State Of Uttar Pradesh vs Kartar Singh on 6 February, 1964

Equivalent citations: 1964 AIR 1135, 1964 SCR (6) 679, AIR 1964 SUPREME COURT 1135, 1964 ALL. L. J. 732, 1964 MADLJ(CRI) 633, 1964 2 SCJ 666, 1964 (1) SCWR 435, 1964 SCD 939

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Bench: N. Rajagopala Ayyangar, A.K. Sarkar, K.N. Wanchoo, K.C. Das Gupta

PETITIONER:
STATE OF UTTAR PRADESH

Vs.

RESPONDENT:
KARTAR SINGH

DATE OF JUDGMENT:
06/02/1964

BENCH:
AYYANGAR, N. RAJAGOPALA
BENCH:
AYYANGAR, N. RAJAGOPALA
SINHA, BHUVNESHWAR P.(CJ)
SARKAR, A.K.
WANCHOO, K.N.
GUPTA, K.C. DAS

CITATION:
1964 AIR 1135 1964 SCR (6) 679
CITATOR INFO :
RF 1966 SC 128 (16)
F 1971 SC2346 (12)
R 1974 SC 1 (24)
R 1974 SC 228 (16)
R 1978 SC 933 (9)

ACT:
Constitution of India-Prevention of Food Adulteration-Fixation of Reichert value of ghee for different States of India-If unreasonable or discriminatory-Constitution of India, Art. 14-Prevention of Food Adulterations Act, 1954, ss. 7, 16(1)(a) (i), 23-Prevention of Food Adulterations Rules, 1955, r. 5, Appendix B A-11, item 14.

HEADNOTE:

The respondent was tried for the commission of an offence under s. 7 read with s. 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954 for selling adulterated ghee. The analysis of the ghee had disclosed that it had a Reichert Value of only 22-5 whereas the minimum Reichert value fixed for Uttar Pradesh, where the respondent sold the ghee, was 28. The defence of the respondent was that he had obtained the ghee which he sold from Jodhpur where the Reichert value fixed was only 22 and that the sample must be held not to be adulterated on the basis of the decision of the Allahabad High Court in State v. Malik Ram, A.1,R. 1962 All. 156. This decision laid down that a distinction should be made between ghee obtained from cattle in the hill districts and ghee obtained from cattle in the plains and that ghee obtained from the hill districts of U.P. cannot be held to be adulterated if its Reichert value was equal to that prescribed for Himachal Pradesh which is a hilly area. It was the contention of the respondent that his ghee was admittedly pahadi ghee and therefore this decision would apply.

The First Class Magistrate rejected these contentions and convicted him and sentenced him to six months' R.I. and a fine of Rs. 500. On appeal the Sessions Judge concurred in the findings of the trial court but reduced the sentence. The respondent thereupon filed a Criminal Revision Petition before the High Court. The High Court agreed with the courts below that the ghee was not Jodhpur ghee but it was produced locally. But it held that the Reichert values as fixed were not based on any reasonable classification and therefore it was sufficient if a vendor satisfied the minimum standard prescribed for any area in the country and since the minimum prescribed for certain areas is 21 and since the ghee in question had 22-2 the respondent was not guilty of the offence charged. The State thereupon appealed to this Court by way of a certificate under Art. 134(1)(e) of the Constitution.

It was urged by the appellant that the High Court was wrong in striking down or re-drafting the rules framed by the Central Government in the manner in which the High Court has done purporting to invoke

680

Art. 14 of the Constitution and virtually setting up what the High Court considered was the reasonable standard.

Held: (i) Where the Government have prescribed certain standards after taking into considerations various factors the court cannot strike down these standards as unreasonable or discriminatory merely on some priori reasoning. It can do so only by basing its decision on materials placed before it by way of scientific analysis. The party invoking Art. 14 must make averments with details to sustain such a plea and lead evidence to establish his allegations. In the absence of such plea and evidence the court cannot accept

the statement of a party as to the unconstitutionality of a rule and refuse to enforce that rule as it stands merely because in its view the standards are too high and for this reason the rule is unreasonable.
(ii) Applying these principles it is found that the case State v. Malik Ram (A.I.R. 1962 All. 156) was wrongly decided by the Allahabad High Court. In the case under appeal the High Court took the matter a step further and adopted the lowest Reichert value prescribed for any area in the country as what should be adopted for every other area in the country disregarding the rules. Hence the High Court was wrong in allowing the revisions.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 164 of 1962.

Appeal from the judgment and order dated May 2, 1962, of the Allahabad High Court in Criminal Revision No. 1579 of 1961. O. P. Rana and C. P. Lal, for the appellant.

Harnam Singh Chadda and Harbans Singh, for the respondent. February 6, 1964. The Judgment of the Court was delivered by AYYANGAR J.-This appeal which comes before us on a certificate of fitness granted by the High Court of Allahabad under Art. 134(1)(c) of the Constitution, is against a judgment of that Court acquitting the respondent Kartar Singh of an offence under s. 7 read with s. 16 (1)(a)

(i) of the Prevention of Food Adulteration Act, 1954 which may be conveniently referred to as the Act.

The facts giving rise to the prosecution are briefly these:

The respondent runs a shop at Haldwani and among the products sold by him is ghee. On March 19, 1960 a quantity of the ghee was purchased by the Food Inspector of the area and he put samples of the purchase into three phials which were sealed in the respondent's presence. It may be mentioned that even in the seizure memo the Food Inspector noted the ghee purchased by him as "pahadi ghee". One of the samples was forwarded to the Public Analyst to the Government of Uttar Pradesh for analysis forascertaining whether the said ghee was adulterated.The analysis disclosed that in several respects the samplewas sub- standard and that in particular it had a ReichertValue of 22-5 as against the prescribed minimum of 28 for ghee in Uttar Pradesh. After setting out the details of the ana- lysis, the Public Analyst expressed the opinion that the sample "contained a small proportion of vegetable fat or oil foreign to pure ghee". On receipt of this report, the Medical Officer of Health, Haidwani sanctioned the pro- secution of the respondent and a complaint was thereafter laid before the Magistrate 1st Class by the Food Inspector. The respondent

pleaded not guilty and entered on his defence. Subsequently, the second sample was got analysed by the Director, Central Food Laboratory, who reported that his analysis disclosed a Reichert Value of 21-7 as against 22-5 of the Public Analyst. The opinion expressed by him as regards the sample of ghee which he analysed was the same as that of the Public Analyst, viz., that the sample was adulterated.

The defence of the respondent who admitted that he had sold the ghee, samples of which were the subject of analysis, but denied it was adulterated, was two-fold: (1) He had obtained the ghee which he sold from Jodhpur, (2) The sample must be held not to be adulterated on the basis of the decision of the Allahabad High Court in State v. Malik Ram(1). The plea by the respondent regarding the ghee sold having come from Jodhpur was made because if this were established under the rules framed under the Act, to which (1) A.I.R. 1962 AU. 156.

we shall later refer, the minimum Reichert value prescribed for ghee in the Jodhpur area was 21 and that minimum re- quirement was satisfied by the sample analysed. The res- pondent led evidence to prove his purchase from Jodhpur but the learned Magistrate did not accept this case. The other defence was a point of law relying on the decision of a Division Bench of the Allahabad High Court reported as State v. Malik Ram(1). The learned Judges who decided that case drew a distinction between ghee obtained from Cattle in the hill districts of Uttar Pradesh and those from cattle in the plains. This decision was relied on by the respondent because the ghee sold by him was noted as 'pahadi ghee' by the Food Inspector. The learned Judges held that notwithstanding the terms of the rules to which we shall later refer, ghee obtained from hilly areas of Uttar Pradesh like Kumaun hills, could not be held to be adulterated if its Reichert value was equal to that prescribed for Himachal Pradesh which was mostly a hilly area. They therefore held that though the rules under the Food Adulteration Act prescribed a minimum Reichert value of 28 for ghee for the entire State of Uttar Pradesh, still if ghee from hill areas of the Uttar Pradesh State reached a minimum of 26 Reichert value, such ghee would not be "adulterated ghee". We shall consider the correctness of this decision after completing the narrative of the proceedings. The learned Magistrate held that this decision did not affect the present case because the Reichert value of the respondent's ghee was less than 26.The Magistrate therefore convicted the respondent andsentenced him to rigorous imprisonment for a period of sixmonths and a fine of Rs. 500 and in default to furtherimprisonment for three months. The respondent preferred an appeal to the Sessions Judge Kumaon, and raised the same pleas and defences as he put forward before the learned Magistrate. The Sessions Judge concurred in the finding of the Magistrate regarding the story of the respondent having bought the ghee from Jodhpur, and he also agreed with the Magistrate about the effect of the decision of the Division Bench of the High Court which was also relied on before him. The (1) A.I.R. 1962 All. 156.

Sessions Judge, however, while upholding the conviction reduced the sentence of imprisonment from six months to one month and the fine to Rs. 200.

The respondent thereupon filed a Criminal Revision petition to the High Court under ss. 435 and 439 of the Criminal Procedure Code. The learned Judge of the High Court agreed with the Courts below on the finding of fact as regards the Jodhpur origin of the ghee observing "as the file stands I

am satisfied that this ghee was of local origin". There was, of course, no point raised before him as regards the correctness of the analysis. 'Me learned Judge, however, held that the basis on which the Reichert value had been prescribed for the several areas in the country was not based on any rational classification and he therefore held that it was sufficient if any vendor of ghee in the country satisfied the minimum standards prescribed for any area under these rules. As there were areas in the country in regard to which a minimum Reichert value of 21 had been prescribed, he held that the respondent was not guilty of adulteration and so directed his acquittal. It is from this decision that the present appeal has been filed by the State.

Before considering the point about the standards prescribed under the Food Adulteration Act being violative of Art. 14, an Article which though not specifically mentioned, is apparently the ground upon which the learned Judge has held that the prescription of the Reichert value of 28 for Uttar Pradesh was unenforceable, it would be necessary to set out the statutory provisions on which the decision of the present appeal turns. The preamble to the Act describes it as one "to make provision for the prevention of adulteration of food". Section 2 defines the word 'adulterated' as follows :

> "An article of food shall be deemed to be adulterated-
>
> (i) if the quality or purity of the article falls below the prescribed standard or its constituents are present in quantities which are in excess of the prescribed limits of variability;"

to read only the portion that is material. Section 3 enables the Central Government to constitute a committee for food standards and it runs "3.(1) The Central Government shall, as soon as may be after the commencement of this Act, constitute a Committee called the Central Committee for Food Standards to advise the Central Government and the State Governments on matters arising out of the administration of this Art and to carry out the other functions assigned to it under this Act.

(2) The Committee shall consist of the following members, namely:-

> (a) the Director General, Health Services, ex officio, who shall be the Chairman;
>
> (b) the Director of the Central Food Laboratory, ex officio;
>
> (c) two experts nominated by the Central Government;
>
> (d) one representative each of the Central Ministries of Food and Agriculture, Commerce and Industry, Railways and Defence nominated by the Central Government;
>
> (e) one representative each nominated by the Government of each State;
>
> (f) two representatives nominated by the Central Government to represent the Union territories;

(g) two representatives of Industry and Com- merce nominated by the Central Government;

(h) one representative of the medical profession nominated by the Indian Council of Medical Reserch".

Section 7 which prohibits the manufacture and sale of adulterated food reads:

"No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute-

(i) any adulterated food;....."

Section 8 makes provision for State Governments appointing Public Analysts and s. 9 for the appointment of Food Ins- pectors. The next material provision is that contained in s. 13 which deals with the reports of the analysis of food for the purpose of ascertaining whether there are adulterated or sub-standard etc. Its first sub-section directs the Public Analyst to make a report and under sub-s. (3) the Certificate issued by the Director of the Central Food Laboratory under sub-s. (2) is to supersede the report given by a Public Analyst under sub-s. (1). Section 16 provides for the penalties for offences under the' Act. Section 23 confers on the Central Government power to make rules but these rules have to be framed after consultation with the Committee established under s. 3 and among the rules which might be made are-

Section 23(1)(b)-defining the standards of quality for, and fixing the limits of variability permissible in respect of, any article of food;.....

"23. (2) All rules made by the Central Government under this Act shall as soon as possible after they are made be laid before both Houses of Parliament."

Under the power conferred by s. 23, the Prevention of Food Adulteration Rules, 1955, were promulgated. Rule 5 which occurs in Part III of the rules--headed "Definitions and Standards of quality"-specifies that "the standards of quality of the various articles of food specified in Appendix B to these rules are as defined in that appendix." Ghee is one of the articles of food whose standards are prescribed in Appendix B, milk and milk products being listed under head A-1 1. Ghee is dealt with in item 14 of A-11 and the standard prescribed for it runs:

Ghee means the pure clarified fat derived solely from milk or from curds or from cream to which, no colouring matter or preservative has been added. It shall conform to the following specifications-

in Punjab, Uttar Pradesh, Bhopal Vindhya Pradesh, Bihar, West Bengal (except Bishnupur) and PEPSU (except Mahendragarh):

(a).....

(b) Reichert Value Not less than 28.

(c).....

(d).....

In Madras, Andhra, Travancore-Cochin, Hyderabad, Mysore, Orissa, Assam, Tripura, Manipur, Madhya Bharat, Bombay, Himachal Pradesh, Mahendragarh District of PEPSU, Madhya Pradesh (except cotton tract areas) and Rajasthan (except Jodhpur) the specifications will be the same as above except that Reichert value shall be not less than 26.0. In Saurashtra, Kutch, cotton tract areas of Madhya Pradesh, Jodhpur Division of Rajasthan and Bishnupur Sub-division of West Bengal the Reichert value shall not be less than 21 and the Butyro refractometer reading at 40 degree C shall be between 41-5 to 45.0. The limits for free fatty acids and moisture shall be the same as for ghee in Punjab, PEPSU etc. given above.

Explanation.-By cotton tract is meant the areas in Madhya Pradesh where cotton seed is extensively fed to the cattle. The learned counsel for the State has urged before us that the learned Judge was not justified in striking down or re- drafting the rules framed by the Central Government in the manner in which he has done, purporting to invoke Art. 14 of the Constitution, and in virtually setting up what he considered was the reasonable standard of quality which should determine whether the ghee sold by the respondent was adulterated or not. We entirely agree with this submission. Now, it is common ground that if the rules were valid and the standards prescribed enforceable, the ghee sold by the respondent was 'adulterated' with the result that the respondent was guilty of an offence under s. 7 read with s. 16 of 'the Act. The only question is whether there was any material placed before the Court for refusing to apply the rules for determining the standards of quality. 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 apriori reasoning but only as a result of materials placed before the Court by way of scientific analysis. It is obvious that this can be done only when the party invoking the protection of Art. 14 makes averments with details to sustain such a plea and leads evidence to establish his allegations. That where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the rules offend Art. 14 the burden is on him to plead and prove the infir- mity 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 formu- lating the classification of the zones and the prescription of the minimum standards to each zone, and where we have a rule framed with the assistance of a committee containing experts such as the one constituted under s. 3 of the Act, that presumption is strong, if not overwhelming. We might in this connection add that the respondent cannot assert any fundamental right under Art. 19(1) to carry on business in adulterated foodstuffs.

Where the necessary facts have been pleaded and established, the Court would have materials before it on which it could base findings, as regards the reasonableness or otherwise or of the discriminatory nature of the rules. In the absence of a pleading and proof of unreasonableness or arbitrariness the Court cannot accept the statement of a party as to the unreasonableness or unconstitutionality of a rule and refuse to enforce the rule as it stands merely because in its view the standards are too high and for this reason the rule is unreasonable. In the case before us there was neither pleading nor proof of any facts directed to that end. The only basis on which the contention re- garding unreasonableness or discrimination was raised was an apriori argument addressed to the Court, that the division into the- zones was not rational, in that hilly and plain areas of the country were not differentiated for the prescription of the minimum Reichert values. That a distinction should exist between hilly regions and plains, was again based on apriori reasoning resting on the different minimum Reichert values prescribed for Himachal Pradesh and Uttar Pradesh and on no other. It was, however, not as if the entire State of Himachal Pradesh is of uniform elevation or even as if no part of that State is plain country but yet if the same minimum was prescribed for the entire area of Himachal Pradesh, that would clearly show that the elevation of a place is not the only factor to be taken into account.

At this stage it might be pointed out that the test for Reichert or Reichert-Meissl value of ghee is one of the important tests for detecting adulteration with certain vegetable oils by determining the proportion of the volatile soluble acids in the ghee. The presence of the adulterant disturbs the ratio existing in normal butter fat or ghee between soluble and insoluble acids and volatile and non-volatile acids. The Reichert value of pure ghee is not constant, but is dependent on several factors-among them the breed of the cattle to be found in an area, whether the cattle are pasture fed or stall fed, and the nature of the additional feed given, the nature of the terrain, the rain- fall and climatic conditions etc. That the feed available for the cattle is a very material and determining factor is apparent even from the rules, for a distinction is drawn between different areas of Madhya Pradesh depending on cotton seed being available for feeding the cattle. It is on the basis of the conjoint effects of these and other factors which obtain in the different areas, some pointing to a higher Reichert value and others neutralising it and after extensive survey conducted from samples collected and analysed during various seasons, that the country has been divided into zones under the rule in Appendix 'B' and the minimum Reichert value ascertained and prescribed for each. From the fact that certain areas included in some of the zones are hilly, it does not automatically follow that was the potent factor or the only factor which was taken into consideration for prescribing the standard for that region. Without appreciating the several factors which bear upon the Reichert value of the ghee produced in a locality and the value attributed to each of these several relevant factors, it would not be possible to pronounce upon the reasonable- ness or correctness of the classification of the areas and the prescription of different standards to each of them. In State v. Malik Ram (1) a Division Bench of the High Court held that because certain areas of Uttar Pradesh were hilly, the Reichert value prescribed for the hilly areas like those in Himachal Pradesh should be adopted and be given effect to notwithstanding there was no ambiguity in the rules as regards the area where the prescribed standards should be applicable. Except a principle which the Court deduced from the rules themselves there was no material before the Court that the minimum standard prescribed for Uttar Pradesh was defective in any respect. The approach adopted by the learned Judges in Malik Ram's case appears to us to be a reversal of the well-recognised principle

that it is for those who challenge the constitutionality of a statute or a statutory rule to allege and prove the grounds of invalidity and the adoption of the contrary rule that when a party makes such a challenge it is for those who seek to support it to sustain it by positive evidence of its reasonableness and legality. The Court evolved from a reading of the rules a principle that the standards vary with the elevation of the place, without having before it any materials for such a conclusion save what it considered was the rationale underlying the division into zones. As already explained, even in Himachal Pradesh the elevation of every place is not the same and there are areas which (1) A.I.R. 1962 All. 156.

134-159 S.C.-44 are higher than others and so the test adopted does not even satisfy logic. We do not consider that the Court was justified in practically legislating and laying down what the rules should be rather than give effect to the law by adherence to the rules as framed.

In the case now under appeal the learned Judge took the matter a step further and he adopted the lowest Reichert value prescribed for any area in the country as that which he would adopt for every other area in the country disre- garding the rules. We find no justification for this either and, in fact, if the learned Judges in Malik Ram's case(1) were in error in applying the Himachal standard to hilly areas of Uttar Pradesh, the judgment now under appeal discloses even more error. We might add that if one could legitimately discard the standard prescribed in the rules, as the learned Judge has done, we do not see any principle in holding, as he seems to indicate, that where the Reichert value is below 21 the ghee should be treated as adulterated. We, therefore, hold that the learned Judge was not justified in allowing the revision of the respondent and acquitting him.

The result is that the appeal is allowed, the acquittal of the respondent is set aside and his conviction restored. It was stated to us on behalf of the respondent that of the imprisonment for one month to which the sentence passed on him by the Magistrate was modified by the Sessions Judge, he had already undergone a sentence of 18 days. He has been on bail practically since the admission of his Revision Petition in the High Court. In the circumstances, we consider that the sentence of imprisonment passed on him might be reduced to the period already undergone. The sentence of fine imposed will, however, stand. Appeal allowed.

1) A.I.R. 1962 All. 156.