

(1968) 04 MAD CK 0003
In the Madras High Court

T. Babulal and Another	Vs	APPELLANT
The Drug Inspector-I		RESPONDENT

Date of Decision : 25-04-1968

Acts Referred:

Constitution of India, 1950 — Article 14
Drugs and Cosmetics Act, 1940 — Section 18(a)(ii)(a), 23, 24, 25

Citation : (1970) 1 MLJ 124

Hon'ble Judges : P.S. Kailasam, J

Bench : Single Bench

Judgement

P.S. Kailasam, J.—These two petitions are filed for the issue of writs of prohibition directing the Drug Inspector-1, Madras City

(respondent in both the petitions) from proceeding against the petitioners in C.C. No. 8805 of 1968 on the file of the Chief Presidency Magistrate,

Madras. The Drugs Inspector preferred a complaint against the petitioners in the writ petitions for contravening the provisions of Section 18 (a) (ii)

(a) of the Drugs and Cosmetics Act, 1940 (Act No. XXIII of 1040). The case against the petitioners has been taken up on the file by the Chief

Presidency Magistrate as C.C. No. 8805 of 1968 and it is pending. In these writ petitions, it is stated that the provisions of the Drugs Act are

violative of the Constitution of India and therefore the respondent should be prohibited from proceeding with the criminal case. In cases, where the

validity of any enactment is questioned, the procedure is laid down u/s 432 of the Criminal Procedure Code. If the petitioner satisfies the Court that

the case pending against him involves a question as to the validity of any Act, the determination of which is necessary for the disposal of the case

and if the Court is of opinion that such Act is invalid or inoperative but has not

been so declared by the Court, it should state a case setting out its opinion and the reasons therefore and refer the same for the decision of the High Court. This procedure has not been followed and on this ground alone these petitions are liable to be dismissed.

2. As the learned Counsel for the petitioners questioned the validity of Sections 23 and 25 of the Act, the contentions will be referred to briefly.

Reference was made to the first proviso to Sub-section (3) of Section 23 which states that if the sample is taken from the premises whereon the

drug or cosmetic is being manufactured, it shall be necessary to divide the sample into three portions only. In cases where the sample is taken from

any other premises it is necessary to divide it into four portions. The necessity to divide the sample into four portions is dispensed with if the sample

is taken from the manufacturer. It was submitted that the first proviso offends the equal protection of laws guaranteed under Article 14 of the

Constitution. Obviously in the case where the drug is taken from the manufacturer, the manufacturer himself is not given one portion. In the case

where the sample is seized say from a dealer the manufacturer is also given a portion. In such cases, in order to provide a portion to be given to the

manufacturer, the sample is divided into four portions. The validity of the first proviso cannot be challenged as there is no purpose in having an

extra portion in cases where the drug is seized from the manufacturer himself. It may be in this case, the two petitioners may come under the

definition of manufacturer as the petitioner in W.P.No. 1731 of 1968 who was doing the packing would also be a manufacturer by virtue of the

definition. But this would not in any way affect the validity of the first proviso to Sub-section (3) of Section 23. The validity of Section 25, was

attacked. Sub-section (3) provides that the report signed by a Government Analyst shall be evidence of the facts stated therein and such evidence

shall be conclusive unless the person from whom the sample was taken has within twenty eight days of the receipt of a copy of the report notified in

writing the Inspector or the Court before which the proceedings are pending that he intends to adduce evidence in controversion of the report.

Sub-section (4) makes provision for sending the sample to the Director of the Central Drugs Laboratory. Provision is made in several enactments

including the Criminal Procedure Code for reception of the reports of analyst.

Section 510 (1) provides that any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government, or the Chief Inspector of Explosives or the Director of Finger Print Bureau or an officer of the Mint upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under the Code may be used as evidence in any inquiry, trial or other proceeding under the Code. Sub-section (2) provides that if the Court thinks it shall on the application of the prosecution or the accused summon and examine any such person as to the subject-matter of his report. It may be that under the Drugs Act the report of the Government Analyst is treated as conclusive but sufficient safeguard is provided for the person aggrieved to adduce evidence in controversion of the report by following the procedure laid down in the sub-section. This provision cannot be said to affect any of the fundamental rights of the petitioners for ample safeguard is provided for assuring him of fair and proper enquiry before the Court. The validity of Sub-section (4) of Section 24 is also challenged on the ground that report of the Director of the Central Drugs Laboratory is treated as conclusive of the facts stated therein. The proceedings under Sub-section (4) is in addition to the right of the person to adduce evidence in controversion of the report of the Government Analyst. Under Sub-section (4) the Court may of its own motion or at the request of the complainant or the accused cause the sample of the drug or cosmetic to be sent for test or analysis to the laboratory under the control of the Director of the Central Drugs Laboratory. The report of the Director of the Central Drugs Laboratory and the result thereof are treated as conclusive evidence of the facts stated therein. It does not necessarily follow that the Court should accept what is stated in the report as conclusive. I am unable to see how the provisions of Sub-section (3) or Sub-section (4) of Section 25 in any way affect the fundamental rights of the person himself or in any way restrict his right to defend himself adequately before the Court. There is no substance in any of the contentions raised.

3. The petition are dismissed.