Supreme Court of India
Municipal Corporation Of Delhi vs Laxmi Narain Tandon Etc. Etc on 17 December, 1975
Equivalent citations: 1976 AIR 621, 1976 SCR (2)1050
Author: R S Sarkaria
Bench: Sarkaria, Ranjit Singh

PETITIONER:
MUNICIPAL CORPORATION OF DELHI

Vs.

RESPONDENT:
LAXMI NARAIN TANDON ETC. ETC.

DATE OF JUDGMENT17/12/1975

BENCH:
SARKARIA, RANJIT SINGH
BENCH:
SARKARIA, RANJIT SINGH
CHANDRACHUD, Y.V.
BHAGWATI, P.N.

CITATION:
1976 AIR 621 1976 SCR (2)1050
1976 SCC (1) 546
CITATOR INFO :
RF 1980 SC 674 (4)

ACT:
"Sale"-Distinction between-Prevention of Food Adulteration Act, 1954, and Punjab General Sales Tax Act.
Storing an article of food for purposes other than sale-If constitutes an offence-Supply and offer of food by a hotelier to a customer under a consolidated charge-If constitutes sale within the meaning of Prevention of Food Adulteration Act,

HEADNOTE:
The respondents were charged with an offence under s. 7 read with s. 16 of the Prevention of Food Adulteration Act, 1954, on the ground that they had stored for sale articles of food, which were adulterated and of sub-standard quality. Before the Magistrate, the respondents contended that no articles of food were sold in the hotel to non-resident visitors or the public generally and that the hotel provided residential services and other amenities including meals only to resident customers against a composite charge and that no rebate was allowed for food if a resident customer chose not to eat it. The Magistrate acquitted the

respondents.

On appeal the Division Bench of the High Court referred two questions to the Full Bench, namely, (i) whether for the purposes of the Prevention of Food Adulteration Act, 1954, there was no sale of food provided by a hotelier to a guest when a consolidated charge was made; and (ii) whether the expression "store" used in ss. 7 and 17 of the Act means storage simpliciter or storing for sale ?

The Full Bench held (1) that there was no 'sale' of food to the customer within the contemplation of the Act and (2) that the word "store" used in ss. 7 and 16 means storage for sale.

Allowing the appeals,

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HELD : (1) The High Court has over-looked the important distinction between the connotation of "sale" for the purposes of Sales Tax Act and the one under the Prevention of food Adulteration Act. The supply of food by a hotelier to a customer when a consolidated charge is made for residential accommodation and other amenities, including food, amounts to a "sale" of an article of food for the purposes of the Prevention of Food Adulteration Act. [1057 B and 1058 F]

(a) A comparative study of the definition of 'sale' in the Sales Tax Act and the Prevention of Food Adulteration Act would show that the connotation of "sale" for the purposes of Prevention of Food Adulteration Act is far wider than the meaning assigned to it in the Sales Tax Act. [1056 B]

(b) The object of the Sales Tax Act is to levy tax on sales or purchases of certain articles of commerce. The object of the Prevention of Food Adulteration Act is to prevent, in the interest of the health of the community, supply of adulterated foodstuffs by a person as a part of his business activity. [1056 F & H]

(c) For the purposes of the Prevention of Food Adulteration Act the broad test applicable would be, whether the article of food was offered by the hotelier to the resident customer for a money consideration, it being immaterial whether such consideration was a distinct item or was an inseparable element of the consolidated charge made by the hotelier for providing residential accommodation, services, amenities and food. The mere fact that the property in the food article does not pass to the customer before he eats it does not take it out of the definition of "sale" under the Food Act . In the case of food actually consumed, the property does pass to the customer. In other cases, even when the

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resident customer does not eat the food offered to him by the hotelier, such an offer by itself would be sufficient to constitute a "sale" of that article of food within the contemplation of s. 2(xiii) of the Food Act. The fact

remains that the supply or offer of food to a customer is for a money consideration as a part of business activity and, as such, constitutes "sale" under the Prevention of Food Adulteration Act. [1057 C-D 1058 C]

(d) The object of assigning so extensive a meaning to the term "sale" is to bring within the ambit of the Prevention of Food Adulteration Act all commercial transactions whereunder an adulterated article of food is supplied for consumption by one person to another. [1056 D]

Municipal Corporation of Delhi v. Shri Kacheroo Mal [1976] 2 S.C.R. 1, referred to.

(e) The dominant object of the transaction and the intention of the parties, while entering into the transaction in question, was to provide against payment wholesome food for consumption, besides residential accommodation and services. [1058 B]

State of Punjab v. M/s Associated Hotels of India Ltd. [1972] 2 S.C.R. 937, referred to.

(2) (a) The Full Bench has rightly answered the second question. The expression "store" in s. 7 means "storing for sale" and consequently, storing an adulterated article of food for purposes other than for sale would not constitute an offence under s. 16(1)(a). [1054-H]

(b) The terms "store" and "distribute" take their colour from the context and the collocation of words in which they occur in ss. 7 and 16. "Storage" or "distribution" of an adulterated article of food for a purpose other than for sale, does not fall within the mischief of this section. Under s. 10, the Food Inspector is authorised to take samples of an article of food only from particular persons indulging in a specified course of business activity, the immediate or ultimate end of which is the sale of an article of food. The section does not give a blanket power to the Food Inspector to take samples of an article of food from a person who is not governed by any of the sub-clauses of s. 2(i) (1)(a). Sub-s. 2 makes it clear that a sample can be taken only of that article of food which is "manufactured", "stored" or "exposed for sole". If an article of food is not intended for sale and is in the possession of a person who does not fulfil the character such as is referred to in s. 10, the Food Inspector will not be competent under the law to take a sample, and on such sample being found adulterated, to validly launch prosecution thereon. [1054 D-G]

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos 101, 104 of 1971.

From the Judgment and Order dated the 24th April, 1970 of Delhi High Court in Criminal Appeal Nos. 11,6, 63 and 64 of 1968.

V. S. Desai, D. P. Maheshwari and Naresh Sethi for the Appellants.

A. K. Sen, M. C. Bhandare, Rameshwar Nath and M. K. Gupta for Respondents.

The Judgment of the Court was delivered by SARKARIA, J. The common questions that arise for determination in these appeals on certificate directed against the judgments of the Delhi High Court are :

> (1) Whether for purposes of the Prevention of Food Adulteration Act, 1954 (for short, the Food Act) there is no sale of food which is provided by a hotelier to a guest when a consolidated charge is made for room and the other amenities, including food, and when no rebate is allowed for any meal which may not be taken by the guest ?
>
> (2) Whether the expression "store", as used in section 7 and section 16 of the Act, means storage simpliciter or storing for sale ?

In answer to the first question, the Full Bench of the High Court, to which these questions were referred, held that when a composite charge is made for residential accommodation and food by a hotelier, there is no sale of food to the customer within the contemplation of the Food Act. On the second question, its answer was that the word "store" used in s. 7 and s. 16 of the Act means storage for sale.

The questions arose in these circumstances: M/s. Associated Hotels of India Ltd. (for short, Associated Hotels) runs Hotels, one of them is Oberoi Maidens Hotel, 7, Alipur Road, Delhi. Respondent 1 (L. N. Tandon) is the Manager of that Hotel, while Respondent 2 is the Managing Director of the Associated Hotels. According to the prosecution case, on July 25, 1966, Shri P. P. Sinha, a Food Inspector of the Municipal Corporation of Delhi, got from Respondent 1, the samples of ice-cream, milk, curd and butter for the purpose of analysis. The sealed samples were sent to the Public Analyst for examination and were found to be sub-standard and, as such, 'adulterated articles of food' within the purview of s. 2(i) (i). In the case of ice-cream; there was 1.6% deficiency in total solids and 2.9% deficiency in fat.

The Assistant Municipal Prosecutor thereupon filed four separate complaints under s. 7 read with s. 16 of the Act for prosecution of the Respondents in the court of the Magistrate 1st Class, Delhi. It was alleged in the complaints that the articles of food of which samples were taken, had been stored for sale in the said Hotel. The accused raised factual as well as legal pleas in defence. Respondents inter alia contended that the sampling was not done in their presence, and consequently, the entire proceedings, being violative of the mandatory requirement of law, were vitiated and illegal. A common stand taken by both the Respondents, was that no articles of food are sold in this Hotel to the non-resident visitors, or the public generally, that the hoteliers provide residential accommodation, services and other amenities, including meals, only to the resident customers

against a composite charge and that no rebate is allowed for food if a resident customer chooses not to eat it.

The Magistrate accepted the defence plea that the samples had been taken in the absence of Respondent 1 and there had been breach of the law on that score. He further held that the food articles of which samples were taken had not been stored for sale. In the result the Magistrate acquitted both the Respondents. Against this acquittal. the Municipal Corporation of Delhi carried an appeal to the High Court. The Division Bench before which that appeal came up for hearing, referred three questions (including the two set out above) to a Full Bench for opinion. Thereafter, the Division Bench, merely on the basis of the answers returned by the Full Bench upheld the acquittal and dismissed the appeals.

It will be useful at the outset to have a look at the scheme and content of the relevant provisions of the Act.

The broad aim of the Act is to ensure the sale and supply of pure food to the public. With that end in view, the Act prevents adulteration of food articles.

For the purpose of the Act an article of food is deemed to be adulterated, if it falls under any of the clauses (a) to (1) of s. 2 (i) This definition of "adulterated article of food" is of very wide amplitude. Even a sub-standard article would fall within the mischief of sub-clause (1) "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 prescribed limits of variability".

Section 7 prohibits a person to "manufacture" for sale or "store", "sell", or "distribute", inter alia, any: "(i) adulterated food".

Contravention of this prohibition is punishable as an offence under s. 16. The relevant part of the sections reads:

> "(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 articles 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..... he shall in addition to the penalty to which he may be liable under the provisions of s. 6, be punishable with imprisonment for a term which shall not be less than six months but may extend to six years, and with fine which shall not be less than one thousand rupees :"

Then, there is a Proviso to this sub-section which gives a discretion to the Court for any adequate and special reasons to be recorded, to award a sentence less than the minimum prescribed, only if the offence is under cl. (a) (i) and is with respect to an article adulterated under s. 2(i)(1).

Section 10 confers powers on the Food Inspector to take samples and also indicates the scope of these powers.

Sub-section (1) authorises him-

(a) to take samples of any articles of food from-

(i) any person selling such article;

(ii) any person who is in the course of conveying, delivering or preparing to deliver such article to a purchaser or consignee;

(iii)a consignee after delivery of any such article to him; and

(b) to send such sample for analysis to the public analyst for the local area within which such sample has been taken.

* * * *".

Sub-section (2) gives power to the Food Inspector to enter and inspect any place where any article of food is manufactured, stored or exposed for sale and take samples of such articles of food for analysis.

From a conjoint reading of the above referred provisions, it will be clear that the broad scheme of the Act is to prohibit and penalise the sale, or import, manufacture, storage or distribution for sale of any adulterated article of food. The terms "store" and "distribute" take their colour from the context and the collocation of words in which they occur in ss. 7 and 16. "Storage" or "distribution" of an adulterated article of food for a purpose other than for sale does not fall within the mischief of this section. That this is the right construction of the terms "store" and "distribute" in s.16 (1) will be further clear from a reference to s. 10. Under that section, the Food Inspector, to whom the Act assigns a pivotal position for the enforcement of its provisions, is authorised to take samples of an articles of food only from particular persons indulging in a specified course of business activity. The immediate or ultimate end of such activity is the sale of an article of food. The section does not give a blanket power to the Food Inspector to take samples of an article of food from a person who is not covered by any of the sub-clauses of sub-s. 1 (a) of sub-s.

2. The three sub-clauses of sub-section 1(a) apply only to a person who answers the description of a seller or conveyer, deliverer, actual or potential, of an article of food to a purchaser or consignee or his consignee after delivery of such an article to him. Sub-section (2) further makes it clear that sample can be taken only of that article of food which is "manufactured", "stored" or exposed for sale. It follows that if an article of food is not intended for sale and is in the possession of a person who does not fulfil the character of a seller, conveyer, deliverer, consignee, manufacturer or storer for sale such as is referred in sub- ss. 1(a) and (2) of the section, the Food Inspector will not be competent under the law to take a sample, and on such sample being found adulterated, to validly

launch prosecution thereon. In short, the expression "store" in s. 7 means "storing for sale" and consequently storing of an adulterated article of food for purposes other than for sale would not constitute an offence under s. 16(1) (a).

The Full Bench of the High Court has thus rightly answered the second question.

The stage is now set for considering the main question, whether food made available to a resident customer in a hotel by a hotelier against a consolidated charge for all the services and amenities and food amounts to a sale of an article of food for the purposes of the Food Act ?

The High Court has considered this question entirely in accordance with the norms and tests applied in the context of Punjab General Sales Tax Act, 46 of 1948 (for short, the Sales-tax Act) by a Division Bench of the High Court of Punjab in State of Punjab v. M/s. Associated Hotels of India Ltd. (i) which was subsequently affirmed in appeal by this Court on January 4, 1972 in State of Punjab v. M/s. Associated Hotels of India Ltd. (2).

The High Court has adopted two main criteria for holding the transaction or the arrangement in question not to be a 'sale' of an article of food. First, under such an arrangement, there is no transfer of the property in the food to the customer unless it is actually consumed by him. Second, the predominant character which the transaction bears is not that of a sale of an article of food but of a contract for work or services, and the food supplied by the hotelier pursuant to such a transaction, is only a part of the amenities or services rendered to the customer.

In our opinion, neither of these reasons holds good, if the matter is considered in the context of the Food Act. For a proper appreciation of the points for determination, it is important to bear in mind the distinction between the definition of the term 'sale' in the Sales-tax Act and the Food Act, and also the fact that the purpose, scheme and the content of the two Acts are entirely different.

Under s. 2(h) of the Sales-Tax Act 'sale' has been defined as follows:

> "In this Act, unless there is anything repugnant in the subject or context,-
>
> (h) "sale" means any transfer of property in goods other than goods specified in Schedule for cash or deferred payment or other valuable consideration, but does not include a mortgage, hypothecation, charge or pledge. Explanation-(1) A transfer of goods on hire- purchase or other instalment system of payment shall, notwithstanding that the seller retains a title to any goods as security for payment of the price, be deemed to be a sale."

In the Food Act "sale" has been defined as under:

> "In this Act unless the context otherwise requires-

> "sale" with its grammatical variations and cognate expressions means the sale of any article of food, whether for cash or on credit or by way of exchange and whether by wholesale or retail, for human consumption or use, or for analysis, and includes an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale of any such article, and includes also an attempt to sell any such article."

A comparative study of the above-quoted definitions would show that the connotation of "sale" for purposes of the Food Act is far wider than the meaning assigned to it in the Sales-tax Act. While under the Food Act "sale" would include a mere "offer for sale", "exposing for sale" or having in "possession for sale", under the Sales-tax Act, the transfer of property in the goods, except where it falls within the Explanation, is an essential feature of "sale". Further, the legislature has advisedly left the word "sale" occurring in the first part of the definition under the Food Act to be interpreted in its widest amplitude. According to the Oxford Dictionary "sale" means "action or an act of making over to another for a price", "the exchange of a commodity for money or other valuable consideration", "disposal of goods for money".

It will be seen that the definition of 'sale' in s. 2(xiii) of the Food Act with which we are concerned, is wider even than its dictionary meaning. The object of assigning so extensive a meaning to the term 'sale' appears to be to bring within the ambit of the Food Act all commercial transactions whereunder an adulterated article of food is supplied for consumption by one person to another. In the context of the Food Act, therefore, the term 'sale' has to be construed according to the "mischief rule" enunciated in Heydon's case. As pointed out by this Court in Municipal Corporation of Delhi v. Shri Kacheroo Mal (1), wherever possible, without unreasonable stretching or straining, the language of this statute should be construed in a manner which would suppress the mischief, advance the remedy, promote its object, prevent its subtle evasion and foil its artful circumvention.

The object of the Sales-tax Act is to levy tax on sales or purchases of certain articles of commerce. The taxable event under that Act is the sale or the purchase and to constitute a taxable sale or purchase to use the words of Shelat J. who spoke for the Court in Associated Hotels Case, supra, "the Revenue has to establish that there was a sale, distinct from the contract of work or service of the property so passing to the other party." A transaction to attract liability under the Sales-tax Act, therefore, must be wholly and solely a 'sale' of a taxable article as a distinct entity. If it is inseparably submerged in or amalgamated with a contract for work or services, then it is not possible to fasten it with liability as a sale under the Sales-tax Act, much less can such liability be quantified as an item of taxable turnover for the relevant account year. Such considerations or difficulties do not arise for the purpose of the Food Act.

The primary object of the Food Act is to prevent, in the interest of the health of the community, the supply of adulterated foodstuffs by a person as a part of his business activity.

The definitions of the term 'sale' have in terms, been made subject to the context of the respective Acts in which they occur. Consequently, in judging whether a transaction is a sale or not, due regard must be had to the purpose, scheme and context of the particular Act under which the question arises. The learned Judges of the High Court appear to have overlooked the important distinction

between the connotation of 'sale' for purposes of the Sales-tax Act and the one under the Food Act.

For the purposes of the Food Act, the broad test applicable would be whether the article of food was offered by the hotelier to the resident customer for a money consideration, it being immaterial whether such consideration was a distinct item or was an inseparable element of the consolidated charge made by the hotelier for providing residential accommodation, services, amenities and food?

The mere fact that the property in the food article does not pass to the customer before he eats it, does not take it out of the definition of 'sale" under the Food Act. In the case of food actually consumed, the property does pass to the customer. In other cases, even when the resident customer does not eat the food offered to him by the hotelier, such an offer by itself, would be sufficient to constitute a "sale" of that article of food within the contemplation of s. 2(xiii) of the Food Act.

Mr. Ashok Sen, relying on the observations of this Court in Associated Hotels' case (supra) contends that the true test to be applied even in a case under the Food Act, is; What was the primary object of the transaction and the intention of the parties while entering into it? It is maintained that the predominant character of the transaction in question was to provide a number of amenities and services to resident customers and that the meals supplied were only incidental to those services. In such a case, it is submitted, it cannot be said that the transaction amounts to a 'sale' of meals as an article of commerce to the customer. Mr. Sen cites instances of Hospital, Nursing Home, College Hostel, Nursery School, Passenger Airliner, Passenger Ocean-going Ship where meals are provided to the residents or passengers, as the case may be, as part of the services against a consolidated charge. Counsel concedes that if the respondents had been supplying food to the members of the public who were not residents of the Hotel, against charges, from the same kitchen or store from which they supplied it to the resident customers against a consolidated charge, that would be hit by the Food Act because in such a case mere storage of food in the Hotel, would be 'storage for sale' attracting the penal provisions of the Food Act.

It appears to us that the contention cannot be accepted. We have already indicated above that for purposes of the Food Act, the mere offer of an article of food for a money consideration, irrespective of whether such consideration is ascertainable, as a distinct item, or is an inseparable element of a consolidated charge for a number of things, would bring it within the mischief of "sale" under s. 2(xiii) of the Food Act.

The test suggested by Mr. Sen is not decisive for the purposes of the Food Act. Even so, if such a test is applied consistently with the object of the transaction and the intention of the parties while entering into is nevertheless a commercial transaction. Surely, the dominant object of the transaction and the intention of the parties while entering into the transaction in question was to provide against payment, whole some food for consumption besides residential accommodation and services. Good residential accommodation and good food against one consolidated charge were the main considerations which must have weighed with the parties while entering into this transaction. It is therefore not correct to say that the supply of food under such a composite transaction entered into between the hotelier and his resident customer does not amount to supply of food as an article of commerce. The fact remains that the supply or offer of food to such a customer is for a money

consideration as a part of business, activity, and as such, constitutes "sale" under the Food Act.

It is true that in pursuance of such a transaction, the bill prepared by the hotelier is one and indivisible; it is not capable of being proximated or split into charges for food and charges for other amenities. But the fact remains that such a composite bill is prepared after taking into account the cost of the meals, also.

The illustrations given by Mr. Sen are not apposite. Hotel business is very different from that of a Hospital or a Nursing Home, or College Hostel, or Passenger Airliner etc. Moreover, the question whether a particular transaction in the context of the Food Act constitutes a sale or not, is largely a question of fact depending on the circumstances of each case. It is therefore not proper to enunciate any hard and fast rule of universal application on the basis of purely hypothetical instances cited by Mr. Sen.

For the foregoing reasons we would reverse the answer given by the High Court and hold that the supply or offer of food by a hotelier to a customer when a consolidated charge is made for residential accommodation and other amenities, including food, amounts to a 'sale' of an article of food for the purpose of the Food Act.

The last submission of Mr. Sen was that this case has been pending for the last 15 years; that the trial Magistrate had acquitted the respondent not only on the ground that there was no "sale" within the meaning of the Food Act but also on the ground that the samples of the articles in question were not taken in accordance with law in the presence of Respondent No. 1. It is stressed that the law on the point was anything but clear and this is not a case where articles of food were found contaminated or mixed with any deleterious or injurious substance; but the articles of food being sub-standard, were only technically adulterated under cl. (1) of s. 2 (i) of the Act. In these premises, counsel maintains, the acquittal should not be converted into a conviction. Reliance has been placed on this Court's dicta in Food Inspector Calicut Corporation's case (1) and M/s. Bhagwan Das Jagdish Chander v. Delhi Administration and anr.(2) in support of this contention.

Although this last contention is not wholly devoid of force, we find it difficult to accept it because the High Court has not recorded any finding on the merits of these cases. It has maintained the acquittal merely on the ground that the transaction in question did not amount to "sale" of article of food within the meaning of the Food Adulteration Act. The case would therefore have to go back to the High Court for deciding the appeals on merits.

Accordingly, we allow these appeals, set aside the judgment of the High Court and remit the cases to it with a direction to dispose them of in accordance with law. It would be open to the respondents to urge before the High Court all the contentions which are available to them. Since the cases are quite old, the High Court will dispose them of with utmost expedition.

P.B.R. Appeals allowed.