

## Bishamber Dayal vs State on 18 September, 1953

**Equivalent citations: AIR1954ALL183**

ORDER

Desai, J.

1. The applicants have been convicted Under Section 7, Essential Supplies (Temporary Powers) Act read with Clause 8, U. P. Flour, Rice and Dal Mills Control Order, 1948. It has been held by the Courts below that they contravened Clause 3 of the Order by allowing "bajra" and wheat to be ground in their flour mill without having a licence. The applicants are the owners of a flour mill situated, in Kakore and it was inspected by a Marketing Inspector who found that the mill was being worked by Mahboob, a servant of the applicants and that 'bajra' and wheat were being ground. He also found that the applicants had not obtained a licence for grinding controlled foodgrains in the mill. "Bajra" and wheat are controlled foodgrains. Clause 3 of the Order is :

"No flour mill x x x shall grind or hull xxx any controlled foodgrain except under and in accordance with the terms of a licence granted under this Order".

2. I am surprised at the language used in this clause. I never expected such words as "no flour mill shall grind" in a formal Order of a penal nature issued by the State in exercise of the powers conferred by an Act. Something may be ground in a flour mill but a flour mill cannot be said to grind anything -- an inanimate object cannot do an act and it seems to me meaningless to prohibit a flour mill from grinding anything. There is no reference to any human being in this clause. "Flour Mill" is defined in Clause 2 to mean "a power driven flour mill other than a roller mill". With that definition staring in one's face, one cannot possibly hold that a "flour mill" is not an inanimate object commonly known as a flour mill but a person owning a flour mill, or managing or working it. If the State wanted to prohibit an owner or a manager or a servant from grinding controlled foodgrains in a flour mill without obtaining a licence, it should have said so in so many words so that the public could know whose responsibility it is to see that the prohibited act is not done.

Clause 4 of the Order refers to applications for licences; this also does not refer to any human being. It does not say by whom an application should be made. Merely because the forms given in the schedule suggest that it should be made by an owner, it cannot be said that the words "flour mill" in Clause 3 mean its owner. Clause 8 is to the effect that :

"If any person contravenes any provision of this Order or any of the terms of the licence granted under this Order, he shall be liable to the punishment provided under Section 7, Essential Supplies (Temporary) Powers Act."

This is the only provision in the Order which refers to a person. When the prohibition under Clause 3 is on a flour mill, infringement of that prohibition cannot be punished under Clause 8. As it is a flour mill that is prohibited from doing a certain act, the prohibition can be infringed only by a flour mill. In other words, the Order is so worded that its provisions can be contravened only by a flour mill, but a flour mill is not a person who can be prosecuted. It is not like a company or a firm which is a compendious name for group of persons. A company or a firm can be included in the meaning of the word "person" but a flour mill cannot be, the State may hold the applicants and flour mill guilty of contravening Clause 3 of the Order, but cannot hold them guilty. When in the whole Order there is no reference to any human being connected with a flour mill or otherwise, it is Impossible to say that any particular person has contravened any provision of the Order and is liable to the punishment provided under Section 7, Essential Supplies Act.

3. In the present case it has been found that Mahboob was working the mill and that the applicants were not present there. There is nothing in the Order to justify holding the applicants responsible for that act of Mahboob. There is no reason for holding that the words "Flour Mill" in Clause 3 should mean the owners of a flour mill even if they are not present in it, and not some other person connected with it, such as a manager or a lessee or a servant or the owner's son or brother. At the most Mahboob, who did the actual act of grinding 'bajra' and wheat in the flour mill, can be said to have contravened the provision of Clause 3 of the Order but not the applicants. It is not the prosecution case that they had abetted Mahboob in the doing of the act; therefore they cannot be prosecuted as abettors also. If the State wanted to hold the proprietor of a flour mill responsible for any grinding of controlled food-grains without a licence, whether the grinding was done by himself or by his servant in his absence, it should have used clear language in the Order. An order of a penal nature must be clear and specific in its language and must not leave anything to presumption. If a member of the public is prohibited from doing an act, he must be prohibited clearly and in an unambiguous language. The prohibition cannot be left to be implied from some facts.

4. I hold that there is nothing in the U. P. Flour, Rice and Dal Mills Control Order casting, any liability upon the applicants and that they cannot be punished for contravening any provision of it. The applications are allowed. The convictions and sentences of the applicants are set aside and they are acquitted. The fines, if realised from them, should be refunded.

5. Leave to appeal to the Supreme Court is.

refused.