

21. Before parting with this judgment, it deserves passing reference that Mr. R. L. Batta, learned counsel for the petitioners in C.W. No. 2038 of 1976 had half-heartedly challenged the levy of the market fee over and above Rs. 1.50 P. per hundred rupees but had to fairly concede that the matter stood concluded against him by the Full Bench judgment reported as *Kewal Krishan Puri and another v. The State of Punjab and others* (10).

S. C. Mital, J.—I agree.

N.K.S.

Before S. S. Sandhawalia, Chief Justice & S. C. Mital, J.

GIAN CHAND,—Petitioner.

versus

THE STATE OF PUNJAB,—Respondent.

Criminal Revision No. 662 of 1974.

November 7, 1978.

*Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 7, 10 and 16(1) (b)—Prevention of Food Adultration Rules 1955—Rule 22—Punjab Hydrogenated Oil Dealers Licensing Order 1967—Clauses 8 and 10—License prohibiting sale of article of food below the prescribed quantity by a wholesale dealer—Food Inspector requiring wholesale dealer to sell article of food less than such quantity—Refusal by such dealer on the ground that sale was in violation of the terms of his license—Such refusal—Whether amounts to preventing the Food Inspector from taking sample—Proviso to clause 10 of the Licensing Order—Whether a sufficient protection to the licensee.*

**Held**, that section 10 of the Prevention of Food Adulteration Act 1954 confers powers on the Food Inspector to take sample of any article of food from the persons specified therein. This statutory power cannot be easily whittled down by the plea that the accused being a wholesaler could not sell quantity of an article of food less than prescribed in his license to the Food Inspector. Otherwise, the

(10) AIR 1977 Pb. & Haryana 347.

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obvious result would be that a wholesale dealer may by and large evade giving sample of an article of food. The word 'prevent' does not in any way connote or necessitate a physical obstruction or threat or assault. If the determined refusal by a seller to give a sample in actual practice effectually hinders the Food Inspector to take a sample from a person selling the same, then the inevitable legal consequence of such refusal is necessarily to prevent the Food Inspector to exercise his powers within the meaning of the Act.

(Paras 4 and 8).

*Held*, that the proviso to clause 10 of the Punjab Hydrogenated Oil Dealers Licensing Order 1967 appears to give against any proposed action, ample protection to a wholesale dealer, who may be technically said to have violated the term of the licence by selling quantity of an article of food less than prescribed in the licence to the Food Inspector.

(Para 3).

State v. Badri Prasad 1960 All L.J. 100 Dissented From:

*Case referred by Hon'ble Mr. Justice A. S. Bains on the 14th March, 1978 to a larger bench for a decision of a important question of law involved in the case. The Division Bench consisting of Hon'ble the Chief Justice Mr. S. S. Sandhawalia and Hon'ble Mr. Justice S. C. Mital finally decided the case on 7th November, 1978.*

*Petition u/s. 16(1) (a) read with Section 7 of Punjab Food Adulteration Act for the revision of the order of the Court of Shri Hardial Singh, Judicial Magistrate 1st Class, Jullundur dated 25th March, 1974 holding that reasons recorded in the judgment and from the statement of Food Inspector that there is a prime facie case against the accused and charges framed under Section 16(1) (a) read with section 7 P.F.A. Act, and prevention to take the sample is also an offence.*

Munishwar Puri, Advocate, for the Petitioner.

Bachhittar Singh, Advocate, for the State.

JUDGMENT

**S. C. Mital, J.—**

1. Gian Chand, a whole-sale dealer in the vegetable oils, has been charged under section 16(1)(b) read with section 7 of the Prevention of Food Adulteration Act for preventing the Food Inspector from taking sample of vegetable ghee. Relying on *State v. Badri Prasad, Prop. Hardeo Sahai Mangatram*, (1), Gian

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Chand has assailed the said charge by filing this revision petition. The view expressed by the Division Bench of the Allahabad High Court did not find favour with the learned Single Judge, hence, this reference to a larger Bench.

2. The salient facts are that Dr. Tejinder Singh, exercising the powers of the Food Inspector, visited the shop of Gian Chand and served notice Ex. PA on him for taking  $1\frac{1}{2}$  kilos of vegetable *ghee* as sample. Gian Chand refused to sign the notice on the plea that he, being a whole-sale dealer, was prohibited by the terms of his licence from selling any quantity less than 2 tins, weighing  $16\frac{1}{2}$  kilograms each. Rule 22 of the Prevention of Food Adulteration Rules, 1955 prescribes the approximate quantity of *ghee* to be sent to the Public Analyst. The fact that the sample containing 500 grams of the *ghee* was required to be sent by the Food Inspector to the Public Analyst is not disputed before us. Under section 11 of the Act, 3 samples of 500 grams each were to be taken. Accordingly the Food Inspector asked for  $1\frac{1}{2}$  kilograms of *ghee*.

3. As laid down by the Supreme Court in *Mangaldas Raghavji Ruparal v. State of Maharashtra*, (2) the Act gives special definition of 'sale' under section 2(xii), which specifically includes within its ambit a sale for analysis. In this view of the matter, it was urged that Gian Chand would have been guilty of contravening the terms of his licence if he had acceded to the demand of the Food Inspector and that Gian Chand was within his right, to insist upon the sale of 2 tins of *ghee*, weighing 33 kilograms to the Food Inspector. A reference in this regard was made to the provisions of the Punjab Hydrogenated Oil Dealers Licensing Order, 1967 (hereinafter referred to as the Licensing Order), read with section 7 of the Essential Commodities Act, 1955 and it was urged that the direction issued under clause 8 of the Licensing Order prohibited Gian Chand from selling quantity of *ghee* less than 2 tins (33 kilograms). Clause 10 of the Licensing Order provides that no holder of a licence shall contravene any of the terms or conditions of licence and in the event of contravention of any term, without prejudice to any other action that may be taken against the licensee,

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his licence may be cancelled or suspended by the Licensing Authority. But the proviso to clause 10 reads:—

“Provided that no order shall be made under this clause unless the licensee has been given the reasonable opportunity of stating his case against the proposed cancellation or suspension.”

It would be seen that the proviso appears to give ample protection to a whole-sale dealer, who may be technically said to have violated the term of the licence by selling quantity or an article of food less than prescribed in the licence, to the Food Inspector.

4. Section 10 of the Prevention of Food Adulteration Act confers powers on the Food Inspector to take sample of any article of food from the persons specified therein. This statutory power cannot be easily whittled down by the plea of the sort taken by Gian Chand. Otherwise, the obvious result would be that a whole-sale dealer may by and large evade giving sample of an article of food.

5. Adverting now to *Badri Prasad* case, it is significant that the attention of the learned Judges of the Allahabad High Court was not drawn to any provision of law like the proviso to clause 10 of the Licensing Order enacted by the State of Punjab. On the other hand, the case put forward before them was that *Badri Prasad* being a whole-sale dealer, could not, according to the conditions of his licence, legally sell mustard-oil for a quantity less than one tin. If he had done so, the Food Inspector categorically stated that *Badri Prasad* would have been challaned by the Food Inspector under section 7 of the Essential Commodities Act. In this situation, the learned Judges observed that there was a trap laid for *Badri Prasad*. Besides the learned Judges were very much influenced by the provisions of sub-section (4) of section 10 of the Prevention of Food Adulteration Act which is in the following terms:—

“If any article intended for food appears to any Food Inspector to be adulterated or misbranded, he may seize and carry away or keep in the safe custody of the vendor such article in order that it may be dealt with as hereinafter provided and he shall, in either case, take a sample of such article and submit the same for analysis to a Public Analyst.”

But the attention of the learned Judges was not drawn to the provisions of section 11 of the Act, relating to taking of samples. When read in the context of section 10(4), sub-section 4 to section 11 requires that an article of food seized under section 10(4), unless destroyed under section 10(4A), shall be produced before a Magistrate as soon as possible and in any case not later than 7 days after the receipt of the report of the Public Analyst. In order to complete the scheme of seizure of article of food under section 10(4), it is now necessary to reproduce sub-section (5) (a) of section 11 of the Act which lays down:—

- (5) If it appears to the Magistrate on taking such evidence as may deem necessary:—
- (a) that the article of food produced before him under sub-section (4) is adulterated or mis-branded, he may order it:—
- (i) to be forfeited to the Central Government, the State Government or the local authority, as the case may be; or
  - (ii) to be so destroyed at the cost of the owner or the person from whom it was seized so to prevent its being used as human food; or
  - (iii) to be disposed of as to prevent its being again exposed for sale or used for food under its deceptive name; or
  - (iv) to be returned to the owner, on his executing a bond with or without sureties, for being sold under its appropriate name or, where the Magistrate is satisfied that the article of food is capable of being made to conform to prescribed standard for human consumption after the reprocessing for being sold after reprocessing under the supervision of such officer as may be specified in the order;

6. In view of the above, the learned counsel for Gian Chand was unable to show how the object of taking sample by the Food Inspector could be served by having recourse to the provisions of

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section 10(4) of the Act. That being so, with due respect, I find it exceedingly difficult to agree with the Allahabad view in *Badri Parsad's case*.

7. The learned counsel for Gian Chand then pressed into service *R. J. Gujar v. Jamnadas Gopalji and another* (3). In that case, the Food Inspector asked for a sample of 450 grams of 'Anik Ghee', but the accused offered to sell sealed tin, weighting 2 kilograms. In the proceedings launched under section 16(1)(b) of the Act, the accused pleaded that he had purchased the *ghee* with a written warranty in the prescribed form from the manufacturer, therefore, he was entitled to insist on the sale of the sealed tin of *ghee* to the Food Inspector. The learned Judge expressed the view that section 10 dealing with the powers of the Food Inspector could not be construed as to deprive the accused of the statutory defence under section 19(2) of the Act. It need hardly be said that at this stage of the present case, the ruling under consideration cannot be made applicable, for the simple reason that the plea of Gian Chand before us is that the term or condition of his licence did not permit him to sell 1½ kilogram of *ghee* asked for by the Food Inspector.

8. The meaning of the word 'prevent' occurring in section 16(1)(c) and (d) of the Act was considered in depth by Division Bench of this Court in *Krishan Lal etc. v. State of Haryana*, (4). S. S. Sandhawalia, J., now the Hon'ble Chief Justice, speaking for the Bench, observed that the word 'prevent' does not in any way connote or necessitate a physical obstruction or threat or assault. Where a seller slips away and evades to participate in the necessary proceedings, the Food Inspector is obviously prevented from taking sample in accordance with the law. It was further held that if the determined refusal by a seller to give a sample in actual practice effectually hinders the Food Inspector to take a sample from a person selling the same, then the inevitable legal consequence of such refusal is necessarily to prevent the Food Inspector to exercise his powers in accordance with the said provision of law. Having regard to the ratio of *Krishan Lal's case*, the learned counsel for Gian Chand did not contend that the refusal to give sample of the *ghee* did not amount to prevent the Food Inspector from taking a sample thereof.

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(3) A.I.R. 1970 Bombay 135.

(4) 1978 P.L.R. 533.

On the other hand, the refusal to give the sample was sought to be justified on the ground discussed above.

9. Gian Chand having failed to make out a case for quashing the impugned charge, his revision petition is hereby dismissed. The trial Court to proceed with the case according to law. The dismissal of this petition shall in no way prejudice Gian Chand with respect to any other valid defence open to him.

S. S. Sandhwalia, C.J.—I agree.

N.K.S.

*Before B. S. Dhillon and S. S. Dewan, JJ.*

DHARAM PAL ETC.,—*Petitioners.*

*versus*

STATE OF PUNJAB and another,—*Respondents.*

*Civil Writ Petition No. 258 of 1975.*

November 9, 1978.

*Punjab New Mandi Townships (Development and Regulation) Act (2 of 1960)—Sections 3, 10, 12 and 13—Constitution of India 1950—Articles 14 and 19(1) (f)—Section 13—Whether ultra vires Articles 14 and 19(1) (f).*

*Held*, that it is plain from the provisions of the Punjab New Mandi Townships (Development and Regulation) Act, 1960 that the unpaid portion of the consideration money shall be first charge on the site or the building. The transferee, after the said charge is satisfied, is entitled to sell, mortgage or otherwise transfer any right, title or interest in the site or building. A charge is created for the unpaid portion of the consideration money and the prohibition against sale, mortgage or transfer by the transferee of any right, title or interest in the site is only upto that point upto which the charge of property regarding the remaining sale consideration price is not satisfied. The statute speaks of payment of consideration money due to the Government. If the Government is the owner, the Government cannot at the same time be entitled to a charge on the property for the balance of the consideration money. A charge on the property is under the Transfer of Property Act enforced by instituting a suit