

(1999) 04 MAD CK 0130

In the Madras High Court

Case No : Criminal Appeal No. 856 of 1990

State by the Food Inspector, Villupuram Municipality

APPELLANT

Vs

Jothi

RESPONDENT

Date of Decision : 29-04-1999

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 10, 10(1), 10(2), 10(4A), 10(6)
Prevention of Food Adulteration Rules, 1955 — Rule 12, 15, 9, 9(1)

Citation : (1999) CriLJ 3979 : (1999) 2 LW(Cri) 417

Hon'ble Judges : V.S. Sirpurkar, J;P. Thangavel, J;A. Raman, J

Bench : Full Bench

Advocate : G.M. Syed Fasiuddin, app, for the Appellant; K.G. Subramanian, for the Respondent

Judgement

V.S. Sirpurkar, J.—The issue referred to us for decision is as to whether the Sanitary Inspector (who is appointed as a Food Inspector u/s 9 of the Prevention of Food Adulteration Act, 1954) working in a particular division of the Municipality could validly collect the samples out of food articles and take action under the Act from another division for which he is not working as a Sanitary Inspector.

2. The following factual matrix will help to understand the controversy involved :-

The Food Inspector, Villupuram, filed a complaint against the accused Jothis, son of Rajagopal for offences u/s 7(2) read with Section 2(ix)(j) and (k) of the Prevention of Food Adulteration Act, 1954 (hereinafter called "the Act" for the sake of brevity). In his complaint, it was inter alia contended that on 18-12-1985 at about 12.40 p.m. the said Food Inspector inspected the Sherbet (Syrup) shop owned by the accused at Villupuram Town Bus-stand and after introducing himself to the accused, issued Form No. VI to him for taking the food sample. He purchased 750 ml. of "Sherbet" kept for sale for Rs. 61- and passed cash receipt. He divided the sample into three equal parts, filled them in three clean bottles, closed them with corks, sealed them with wax to avoid leakage and labelled the food samples with the necessary papers as required in Rule 15 of the

Prevention of Food Adulteration Rules, 1955 (hereinafter called "the Rules" for the sake of brevity). He then wrapped the same in a strong wrapper, tied the same and pasted the paper slip on the sample bottles. He also obtained the signature of the accused on the slip and the wrapper. He prepared copies of Form No. VII and sent one of the bottles to the Public Analyst, Thanjavur through Railway parcel. It is then contended in the complaint that thereafter, he put the remaining sample bottles in a cover and handed over to the Local Health Authority. It is further contended that from the report of the Public Analyst, Thanjavur, which was received by him, it came to his knowledge that the sample was adulterated and, therefore, after obtaining the order of the Local Health Authority, he decided to file a complaint in the Court on 24-1-1986.

3. The accused abjured the guilt and in support of the complaint of P.W.I, the said Food Inspector was examined. The Food Inspector supported the complaint and deposed accordingly. He also proved all the other necessary documents. However, during cross-examination, he admitted as under :-

(Text in Vernacular, omitted.- Ed.)

(I am in-charge of "B" Division. Accused is at "A" Division).

Relying on this admission, the trial Court acquitted the accused on the ground that the Food Inspector had no jurisdiction to inspect the area and take sample and if that was so, the proceedings must fail. In drawing this conclusion, the trial Court relied on the reported ruling of this Court (Kader, J.) in *M. Ramaswamy v. State* 1988 (2) MWN 81.

4. The State filed an appeal against this judgment before this Court. When the appeal came up for hearing, the learned single Judge of this Court (K. P. Sivasubramaniam, J.) found that the aforementioned ruling in *M. Ramaswamy's* case 1988 (2) MWN 81 following a ruling in *B. Venkata Subbu v. The Food Inspector, Tiruchirappalli Municipality, Tiruchirappalli* 1985 TNLJ 49 was contrary to the judgment of the learned single Judge (Singaravelu, J.) in *Sankaran v. The Food Inspector-X Division, Tiruchirappalli Municipality, Tiruchirappalli* 1985 MLW 33, where it was held that the territorial jurisdiction of a Food Inspector appointed within a Municipality by virtue of being a Sanitary Inspector was not confined to a particular ward and did not take away the power of the Sanitary Inspector/Food Inspector to inspect any area in the Municipality to take samples of the food-stuff. It was in view of this conflict and the fact that number of cases depended on this issue, the matter has been referred by the Hon'ble the Acting Chief Justice to a Full Bench.

5. The learned Public Prosecutor argues that the provisions of the Act clearly show that a Food Inspector is appointed not for a particular ward but for whole municipal area and that it is only for the administrative convenience that the Sanitary Inspectors, who are appointed as Food Inspectors, are allotted different areas. He contends that the allotment of area for the administrative convenience cannot affect the jurisdiction of a Food Inspector so as to be restricted.

6. The learned Counsel appearing on behalf of the accused, however, heavily relies on the judgment by the learned single Judge (Kader, J.) in Ramaswamy" s case (1988 (2) MWN 81 and suggests that where the Food Inspector lacked the initial authority to take the sample from a particular area and where he was acting in contravention of the powers awarded to him by his superiors, his action would be nullified and no prosecution could be based on such illegal action on the part of the Food Inspector to collect the sample.

7. Before we advert to consider the rival contentions, it will be better to see the various provisions of the Act as well as the Rules thereunder. Section 9(1) of the Act provides as under:-

9. Food Inspectors.- (1) The Central Government or the State Government may, by notification in the Official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications to be Food Inspectors for such local areas as may be assigned to them by the Central Government or the State Government, as the case may be." (rest of the Section is not relevant for our purpose).

The term "local area" is defined by Section 2(vii) which is as under :

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

The language of Section 9(1) of the Act, therefore, very clearly provides that a Food Inspector, who has the prescribed qualifications, can be appointed for such local area as may be assigned to him by the Government and that such appointment has to be made by a notification in the Official Gazette. Thus, the Food Inspector must necessarily have a jurisdiction only for such area as is assigned to him by a notification. It will be seen from the definition of the term "local area" that the said local area has to be defined by a Notification in the Official Gazette to be a local" area.

8. There can be no dispute that the Food Inspector would have a jurisdiction to take a sample only from the local area in respect of which he is appointed u/s 9 of the Act and that the said local area must also be such as has been defined and notified in the Official Gazette. A further guidance to the definition and interpretation of the term "local area" can be had from the definition of the term "local authority". The definition runs as under :

(viii) "local authority" means in the case of-

(1) 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 Central

Government or the State Government under this Act.

This definition gives a further clue that a municipality itself can be declared as a local area and if it is so declared, then the Municipal Board or the Municipal Corporation would be a local authority. The definition of the term "Local Health Authority" runs as under :

(viii-a) "Local Health Authority", in relation to a local area, means the officer appointed by the Central Government or the State Government, by notification in the Official Gazette, to be in-charge of Health Administration in such area with such designation as may be specified therein.

On this backdrop, it will be interesting to see the powers of the Food Inspector as we are dealing in this case principally with the powers of the Food Inspector. Relevant part of Section 10 of the Act runs as under :-

10. Powers of Food Inspectors.-

(1) A Food Inspector shall have power-

(a) to take samples of any articles of food from-

(i) any person selling such article;

(ii) any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee;

(iii) a consignee after delivery of any such article to him; and

(b) to send such sample for analysis to the Public Analyst for the local area within which such sample has been taken;

(c) with the previous approval of the Local (Health) Authority having jurisdiction in the local area concerned, or with the previous approval of the Food (Health) Authority, to prohibit the sale of any article of food in the interest of public health.

(explanation is not necessary for our purpose)

(2) Any Food Inspector may enter and inspect any place where any article of food is manufactured, or stored for sale, or stored for the manufacture of any other article of food for sale, or exposed or exhibited for sale or where any adulterant is manufactured or kept and take samples of such article of food or adulterant for analysis, (proviso is not relevant for our purpose).

The specific language of Section 9 suggests that the creation of a post of a Food Inspector has to be with reference to a local area and thus, the term "Food Inspector" would itself mean a Food inspector appointed for a particular local area. A conjoint reading of Section 9, Section 10(1) and Sub-section (2) which have been quoted above would certainly bring out a position that a Food Inspector can operate for the purposes of taking samples of the food articles in the local area for which he is appointed. Section 10(1)(b) makes a specific

reference as to the power of the Food Inspector to send a sample for analysis to the Public Analyst, who is a Public Analyst for the local area within which such sample has been taken. Sections 9 and 10 of the Act cannot be read in isolation and it will have to be deducted wherever there is a reference to the term "Food Inspector" it has only to be meant as a Food Inspector appointed for a particular local area. Sub-sections (1) and (2) of Section 10 of the Act specifically refer to the power of the Food Inspector to obtain the samples of the food articles from the persons selling such articles or the persons who are dealing with such articles or a consignee. Sub-section (2) of Section 10 of the Act specifically empowers the Food Inspector to enter and inspect any place where any article of food is manufactured or stored for sale, or stored for the manufacture of any other article of food for sale or any such place which a Food Inspector suspects to be storing any adulterant. A clear-cut reference to the term "Food Inspector" in these provisions would clearly bring out a position that the Food Inspector may do all these duties only in respect of the local area for which he is appointed. Even in Form No. VI, which is required to be passed to the seller of food article under Rule 12 as also Form No. VII, which is a Memorandum to the Public Analyst, the Food Inspector is expected to mention his area. This would sufficiently show that the Food Inspector is integrally connected with the local area and the concept of a Food Inspector cannot be accepted without there being a corresponding local area in his case.

8(a). However, the Act does not make any reference to any sub-divisions of these local areas. The Act as well as the Rules quoted above would sufficiently show that wherever the duties and powers of the Food Inspector are described, they are described with reference to the local area alone and there does not appear to be" anything in these provisions empowering the local authorities to carve out any separate jurisdiction other than the one conferred u/s 9 of the Act. The definition of the term "local authority" or as the case may be the term "local health authority" do not suggest any power in these authorities to carve out any specific area amongst a local area in favour of the Food Inspectors. It is, therefore, clear that the powers described in Section 10 of the Act can be exercised by the Food Inspector in respect of the whole local area. Thus, in this regard, at least, there is not administrative control of the local authority or local health authority. In Section 10, however, there are some powers which require the previous approval of the local health authority. Section 10(1)(c) of the Act is one such example where the Food Inspector can prohibit the sale of any article of food in the interest of public health only with the previous approval of the Local Health Authority of the local area. There is also a reference to the term "Local Health Authority" in Sub-section (4-A) of Section 10 of the Act. The only reference to the administrative control is to be found in the proviso to Section 10(6). Section 10(6) of the Act creates a power in the Food Inspector to seize any adulterant as also the books of account and other documents from the manufacturer, distributor or dealer. However, the proviso to this Section provides as under:

Provided that no such books of account or other documents shall be seized by the Food Inspector except with the previous approval of the authority to which he is officially subordinate .

(Emphasis Supplied)

Amongst the powers to be exercised by the Food Inspector in his local area, the proviso to Section 10(6) is the only example suggesting the administrative control on the Food Inspector. Otherwise, the whole Section 10 as also Section 9 of the Act are silent about any such administrative control much less regarding the jurisdiction over a local area over the Food Inspector by the local authority or the local health authority in respect of his powers u/s 10 of the Act.

9. Thus these two Sections are completely silent about further carving out any area in the local area in respect of which the Food Inspector is appointed and it can be safely concluded that the Food Inspector can exercise his powers in respect of the local area for which he is appointed by the appropriate Government. It will be seen that there is only one exception which is provided by the rules and more particularly Rule 9(a) of the Rules which speaks about the duties of the Food Inspector. The rule provides as follows :-

9. Duties of Food Inspector.-- It shall be the duty 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 him.

(Emphasis Supplied)

Very significantly the other duties which also include the duty to collect the samples of the food articles do not restrict the area of his operation, which suggests that the duty to inspect the establishments licensed for the manufacture, storage or sale of an article of food could alone be controlled by assignment of the area. However, the emphasised words of Rule 9(a) of the Rules cannot control the powers of the Food Inspector enumerated in Section 10 of the Act. This will be clear even from the wording of Rule 9(c) of the Rules which suggests the power of the Food Inspector to procure and send for analysis, if necessary, samples of any articles of food which he has reason to suspect are being manufactured, stocked or sold or exhibited for sale in contravention of the provisions of the Act or Rules thereunder. Very Significantly the power of collecting the sample of food articles and sending it for analysis which is created vide: Section 10(1) and (2) and reiterated in Rule 9(c) of the Rules does not anywhere limit the territorial jurisdiction in a local area of the Food Inspector. Rule 9(i) does provide an administrative control. Rule 9(1) of the Rules runs as follows :-

9(i) to perform such other duties as may be entrusted to him by the Health Officer having jurisdiction in the local area concerned or Local Health Authority or the Food Health Authority.

However, this rule cannot be interpreted to create any administrative restraints in respect of the powers and duties under the Act which have already been considered, as the reference in this rule is only to such other duties, thereby implying that the principal powers of the Food Inspector and also the duties do not have any intraterritorial constraints in the local area for which he is appointed u/s 9 of the Act except as provided under Rule 9(a). We are not concerned with Rule 9(a) here in this case. From all these discussions, it will have to be held that the Food Inspector has full powers in respect of the local area for which the said Food Inspector is appointed u/s 9 of the Act and further there cannot be any unnatural divisions of this local area bringing a cloud on the power of the Food Inspector to act in that local area. The whole Act as well as the Rules are silent in respect of the powers on the part of the local authority or local health authority to bring such a cloud or to carve out and assign any specific area within the local area to the Food Inspector except as indicated above.

10. On this backdrop, it will be interesting to see the conflicting reported decisions which have occasioned this reference.

11. It will be seen that in B. Venkata Subbu's case 1985 TNLJ 49 , the notification appointing the Sanitary Inspector as the Food Inspector had restricted the area of such Food Inspector to the area where the Sanitary Inspector prior to his appointment was exercising the jurisdiction. This will be clear from the facts stated. The following portion of the said judgment would clarify the issue :--

It is pointed out that all the Sanitary Inspectors are authorised by the notifications issued by the Government to act as Food Inspector. But the power to act as such is restricted to that particular area over which they have already exercised jurisdiction as Sanitary Inspector prior to their appointment as Food Inspector. (Emphasis Supplied)

This will show that in that case the same Sanitary Inspectors were already assigned particular areas to operate and they were appointed as the Food Inspectors under the Act only in respect of the area in which they already were authorised to work as the Sanitary Inspectors. Therefore, obviously if the Sanitary Inspector was working in Ward No. 1 before his appointment as a Food Inspector, he could have no right to act as Food Inspector in Ward No. 2. While deciding M. Ramaswamy's case 1988 (2) MWN 81 (cited supra), Kader, J. relied on the decision of a learned single Judge (P. N. Bakshi, J.) of the Allahabad High Court in Ram Dulare v. State 1979 (I) FAC 269 : 1979 All LW 220 : 1979 ALJ 220. There also the factual situation obtained was that a Food Inspector was appointed as a Food Inspector u/s 9 of the Act only in respect of the area over which he had already been exercising jurisdiction viz., Hanbans Mohal. The learned single Judge of the Allahabad High Court took the view that the oral instructions by the Nagar Swasthya Adhikari (perhaps the higher authority to the Food Inspector) to the Food Inspector to collect the samples from some other

area also could not create any valid power in the said Food Inspector in contravention of the notification u/s 9 of the Act, which restricted his area of operation to the area where he was already working.

12. In *M. Ramaswamy's case* (1988 (2) Mad WN (Cri) 81) (cited supra), however, the learned single Judge (Kader, J.) seems to have taken a view that the Food Inspector could take the samples only from Ward No. 4 where he was previously working as a Sanitary Inspector. The exact nature of the notification was not examined in *M. Ramaswamy's case* by the learned Judge to see whether the appointment of a Food Inspector was a general appointment or whether it was restricted to the area where the said Food Inspector was already operating as a Sanitary Inspector. It seems to have been presumed that the appointment of a Food Inspector in that case was only with reference to the local area where such Food Inspector was working as a Sanitary Inspector. We need not go into the correctness of that judgment as it is reported that the SLP is pending against that judgment.

13. In *Sankaran's case* 1989 MLW 33 however, the learned single Judge (Singharavelu, J.) took a view disagreeing with the view expressed by Kader, J. in the aforementioned earlier case viz., *B. Venkata Subbu's case*, which is reflected as below :-

I am unable to agree with this view expressed in *Crl. M.P. No. 7875 of 1983*, because all the Sanitary Inspectors within the Municipality are conferred with the powers of Food Inspectors and appointed as such. In other words, all Sanitary Inspectors by virtue of their office are Food Inspectors. The Sanitary Inspectors are, of course, appointed for specified areas, but it does not automatically mean that he should confine himself as Food Inspector only in that area, since there is no want of inherent jurisdiction to him. This allocation of areas is only for administrative convenience and it does not take away the powers of a Sanitary Inspector to inspect any premises and take samples. Jurisdiction is carved out only for effective performance of duties and in the case before us, the Food Inspector took out samples in the immediate presence of his superior, namely Senior Inspector who was present at the time and place of occurrence. In this connection, the scheme of the Prevention of Food Adulteration Act must also be noted and Section 12 of the said Act empowers even a private person to take sample and send it to the analyst. Therefore, a Food Inspector who is also a Sanitary Inspector of the Municipality cannot be said to have acted without jurisdiction while taking the sample, especially when the Senior Inspector was there guiding the inspection. Therefore, the argument that the Food Inspector has no territorial jurisdiction over the Ward has no merit and the Food Inspector, by virtue of his office as Sanitary Inspector, is empowered to take samples in any of the areas within the Municipality in which he is working. The result, is, the plea of want of jurisdiction is negatived.

On the basis of this judgment, the learned single Judge (K. P. Sivasubramaniam, J.) felt the necessity to refer the matter as he was of the view that the learned

single Judge in the aforementioned judgment had held that the territorial jurisdiction of a Food Inspector appointed within a municipality by virtue of being Sanitary Inspector was not confined to a particular ward and would not take away the power of the Sanitary Inspector to inspect any other areas to take sample.

14. We have already clarified that the power of a Food Inspector would depend on the language of the notification appointing him. If the notification carves out a particular area (in respect of which he has the powers to act as the Sanitary Inspector), then the Food Inspector concerned would not be able to operate beyond that area, but if the appointment of a Food Inspector is in respect of the whole local area covered by the municipality, then there would be no question of any fetters on his rights. We have already shown above that the restriction in respect of the local area for which the Food Inspector is appointed, cannot be restricted by the local authority or as the case may be, the local health authority. To define the local area is the exclusive power of the State or the Central Government u/s 9 of the Act. Therefore, if a Sanitary Inspector because of his holding of the post of a Sanitary Inspector in a particular municipality is appointed as a Food Inspector for that municipality, it should naturally mean that such Sanitary Inspector is appointed as a Food Inspector for the whole local area over which the municipality has its jurisdiction and as such the whole area of the municipality would become the local area for such a Sanitary Inspector, irrespective of the fact that he is authorised by his superiors to act as the Sanitary Inspector in a particular ward. Everything, however, would depend on the language of the notification. It cannot be forgotten that the Sanitary Inspectors, who are appointed as the Food Inspectors, are municipal employees first, thereby there is an administrative control over the working of the Sanitary Inspectors of the municipal authorities. The allotment of the Sanitary Inspectors for a particular ward would essentially be an administrative function for the sake of administrative convenience. Such administrative convenience cannot affect the concept of "local area" particularly where the Sanitary Inspector working in a particular municipality by dint of that post is appointed as a Food Inspector for that municipality. Again we cannot ignore the fact that the appointment of a Sanitary Inspector in the municipality is for the whole municipality and not for a ward. Therefore, where the Sanitary Inspector is appointed as the Food Inspector u/s 9 of the Act for a particular municipality, he would have a jurisdiction to act as a Food Inspector for the whole local area of that municipality. The definition of the term "local area" buttresses this inference.

15. To hold otherwise would be giving a power in the hands of the municipal authorities to change the local area of the Sanitary Inspectors, who are appointed as the Food Inspectors. For example, if a Sanitary Inspector is asked to be in charge of Ward No. 1 for administrative reasons, he may be shifted to Ward No. 4. In that case, his local area would change because of the shifting of such Sanitary Inspector/Food Inspector from Ward No. 1 to Ward No. 4. Such could not be interpretation of Section 9 of the Act which speaks of a compact

local area for which a Food Inspector is appointed.

16. We are also told that the Sanitary Inspectors are transferable from one municipality to another municipality. Where the Sanitary Inspector is so transferred and because of his post of a Sanitary Inspector in the municipality where he is transferred, if he becomes a Food Inspector, then it is apparent that he would be a Food Inspector for the local area of the municipality, where he is transferred. Merely because he is allotted a certain ward for administrative convenience, his jurisdiction cannot be restricted by the municipal authorities as in doing so, the municipal authorities would be indirectly usurping a power of State/Central Government u/s 9 of the Act. Thus, the interpretation, sought for by the accused herein is not possible.

17. To sum up, we are of the considered opinion that where a Sanitary Inspector is appointed as a Food Inspector u/s 9 of the Act for a particular municipality, such Sanitary Inspector/Food Inspector would have the jurisdiction to act as Food Inspector in whole of the local area of which he is appointed, meaning the municipal area.