
(1975) 09 GUJ CK 0003
In the Gujarat High Court

Shriram Harichand Gujaral

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 23-09-1975

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(1)(a)(i), 16(1)(a)(i)
Prevention of Food Adulteration Rules, 1955 — Rule 4 , 4(3), 4(3)

Citation : (1976) 17 GLR 434

Hon'ble Judges : S.H. Sheth, J;N.H. Bhatt, J

Bench : Division Bench

Judgement

S.H. Sheth, J.—In this appeal the learned single judge has referred to the Division Bench the following question:

Whether the provisions of Sub-rule (3) of Rule 4 in so far as they stipulate that a copy of the memorandum and the specimen impression of the seal used to seal the container and the cover should be sent separately, are mandatory or are directory.

In order to answer the question which has been referred to the Division Bench it is necessary to briefly state the facts of the case. The accused was prosecuted u/s 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 for having sold to the complainant chilly powder adulterated with coal tar dye. The complainant-food inspector took from the accused the sample of chilly powder for analysis and divided it into three parts. As required by Sub-section (1) of Section 11 of the prevention of the food adulteration Act, 1954 he delivered one part of the sample to the accused, sent another for analysis to the public analyst and produced the third in the Court below. As required by Sub-section (1) of Section 13 of the said Act the public analyst sent his report to the food inspector. He found that the chilly powder in question was adulterated with coal tar dye. The accused was, therefore, prosecuted. When the trial commenced the accused applied to the learned Magistrate under sub Section (2) of Section 13 to send the third part of the chilly power to the director of central food laboratory for

obtaining his certificate. The learned Magistrate granted his application and sent it to the director. He was required to comply with Rule 4 of the prevention of food adulteration rules, 1955. He sealed the third part in a packet, enclosed with it memorandum in form I appended to the Prevention of Food Adulteration rules as required by Rule 4(1) thereof and sent it by registered post to the director. He, however, did not send the specimen impression of the seal and a copy of the memorandum separately by registered post to the director. Instead of doing so he enclosed the specimen impression of his seal and a copy of the memorandum in the sealed packet itself. Therefore, the question which arose before the learned single judge was whether compliance with Sub-rule (3) of Rule 4 was mandatory or directory and what was the effect of the failure to send separately by registered post the specimen impression of the seal and a copy of the memorandum. Does it render the certificate issued by the director of central food laboratory inadmissible in evidence? The learned single judge found that the question which was raised before him was a question of considerable importance and, therefore, he referred the question reproduced above to the larger bench. We are called upon to answer that question.

2. In order to answer the question it is necessary to discover the purpose and object which the rule-making authority had in mind in making Sub-rule (3) of Rule 4. It is necessary for us to see whether strict compliance with it advances the cause of justice and what are the consequences flowing from the failure to comply with it. In order to answer the question a quick glance at Sections 11 and 13 is necessary. Their scheme has been analysed by a Division Bench of this Court in *Bhagwandas Gurnomal v. The State of Gujarat* 16 Gujarat Law Reporter 164. Having referred to the two decisions of the Supreme Court bearing on the subject this Court has laid down that when a valuable right is conferred by Section 13(2) on the vendor to have a sample given to him analysed by the director of central food laboratory the prosecution should proceed in the manner by which the right conferred upon the accused would not be denied to him. It is a valuable right because the certificate of the director is treated as conclusive evidence of its contents. That right has been conferred upon the accused for his proper and effective defence. It is his right to have the other sample which was given to him by the food inspector or which the food inspector produced before the court analysed by a greater expert whose certificate becomes conclusive evidence of the facts stated therein. Relying upon the decision of the Supreme Court in *Ram Dayal Vs. Municipal Corporation of Delhi and Another*, this Court has observed that if the certificate issued by the director was not made final and conclusive evidence of the facts stated therein, it would be open to the party against whom the certificate is declared to be sufficient evidence either to rebut the facts stated therein by his own or other evidence or to require the expert to be produced for cross-examination it has been pointed out by the Supreme Court in that decision that Sub-section (2) of Section 13 gives a right both to the accused as well as to the complainant on payment of a prescribed fee to apply to the court, after the prosecution has been instituted, to send a part of the sample

to the director of central food laboratory for a certificate and the court is bound to send it under its seal to the director who is required to submit his report within one month from the date of its receipt the certificate issued by the director supersedes the public analysts report and is conclusive and final. This Court after having analysed the scheme of Sections 11 and 13 of the Act has held that Sub-section (2) of Section 13 confers upon the complainant and the accused a right to get the sample analysed by the higher authority-the director of central food laboratory-whose certificate supersedes the report of the public analyst given under Sub-section (1) of Section 13. Since the certificate issued by the director is final and conclusive evidence of the facts stated therein the law which provides for it must be construed strictly. Dealing with the question of the statutory requirement of sending the specimen impression of the seal this Court has observed in that decision that since the requirement of Sub-section (2) of Section 13 is mandatory the statutory safeguard provided by Rule 4 must be interpreted in a manner consistent with that mandatory requirement. In Sub-section (2) of Section 13 there is an in built guarantee because it requires the court to firstly ascertain that the mark and seal which were affixed to the sample when it was first marked and sealed on the spot by the food inspector are intact. It is only when the court is satisfied that the mark and seal or fastening up are intact that the court seals the sample part delivered to the vendor or produced by the complainant before the court and despatches it for analysis to the director they have, therefore, held that the expression despatch the part of the sample under its own seal means in the context of Sub-section (2) of Section 13 that the court must apply its own seal both to the container and the outer cover dealing with Rule 4 it has been observed by this Court that it provides that as ample for analysis should be sent through a messenger or by registered posting a sealed packet with a memorandum inform in outer cover addressed to the director. In the context of Sub-rule (3) of Rule 4 with which we are concerned in this reference it has been observed by this Court that it provides that a copy of the memorandum and a specimen impression of the seal used to seal the container and the cover shall be separately sent to the director by registered post next, this Court has further observed that the scheme of Sub-rule (3) of Rule 4 is that the court will have to send alongwith a copy of the memorandum a specimen impression of the seal used by the Court to seal the container and the outer cover. The seal on the outer cover may be damaged in transit or may be tampered with. Therefore, Sub-rule (4) of Rule 4 requires the director to specifically examine the inner seal on the container and to note its condition. Taking into account the consequences flowing from the certificate issued by the director this Court has taken the view that the requirement of sending a copy of the memorandum and a specimen impression of the seal of the court to the director cannot be directory. It is mandatory. Since in a case of this type the conviction of the accused shall rest upon the certificate issued by the director which in its turn is a conclusive evidence of the facts stated therein it is quite obvious that all legal requirements laid down in that behalf must be strictly complied with.

3. In order to protect society against food adulteration and the hazards flowing therefrom the Act has made a provision for taking a sample of food by the food inspector and to have it analysed by the public analyst. It also provides for the analysis of such a food sample in order to find out whether the dealer carries on his business in a straightforward manner or has been doing so against the interests of the society endangering public health by selling adulterated articles of food. The object of the Act is to protect the society against unscrupulous and anti-social dealers. While protecting the society against such dealers the law also protects an honest dealer against an unscrupulous food inspector and gives him a right to have the sample delivered to him by the food inspector or one produced by him before the court analysed by a superior expert-the director of central food laboratory. Now when the accused chooses to exercise this right of his he takes the risk because the certificate issued by the director supersedes the report of the public analyst (see Sub-section (3) of Section 13). The prosecution is not required to produce id the court the sample analysed by the director (see Sub-section (4) of Section 13). The certificate issued by the director is final and conclusive evidence of the facts stated therein, (see proviso to Sub-section (5) of Section 13), there is no obligation on the prosecution to examine the director and the accused has no right to cross-examine him. Under these circumstances the rule-making authority has provided certain safeguards with the object that the right given to the accused by Sub-section (2) of Section 13 does not become illusory and is exercised by him for his due and just protection against unexpected, unfair and ordinarily unfathomable hazards. Therefore, the question which arises is this: what are the safeguards which the rule-making authority has provided? The principal safeguard which is provided is that under Sub-section (2) of Section 13 the accused can make an application to the court for sending the sample which was delivered to him or the sample which the food inspector produced before the court to the director of central food laboratory for his certificate. While doing so, the court has to first ascertain that the mark and seal or fastening contemplated by Clause (b) of Sub-section (1) of Section 11 are intact and despatch the part or the sample under its own seal to the director of the central food laboratory. The director is required to send to the court within one month from the date of the receipt of the sample his certificate relating to the analysis of the food sample sent to him by the court. It must be in the prescribed form. He is required to specify in that certificate the result of his analysis. Sub-rule (1) of Rule 4 requires that the sample of food which is sent for analysis under Sub-section (2) of Section 13 shall be sent through a messenger or by registered post in a sealed packet enclosing therewith a memorandum in form I in an outer cover addressed to the director. The next safeguard which is provided is in Sub-rule (2) of Rule 4 which requires the court to mark the container as well as the outer covering of the packet with a distinguishing number. The third safeguard which is provided is that a copy of the memorandum and a specimen impression of the seal used to seal the container and the cover shall be sent separately by registered post to the director. The next safeguard which is provided is in Sub-rule (4) of Rule 4 which requires that either

the director or an officer authorised in writing by him in that behalf alone shall open the packet and record the condition of the seal on the container. Thereafter the food sample sent to him is subjected to analysis and the certificate is issued by him to the sender in form ii appended to the rules: Sub-rule (7) of Rule 4 requires that the certificate issued under the rules by the laboratory shall be signed by the director. Since the legislature has made the certificate issued by the director final and conclusive evidence of the facts stated therein and exonerated the prosecution from the ordinary requirement of examining him to prove his certificate it has provided a number of safeguards against all possible hazards which the accused may suffer and which he may not be in a position to avert or avoid. In other words, since the certificate issued by the director has been made final and conclusive evidence of the facts stated therein the accused has been protected in a number of respects. This Court in the case of Bhagwandas Gurnomal (*supra*) has already held that the requirement of sending a specimen impression of the seal of the court and a copy of the memorandum under Sub-rule (3) of Rule 4 is mandatory. Mr. Shethna has tried to argue that this Court in that decision has not only held that the requirement of sending a specimen impression of the seal and a copy of the memorandum by the court to the director is mandatory but it has also held that sending them Separately by Registered Post to the director is mandatory. We have meticulously gone through that decision of this court. It is clear from that decision that what was canvassed before the court was that the requirement of sending a specimen impression of the seal and a copy of the memorandum was mandatory. While dealing with that question the court referred to the language of Sub-rule (3) of Rule 4 which uses the expression separately by registered post. Whether sending of a specimen impression of the seal and a copy of the memorandum Separately by Registered Post was mandatory or not was not canvassed in that case before the court. Therefore, after it was held that sending of a specimen impression of the seal and a copy of the memorandum to the director was mandatory the further question which has arisen before us is whether sending them Separately by Registered Post is mandatory or directory. It is true that in the case of Bhagwandas Gurnomal (*supra*) this Court has construed Sub-rule (3) of Rule 4 and has held it to be mandatory. However, merely on the basis of that decision in which the question relating to sending Separately by Registered Post was not canvassed it cannot be held that decision answers the question which has been referred to us by the learned single judge. We are in agreement with Mr. Shethna that Sub-rule (3) of Rule 4 which has been construed by this Court in the case of Bhagwandas Gurnomal (*supra*) has laid down a mandatory requirement of sending a specimen impression of the seal and a copy of the memorandum to the director but we do not agree with him when he says that decision also has down that sending a specimen impression of the seal and a copy of the memorandum Separately by Registered Post has also been held to be mandatory. It has therefore become necessary for us to answer that question on first principles.

4. The next decision to which Mr. Shethna has invited our attention is in Mangllal

Chamnaji v. The State of Gujarat and Anr. 15 GLR 852. In that case a Division Bench of this Court was called upon not to construe Sub-rule (3) of Rule 4 but was called upon to construe Rules 7, 16, 17 and 18 of the Prevention of Food Adulteration rules. While analysing the scheme of those rules it has been observed by this Court in that decision that Rule 7 lays down that it is the duty of the public analyst to compare the seal on the container and the outer cover with the specimen impression received by him separately and to note the condition of the seals thereon. Rule 18, it has been observed in that decision, lays down a duty for the food inspector to send a copy of the memorandum and a specimen impression of the seal used to seal the packet to the public analyst separately by registered post or to deliver to him or to any person authorised by him. Reading both those rules together, it has been next observed by this Court that the specimen impression has to be compared under Sub-rule (1) of Rule 7 by the public analyst with the seal on the container. Adverting to the object and purpose of the rule-making authority in making this provision it has also been observed by this Court that they have been made in order to safeguard the interest of a person who is likely to be tried for the contravention of the provisions of the Act and who is likely to be convicted if the sample is found adulterated on the strength of the report of the public analyst alone. The final conclusion which this Court has recorded in that case is that the language of Sub-sections (1), (2) and (5) of Section 13 and the provisions of Rules 7, 16, 17 and 18, when read together, make it clear that the requirements laid down by them are mandatory. Mr. Shethna has tried to draw from this decision sustenance for his argument. He has argued that since Rule 18 contains a provision similar to the provision contained in Sub-rule (3) of Rule 4 and since it has been held to be laying down a mandatory requirement we should hold that Sub-rule (3) of Rule 4 is also mandatory. Mr. Mehta has tried to repel that argument by submitting that the scheme of Rule 18 read with Rule 7 is different from the scheme of Sub-rule (3) of Rule 4. Whereas Rule 18 read with Rule 7 deals with matters relating to the food sample to be sent to the public analyst, Sub-rule (3) of Rule 4 deals with the food sample to be sent, at the instance of the accused or the complainant, to the director of the central food laboratory, now Rule 18 requires the food inspector to send a copy of the memorandum and a specimen impression of the seal used to seal the packet to the public analyst separately by registered post or deliver to him or to any person authorised by him Sub-rule (1) of Rule 7 requires the public analyst or an officer authorised by him to compare the seals on the container and the outer cover with the specimen impression received separately by him and to note the condition of the seals thereon when both these rules are read together, Mr. Mehta has argued, it becomes quite clear that the public analyst is not only required to compare the seal on the container but also on the outer cover. The seal on the outer cover of the food packet can only be compared if a specimen impression of the seal has been separately sent to him either by registered post or through a messenger or has been delivered to him in any other manner if a specimen impression of the seal is enclosed by the food inspector in the packet itself, then unless the outer seal is broken and the

specimen impression of the seal is brought out, the public analyst will not be able to compare the seal on the outer cover with the specimen impression of the seal but if he breaks the seal on the outer cover in order to compare the specimen impression of the seal, he would not be able to compare the seal on the outer cover with the specimen impression of the seal because for taking out the impression of the seal from the packet he must have damaged or destroyed the seal on the outer cover. It is under these circumstances, Mr. Mehta has argued, that the rule-making authority has laid down that a specimen impression of the seal and a copy of the memorandum shall be separately sent by the food inspector to the public analyst therefore, according to Mr. Mehta, this Court has held in Mangilals case (supra) that the requirement of sending separately the specimen impression of the seal and a copy of the memorandum, laid down by Rule 18, is mandatory. He has then asked us to compare the language of Rule 7 with the language of Sub-rule (3) of Rule 4. According to him, where as Sub-rule (1) of Rule 7 requires the public analyst to compare the seal on the outer cover with the specimen impression of the seal received by him separately, Sub-rule (4) of Rule 4 does not require the director or the officer authorised by him to compare the seal on the outer cover with the specimen impression of the seal received by him. Sub-rule (4) of Rule 4 requires the director or the officer authorised by him to compare only the seal on the container (as distinguished from the seal on the outer cover) with the specimen impression of the seal. Mr. Mehta has therefore, made two submissions before us on the basis of his argument. His first submission is that the director is not required to compare the seal on the outer cover which the public analyst is required to do. Therefore, if the specimen impression of the seal is not sent to the director separately by registered post but is enclosed in the packet itself, the purpose for which it is sent would not be defeated because he can remove the outer cover the seal on which is not required to be compared with the specimen impression of the seal, take out the container and the specimen impression of the seal enclosed therewith and compare one with another he has, therefore, argued that the principle laid down by this Court in Mangilals case (supra) cannot be applied to construe Sub-rule (3) of Rule 4. The argument advanced by Mr. Mehta is very well founded and must be accepted. However, that does not answer the question which has been raised before us. We have still to find out whether the requirement of sending separately by registered post a specimen impression of the seal and a copy of the memorandum to the director under Sub-rule (3) of Rule 4 in any manner safeguards better the right of the accused. If it provides a safeguard for the accused it must be held to be mandatory. If it provides no safeguard to the accused, then it must be held to be directory because in such a case whether a specimen impression of the seal and a copy of the memorandum are separately sent by registered post to the director or whether they are enclosed with the food packet sent to him for analysis is immaterial. Mr. Mehta has argued that there is no special purpose which separate despatch of a specimen impression of the seal and a copy of the memorandum by registered post to the director serves. He has argued that when the court sends a food sample to the director at

the instance of the complainant or the accused there is no interested party which is likely to interfere with the seal and, therefore, with the food sample. He has also argued that Sub-rule (4) of Rule 4 casts upon the director an obligation to compare the seal on the container with the specimen impression of the seal sent to him and not with the specimen impression of the seal sent to him separately by registered post. The two arguments which Mr. Mehta has raised are prima facie very attractive. He has also invited our attention to form no ii appended to the rules and pointed out to us paragraph 2 therein which requires the director to note the condition of the seals on the container and the outer covering on receipt. The reference made by him to form No. It is intended to fortify his second argument which we have noted above. Though the arguments advanced by Mr. Mehta are prima facie very attractive we have got to find out whether there is any special purpose which the rule-making authority had in mind while making Sub-rule (3) of Rule 4. If they had none, then the requirement of Sub-rule (3) of Rule 4 must be held to be directory. If they had one in mind, then it must be held to be mandatory. Now, when the accused or the complainant applies to the court for sending a food sample produced before the court or in the possession of the accused to the director of the central food laboratory the packet which the court sends originates in the court. Then it starts travelling from the place of its origin to the central food laboratory. Its journey ends, before it is delivered to the central food laboratory, at the post office which serves the central food laboratory. We have therefore, three stages through which such a sample passes. It originates in the court which sends it, it travels from the place of its origin to the place of its delivery and before it is finally delivered to the central food laboratory its journey ends at the post office which serves the central food laboratory. Now, if any mischief or interference is committed at any of these three stages with the food packet, it will be difficult for the Director to discover it because whoever interferes with the seal on the container will also be able to interfere with the specimen impression of the seal enclosed therewith because both are available to him at one and the same time and they can be safely interfered with. It may happen at the place where it originates or in the course of its journey or at the post office where its journey ends and which will deliver it to the central food laboratory. If the seal which the container bears and the specimen impression of the seal are found in one and the same packet, then anyone who interferes with it will be able to successfully achieve his object because he will be able to interfere with both, both being available to him at one and the same time. That will not be the situation if the specimen impression of the seal has been sent separately either through a messenger or by registered post to the director of the central food laboratory because whoever interferes with the seal on the container will not have the specimen impression of the seal available to him for being interfered with since it must have been sent separately either through a messenger or by registered post. It is needless for us to add that whoever thinks of interfering with the seal on the container will also be able to successfully interfere with the seal on the outer cover. Now, the important and valuable safeguard which has been

conferred upon the accused will be lost and will become illusory if the seal on the container and the specimen impression of the seal, both available at one and the same time, have been interfered with by some unscrupulous mischief monger because the director who is not available to the accused for cross-examination will not be able to know in such a situation whether the seal on the container has been interfered with or not. The requirement of separately sending the specimen impression of the seal to the director is therefore intended to show him the genuine seal of the court with which he is required to compare the seal which the container bears. Since there is much less likelihood of any interference with the seal on the container and the specimen impression of the seal sent separately, there is a greater protection or safeguard which has been conferred upon the accused by Sub-rule (3) of Rule 4. Therefore, the requirement of sending separately the specimen impression of the seal serves a very laudable purpose of safeguarding and protecting the interests of the accused and ensures fair administration of justice to him. It is this special safeguard which the accused loses when the specimen impression of the seal is sent to the director as an enclosure in the packet sent to him for analysis. We are, therefore, of the opinion that Sub-rule (3) of Rule 4 in so far as it lays down that the specimen impression of the seal and a copy of the memorandum shall be sent separately to the director serves a special purpose for the accused. It assumes greater significance in cases under the Prevention of Food Adulteration Act where the fate of the accused depends upon the certificate issued by the director the contents of which are final and conclusive evidence of the facts stated therein and which are not open to challenge by the accused in any manner whatsoever. Not only he cannot challenge the contents of the certificate by leading any other evidence but he cannot also challenge the contents by requiring the director to be cross-examined by him. Once the director issues a certificate that the food sample sent to him was adulterated the fate of the accused is sealed. It is not open to him even to ask the court to get back food sample analysed by the director for further analysis by his own expert. When the final and conclusive character attributed to the certificate issued by the director produces such a far-reaching consequence as we have analysed above, we have no doubt in our mind that all provisions of law which relate to it and which confer even the smallest safeguard on the accused must be construed strictly and not liberally. We are, therefore, of the opinion that the provisions of Sub-rule (3) of Rule 4 of the prevention of Food Adulteration Rules, 1955 in so far as they require that a specimen impression of the seal used by the court to seal the container and the cover and a copy of the memorandum shall be sent separately to the director are mandatory and are required to be complied with strictly. Our answer to the question which has been referred to us, therefore, is as gutted above. The matter shall now go back to the learned single judge for final disposal of the appeal according to law.