Calcutta Municipal Corporation vs Pawan K. Saraf And Anr on 13 January, 1999

Equivalent citations: AIR 1999 SUPREME COURT 738, 1999 AIR SCW 346, (1999) 1 RECCRIR 699, (1999) 1 PAT LJR 81, (1999) 1 SCJ 324, (1999) SC CR R 277, (1999) 1 CURCRIR 5, (1999) 1 SUPREME 30, (2000) ALLCRIC 124, 1999 CALCRILR 178, (1998) 2 RAJ CRI C 158, (1998) CRILR(RAJ) 442, 1999 FAJ 138, (1999) 1 EFR 271, (1999) 1 FAC 1, (2001) 2 MADLW(CRI) 477, (1999) MAD LJ(CRI) 280, 1999 ADSC 1 37, 1999 ALLMR(CRI) 1 538, (1999) CRILT 296, (1999) 16 OCR 226, 1999 (2) SCC 400, 1999 FAJ 1, 1999 CRILR(SC MAH GUJ) 76, (1999) 24 ALLCRIR 437, (1999) 1 SCALE 31, (1999) 1 ALLCRILR 12, 1999 CHANDLR(CIV&CRI) 352, 1999 CRILR(SC&MP) 76, (1999) 1 ANDHLT(CRI) 78, (1999) 1 JT 39 (SC), 1999 SCC (CRI) 218

Bench: K.T. Thomas, D.P. Wadhwa

CASE NO.:
Special Leave Petition (crl.) 3708 of 1998

PETITIONER:
CALCUTTA MUNICIPAL CORPORATION

RESPONDENT:
PAWAN K. SARAF AND ANR.

DATE OF JUDGMENT: 13/01/1999

BENCH:
K.T. THOMAS & D.P. WADHWA & S.S. MOHAMMED OUADRI

JUDGMENT:

JUDGMENT 1999 (1) SCR 74 The following Order of the Court was delivered :

When we dismissed the Special Leave Petition on 5.11.1998 we also said that reasons of such dismissal will follow. Accordingly we state our reasons hereunder :

Special leave petition has been filed by the Calcutta Municipal Corporation against an order of a Single Judge of the High Court of Calcutta quashing a prosecution proceeding pending against the respon-dent for offence under Section 16(l)(a)(i) read with Section 7 of the Prevention of Food Adulteration Act, 1954 (for short "the Act"). The aforesaid proceedings were initiated in the following background :

On 19.7.1989 a Food Inspector of the Corporation of Calcutta took sample of compounded Asafoetida from the shop of the respondent. When one of the parts of the sample was sent to the Public Analyst, Calcutta it was analysed and found to be adulterated as it did not conform to the standard prescribed for that food article and hence report was forwarded to the Local Health Authority. A complaint was thereafter filed against the respondent before the Magistrate Court concerned for the aforesaid of- fence. When respondent entered appearance he made an application to the court for sending one of the remaining parts of the sample to the Director of Central Food Laboratory and the court despatched it as prayed for. The Director of Central Food Laboratory sent a Certificate to the court specifying the result of the analysis to the effect that the food article contained in the sample conforms to the standard prescribed for com-pounded Asafoetida.

Respondent thereupon move the trial court for discharging him from prosecution, but the learned Magistrate declined to do so on the premise that "the certificate of analysis issued by the Director of Central Food Laboratory was not complete as results of certain tests were not indicated therein.' Respondent then moved the High Court in revision challenging the aforesaid order of the Magistrate, learned Single Judge of the High Court upheld the contentions of the respondents and quashed the prosecu-tion proceedings. Report of the Public Analyst contains the following particulars :

"Test for Starch	:	Positive
Natural colouring Matter	:	Present
Test for Colophony Resin	:	Positive
Test for Galbanum Resin	:	Negative
Test for Ammoniaccum Resin	:	Negative
Test for any other foreign Resin	:	Positive
Test for coal tar dyes	:	Negative
Total Ash	:	0.9%
Test for Mineral Pigment	:	Negative
Ash Insoluble in dil. HCI	:	0.06%
Alcoholic Extract (with 90% of alcohol) is estimated by the U.S.P. 1936 method	:	4.4%

And am of opinion that the sample of compound Asafoetida does not conform to the standard in respect of Alcoholic Extract. Further it contains Colophony resin and Foreign resin. Hence, it is Adulterated.

Signed this 17th day of August, 1989."

The Certificate of Central Food Laboratory contains the following facts :

"Certified that the sample.....was in a condition fit for analysis and has/have been tested analysed and that the result/results of such tests analysis are stated below :

Total Ash %	-	0.66
Ash Insoluble in dil. HCI %	-	0.04
Alcoholic extract (with 90% alcohol) %	-	5.50
Test for Colophony	-	Negative
Test for colour		Coal tar dye absent
Boric acid test	-	Positive

And I am of the opinion that the sample conforms to the standards of compounded Asafoetida as per P.FA. Rules, 1955."

The standard of quality of compounded Asafoetida is specified in Item No. A.04 of Appendix B of the Prevention of Food Adulteration Rules, 1955 which is extracted below :

"It shall not contain -

(a) Colophony resin,

(b) galbanum resin,

(c) ammoniaccum resin,

(d) any other foreign resin,

(e) coal tar dyes,

(f) mineral pigment,

(g) more than 10 per cent total ash content,

(h) more than 1.5 per cent ash insoluble in dilute hydrocholoric acid, (i) less than 5 per cent alcoholic extract, (with 90 per cent of alcohol) as estimated by the U.S.P. 1936 method."

Sri Tapas Ray, learned senior counsel for the petitioner- Corpora-tion, contended before us that as the certificate is silent about galbanum resin, ammoniaccum resin and mineral pigment it must be presumed that the Director of Central Food Laboratory has not conducted those tests with the sample and hence the certificate cannot be acted on as such.

If the certificate issued by the Director of Central Food Laboratory did not contain anything about those three elements it only means that the sample did not contain even a wee bit of those elements when analysis was made in the laboratory. The Central Food Laboratory is established in accordance with Section 4 of the Act. Rule 4 of the PFA Rules contains provisions to be followed by the Director of Central Food Laboratory on receipt of a part of the sample sent by the court. Sub-rule (4)

prescribes that "receipt of a package containing a sample for analysis the Director or an officer authorized by him, shall compare the seals on the container and the outer cover with specimen impression received separately and shall note the condition of the seal thereon." Sub-rule 5 says that after the analysis the certificate thereof shall be supplied forthwith to the sender in Form II.

Section 13 of the Act contains provisions regarding report of Public Analyst as well as the Certificate of the Director of Central Food Laboratory. After institution of prosecution against the person from whom the sample of the article of food was taken (and/or the person whose name and address were disclosed under Section 14-A), the accused has the right to apply to the court to get one of the remaining parts of the sample of the food article analysed by the Central Food Laboratory. It is a right con-ferred on the aforesaid accused in order to defend the prosecution launched against him or them. For availing themselves of the aforesaid statutory right all that they have to do is to make application to the court within the prescribed time. Once the application is made it is not the look out of the accused to get the result of the analysis made by the Central Food Laboratory.

Sub-section (2-B) of Section 13 requires the court to despatch one of the parts of the sample under its own seal to the Director of Central Food Laboratory. Once it is despatched it is the duty of the said Director to send a Certificate to the court "in the prescribed form within one month from the date of receipt of the part of the sample specifying the result of the analysis". Sub- section (3) of Section 13 is important in this context and is extracted below :

> "The certificate issued by the Director of the Central Food Laboratory under sub-section (2-B) shall supersede the report given by the public analyst under sub-section (1)."

When the statute says that certificate shall supersede the report it means that the report would stand annulled or obliterated. The word "supersede" in law, means "obliterate, set aside, annul, replace, make void or inefficacious or useless, repeal", (vide Black's Law Dictionary, 5th Edn.). Once the Certificate of the Director of Central Food Laboratory reaches the court the Report of the Public Analyst stands displaced and what may remain is only a fossil of it.

In the above context the proviso to sub-section (5) can also be looked at which deals with the evidentiary value of such certificate. The material portion of the proviso is quoted below :

> "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."

If a fact is declared by a statute as final and conclusive, its impact is crucial because no party can then give evidence for the purpose of disprov- ing the fact. This is the import of Section 4 of the Evidence Act which defines three kinds of presumptions among which the last is "conclusive proof. "When one fact is declared by this Act to be conclusive proof of another the court shall, on proof of the one fact regard the other as proved and shall not allow evidence to be given for the purpose of disproving it."

Thus the legal impact of a Certificate of the Director of Central Food Laboratory is three-fold. It annuls or replaces the report of the Public Analyst, it gains finality regarding the quality and standard of the food article involved in the case and it becomes irrefutable so far as the facts stated therein are concerned.

If the argument of the learned counsel for the Corporation is upheld and the Certificate of the Director of Central Food Laboratory is sidelined as pleaded by him, the consequence is that there will not be anything surviving to show the quality or standard of the food articles involved in the case. Even that apart, the accused will be deprived of his statutory right to disprove the Report of the Public Analyst.

The aforesaid position has been delineated by this Court in two decisions. In Municipal Corporation of Delhi v. Ghisa Ram, AIR (1967) SC 970 = [1967] 2 SCR 116 the Director of Central Food Laboratory reported to the court that the part of the sample sent to him became highly decomposed and hence no analysis was possible. The accused was there-upon acquitted and the acquittal was challenged on the contention that in the absence of a Certificate of the Director the Central Food Laboratory, for any reason whatsoever, the Report of the Public Analyst will stand and the court can act on it. This Court has observed that the right of the accused to have the sample analysed by the Director of Central Food Laboratory is a valuable one and such right has been given "in order that, for his satisfaction and proper defence, he should be able to have the sample.... analysed by a greater expert whose certificate is to be accepted by court as "conclusive evidence".

In Chetumal v. State of Madhya Pradesh & Anr., AIR (1981) SC 1387 = [1981] 3 SCC 72 a certificate was called for from the Director of Central Food Laboratory but the Director had reported that the specimen impres-sion of the seal sent to him did not tally with the seal on the container in which sample was sent to him. In the Certificate the Director mentioned that the article of food was adulterated as some of the elements were not in conformity with the standard prescribed. The trial court thereupon convicted the accused relying on the Report of the Public Analyst which was confirmed in appeal and High Court in revision did not interfere. But this Court set aside the conviction and sentence with the following obser- vations :

> "It is clear that the conviction cannot stand. Under Section 13(3) of the Prevention of Food Adulteration Act, the report of the Public Analyst stood superseded by the certificate issued by the Director of the Central Food Laboratory. Having been so super-seded, the report of the Public Analyst could not, therefore, be relied upon to base a conviction. The certificate of the Director of the Central Food Laboratory having been excluded from con-sideration because of the tampering of the seals, there was really no evidence before the Court on the basis of which the appellant could be convicted. The court could not fall back on the report of the Public Analyst as it had been superseded. The only method of challenging the report of the Public Analyst was by having the sample tested by the Director of the Central Food Laboratory."

For the aforesaid reasons the High Court has rightly quashed the prosecution proceedings on the strength of the Certificate of the Director of Central Food Laboratory which has come on record in the case.

D.P. WADHWA, J. This special Leave Petition is barred by 309 days. It is against an order made in revision by the Calcutta High Court uphold-ing the order of the trial court acquitting the respondent of an offence under Sections 7/16 of the Prevention of Food Adulteration Act, 1954 (Act, for short). There is an application by the petitioner seeking condonation of delay in filing this petition. Reliance has been placed on a decision of this Court in Collector, Land Acquisition, Anantnag and Anr. v. Mst. Katiji and Ors., AIR (1987) SC 1353. It was submitted that the Court should be liberal in condoning the delay. Liberal all right, but delay is inexcusable unless sufficient cause is shown. It is not the law that when an application seeking condonation of delay is filed by the State or any authority, this Court must invariably condone the delay irrespective whether sufficient cause is shown or not. In Ramlal & Ors. v. Rewa Coalfields Ltd., AIR 1962 SC 361, this Court said :

> "In construing s.5 of the Limitation Act it is relevant to bear in mind two important considerations. The first consideration is that the expiration of the period of limitation prescribed for making an appeal gives rise to a right in favour of the decree-holder to treat the decree as binding between the parties. In other words, when the period of limitation prescribed has expired the decree-holder has obtained a benefit under the law of limitation to treat the decree as beyond challenge, and this legal right which has accrued to the decree-holder by lapse of time should not be light-heartedly disturbed. The other consideration which cannot be ignored is that if sufficient cause for excusing delay is shown discretion is given to the Court to condone delay and admit the appeal. This discre-tion has been deliberately conferred on the Court in order that judicial power and discretion in that behalf should be exercised to advance substantial justice. As has been observed by the Madras High Court in Krishna v. Chathappan, ILR 13 Mad. 269.
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> "Section 5 gives the Court a discretion which in respect of jurisdiction is to be exercised in the way in which judicial power and discretion ought to be exercised upon principles which are well understood; the words sufficient cause' receiv-ing a liberal construction so as to advance substantial justice when no negligence nor inaction nor want of bona fide is imputable to the appellant".

In para 4 of the application, petitioner has described the following circumstances which according to it would amount to sufficient cause for the court to condone the delay : "The impugned order was passed on 13.08.1997, however, as the Ld. Advocate for the petitioner Corporation in the High Court did not communicate the result of the case to the Corporation, the Certified Copy of the same could be applied only upon knowing the result on 12.02.1998. Accordingly, the Certified Copy of the Order was ready for delivery on 20.04.1998. The same was col-lected by the officers of the Law Department of the Petitioner Corporation during May, 1998, and a decision to file the SLP was taken during June, 1998. The Advocate-on-record for the Petitioner was instructed to file the S.L.P. upon re-opening of this Hon'ble Court after summer vacations. Upon examination of the papers sent for

filing S.L.P. it was found that the same were insufficient to draft the S.L.P. Accordingly, vide letter dated 14.07.1998, a requisition was sent for forwarding the required documents, this requisition was followed by a reminder dated 27.07.1998. The Officer of the Corporation visited Delhi in con-nection with this case and other matters on 02.09.1998, but again without Annexure P-2 to the S.L.P., though the S.L.P. was finalised and the Affidavit was sworn by the Officer of the Corporation but for want of Annexure P-2 to the S.L.P. the same could not be filed. The Annexure P-2 to the S.L.P. was received on 15.09.98, and thereafter this S.L.P. was filed without any delay."

Annexure P-2 is a report of the Central Food Laboratory dated November 2, 1989. It is not that this report was not with the petitioner. On the face of it, there appears to be no sufficient cause to condone the delay. We did not think it even necessary to issue notice on this application and dismissed the application. It is only when circumstances mentioned in the application before this Court would show sufficient cause to condone the delay that notice is required to be issued. Rule 10 of Order XVI of the Supreme Court Rules, 1966 provides that where a petition for special leave has been filed beyond the period of limitation prescribed therefore and is accom-panied by an application for condonation of delay, the Court shall not condone the delay without notice to the respondent. In Ram Lal Kapur & Sons (P) Ltd. v. Ram Nath and Ors, [1963] 2 SCR 242, a preliminary objection was raised to the hearing of the appeal by the respondent that this Court granted special leave ex parte and it should be revoked as having been improperly obtained. Application (petition) seeking leave was filed after a great deal of delay, i.e., after lapse of 4 years. The Court observed :

> "It is obvious that it was an application which had been filed far beyond the period of limitation prescribed by the rules of this Court. Learned Counsel for the respondent urged that there were no sufficient grounds for condoning that long delay and that we should therefore revoke the leave."

The Court, however, did not accede to the request of the respondent for revoking the leave in the peculiar circumstances of the case before it and went on to observe as under :

> "Nevertheless, we consider that we should add that, except in very rare cases, if not invariably, it should be proper that this Court should adopt as a settled rule that the delay in making an applica-tion for special leave should not be condoned ex- parte but that before granting leave in such cases notice should be served on the respondent and the latter afforded an opportunity to resist the grant of the leave. Such a course besides being just, would be preferable to having to decide applications for revoking leave on the ground that the delay in making the same was improperly condoned years after the grant of the leave when the Court naturally feels embarrassed by the injustice which would be caused to the appellant if leave were then revoked when he would be deprived of the opportunity of pursuing other remedies if leave had been refused earlier. We would suggest that the rules of the Court should be amended suitably to achieve this purpose."

It is, therefore, only when this Court from the facts stated in the application seeking condonation of delay is prima facie of the view that there could be sufficient cause that notice is required to be issued. If the application does not make out any such cause there is no bar dismissing the application without notice to the other party. Since no sufficient cause was shown by the petitioner as noted above, we dismissed the petition on the ground of delay.

Though we dismissed the special leave petition on the ground of delay as well as on merits, on reconsideration I feel it is contradiction in terms. If we dismiss the petition on the ground of delay we cannot go into the merits though at best it could be said that it is not a fit case for this Court to exercise its jurisdiction under Article 138 of the Constitution.

Be that as it may. With due respect to my learned brethren I think I should not express any opinion on the statement of law that if the certificate issued by the Director of Central Food Laboratory did not contain anything about those three elements it only means that the sample did not contain even a wee bit of those elements when analysis was made in the laboratory". This is how I look at the things.

Under the Rules framed under the Prevention of Food Adulteration Act, standard of quality of compounded asafoetida which was alleged to be adulterated has been prescribed. Compounded asafoetida shall not contain :

(a) Colophony resin,

(b) Galbanum resin,

(c) ammoniaccum resin,

(d) any other foreign resin,

(e) coal tar dyes,

(f) mineral pigment,

(g) more than 10 per cent total ash content,

(h) more than 1.5 per cent ash insoluble in dilute hydrocholoric acid, (i) less than 5 per cent alocoholic extract, (with 90 per cent of alcohol) as estimated by the U.S.P. 1936 method.

In the present case, while the Public Analyst analysed the article with reference to all the items aforesaid, the certificate issued by the Director of CFL did not show any testing for galbanum resin, ammoniaccum resin and mineral pigment. Under Section 13 of the Act, Public Analyst is to submit his report in form as may be prescribed. Similarly, the Director, CFL is also to send the certificate of the analysis of the sample in the form prescribed. Forms are prescribed under Rule 4 of the Rules

framed under the Act. While Public Analyst is to send his report in form 1 as prescribed under Rule 4(1) of the Rules, certificate of test or analysis by the CFL is to be sent in form 2 as prescribed under Rule 4(5) of the Rules. In the present case, it would be seen that while the Public Analyst has sent his report of analysis in the form prescribed, it was not so done by the Director of CFL. Should not analysis by each of these two authorities show that the sample was tested with reference to the standard prescribed? The question that may arise for consideration is if in such a case, it could be said that the report of the Director of CFL would supersede that of the Public Analyst when the report of the Director, CFL is not in the form prescribed. Prime facie it may be so but it certainly requires consideration. This Court should not reach its decision ex-parte of its own without notice to the parties and without hearing the matter in depth.

Argument of Mr. Tapas Ray, learned counsel for the Calcutta Municipal Corporation, that since the report of the Director of CFL was silent about galbanum resin, ammoniaccum resin and mineral pigment it must be presumed that he had not conducted those tests with the sample and such certificate issued by him is not valid cannot be brushed aside without hearing full arguments. It is on this ground that I have expressed my inability to concur with the view that if the certificate issued by the Director, CFL did not contain anything about those three elements it only means that the sample did not contain even a wee bit of those elements when analysis was made in the laboratory. As a matter of fact I think that this Court should not lay down a law on an ex parte hearing. It is not material even if the dismissal of the petition does not prejudice the other party. Any law declared by this Court applies all over. It is binding on all the courts in the country under Article 141 of the Constitution.

In Municipal Corporation of Delhi v. Ghisa Ram, [1967] 2 SCR 116 the plea which found acceptance by this Court was that the respondent having been denied his right of obtaining the report of Director, CFL because of the delay by the appellant in launching the prosecution, the respondent could not be validly convicted. It was case where sample of curd was lifted from the shop of the respondent. This court held :

> "It appears to us that when a valuable right is conferred by Section 13(2) of the Act on the vendor to have the sample given to him analysed by the Director of the Central Food Laboratory, it is to be expected that the prosecution will proceed in such a manner that that right will not be denied to him. The right is a valuable one, because the certificate of the Director supersedes the report of the Public Analyst and is treated as conclusive evidence of its contents. Obviously, the right has been given to the vendor in order that, for his satisfaction and proper defence, he should be able to have the sample kept in his charge analysed by a greater expert whose certificate is to be accepted by Court as conclusive evidence. In a case where there is denial of this right on account of the deliberate conduct of the prosecution, we think that the vendor, in his trial, is so seriously prejudiced that it would not be proper to uphold his conviction on the basis of the report of the Public Analyst, event though that report continues to be evidence in the case of the facts contained therein."

The Court also observed :

> "We are not to be understood as laying down that, in every case where the right of the vendor to have his sample tested by the Director of the Central Food Laboratory is frustrated, the vendor cannot be convicted on the basis of the report of the Public Analyst, we consider that the principle must, however, be applied to cases where the conduct of the prosecution has resulted in the denial to the vendor of any opportunity to exercise this right. Different considerations may arise if the right gets frustrated for reasons for which the prosecution is not responsible."

In Chetumal v. State of Madhya Pradesh & Anr., [1981] 3 SCC 72, an objection was taken that the certificate issued by the Director, CFL could not be taken into consideration as he had reported that the specimen impression seal sent to him did not tally with the seal of the container in which the sample of oil was sent to him. This Court held :

> The certificate of the Director of the Central Food Laboratory having been excluded from consideration because of the tampering of the seals, there was really no evidence before the court on the basis of which the appellant could be convicted. The court could not fall back on the report of Public Analyst as it had been superseded. The only method of challenging the report of the Public Analyst was by having the sample tested by the Director of the Central Food laboratory. In the present case the appellant was deprived of the opportunity to which he was entitled for no fault of his. It was not, therefore, open to the court to fall back upon the report of the Public Analyst to convict the appellant." These two judgments, in my view, do not deal with the issue raised in the present case. As seen above the report of the Director, CFL is not in the form prescribed inasmuch as it did not show if the Director con-ducted test respecting all the standards laid down the rule.1 would, therefore, rather dismiss the Special Leave Petition on the ground of delay without expressing any opinion on the merit of the case.