laid by him would entail in acquittal.

Therefore in the exigencies of administration, the first respondent considered that the petitioner should not continue to take samples of articles of food and the second respondent was accordingly instructed. Therefore the principles of natural justice do not apply to the facts of this case. We are afraid that the contention of the learned Government Pleader is wholly misconceived.

38. It is now well settled position of law that the principles of natural justice cannot be imprisoned with the strait jacket of rigid formula. It depends upon the nature of jurisdiction conferred upon the administration authority; upon the character of the rights of the persons affected; the scheme and policy of the statute and other relevant circumstances in the particular case (vide *Union of India (UOI) and Another Vs. P.K. Roy and Others*, . As early as in 1918 the House of Lords laid down in *Board of Education v. Rice* 1911 AC 179 at p. 181 that -

"..... A functionary who has to decide an administrative matter of the nature involved in this case can obtain the material on which he is to act in such manner as may be feasible and convenient, provided only the affected party has a fair opportunity to correct or contradict any relevant and prejudicial material."

39. The frontiers of the principles of natural justice expanded extensively and is being applied in varied circumstances depending upon the facts and circumstances of particular case. Their Lordships of the Supreme Court applied the principles of natural justice even in respect of orders of administrative character when the order involves civil consequences (vide *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, . When the administrative order has the effect of the right to property, their Lordships of the Supreme Court in *The D.F.O., South Kheri and Others Vs. Ram Sanahi Singh*, have held that the order has to be made in a manner consistent with the rules of natural justice.

40. In *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, his Lordship, Justice Bhagwati, speaking for the Bench, held :

"Natural justice is pragmatically flexible and is amenable to capsulation under the compulsive pressure of circumstances."

Thus, the applicability of the principles of natural justice depends upon the facts and circumstances in each case and the consequences that flow from the order impugned.

41. Sri M. R. K. Chowdary, the learned Government Pleader relied upon the decision of his Lordships, Sri Justice Chinnappa Reddi (as his Lordships then was) in the *Gram Panchayat, Mudunuru v. Dist, Collector, Krishna*, W.P. No. 6163/73 dated 12-8-1975, and contended that the principles of natural justice are not applicable to the facts of this case. In the said decision, it was contended that the Government passed the order without notice to the Gram Panchayat and that there was a failure of observation of the principles of natural justice. In that case the Gram Panchayat passed a resolution of discontinue the post of a peon against which he filed an appeal before the District Collector and the Collector set aside that order and the matter was carried in revision to the Government. In that context the learned Judge observed as follows :-

"If the Gram Panchayat could be considered to be party to a proceeding the argument may have to be accepted. But in the proceedings before the Collector the Gram Panchayat could not rightly to be prescribed as a party.

The Gram Panchayat was the subordinate authority against whose order an appeal had been filed to the appellate authority. In a proceeding before the appellate authority it cannot be rightly said that the subordinate authority is a party to the proceedings. In such cases it may be proper for the appellate authority to call for the remarks to call for such remarks cannot be said to have resulted in a failure of natural justice.

42. Therefore, the said decision has no application to the facts in this case.

Against the said judgment Writ Appeal No. 643/75 was filed and this question was not considered by the Division Bench in the judgment dated 5th July, 1976. Therefore, it is not necessary to consider the writ appeal in this context.

43. As held by us, the writ petitioner has undergone the training for 45 days as Food Inspector. He fully satisfied the qualifications prescribed under Rule 8(iii) of Food (Inspector) as enjoined under the provisions of the Act and Rules referred to above. The impugned proceedings directly nullifies his qualifications. Thereby not only he is being deprived of his status as Food Inspector and acquisition of qualifications but also being exposed to the peril of malicious prosecution at the hands of the persons from whose custody, shops or establishments, he has taken samples of articles of food for analysis and when they were found to be adulterated laid prosecutions. To avoid all these civil and criminal consequence, it is imperative on the part of the first respondent, after the receipt of the letter from the brother of the third respondent to issue prior notice to the petitioner and he should have been given opportunity of representation and he should also have been heard before issuing the impugned proceedings. Therefore, the impugned order is violative of not only the principles of natural justice but also smacks of violation of fair play in administrative action.

44. For all these reasons, we hold that the appeals fail and accordingly confirm the judgment of our learned brother. The appeals are dismissed with costs. Advocate's fee Rs. 250/-.

45. Appeals dismissed.