

Before S. S. Sandhawalia and J. M. Tandon, JJ.

KRISHAN LAL AND OTHERS—Petitioners

versus

STATE OF HARYANA—Respondent.

Criminal Misc. No. 3616-M of 1974

January 3, 1978.

Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 10, 11 and 16(1) (c)—Word 'Prevents' occurring in section 16(1) (c)—Meaning of—Seller slipping away on demand by Food Inspector to provide sample—Whether amounts to preventing the Food Inspector from taking a sample—Power to seize adulterated article under section 10(4)—Whether a substitute to the taking of a sample under section 10(1) (a).

Held that the plain and ordinary meaning of the word 'prevents' does not in any way connote or necessitate a physical obstruction or threat or assault. This word as used in section 16(1) (c) of the Prevention of Food Adulteration Act, 1954, is not to be construed in isolation and one cannot lose sight of the preceding and relevant provisions of sections 10 and 11 of the Act. An overall reading of these provisions makes it plain that both the presence and the participation of the seller in taking a sample under section 10(1) (a) (i) of the Act is essentially envisaged by the Act and the rules framed thereunder. Therefore, where a seller slips away and evades participation in the necessary proceedings, the Food Inspector is obviously prevented from taking the sample in accordance with the law. In the absence of the seller neither the price of the article can be tendered to him nor the notice required by law can be delivered or the signatures or the thumb impressions of the seller can be taken on the sealed samples. In such a situation the Food Inspector is effectually hindered from complying with the provisions of the Act or to put it in other words the taking of a sample from a person selling such an article is frustrated or circumvented. Applying the ordinary dictionary meaning, it follows that in such a situation the Food Inspector in fact and in law is prevented from taking a sample in accordance with the statutory provisions. Such a situation is identical where the seller though physically present determinedly refuses to participate, co-operate or comply with the mandate of the law.

(Paras 9 and 10)

Held that the power of seizure under section 10(4) of the Act and section 10(1)(a) of the Act are distinct and separate and lead to different legal results. The mere taking of samples subsequently from the seized articles is no substitute or equivalent of taking a sample in the mode prescribed from the seller of the article itself.

(Para 11)

Bishan Dass Telu Ram vs. The State A.I.R. 1957 Pb. 99 OVERRULED.

State of Gujrat vs. Laljibhai Chaturbhai, A.I.R. 1967, Gujrat 61.

DISSENTED FROM

Case referred by Hon'ble Mr. Justice S. S. Sandhawalía, on 19th February, 1975 to a Division Bench for decision of an important question of law involved in the case. The Division Bench consisting of Hon'ble Mr. Justice S. S. Sandhawalía and Hon'ble Mr. Justice J. M. Tandon finally decided the case on 3rd January, 1978 on merits.

Petition under section 482 Cr. P.C. praying that the charge framed by the respondent against the petitioners per order dated 27th August, 1974, Annexure P. 1, under section 16(1)(b) of the Prevention of Food Adulteration Act (No. XXXVII of 1954) be quashed and this petition be accepted.

It is further prayed that during the pendency of the petition in this Hon'ble Court further proceedings before the Judicial Magistrate 1st Class, Palwal may be stayed.

M. L. Sarin, Advocate, for the petitioner.

D. S. Bali, Advocate, for A.G. Haryana, for the respondents.

JUDGMENT

S. S. Sandhawalía, J.

(1) The precise connotation that should be placed on the word 'prevents' in section 16(1)(c) of the Prevention of Food Adulteration Act, 1954 is the significant question which arises for interpretation in this criminal miscellaneous application.

(2) The issue arises in this petition seeking to quash the institution of criminal proceedings against the three petitioners by the Food Inspector in the Court of the Judicial Magistrate, Palwal. In the complaint filed against them it was alleged that on 29th

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March, 1974, the petitioners were present on the premises of Messrs Gupta Ice Factory, Palwal and were in possession of ice candies for purposes of public sale when the complainant Food Inspector reached there. They informed him that the space and equipment for the manufacture of candies had been given over to a contractor and on the false pretence of calling him to the premises all the three of them slipped away from the factory one by one and neither returned thereto nor brought the alleged contractor thereat. On these allegations, the Food Inspector filed the impugned complaint against the petitioners levelling a charge against them of preventing him from taking a sample as authorised by the Act. The trial Magistrate,—*vide* a detailed order, dated the 27th of August, 1974 found a *prima facie* case made out from the complaint under section 16(1)(c) of the Act against the petitioners who framed a charge accordingly. The petitioners pleaded not guilty to the charge and claimed trial. However, the present petition was later instituted primarily on the ground that even accepting all the prosecution allegations as laid in the complaint to be true, no offence whatsoever is disclosed.

(3) The rather delicate question as to what amounts to preventing a Food Inspector from taking a sample in the present context must necessarily revolve round the relevant statutory provisions. Therefore, at the very outset these deserve notice *in extenso*.

“10. Powers of Food Inspectors.—(1) A Food Inspector shall have power—

(a) to take samples of any article 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;

* * * *

(4) 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):

* * * *

11. *Procedure to be followed by Food Inspectors.*—(1) When a Food Inspector takes a sample of food for analysis, he shall—

(a) give notice in writing then and there of his intention to have it so analysed to the person from whom he has taken the sample and to the person, if any, whose name, address and other particulars have been disclosed under section 14A ;

(b) except in special cases provided by rules under this Act, divide the sample then and there into three parts and mark and seal or fasten up each part in such a manner as its nature permits and take the signature or thumb-impression of the person from whom the sample has been taken in such place and in such manner as may be prescribed:

Provided that where such person refuses to sign or put his thumb-impression the Food Inspector shall call upon one or more witnesses and take his or their signatures or thumb-impressions, as the case may be, in lieu of the signature or thumb-impression of such person ;

* * * *

16. *Penalties.*—(1) Subject to the provisions of sub-section (1A), if any person—

* * * *

(c) prevents a Food Inspector from taking a sample as authorised by this Act; or

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(d) prevents a Food Inspector from exercising any other power conferred on him by or under this Act; or

* * * * *

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

(4) Now the primary contention of Mr. M. L. Sarin is that even accepting the prosecution case as laid, the mere slipping away from the factory premises by all the three petitioners on a false pretence, and thereby evading the proceedings under the Act does not amount to preventing the Food Inspector from taking a sample and is, therefore, not an offence under section 16. In the alternative, it was contended that the Food Inspector has the power under section 10(4) of seizing and carrying away the adulterated or misbranded food and taking samples therefrom and consequently it cannot be said that he was prevented from doing so.

(5) Reliance for the aforesaid stand was placed on a very short judgment of Raju, J., *State of Gujarat v. Laljibhai Chaturbhai* (1) wherein it was observed that in order to come within the ambit of mischief, there must be a physical obstruction or a threat or an assault and mere refusal to give a sample or merely leaving the premises would not amount to prevention. Reference was then made to the brief observations in *Bishan Dass Telu Ram v. State* (2) to the effect that mere refusal to give a sample does not amount to prevention which, however, need not have an element of physical obstruction, but would necessarily involve some act which hinders an Inspector from taking a sample.

(6) Before examining the argument aforesaid and the authorities relied upon, it has to be borne in mind herein that we are dealing with a statute directed against the commission of a serious anti-social crime. This aspect has been highlighted by Krishna Iyer, J.,

(1) A.I.R. 1967 Gujrat 61.

(2) A.I.R. 1957 Pb. 99.

speaking for the Court in *P. K. Tejani v. M. R. Danga* (3) in the following terms:

“The central concept of the statute is prevention of adulteration of food in the sombre background of escalating manoeuvres by profiteers who seek to draw dividends from the damage to the health of the people caused by trade in adulteration. The social sternness and wide sweep of the statute can be realised from the thought that an insidious boat that internally erodes the vitality of a nutritionally deficient nation is, in one sense, a greater menace than a visible army of aggression at our frontiers and so the police power of the State must reach out to protect the unsuspecting community with overpowering laws against those whose activities are a serious hazard to public health. And so a minimum jail term is fixed in the Act itself.”

(7) It is now a settled canon of construction that a word or phrase used in a statute must take necessarily its hue from the context in which it is used. Therefore, in interpreting the relevant provisions of the Food Adulteration Act, one must avoid, if possible, a construction which would frustrate or negate its basic purpose.

(8) Now in construing the word ‘prevents’ one must inevitably resort to its ordinary dictionary meaning because it cannot be classified as a term of art. In the Oxford English Dictionary one of the meanings ascribed to it is :

“To stop, keep, or hinder (a person or other agent) from doing something.

To frustrate, defeat, bring to nought, render void or nugatory.”

In the Webster’s Third New International Dictionary, the meaning given to it is :

“Frustrate, circumvent, to keep from happening or existing esp. by precautionary measures; hinder the progress, appearance or fulfillment of.”

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(9) It is manifest, therefore, that the plain and ordinary meaning of the word 'prevent' does not in any way connote or necessitate a physical obstruction or threat or assault. Therefore to induct, these as a necessary concomitant of prevention, appears to me as wholly unwarranted.

(10) Now the word 'prevents' as used in section 16(1)(c) and (d) is not to be construed in isolation and one cannot lose sight of the preceding and relevant provisions of sections 10 and 11 of the Act. It is evident from the afore-quoted provisions of section 10(1) that the Food Inspector is empowered to take samples from three classes of persons and the very first one is the person selling such an article. In the context of taking a sample from the seller, therefore, the procedure prescribed by sections 10 and 11 and the rules framed under the Act at once comes into play. Section 10(3) lays a statutory duty on the Food Inspector to pay to the seller the cost of the sample calculated at a rate at which the article is usually sold to the public. Clause (a) of sub-section (1) of section 11 makes it incumbent on the Food Inspector to give a notice in writing then and there to the person from whom he has taken the sample. Clause (b) then obliges the Food Inspector to divide the sample so taken into three parts and after marking and sealing the same to take the signatures or thumb-impression of the person from whom the sample has been taken in the manner prescribed. Rule 12 as amended of the Prevention of Food Adulteration Rules, 1955, lays down that when an Inspector takes a sample of an article for the purpose of analysis he shall give notice of his intention to do so in writing in form VI then and there to the person from whom he takes the sample. Form VI referred to above has in terms been laid out in appendix 'A' to the Prevention of Food Adulteration Rules, 1955. An overall reading of the aforesaid provision, therefore, makes it plain that both the presence and the participation of the seller in taking a sample under section 10(1)(a)(i) is essentially envisaged by the Act and the Rules framed thereunder. Therefore, where a seller slips away and evades to participate in the necessary proceedings, the Food Inspector is obviously prevented from taking the sample in accordance with the law. In the absence of the seller neither the price of the article can be tendered to him nor the notice required by law can be delivered or the signatures or thumb-impressions of the seller can be taken on the sealed samples. It is, therefore, plain that in such a situation the Food Inspector is effectually hindered from complying with the

provisions of the Act or to put it in other words the taking of a sample from a person selling such an article is frustrated or circumvented. Applying the ordinary dictionary meaning, therefore, it follows that in such a situation, the Food Inspector in fact and in law is prevented from taking a sample in accordance with the statutory provisions. To my mind the situation would also be identical where the seller, though physically present, determinedly refuses to participate, co-operate or comply with the mandate of the law.

(11) One may now advert to the alternative argument that because of the power of seizure under section 10(4) of the Act, it cannot be said that refusal or withdrawal from the proceedings by the seller would prevent the taking of the sample. This argument, in my view, loses sight of the patent distinction between the taking of a sample from a seller under section 10(1)(a) and the mere seizure of adulterated or misbranded articles. The two things are distinct and separate and would lead to different legal results. The mere taking of samples subsequently from seized articles is no substitute or equivalent of taking a sample in the mode prescribed from the seller of the article itself. This is evident from this sub-section itself which indicates that the purpose of its seizure is to deal with it in accordance with the provisions of the succeeding sub-sections (4A) and (5) and section 11(4), (5) and (6) of the Act.

(12) Having dealt with the matter on principle, one may now advert to the admitted conflict of precedent on the point. A reference to the judgment in *Bishan Das Telu Ram's case* leaves no manner of doubt that the matter was not at all adequately canvassed before the learned Single Judge and was decided on first impression with a few short and cryptic observations. What has been said above applies with equal, if not with greater, force to the observations of Raju J., in *Lalji Bai Chaturbhai's case* (supra). In the latter judgment neither principle nor precedent has been cited for the rather sweeping observation that physical obstruction or a threat or assault is necessary to amount to prevention nor am I able to subscribe to the view that a determined refusal by the seller or his deliberate absconding from the premises would not come within the mischief of the offence. With respect, I must record my dissent with this view.

(13) Directly opposed to the view expounded in the aforesaid two judgments is a catena of authorities to the contrary. Virtually

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on all fours with the facts in the present case is the Division Bench judgment in *Municipal Board, Sambhal v. Jhamman Lal and another* (4) wherein it has been held that if the seller disappears from his shop he has done an overt act by means of which he made it impossible for the Food Inspector to obtain a sample from him and his act is within the mischief of section 16 of the Act. The alternative argument that the seizure under section 10(4) of the Act would be an adequate substitute has been also effectively repelled therein. *Bishan Das Telu Ram's case* (supra) was expressly noticed and dissented from and reliance instead was placed on *Public Prosecutor v. Murugesan* (5). Indeed the weight of precedent is entirely in consonance with the Allahabad view. In a considered judgment, the Division Bench in *District Board, Patna v. Sahu Sao* (6) held in categorical terms that a refusal by the seller to give a sample and to participate in the proceeding *per se* amounts to preventing the Food Inspector from taking a sample. Both *Bishan Das Telu Ram* and *Laljibhai Chaturbhai* cases were considered and not followed. A similar view has been taken by another Division Bench of the Gauhati High Court in *J. L. Roy v. Nepal Chandra Saha* (7).

(14) The learned Single Judge Reddy J., of the Andhra Pradesh High Court in *The Public Prosecutor v. Doredla Ramavva and another* (8) has held that 'prevents' only means 'to hinder effectually' from taking a sample and therefore, refusing to give the article demanded by a Food Inspector for inspection and locking the shop would amount to preventing him from taking samples and constitute an offence under section 16 of the Act. In this Court also a hint of dissent is discernible in the view taken by Pandit J., in *Gurjit Singh and another v. The State* (9).

(15) As against the weight of precedent aforesaid a discordant note has again been struck by the judgment in *Municipal Board appellant v. Maluk Dass Gupta and other respondents* (10), which has then been followed in *Municipal Council v. Mangilal* (1). In my

(4) A.I.R. 1961 All. 103.

(5) A.I.R. 1954 Mad. 199.

(6) A.I.R. 1971 Pat. 222.

(7) 1974 Cr.L.J. 576.

(8) 1973 Cr.L.J. 506.

(9) 1970 Cr.L.J. 1205.

(10) 1971 Cr.L.J. 705.

(11) 1975 Cr.L.J. 1728.

view the rationale of these authorities stands already adequately refuted by the considered judgments noticed above. Nevertheless, as the *Municipal Council Jaipur's case* is the last of the series brought to our notice in point of time its reasoning may be briefly yet critically examined.

(16) It appears to me that the main ground on which this case turns is that the words 'refusal' and 'prevent' have different shades of meaning because the underlying concept of refusal is to decline to do a certain thing by a person himself whereas the concept of prevention is to offer hindrance or obstruction of some kind to another. Now if the two words are viewed in isolation which primarily is an exercise in etymology then there can perhaps be no dispute with the proposition that the words 'refusal' and 'prevent' are not synonymous. However, herein we are more concerned to see the factual and the legal effect of a refusal by a seller or a consignee to give a sample in the particular context of the provisions of the Prevention of Food Adulteration Act and the rules framed thereunder. It is, therefore, that one does not find adequate justification or occasion to introduce and lay great store on the finer nuances of a shade of difference in the meaning of these two words when viewed in abstract. As I had occasion to observe earlier, a word in a statute is not to be construed as if in a vacuum and it necessarily takes its shade and hue from the context in which the same is placed. What we are concerned here are the factual consequences and the legal result which flows from such refusal. 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 as is provided by section 10(1)(a)(1) then the inevitable legal consequence of such refusal is to necessarily prevent the Food Inspector to exercise his powers in accordance with the said provision of the statute. This legal result is in my view clearly within the mischief of the word 'prevent' as used in section 16(1)(c) and (d).

(17) Another reason for arriving at the conclusion given in the said judgment is that the interpretation herein was of a penal statute and the words thereof must be construed strictly in preference to a liberal construction. This observation seems to lose sight of the anti-social nature of the crime against which the Prevention of Food Adulteration Act is directed. This has been earlier highlighted by me in the picturesque words of Krishna Iyer, J. Authorities now are not indeed lacking on the point that in construing statutes

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directed against economic and anti-social offences a meaning and content must be given to the words therein which advances the general interest of the society rather than one which hinders the larger purpose of the statute. Therefore, I am of the view that in interpreting the statute of the nature of the Prevention of Food Adulteration Act a technical and if I may say so with respect, a doctrinaire approach has necessarily to be avoided.

(18) It has been noticed even in this very case that sometimes accompanied by the requisite conduct and demeanour an act of refusal may amount to prevention under this statute. If that be so then how is one to determine the particular conduct and the special demeanour which would enhance a supposedly innocuous positive refusal to a punishable prevention under the Act ? With respect I say that such vague and ethereal notions introduce uncertainties and ambiguities in the law and its application, which if possible, should well be avoided.

(19) It has then been observed in this judgment, that if some refusal or conduct on the part of the seller makes it impossible for the Food Inspector to obtain the sample in exercise of his powers under section 10(1) of the Act then the same may amount to prevention. What exactly is the quantum of refusal or the nature of the conduct which in most cases would be deemed to render it 'impossible' to take a sample ? Such considerations again would tend to introduce abstruse imponderables in a provision directed to hit forcefully against a crime insidiously eroding the well-being of the society as a whole.

(20) If the view enunciated in the aforesaid two judgments were to be acceded to then it would obviously entitle a seller, conveyer or consignee of adulterated food to determinedly refuse to give a sample, when asked for, and to take his chance for the better. It deserves recalling that Food Inspectors under the Act are not clothed with any police powers nor in practice are they invariably in command of adequate force (if at all they have any authority to use it) in order to compel compliance by a recalcitrant adulterator of foodstuffs. Therefore, the legal consequence of such interpretation would entitle all these persons to coolly withdraw or abscond from the place or premises when asked to give a sample leaving the Food Inspector in the lurch. It has to be borne in mind that in the absence of the seller, conveyer or consignee, samples may perhaps

be taken but they would not strictly be samples of articles of food visualised under section 10(1)(a)(i), (ii) and (iii). Difficulties of establishing the ownership, origin, and on whom the liability for the adulteration is to fall in cases of samples taken in the absence of such persons is too plain to call for elaboration. With respect I opine that the view that a determined refusal by a seller, conveyer or consignee to give a sample or deliberate or evasive withdrawal from the place does not amount to prevention would in effect tend to erode the basic purpose and objects of the statute. I would, therefore, record my respectful dissent from such proposition.

(21) In the light of the above mentioned discussion, I hold both on principle and precedent that *Bishan Das Telu Ram's case* has wrongly been decided and would hereby overrule the same.

(22) The plea on behalf of the petitioner that on the prosecution allegation itself, no offence is made out is thus untenable and is hereby rejected. The petition is dismissed and the case is sent back to the trial Court for expeditious disposal.

K.T.S

REVISIONAL CIVIL

Before Harbans Lal, J.

J. S. ARORA (DR.)—(J. D.)—Petitioner.

versus

J. S. ARORA (PROF.) AND ANOTHER—(D. H.)—Respondents.

Civil Revision No. 1056 of 1977

March 27, 1978.

East Punjab Urban Rent Restriction Act (III of 1949) as amended by the East Punjab Urban Rent Restriction (Chandigarh Amendment) Ordinance (14 of 1976)—Sections 13, 13-A, 15, 17 and 18-B—Order of eviction passed during the operation of the Ordinance—Ordinance lapsing by efflux of time—Eviction order—Whether becomes inexecutable after the lapse—Order under section 13-A—Whether can be deemed to be an order under section 13.