

(1976) 04 GUJ CK 0002
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Haribhai Motichand

RESPONDENT

Date of Decision : 19-04-1976

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 16(a)(i), 16(a)(i)
Prevention of Food Adulteration Rules, 1955 — Rule 8

Citation : (1976) 17 GLR 1172

Hon'ble Judges : N.H. Bhatt, J;D.A. Desai, J

Bench : Division Bench

Judgement

N.H. Bhatt, J.—This is the State's appeal against the respondent, who was convicted of an offence u/s 16(a)(i) of the Prevention of Food Adulteration Act by the Metropolitan Magistrate, 8th Court, Ahmedabad, but whose conviction had come to be set aside by the City Sessions Court in Criminal Appeal No. 71 of 1974. The respondent had been sentenced to undergo S.I. For six months and to pay a fine of Rs. 1000/- in default to undergo further S.I. For three months by the learned Magistrate.

2. The case as made out against the respondent by the Food Inspector of the Ahmedabad Municipal Corporation was that on 24th April, 1974, the respondent had sold 12 cups of prepared tea weighing 14 milliliters which substance was found to have contained saccharine and orange II coal tar dye. As per the prescribed standards, this food was adulterated and so he was prosecuted by the Food Inspector, and as set out above he was convicted and sentenced by the learned Magistrate, but came to be acquitted by the learned City Sessions Judge. The only point which found favour with the learned City Sessions Judge was that the original complainant who. Claimed to be the Food Inspector on the relevant date of taking of the sample was not a Food Inspector as he did not fall within the qualifications of Food Inspector as laid down in. Rule 8 of the Prevention of Food Adulteration Rules 1955 and the proviso appended to the Rule 8 was not attracted.

3. Mr. G.T. Nanavati, the learned Advocate appearing for, the state, urged that in view of the admitted facts, the learned City Sessions Judge had committed an error in interpreting the proviso Rule 8 and in that view of the matter he urged that the judgment of the sessions court be set aside and the case be remanded to that Court for disposal in accordance with law.

4. There was no dispute before the learned City Sessions Judge that the complainant - Food Inspector did not hold any of the qualifications referred to in Clauses (1) to (iv) of the Rule 8 of the Rules. But on behalf of the complainant it was urged that he fell squarely within the proviso appended to Rule 8 in so far as the complainant was appointed as a Food Inspector by the State of Gujarat and the notification dated 17th September 1966 in that contention was published in the Government Gazette. The said notification has been set out verbatim by the learned City Sessions Judge in paragraph 7 of his judgment. It is not even controverted before us that the complainant was appointed as a Food Inspector by the Government of Gujarat as per the said notification. The contention, therefore, remains confined to the consideration of the proviso which reads as under:

Provided that a person who is a Food Inspector on the date of commencement of the Prevention of Food Adulteration (Amendment) Rules, 1968, may continue to hold office as such subject to the terms and conditions of service applicable to him, even though he does not fulfil the qualification laid down in Clauses (i) to (iv).

This Rule 8 together with Clauses (1) to (iv) and the proviso had come to substitute the original Rule No. 8 and this substitution came into effect on 8-7-68 as per GSR No. 1533. Prior to this date, the Rule 8 that was applicable was as follows:

3. Qualifications of a Food Inspector: a person shall not be qualified for appointment as Food Inspector unless he-

(i) is a medical officer in charge of the health administration of a local area, or

(ii) is a graduate in medicine, or a licentiate in medicine, or

(iii) is a holder of qualification in sanitary science registerable as an Additional Qualification by the State Medical Council, or Health Officers Examination Certificate, or possesses qualifications prescribed by the respective State Governments for appointment of sanitary inspectors or health inspectors:

Provided that for a period of four years from the date on which the Act takes effect, persons whose qualifications, training and experience are regarded by the State Government as affording, subject to such further Training, if any, as may be considered necessary, a reasonable guarantee of adequate knowledge and competence may be appointed as Food Inspectors. Provided further that any person appointed as Food Inspector in terms of the preceding proviso may be allowed to hold his post after the said period of four years, if the State

Government is satisfied that he continues to possess adequate knowledge and competence as Food Inspector.

Even a casual glance at the Clause (iii) in that abovequoted repealed Rule 8 would show that a person possessing the qualification prescribed by the State Government for appointment of Sanitary Inspector or Health Inspector was qualified to be appointed as Food Inspector. The complainant before us certainly held that qualification and was eligible for appointment on 17-9-66.

5. When the amended Rule 8 came to be brought to the statute book, the same scheme was followed. But in view of the persons holding the office under the repealed Rule 8, the proviso as is worded in the present Rule 8 came to be framed. As per the proviso, a person who "is" a Food Inspector on the date of commencement of the Prevention of Food Adulteration (Amendment) Rules, 1968, that is, on 8-7-68 may continue to hold the said office as such.

6. The moot question that is to be considered by us in this appeal is whether the original complainant could or could not be said to be a Food Inspector as per the above quoted proviso to Rule 8 which was introduced in the year 1968.

7. As said above, as far as the appointment as Food Inspector is concerned, he was a Food Inspector. But Mr. Amin, the learned advocate for the respondent original accused, urged that on appointment simpliciter would not meet the requirements of the proviso. He urged that unless the complainant Actually functioned as a Food Inspector on the day the Rule 8 came on this statute book, that is on 8-7-68, he would not be a Food Inspector for want of the qualifications laid down in Clauses (i) to (iv). It is also an admitted fact that though the original complainant was appointed as a Food Inspector as back as in the year 1966, he started functioning as such only from 1-5-72, that is, long after the Rule 8, as it is now, came to occupy the field. The complainant in clear terms stated as follows:

I passed Sanitary Inspector's Examination in 1956 from 2-7-1956. I was Sanitary Sub-Inspector. From 1-5-72 I started Food Inspector's work.

The learned Sessions Judge interpreted the verb "is" occurring in the proviso to mean "functions" or "works". The verb "is" means "exists" or "holds a particular office" and it cannot be denied that on the date the Rule 8 came to substitute the original rule, that is on 8-7-68, the complainant certainly was a Food Inspector. To constrain the verb "is" to mean "functions or works" is straining the language without any ostensible or compelling reason. It is a well settled rule of interpretation that all words have to be given their ordinary and natural meaning. The verb "is" ordinarily would and should mean "holds a particular office or is appointed as such. This very interpretation of the verb "is" could be had from the subsequent words used in that proviso itself. The word "may" continue to hold office as such" also indicate that the emphasis is on the appointment and holding of the office irrespective of what Actual work is being assigned to or being rendered by the concerned person. To illustrate this point, we can say that if a

person is appointed to a particular post and is away from duty on account of vacation or leave, he does not cease to be a man holding that particular office during the vacation or leave. In this view of the matter, the view of the learned City Sessions Judge that only those persons who were Actually functioning as Food Inspectors on the date of the commencement of the Prevention of Food Adulteration Rules, 1968, that is on 8-7-68, could claim to be Food Inspectors is difficult to be sustained.

8. In this connection Mr. Amin invited our attention to the case of Shabbir Abdul Rehman Vs. State, . It was a case where the Food Inspector was not holding the diploma for being appointed as the Sanitary Inspector and the Government had permitted unqualified sanitary inspectors to continue to work in that capacity, subject to their being successful in a special examination. The concerned Food Inspector there had taken the sample from the accused in that case on 8-8-63 and the qualification on the result of the special examination was attained by the Food Inspector in November 1963 and it was, therefore, held that he was not a Food Inspector within the meaning of Section 9 on the date of taking sample. This ruling, in our view, has no direct bearing on the situation that is available before us in the case on hand. It is attracted to this case in so far as we have to interpret whether a man should or should not be held to be Food Inspector as per the Rule 8. In that case, as the concerned Food Inspector had not passed the compulsory examination on the day he took the sample, he was held not to be such a Food Inspector. In the case on hand, a different consideration altogether arises. We are dealing with the situation that arises after the 1968 rules came into force. On the day the said rule came into force, that is on 8-7-68, the original complainant was falling squarely within the proviso. Only thing that is required to be considered is whether he should be Actually working as such or not. As said above, the proviso does not require the working as such by the concerned inspector as a condition for being recognised as a Food Inspector under Rule 8 as it came to be framed with effect from 8-7-68. If experience was the *sine qua non*, ordinarily Clause (3) of Rule 8 would have been attracted. Provisos are normally exceptions to what is stated before these provisos are inserted. If experience or training in Food Inspection and sampling work in any of the Laboratories was intended by the rule-making authority, as a pre-requisite, they would not have framed the proviso as it is. The obvious intention in inserting the proviso is to treat as such all the Food Inspectors on the record on the day the Rule 8 came into force and it is obvious that even though the sanitary inspector of the type mentioned in Clause (3) is appointed by the Government as a Food Inspector as per the rules, that were in force prior to 8-7-68, their appointment was not to be called in question because they did not possess one or the other of the four qualifications prescribed in Rule 8. In other words, all Food Inspectors on the date of the commencement of the Prevention of Food Adulteration (Amendment) Rules, 1968, irrespective of any training received by them in Food Inspection and sampling work, were to be treated as Food Inspectors though the rule-making authority thereafter wanted to be more

explicit in this connection and, therefore, laid down the four conditions or qualifications for appointing certain persons as Food Inspectors. In this connection, we would like to refer to the case of Public Prosecutor v. Shanawaz Khan and Mhod Ali Darvesh Arm Kumar and M.B. Parana 1975 Prevention of Food Adulteration Cases 430. It is the judgment of the Andhra Pradesh High Court. The short question that fell for decision was whether P.W. I, there was or was not a Food Inspector within the meaning of Rule 8 which prescribes the qualification of a Food Inspector. The complainant there admittedly did not fall under anyone of the four clauses of Rule 8, as he was not fulfilling the required qualifications laid down in those clauses. Reliance was placed, as in our case, on the proviso. However, in that case the complainant was working as a Food Inspector from the year 1967-68 in different circles. The view expressed by the Magistrate in that case was that in order to qualify himself to be a Food Inspector P.W.I., must have also continued to be the Food Inspector from 8-2-68 to 21-4-72, the date of offences, without a break and it was held not to be the correct view. It was held that the proviso to Rule 8 did not require P.W.I. to continue to hold rite office of Food Inspector from 8-7-68 till the date of offence without any break. Reliance in that connection was paced by the Magistrate on the words "may continue" used in proviso to Rule 8. The Andhra Pradesh High Court in this connection has observed as follows:

The rule making authority must have intended to make every person who was working as a Food Inspector on 8-7-1968 eligible to hold the office of Food Inspector subsequently, despite the fact he does not fulfill the qualifications specified in Clauses (1) to (iv) of Rule 8. The experience of persons working as Food Inspectors on the material date must have been taken into account. I am of the firm opinion that for a person to be brought within the meaning of the proviso to Rule 8 as Food Inspector it is sufficient if he was working as Food Inspector on 8-7-68 but he need not be functioning as Food Inspector continuously thereafter till the date of the offence.

Mr. Amin placed reliance on the above quoted observations and urged that even in that case what weighed with the learned Judge of the Andhra Pradesh High Court was the actual working or functioning as a Food Inspector on 8-7-68. The point which has arisen before us was not before the Andhra Pradesh High Court because in that case it was admitted that on 8-7-68 the P.W.I. there had been Actually working as a Food Inspector. The Andhra Pradesh High Court, therefore, had no occasion to consider whether the appointment of a person as Food Inspector on and prior to 8-7-68 would or wouldaot be sufficient for bringing the man under the proviso in question.

9. As discussed by us above, the complainant before us along with some 180 other persons had been appointed by the State Government as Food Inspector and he was appointed for the City of Ahmedabad after having been appointed to that particular post and after having been made a Food Inspector, with effect from 17th September, 1956, he was, and he continued to hold the office of a

Food Inspector. It is to be noted in this connection that this appointment is to be made by the State Government and the State Government had made him the Food Inspector on that day Actual assignment of work to him was within the hands of the municipal authorities of Ahmedabad and because of the exigencies of their administration, they might have continued taking work of a Sanitary Inspector from him. But that would not in any way derogate from the power conferred by the State Government on the complainant. In this view of the matter, whatever was required to be done by the State Government in order to make the complainant a Food Inspector was done by the State Government and what the rule-making authority wanted to save despite the insertion of Clauses (i) to (iv) in Rule 8 was "the validity of the appointments already made on and prior to 8-7-68.

The result is that the appeal is allowed. The judgment of the learned City Sessions Judge is set aside and the matter is remanded to that court for disposal of the case on the other points that had arisen in the appeal. This remand is necessitated because the learned City Sessions Judge dealt only with this question of the validity or otherwise of the complainant's appointment as a Food Inspector and as he thought that question had gone to the root of the case, no other points were considered by him.