

Andhra Pradesh Grain & Seed Merchants' ... vs Union Of India & Anr on 31 March, 1970

Equivalent citations: 1971 AIR 2346, 1971 SCR (1) 166, AIR 1971 SUPREME COURT 2346, 1971 MADLJ(CRI) 267, (1971) 1 SCR 166, (1971) 1 SCJ 518, (1970) 1 ANDHLT 281, 1970 SCD 553

Author: J.C. Shah

Bench: J.C. Shah, K.S. Hegde, A.N. Grover

PETITIONER:

ANDHRA PRADESH GRAIN & SEED MERCHANTS' ASSOCIATION ETC. ETC.

Vs.

RESPONDENT:

UNION OF INDIA & ANR.

DATE OF JUDGMENT:

31/03/1970

BENCH:

SHAH, J.C.

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SHAH, J.C.

HEGDE, K.S.

GROVER, A.N.

CITATION:

1971 AIR 2346

1971 SCR (1) 166

1970 SCC (2) 71

ACT:

Prevention of Food Adulteration Act (37 of 1954), ss. 7, 10 and 19--Constitutional validity of.

HEADNOTE:

The petitioners are traders in foodgrains, edible oils and other articles of food. In a petition under Art.32 they challenged the validity of ss. 7, 10 and 19 of the Prevention of Food Adulteration Act, 1954. They contended that: (1) ss. 7 and 10 of the Act are violative of Arts. 14 and 19(1)(g) because, (a) s. 16(1)(a) of the Act read with s. 19(1) imposes an absolute liability on dealers; (b) the standards of quality and limits of variability of quality

prescribed by the Act are unreasonable and that small dealers would not be in a position to ascertain whether the goods purchased by them or in their possession are according to those standards as required by s. 7 of the Act; (c) even when an article is purchased not as an article of food, but for other use, the vendor would be deemed guilty if the article did not conform to the prescribed standards; (d) if a retail seller opens a container of branded article of food he loses even the limited protection provided by s. 19(2); and (e) that the penalties which may be imposed under s. 16(1) (a) are unduly severe; and (2) the non-availability to the vendor of the plea of his ignorance and the conclusiveness of the certificate of the Director of Central Food Laboratory under s. 13(5) of the Act, violate the guarantee under Art. 20(3).

HELD : (a) The Act does not make mens rea an ingredient of the offence. Ordinarily, for the protection of the liberty of a citizen, in the definition of offences, blame-worthy mental condition is made an ingredient: but in Acts enacted to deal with a grave social evil or for ensuring public welfare especially in offences against health, it is often found necessary in the larger public interest to provide for imposition of liability without proof of a guilty mind. If from the scheme of an Act, it appears that compliance with the regulatory provisions will be promoted by imposing such absolute liability and that it cannot otherwise be reasonably ensured, the court will be justified in holding that the restriction on the right of the trader is in the interest of the general public. [172 H-173 C]

Adulteration and misbranding of food is a rampant evil in our country. The channels of supply and the movement of goods from trader to trader, and fertile sources of adulteration and misbranding, make it extremely difficult in a large majority of cases to establish affirmatively that storage or sale of adulterated or misbranded food-stuffs was with a guilty mind. Therefore, a statute calculated to control that evil is in the interest of the general public and merely because it makes a departure from the normal structure of statutes enunciating offences and prescribing punishments, the restrictions on traders will not be deemed unreasonable. The defences set out in s. 19(2) are open to the vendor and the act does not dispense with proof that the article of food is adulterated, misbranded or that its sale is prohibited : it only enacts that a vendor selling adulterated and misbranded articles of food cannot merely plead that he was ignorant of the nature and quality of the goods. [171 G-H; 173 C-D]

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(b) The schedule to the Act uses technical expressions in relation to standards of quality and an ordinary retail dealer may not be familiar, with them. But the rules, made under s. 23(1)(b) prescribe clearly the standards of quality. The standards are arrived at after consultation.

with the Committee for Food Standards which. consists of experts in the field of food technology and food analysis and representatives of the Central and State Governments. Hence the standards cannot be, challenged as arbitrary or unreasonable. [175, C]

(c) What is penalised by s. 16(1) is the importation, manufacture for sale or storage, sale or distribution of any article of food. It is always open to a person selling an article capable of being used as an article of food as well as for other purpose, to inform the purchaser by clear notice that the article sold or supplied was not intended to be used as an article of food and in such cases s. 16 would, not apply. [174 G]

(d) Under s. 19(2) if the vendor has obtained the article of food from a licensed manufacturer, distributor or dealer or from a manufacturer, distributor or dealer With a warranty, he is protected, provided he. has properly stored the article and sold it in the same state as he purchased it, even if it turns out to be adulterated or misbranded. By merely opening the container the article of food does not cease to be in the same state in which the vendor purchased it. Therefore, the vendor will not lose the protection of the sub-section merely because he opens the container.. [173 G-H]

(e) The severity of the penalty is not so disproportionate to the gravity of the offence that it may be deemed unreasonable, because, the penalties are imposed as a deterrent to prevent malpractices by traders in articles of food and to ensure the purity of articles of food. [174 C]

The Act deals with the regulation of a class of traders and in view of the widespread malpractices and the practical difficulties of controlling the malpractices, stringent provisions have been made in the Act. The classification is founded on an intelligible differentia and has a rational relation to the object sought to be achieved. [176 C]

(2) Article 20(3) provides that no person accused of any offence shall be compelled to be a witness against himself. By providing that a plea of ignorance of the vendor wilt not be a defence and that the certificate of the Director of Central Food Laboratory, who is a disinterested and high placed official as conclusive, Art. 20(3) is not violated. [176 D-C]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petitions Nos. 468, 469 489, and 490 of 1969.

Petitions Under Art. 32 of the Constitution of India for enforcement of fundamental rights.

S. V. Gupte, D. Sudhakara Rao and B. Parthasarathy, for the petitioners (in W. P. No. 468 of 1969).

B.Parthasarathy, for the petitioners (in W. P. Nos. 469, 489 and 490 of 1969).

Niren De- Attorney-General, B. D. Sharma and S. P. Nayar, for respondent NO. 1 (in all the appeals).

P. Ram Reddy and G. S. Rama Rao, for respondent No. 2 (in all the petitions).

The Judgment of the Court was delivered by Shah, J. The petitioners who are traders in foodgrains edible oils, and other articles of food, challenge the validity of S. 7 read with s. 2 (v) and 2 (ix), and S. 19, S. 2 (i) and s. 10 read with S. 13 of the Prevention of Food Adulteration Act 37 of 1954 and the rules framed thereunder. They claim that by the Act and the rules the fundamental rights guaranteed under Arts. 14, 19 (1) (g) and 20(3) of the Constitution are infringed. The Parliament, with a view to control adulteration and misbranding of articles of food, enacted the Prevention of Food Adulteration Act, 1954. The petitioners concede that they do not claim a fundamental right to carry on business in adulterated or misbranded foodstuffs : they claim that they are honest traders, and do not resort to any malpractice, still in carrying on their business in foodstuffs they are, by the Act, subjected to restrictions which are not reasonable. They contend that the Act presumes every trader charged with an offence under S. 16 (1) (a) to be guilty and imposes upon him the burden of proving that he is not guilty of the offence charged, by establishing facts which are not within his knowledge, or which without great expense wholly incommensurate with his means and the facility available to him, he cannot establish. They also claim that by the Act they are denied the equal protection of the laws and the guarantee of Art. 20(3) of the Constitution is infringed.

The relevant provisions of the Act may first be noticed. Section 7 of the Act provides No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute-

(i) any adulterated food;

(ii) any misbranded food;

(iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence;

(iv) any article of food for the sale of which is for the time being prohibited by the Food (Health) Authority in the interest of public health; or (V) any article of food in contravention of any other provision of this Act or of any rule made thereunder."

By s.10 a food inspector appointed under s. 9 (1) of the Act is authorised to take samples of any articles of food from any person selling such article, or from any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee, or from a consignee after delivery of any such article to him, and to send such sample for analysis to, the public analyst, and with the previous approval of the health officer 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. Sub-section (5) of s. 13 provides "Any document purporting to be a report signed by a public analyst, unless it has been superseded under sub-section

(3), or any document purporting to be a certificate signed by the Director of the Central Food Laboratory, may be used as evidence of the facts stated therein in any proceeding under this Act or under sections 272 to 276 of the Indian Penal Code Provided that any document purporting to be a certificate signed by the Director of the Central Food Laboratory shall be final and conclusive evidence of the facts stated therein."

Section 16(1) prescribes the penalties : cls. (a) & (f) which are relevant provide "(1) If any person-

(a) whether by himself or by any other person on his behalf imports into India or manufactures for sale, or stores, sells or distributes any article of food-

(i) which is adulterated or misbranded or the sale of which is prohibited by the Food (Health) authority in the interest of public health;

(ii) other than an article of food referred to in subclause (i), in contravention of any of the provisions of this Act or of any rule made thereunder; or

(f) whether by himself or by any other person on his behalf gives to the vendor a false warranty in writing in respect of any article of food sold by him, he shall in addition to the penalty to which he may be liable under the provisions of section 6, be punishable with imprisonment for a term which shall not be less than L11Sup.Cl/70 12 six months but which may extend to six years, and with fine which shall not be less than one thousand rupees: Provided that-

.....

Section 19 deals with the defences which may, and which may not, be allowed in prosecutions under the Act. It provides "(1) It shall be no defence in a prosecution for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale.

(2) A vendor shall not be deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves '-

(a) that he purchased the article of food-

(i) in a case where a licence is prescribed for the sale thereof, from a duly licensed manufacturer, distributor or dealer;

(ii) in any other case, from any manufacturer, distributor or dealer with a written warranty in the prescribed form; and

(b) that the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it. (3) Any person by whom a warranty as is referred to in section 14 is alleged

to have been given shall be entitled to appear at the hearing and give evidence."

"Food" is defined in S. 2(v) as meaning "any article used as food or drink for human consumption other than drugs and water and includes-(a) any article which ordinarily enters into, or is used in the composition or preparation of human food, and (b) any flavouring matter or condiments".

Clauses (i) and (ix) of S. 2 define the expressions "adulterated" and "misbranded".

According to counsel for the petitioners the Act imposes unreasonable restrictions, because it creates absolute liability by S. 16(1) (a) and imposes severe penalties for storage and sale or distribution of articles of food found to be adulterated or misbranded, or prohibited by law; it prescribes standards which are technical, and absolute, and for the slightest departure therefrom the trader is liable to be prosecuted and punished. Counsel submitted that it is impossible for an ordinary trader without the assistance of an expert technician to ascertain whether the articles of food purchased by him comply with the prescribed standards, and that in prescribing the standards of quality the imperceptible changes which take place in foodstuffs by passage of time, are not taken into account. In our judgment, the restrictions imposed upon the conduct of business by traders in foodstuffs cannot be deemed unreasonable. By s. 16(1) provision is made for imposing penalties, among other acts, for storage, sale or distribution of articles of food which are adulterated or misbranded, or sale of which is prohibited by the Food (Health) authority in the interest of the public health, or is in contravention of the Act or the rules. The Act, it is true, does not make some blame-worthy mental condition constituted by knowledge or intention relating to the nature of the article stored, sold or distributed, an ingredient of the offence. Unless the case falls within sub-s. (2) of s. 19, if sale, storage or distribution is established, intention to sell articles or knowledge that the articles are adulterated, misbranded, or prohibited need not be proved by the prosecutor to bring home the charge. Sub-section (1) of s. 19 provides that it is no defence in a charge, for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him, or that the purchaser having purchased any article for analysis was not prejudiced by the sale. By that clause a bare plea of ignorance by a trader about the nature, substance or quality of the food sold by him is not a defence in a prosecution for the offence pertaining to the sale of any adulterated food nor that the article was, purchased for analysis. But in considering whether creation of absolute liability amounts to imposing unreasonable restrictions, the Court has to strike a balance between the individual right and public weal. The Courts will not strike down an Act as imposing unreasonable restrictions merely because it creates an absolute liability for infringement of the law which involves grave danger to public health. The Courts will undoubtedly consider whether without imposing absolute liability the object of the statute could be reasonably secured. For that purpose the Court will consider the object of the Act, apprehended danger to the public interest, arising out of the activity if not controlled and the possibility of achieving the intended results by less stringent provisions. The nature of the trade in foodstuffs, the channels of supply and the movement of goods from trader to trader and fertile sources of adulteration and misbranding make it extremely difficult in a large majority of cases to establish affirmatively that storage or sale of adulterated or misbranded foodstuff was with a guilty mind. Provisions in the statute book creating absolute

liability for sale of adulterated food are fairly common. Section 3(1) of the English "Foods & Drugs Act", 1938, imposes absolute duty on a dealer in foodstuff regardless of negligence : Lindley v. George W. Horner & Co. Ltd. (1) and Lamb v. Sunderland and District Creamery Ltd. 2) The same provision is repeated in S. 2 of the "Food and Drugs Act", 1955. In Halsbury's Laws of England, Vol. 10 (3rd Edn.) at p.273, Art. 508, it is stated :-

"A statutory crime may or may not contain an express definition of the necessary state of mind. A statute may require a specific intention, malice, knowledge, wilfulness, or recklessness. On the other hand, it may be silent as to any requirement of mens rea, and in such a case in order to determine whether or not mens rea is an essential element of the offence, it is necessary to look at the objects and terms of the statute. In some cases, the courts have concluded that despite the absence of express language the intention of the legislature was that mens rea was a necessary ingredient of the offence. In others, the statute has been interpreted as creating a strict liability irrespective of mens rea. Instances of this strict liability have arisen on the legislation concerning food and drugs, liquor licensing, and many other matters".

In Mousell Brothers v. London and North Western Rail Co. (3) Atkin, J., observed :

"..... yet the legislature may prohibit an act or enforce a duty in such words to make the prohibitions or the duty absolute :..... To ascertain whether a particular Act of Parliament has that effect or not, regard must be had to the object of the statute, the words used, the nature of the duty laid down, the person whom it is imposed, the person by whom it would in ordinary circumstances be performed, and the person upon whom the penalty is imposed."

In Quality Dairies (York) Ltd. v. Pedley 4) the Court of Appeal held that Regulation-26(1) of the Milk and Dairies Regulation, 1949, requiring a distributor to ensure that every vessel used as a container for milk shall be in a state of thorough cleanliness, imposed an absolute liability.

It is true that for the protection of the liberty of the citizen, in the definition of offences, blameworthy mental condition is ordinarily an ingredient either by express enactment or clear implication-

(1) [1950] 1 All. E.R. 234.

(3) [1917] 2 K.B. 845.

(2) [1951] All. E.R. 923.

(4) [1952] 1 All. E.R. 380.

tion : but in Acts enacted to deal with a grave social evil, or for ensuring public welfare, especially in offences against public health, e.g., statutes regulating storage or sale of articles of food and drink,

sale of drugs, sale of controlled or scarce commodities, it is often found necessary in the larger public interest to provide for imposition of liability without proof of a guilty mind. If from the scheme of the Act it appears that compliance with the regulatory provisions will be promoted by imposing an absolute liability, and that it cannot otherwise be reasonably ensured, the Court will be justified in holding that the restriction on the right of the trader is in the interest of the general public. Adulteration and misbranding of foodstuffs is a rampant evil and a statute calculated to control that evil is indisputably in the interest of the general public : The statute imposing restrictions upon traders will not be deemed unreasonable merely because it makes a departure from the normal structure of statutes enunciating offences and prescribing punishments. By sub-s. (2) of S. 19, even in respect of the absolute offence, the Parliament has enacted that on proof of certain facts, criminal liability will be excluded. Thereby a vendor is not deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves that he purchased the article of food from a duly licensed manufacturer, distributor or dealer in a case where a licence is prescribed for the sale thereof, and in any other case from any manufacturer, distributor or dealer with a written warranty in the prescribed form, provided the article of food while in his possession was properly stored and that he sold it in the same state as the purchased it. The argument of counsel for the petitioners that the provision that a retail seller who opens a container of a branded article of food loses even the limited protection under s. 19(2) is without substance. Clause (b) of sub-s. (2) of s. 19 does not provide, nor does it imply, that if the container of a branded article is opened, the article of food ceases to be in the same state in which the vendor purchased it. If the article of food is sold in the same condition in which it was purchased from a licensed manufacturer or dealer, or was purchased with a warranty, the vendor will not lose the protection of sub-s. (2) of S. 19 merely because he opened the container. If the vendor has obtained the article from a licensed manufacturer, distributor or dealer or from a manufacturer, distributor or dealer with a warranty, he is protected, provided he has properly stored the article and sells it in the same state as he purchased the article, even if it turns out that the article was adulterated or misbranded. The Act does not dispense with proof that the article of food is adulterated, misbranded or that its sale is prohibited: it enacts that a vendor selling articles of food adulterated or misbranded cannot plead merely that he was ignorant of the nature, substance or quality of the goods. A statute enacted by the Parliament in the interest of public health (which is generally made in similar statutes elsewhere) imposing liability for an offence without proof of a guilty mind does not per se impose restrictions on the freedom to carry on trade which are unreasonable.

It is true that stringent penalties are provided under S. 16 (1)(a). A vendor of adulterated, misbranded or prohibited articles of food is punishable with imprisonment for a term which shall not, in the absence of adequate and special reasons, be less than six months, and which may extend to six years, and with fine which shall not be less than one thousand rupees. But for the protection of the public by ensuring the purity of articles of food supplied to the people and preventing malpractices by the traders in articles of food, severity of the penalties is not so disproportionate to the gravity of the offence that it may be deemed unreasonable.

We are again unable to accept the argument that under the Act even when an article is purchased not as an article of food, but for use otherwise, the vendor will be deemed guilty if the article does not conform to the prescribed standards, or is as an article of food adulterated or misbranded.

Counsel said that coconut oil is used in the State of Kerala as a cooking medium, and sale of adulterated coconut oil may in Kerala be an offence under S. 16, but in other parts of the country where coconut oil is not used as a cooking medium and is used as a component of hair oil or for other purposes, it amounts to imposing an unreasonable restriction to penalise the vendor who sells coconut oil knowing that the, purchaser is not buying it as a cooking medium. But there are no articles which are used as food only in one part, and are not at all used as food in another part of the country. Even coconut oil is used as a cooking medium by certain sections of the people in parts of India other than Kerala. In any event it is always open to a person selling an article capable of being used as an article of food as well as for other purpose, to inform the purchaser by clear notice that the, article sold or supplied is not intended to be used as an article of food. What is penalised by s. 16(1) is importation manufacture for sale, or storage, sale, or distribution Of any article of food. If what is imported manufactured or stored, sold or distributed is not an article of food, evidently S.16 can have no application.

The various items in the Schedule setting out standards of quality use technical expressions with which an ordinary retail dealer may not be familiar, and also set out percentages of components which the dealer with the means at his command cannot verify. But by S. 3, the Central Government has to set up the Central Committee for Food 'Standards to advise the Central and the State Governments on matters arising out of the administration of the Act. The Committee consists of experts and representatives of the Central Government and of the State Governments and the Director General of Health Services is its Chairman. Under S. 23 (1) (b) the Central Government makes rules prescribing the standards of quality and the limits of variability permissible in any article of food. The rules are made after consultation with the Committee for Food Standards. The standards set out in the Appendix to the Rules are prescribed after consultation with the Committee for Food Standards. It has not been even urged that the standards have been fixed arbitrarily.' Apart from a general argument that small retail dealers may not, be in a position to ascertain whether goods purchased by them or in their possession are according to the standards, no specific argument was advanced that the standards, are not normal, or that the variations in quality during the course of storage are unreasonably restricted. This Court in *State of Uttar Pradesh v. Kartar Singh*(1) in which in dealing with an argument of invalidity of the rule setting out standards under the Prevention of Food Adulteration Act observed :

"The standards themselves, it would be noticed, have been prescribed by the Central Government on the advice of a Committee which included in its composition persons considered experts in the field of food technology and food analysis. In the circumstances, if the rule has to be struck down as imposing unreasonable or discriminatory standards, it could not be done merely on any a priori reasoning but only as a result of materials placed before the Court by way of scientific analysis. . . . That where a party seeks to impeach the validity of a rule made by a competent authority the burden is on him to plead and prove the infirmity is too well established to need elaboration. If, therefore, the respondent desired to challenge the validity of the rule on the ground either of its unreasonableness or-its discriminatory nature, he had to lay a foundation for it by setting out the facts necessary to sustain such a plea and adduce cogent and convincing evidence to make out his case, for

there is a presumption that every factor which is relevant or material has been taken into account in formulating the classification of the zones and the, prescription of the minimum (1) [1964] 6 S.C.R. 679.

standards to each zone, and where we have a rule framed with the assistance of a Committee containing ex. perts such as the one constituted under s. 3 of the Act, that presumption is strong, if not overwhelming." In the petitions a plea was raised that by the Act and the Rules, the guarantee of Art. 14 was infringed, but no argument was presented before us independently of the argument relating to infringement of the guarantee under Art. 19(1)(g), in support of the contention that the Act infringed the guarantee of equality before the law or equal protection of the laws. The Act deals with the regulation of a class of traders, and in view of the widespread malpractices, and the practical difficulties of controlling those malpractices, stringent provisions have been made by the Act. The classification is founded on an intelligible differentia and the differentia has a rational relation to the object sought to be achieved. The provisions of the Act again do not invest arbitrary authority upon those who are to administer the Act. nor can it be said that the standards prescribed are arbitrary.

The Act does not infringe the guarantee of Art.20(3) of the, Constitution. By that clause no person accused of any offence shall be compelled to be a witness against himself. But by enacting that a plea by the vendor in a prosecution for an offence pertaining to sale of adulterated or misbranded article of food, that he was ignorant of the nature, substance or quality will not be a defence, the guarantee under Art. 20(3) is not infringed. The vendor when charged with an offence is not thereby compelled to be a witness against himself. Nor can it be said that by making the report of the Director of Central Food Laboratory conclusive evidence of the facts stated therein, any such infringement is intended. The provision has been made with a view to secure formal evidence of facts without requiring the Director to remain present, and in' the interest of effective administration of the Act, the certificate signed by the Director of the Central Food Laboratory is made final and conclusive evidence of the facts stated therein. The Director is a highly placed official, an expert in determining the nature, substance and quality of food, and is wholly disinterested in the result of any case coming before the Courts. It is difficult to appreciate how con- clusiveness attributed to the certificate of the Director compels the vendor charged with an offence under the Act to be a witness The petitions fail and are dismissed with costs. One hearing fee Y.P. Petition dismissed.