

A.K. Roy & Anr vs State Of Punjab & Ors on 29 September, 1986

Equivalent citations: 1986 AIR 2160, 1986 SCR (3) 961, AIR 1986 SUPREME COURT 2160, 1986 (4) SCC 326, 1986 (3) FAC 66, 1986 (2) APLJ 34, 1986 SCC(CRI) 443, 1986 FAJ 514, 1986 JT 566, (1986) 2 RECCRIR 569, (1986) 3 SUPREME 490, (1986) 3 FAC 66

Author: A.P. Sen

Bench: A.P. Sen, B.C. Ray

PETITIONER:

A.K. ROY & ANR.

Vs.

RESPONDENT:

STATE OF PUNJAB & ORS.

DATE OF JUDGMENT 29/09/1986

BENCH:

SEN, A.P. (J)

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SEN, A.P. (J)

RAY, B.C. (J)

CITATION:

1986 AIR 2160	1986 SCR (3) 961
1986 SCC (4) 326	JT 1986 566
1986 SCALE (2) 566	

ACT:

Prevention of Food Adulteration Act, 1954: ss. 20(1) and 24(2)(e)/ Prevention of Food Adulteration (Punjab) Rules, 1958: r. 3- Prosecution for an offence under the Act - Sub-delegation of power-Validity of.

Interpretation of Statutes-Use of negative words-Whether makes the provision absolute.

Administrative Law

Statute-Rules framed thereunder - sub-delegation of power-Extent of.

HEADNOTE:

Section 20(1) of the Prevention of Food Adulteration Act, 1954 dealing with cognizance and trial of offences

provides that no prosecution for an offence under that Act shall be instituted except by, or with the written consent of the Central Government or the State Government or a person authorised in this behalf, by general or special order, by the Central or State Government. Section 24(1) empowers the State Government to frame rules for the purpose of giving effect to the provisions of the Act, while s. 24(2) (e) states that such rules may provide for the delegation of the powers and functions conferred by this Act on the State Government or the Food (Health) Authority to subordinate or local authorities.

Rule 3 of the Prevention of Food Adulteration (Punjab) Rules, 1958 framed by the State Government empowered the State Government to delegate its powers to appoint Food Inspectors, to authorise a person to institute prosecutions for an offence under the Act and such other powers exercisable by it under the Act as may be specified in the order of the Food (Health) Authority of the State.

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In pursuance of the provisions of r. 3 of the Rules the State Government issued a Notification dated October 10, 1968 purporting to delegate its powers and functions conferred by s. 20(1) of the Act to institute prosecutions for an offence under the Act, to the Food (Health) Authority. In terms of that Notification the Food (Health) Authority issued a Notification dated September 7, 1972 authorising the Food Inspector, Faridkot to launch prosecutions under s. 20(1) for an offence under the Act.

On February 1, 1985 the Food Inspector, Faridkot filed a complaint against the appellants for having committed an offence punishable under s. 16(1) (a) (ii) of the Act for alleged violation of rr. 24, 28, 29 and 32 of the Prevention of Food Adulteration Rules, 1955.

During the course of the proceedings, the appellants raised an objection that r. 3 of the Prevention of Food Adulteration (Punjab) Rules, 1958 framed under s. 24(2) (e) read with s. 20(1) of the Act was ultra vires the State Government. Alternatively it was urged that by virtue of the authority derived under r.3 the Food (Health) Authority alone had the power to institute prosecution for an offence under the Act and, therefore, he could not sub-delegate his powers to launch the prosecution to the Food Inspector by the Notification dated September 7, 1972. This preliminary objection was rejected by the Magistrate and he proceeded to frame charges against the appellants. They thereupon moved the High Court under s. 482 of the Code of Criminal Procedure, 1973 for quashing of the aforesaid order taking cognizance of the offence and consequent framing of the charge, but the High Court dismissed the petition in limine.

On the question whether the Food Inspector, Faridkot was competent to lodge a complaint against the appellants under s. 20(1) of the Act by virtue of the delegation of powers by the Food (Health) Authority, Punjab under the

Notification dated September 7, 1972 issued by him under r. 3 of the Prevention of Food Adulteration (Punjab) Rules, 1958.

Allowing the appeal by special leave, the Court,

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HELD 1. The notification dated September 7, 1972 issued by the Food (Health) Authority is ultra vires the Food (Health) Authority insofar as he purported to delegate his powers to institute prosecutions for an offence under the Act under s. 20(1) to the Food Inspector,
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Faridkot. The latter was, therefore, not competent to lodge the complaint against the appellants. [972B-C]

2.1 Where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other modes of performance are necessarily forbidden. The intention of the Legislature in enacting s. 20(1) was to confer power on the authority specified therein, which power had to be exercised in the manner provided and not otherwise. [970E-F]

2.2 The use of the negative words in s. 20(1) that 'no prosecution for an offence under this Act. . . shall be instituted except by, or with the written consent of plainly make the requirements of the section imperative. They inhibit insufficient of prosecutions for an offence under the Act except where it is done by the Central Government or the State Government or a person authorised in that behalf by the Central Government or the State Government, or where the prosecution is instituted with the written consent of any of the four specified categories of authorities or persons. If either of these two conditions is satisfied, there would be sufficient authority for the institution of such a prosecution for an offence under the Act. [970C; 969G-H; 970A-B]

Craies on Statute Law, 6th edn., p. 263 referred to.

3. The use of the expression 'in this behalf' in s. 20(1) shows that the delegation of such power by the Central Government or the State Government by general or special order must be for a specific purpose, to authorise a designated person to institute such prosecutions on their behalf. The terms of the section do not postulate further delegation of powers by the person authorised. He can only give his consent in writing when he is satisfied that a prima facie case exists in the facts of a particular case and records his reasons for the launching of such prosecution in public interest. [966E; 971A-B]

4.1. Rules framed pursuant to a power conferred by a statute cannot proceed or go against the specific provisions of the statute. The maxim delegatus non potest delegare merely indicates that sub-delegation of powers is not normally allowable but the Legislature can always provide for it. The provision contained in s. 24(2) (e) of the Act enables the State Government to frame a rule for delegation

of powers and functions under the Act but it clearly does not envisage any sub-delegation. [971C,D]

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4.2. Rule 3 of the Prevention of Food Adulteration (Punjab) Rules, 1958 must, therefore, be read subject to the provisions contained in s. 20(1) of the Prevention of Food Adulteration Act, 1954. It cannot be construed to authorise sub-delegation of powers by the Food (Health) Authority, Punjab to the Food Inspector. So construed, it means that in the instant case, the Food (Health) Authority was the person authorised by the State Government to initiate prosecutions. [971G-H; 972A]

4.3 It was open to the State Government to have issued a notification under s. 20(1) conferring authority on the Food Inspector to launch prosecutions for an offence under the Act, as is the practice in other States. The Food Inspector having been authorised by the Director of Health Service and not the State Government, he was not a person who had been authorised by any general or special order issued by the Central Government or the State Governments. [969G-H]

State of Bombay v. Parshottam Kanaiyalal, [1961] 1 SCR 458 & The Corporation of Calcutta v. Md. Omer Ali & Anr., [1976] 4 SCC 527 referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 400 of 1986 From the Judgment and order dated 12.2.1986 of the Punjab and Haryana High Court in Crl. Misc. Petn. No. 202- M/86.

Dr. Y.S. Chitale, Ravinder Narain, D.N. Misra and P.K. Ram for the Appellants.

H.K. Puri and R.S. Sodhi for the Respondents. The Judgment of the Court was delivered by SEN, J. This appeal by special leave directed against the judgment and order of the Punjab & Haryana High Court dated February 12, 1986 raises a question of some importance. The question is whether the Food Inspector, Faridkot was competent to lodge a complaint against the appellants under s. 20(1) of the Act for commission of an offence punishable under s. 16(1) (a) (ii) of the Prevention of Food Adulteration Act, 1954 (for short 'the Act') by virtue of the delegation of powers by the Food (Health) Authority, Punjab under notification dated September 7, 1972 purported to have been issued by him under r. 3 of the Prevention of Food Adulteration (Punjab) Rules, 1958.

Put very shortly, the essential facts are these. Appellant No. 2, Messrs Food Specialities Limited is a company incorporated under the Companies Act, 1956 engaged in the business of manufacturing and selling various well-known articles of food including New Maggi 2 minute noodles with sweet sour taste-maker while appellant No. 1 A.K. Roy is the Manager, Quality Controller of the Company. On December 14, 1984 at about 3.30 p.m. the Food Inspector, Faridkot purchased a sample of New Maggi Noodles from the shop of a general merchant for purposes of analysis The Public Analyst by

his report dated January 17, 1985 opined that the said article of food contains carmosine and sunset yellow acid coal tar dye instead of caramel as described on the label and was therefore both adulterated as well as misbranded. He further opined that the label of the article of food did not comply with the requirements of rr. 24 and 32 of the Prevention of Food Adulteration Rules, 1955 regarding the addition of extraneous colouring matter. On February 1, 1985 the Food Inspector, Faridkot filed a complaint against the general merchant as well as the appellants for having committed an offence punishable under s. 16(1) (a) (ii) of the Act for alleged violation of rr. 24, 28, 29 and 32 of the Prevention of Food Adulteration Rules, 1955 by virtue of the delegation of powers by the Food (Health) Authority under notification dated October 10, 1968 purported to have been issued by him under r. 3 of the Prevention of Food Adulteration (Punjab) Rules, 1958.

During the course of the proceedings, the appellants raised an objection inter alia that r. 3 of the Rules framed by the State Government in purported exercise of powers under s. 24(2) read with s. 20(1) of the Act, was ultra vires the State Government and alternatively by virtue of the authority derived under r. 3 of the said Rules, the Food (Health) Authority alone had the power to initiate prosecutions for an offence under the Act and therefore he could not legally by the impugned notification sub-delegate his powers to launch the prosecutions to the Food Inspector. The learned Sub-Divisional Judicial Magistrate by his order dated December 4, 1985 rejected the preliminary objection raised as to the power of the Food Inspector to launch the prosecution under s. 20(1) read with s. 9 of the Act, on the ground that the State Government having delegated its powers to the Food (Health) Authority by framing r.3 under s. 24(2)(e) of the Act, the Food (Health) Authority was competent to issue the impugned notification and therefore the complaint was validly lodged. The learned Sub-Divisional Judicial Magistrate further proceeded to frame charges against the appellants for having committed an offence punishable under s. 16(1) (a) (ii) of the Act. Thereafter, the appellants moved the High Court by petition under s. 482 of the Code of Criminal Procedure, 1973 for quashing the impugned order passed by the learned Sub-Divisional Judicial Magistrate taking cognizance of the offence and the consequent framing of the charge by him. High Court did not go into the question and dismissed the petition in limine, It is argued on behalf of the appellants that as a matter of construction the first part of s. 20(1) of the Act makes it clear that a prosecution for offences under the Act not being an offence under s. 14 or s. 14A, can be instituted only by one of the following authorities, namely:

(i) the Central Government or the State Government, or (ii) with the written consent of the Central Government or the State Government, or (iii) a person authorised in this behalf by a general or special order by the Central Government or the State Government, or (iv) with the written consent of a person so authorised. It is urged that the opening words of s. 20(1) 'No prosecution for an offence under this Act ... shall be instituted except by' being of a negative character, the requirements of the section are imperative and that a discretionary power must, in general, be exercised by the authority to which it has been committed. Emphasis is placed on the words 'in this behalf' in the - second part of s. 20(1) of the Act for the submission that the delegation of powers to launch a prosecution by the Central Government or the State Government, by general or special order, must be for a specific purpose in that behalf viz. to authorise the institution of prosecutions under the Act. It was accordingly

submitted that r. 3 of the Punjab Rules enables the Food (Health) Authority to sub-delegate his power 'to authorise the launching of a prosecution for an offence under the Act' to the Food Inspector, was ultra vires the State Government and could not be sustained on the terms of s. 24(2) (e) i.e. the general power of the State Government under s. 24(2) (e) of delegation of its powers and functions under the Act.

In reply, the learned counsel for the respondents contends that r.3 is in the nature of a general order in terms of s. 20(1) of the Act and therefore the State Government has not only delegated its powers 'to launch a prosecution for an offence under the Act' under s. 20(1) to the Food (Health) Authority i.e. the Director of Health Services, Punjab but also under the said rule provision has been made for further sub-delegation of his power to authorise the launching of prosecutions under s. 20(1) to the Food Inspectors.

In order to appreciate the contentions it is necessary to refer to the relevant provisions. Sub-s. (1) of s. 20 of the Act which is material for our purposes, provides as follows:

"20(1). Cognizance and trial of offences-No prosecution for an offence under this Act, not being an offence under section 14 or section 14A shall be instituted except by, or with the written consent of the Central Government or the State Government or a person authorised in this behalf, by general or special order, by the Central Government or the State Government."

Sub-s. (1) of s. 24 of the Act empowers the State Government to frame rules after consultation with the Committee and subject to the condition of previous publication, for the purpose of giving effect to the provisions of the Act not falling within the purview of s. 23. Sub-s. (2) thereof provides that in particular and without prejudice to the generality of the foregoing power, the State Government may make rules for the purpose of giving effect to the provisions of the Act in matters not falling within the purview of s. 23. S. 24(2) (e) of the Act provides:

"24(2). In particular, and without prejudice to the generality of the foregoing power, such rules may-

(e) provide for the delegation of the powers and functions conferred by this Act on the State Government or the Food (Health) Authority to subordinate authorities or to local authorities. "

In exercise of the powers under s. 24(2) (e) of the Act, the Punjab Government framed the Prevention of Food Adulteration (Punjab) Rules, 1958. R. 3 of the Rules reads as under:

"Rule 3-Power of Food (Health) Authority-The State Government may, by an order in writing delegate its powers to appoint Food Inspectors, to authorise a person to institute prosecutions for an offence under the Act and such other powers exercisable by it under the Act as may be specified in the order of the Food (Health) Authority of

the State of Punjab"

In accordance with r. 3, the State Government issued a notification dated October 10, 1968 purporting to delegate its powers and functions conferred by s. 20(1) of the Act viz. to initiate prosecutions for an offence under the Act, to the Food (Health) Authority, to the effect:

"In pursuance of the provisions of rule 3 of the Prevention of Food Adulteration (Punjab) Rules, 1958, the President of India is pleased to delegate to the Food (Health) Authority its powers of appointment of Food Inspectors - and to authorise institution of prosecution for an offence under the Prevention of Food Adulteration Act, 1954. "

In terms of the aforesaid notification, the Food (Health) Authority issued a notification dated September 7, 1972 authorising the Food Inspector, Faridkot to launch prosecution under s. 20(1) for an offence under the Act, in these terms:

"No. IV-I-Pb-72/7518- 2(i) In exercise of the powers conferred by Section 9 of the Prevention of Food Adulteration Act, 1954 (Act No. 37 of 1954) read with Rule 8 of the Prevention of Food Adulteration Rules 1955 and the powers delegated vide Punjab Government Notification No. 5575-HB/L-68/29659 dated 10th October, 1968, Shri Jagrup Singh is hereby appointed as Government Food Inspector for all the local areas in the District, in which the official is posted as Government Food Inspector.

In exercise of powers conferred by Section 20 of the Prevention of Food Adulteration Act, 1954 (Act No. 37 of 1954) read with Punjab Government Notification No.5575 2HBI 1/68/29659 dated 10th October, 1968 the Director, Health Services, Punjab also authorises the above mentioned Food Inspector to institute prosecution against the persons committing offences under the said Act within the limits of local areas."

In this appeal, two main questions arise, namely: (i) Whether r. 3 of the Prevention of Food Adulteration (Punjab) Rules, 1958 framed under s. 24(2) (e) of the Act being contrary to the legislative mandate contained in s. 20(1) of the Act, was ultra vires the State Government and therefore the impugned notification issued by the State Government dated October 10, 1968 purporting to delegate its powers under s. 20(1) to the Food (Health) Authority viz. to authorise the institution of prosecutions for an offence under the Act, was liable to be struck down. Consequently, whether the impugned notification dated September 7, 1972 issued by the Food (Health) Authority authorising the Food Inspector, Faridkot to institute such prosecutions was illegal, bad in law and void ab initio. (ii) Even if r. 3 of the said Rules could be regarded as a general order issued by the State Government in terms r of s. 20(1) of the Act authorising the Food (Health) Authority to launch prosecutions for an offence under the Act by the framing of a rule under s. 24(2) (e) of the Act, whether the Food (Health) Authority by the impugned notification dated September 7, 1972 could, in his turn, sub-delegate his powers to the Food Inspector, Faridkot. The ultimate question is whether the terms of s. 20(1) of the Act do not postulate further delegation by the person authorised

to institute prosecutions for an offence under the Act; he can only give his written consent to such prosecution.

It is common ground that the prosecution in the instant case has not been launched either by or with the written consent of the Central Government or the State Government. It therefore becomes necessary to ascertain whether the Food Inspector, Faridkot was duly authorised to launch a prosecution. The Food Inspector had been conferred powers of the State Government under s. 20(l) of the Act viz. to initiate prosecutions for an offence under the Act, by the Food (Health) Authority i.e. the Director of Health Services. A mere perusal of the impugned notification dated September 7, 1972 makes it manifest that it was the Director of Health Services and not the State Government who had authorised the Food Inspector to launch prosecutions for an offence under the Act. It is therefore clear that the Food Inspector is not a person who has been authorised by any general or special order issued by the Central Government or the State Government. There would be no problem if the State Government were to issue a notification under s. 20(l) of the Act conferring authority on the Food Inspector, Faridkot under s. 20(l) to launch prosecutions for an offence under the Act as is the practice in the other States.

A careful analysis of the language of s. 20(l) of the Act clearly shows that it inhibits institution of prosecutions for an offence under the Act except on fulfillment of one or the other or the two conditions. Either the prosecutions must be instituted by the Central Government or the State Government or a person authorised in that behalf by the Central Government or the State Government, or the prosecutions should be instituted with the written consent of any of the four specified categories of authorities or persons. If either of these two conditions is satisfied, there would be sufficient authority for the institution of such a prosecution for an offence under the Act. The provision contained in s. 20(1) of the Act does not contemplate the institution of a prosecution by any person other than those designated. The terms of s. 20 (1) do not envisage further delegation of powers by the person authorised, except that such prosecution may be instituted with the written consent of the Central Government or the State Government or the person authorised. The use of the negative words in s. 20(1) "No prosecution for an offence under this Act .. shall be instituted except by or with the written consent of" plainly make the requirements of the section imperative. That conclusion of ours must necessarily follow from the well-known rule of construction of inference to be drawn from the negative language used in a statute stated by Craies on Statute Law, 6th edn., p. 263 in his own terse language:

"If the requirements of a statute which prescribe the manner in which something is to be done are expressed in negative language, that is to say, if the statute enacts that it shall be done in such a manner and in no other manner, it has been laid down that those requirements are in all cases absolute, and that neglect to attend to them will invalidate the whole proceeding."

Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other modes of performance are necessarily forbidden. The intention of the Legislature in enacting s. 20(1) was to confer a power on the authorities specified therein which power had to be exercised in the manner provided and not otherwise.

The first part of s. 20(1) of the Act lays down the manner of launching prosecutions for an offence under the Act, not being an offence under s. 14 or s. 14A. The second part provides for delegation of powers by the Central Government or the State Government. It enables that prosecutions for an offence under the Act can also be instituted with the written consent of the Central Government or the State Government or by a person authorised in that behalf, by a general or special order issued by the Central Government or the State Government. The use of the words 'in this behalf' in s. 20(1) of the Act shows that the delegation of such power by the Central Government or the State Government by general or special order must be for a specific purpose, to authorise a designated person to institute such prosecutions on their behalf. The terms of s. 20(1) of the Act do not postulate further delegation by the person so authorised; he can only give his consent in writing when he is satisfied that a prima facie case exists in the facts of a particular case and records his reasons for the launching of such prosecution in the public interest.

In the case of statutory powers the important question is whether on a true construction of the Act, it is intended that a power conferred upon A may be exercised on A's authority by B. The maxim *delegatus non potest delegare* merely indicates that this is not normally allowable but the Legislature can always provide for sub-delegation of powers. The provision contained in ss. 24(2) (e) enables the State Government to frame a rule for delegation of powers and functions under the Act but it clearly does not envisage any sub-delegation. That apart, a rule framed under s. 24(2) (e) can only provide for delegation of minor administrative functions e.g. appointment of Food Inspectors, Food (Health) Authority etc. In the case of important executive functions like the one contained in s. 20(1) of the Act to authorise launching of prosecutions for an offence under the Act which is in the nature of a safeguard, the Courts may be disposed to construe general powers of delegation restrictively. Keeping in view the language of s. 20(1) and 24(2) (e) of the Act, r. 3 of the Punjab Rules can be treated to be a general order issued by the State Government to authorise the Food (Health) Authority i.e. the Director of Health Services to institute prosecutions for an offence under the Act. Unfortunately, the draftsmen of r. 3 more or less employed the language of s. 20(1) of the Act. If r. 3 were to be literally interpreted, the words "to authorise the launching of prosecutions" may lead to the consequence that the Food (Health) Authority who had been delegated the power of the State Government under s. 20(1) of the Act could, in his turn, sub-delegate his powers to the Food Inspector. Such a consequence is not envisaged by s. 20(1) of the Act. It is well-settled that rules framed pursuant to a power conferred by a statute cannot proceed or go against the specific provisions of the statute. It must therefore follow as a logical consequence that r. 3 of the Prevention of Food Adulteration (Punjab) Rules, 1958 must be read subject to the provisions contained in s. 20(1) of the Prevention of Food Adulteration Act, 1954 and cannot be construed to authorise sub-delegation of powers by the Food (Health) Authority, Punjab to the Food Inspector, Faridkot. If so construed, as it must, it would mean that the Food (Health) Authority was the person authorised by the State Government to initiate prosecutions. It was also permissible for the Food (Health) Authority being the person authorised under s. 20(1) of the Act to give his written consent for the institution of such prosecutions by the Food Inspector, Faridkot as laid down by this Court in *State of Bombay v. Parshottam Kanaiyalal*, [1961] 1 SCR 458 and *The Corporation of Calcutta v. Md. Omer Ali & Anr.*, [1976] 4 SCC 527.

In the premises, the impugned notification dated September 7, 1972 issued by the Food (Health) Authority must be declared as ultra vires the Food (Health) Authority insofar as the purported to delegate his powers to institute prosecutions for an offence under the Act under s. 20(1) to the Food Inspector, Faridkot. It must accordingly follow that the Food Inspector, Faridkot was not competent to lodge the complaint against the appellants for having committed an offence punishable under s. 16(1) (a) (ii) read with s. 9 of the Prevention of Food Adulteration Act, 1954.

In the result, the appeal must succeed and is allowed. The judgment and order passed by the High Court and that of the Sub Divisional Judicial Magistrate, Moga are set aside.

P.S.S.

Appeal allowed.