

(10) Before we answer the two questions on the basis of our aforesaid discussion, one matter deserves to be kept in view. After raising objections, the Income Tax Officer gave opportunity to the assessee and within the prescribed period of one month, the corrections was not made. The correction was sought to be made after the expiry of the period and the Income Tax Officer declined registration also on the ground that correction was made beyond the prescribed period and the prayer for correction was not signed by the authorised representative. Once come to the conclusion that the application for registration was in order, the question of directing the assessee to remove the defects, did not arise and consequently the question of making the correction within time or by an authorised representative also did not arise. We are proceeding to decide this matter on the basis of the original application ignoring the application in which the defects were removed because the assessee is entitled to succeed on the basis of its original application. If the assessee was not to succeed on the basis of its original application, then the other question may have arisen for consideration.

(11) In view of the above, we answer both the questions in the affirmative, in favour of the assessee and against the revenue. The assessee will have its costs from the revenue.

S. C. K.

Before S. S. Kang and N. C. Jain, JJ.

AMARJIT SINGH,—Appellant

versus

STATE OF PUNJAB,—Respondent.

Criminal Appeal No. 213—SB of 1985.

July 18, 1988.

Punjab Milk Products Control Order, 1966—Essential Commodities Act (X of 1955)—Ss. 3 and 7—Control order banning manufacture and sale of milk products during the period April, 15 to July, 15—Violation of Control Order—Offence committed during the period of ban—Whether prosecution can be continued thereafter—Nature of Punjab Control Order—Whether a temporary measure—Distinction between Punjab Control Order and Haryana Control Order—Stated.

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Held, that Punjab Milk Products Control Order, 1966 is not a temporary statutory measure. It was made in 1966 and though amended in 1968 on a particular aspect, it is in operation even today and has remained so throughout. It has not been framed for a specific period. It was intended to remain in force. This mischief which is sought to be remedied is perennial. It did not arise all of a sudden and did not, therefore, require a temporary solution. Because of the factors like hot weather, scarcity of green-fodder, depletion of clean water and such other factors, the supplies of milk in the hot weather spanning the period from April, 15 to July, 15 substantially decreases every year and to meet the situation the Control Order has been framed. It cannot be plausibly argued that the Control Order is a temporary measure. With the onset of monsoon in mid July, weather does not remain dry and that not, green fodder become available in abundance. The yield of milk in the milch cattle also appreciably increases resulting in improved supply and availability of the fluid milk. It is no longer necessary to regulate the supply and distribution of fluid milk. The penal provisions of the Control Order are not enforced for the period from 16th of July to the 14th of April of the next year. This however, does not mean that the Control Order does not remain on the Statute book. Since June 9, 1966 when it was framed, Control Order is on the statute book. It has never ceased to be operative except for the specified period. Because the manufacture of specified items of food out of milk or its products is prohibited for a particular period, it does not render the Control Order a temporary measure. Since the Control Order has continued to be operative since 1966, it cannot be urged that the prosecution is launched after its expiry. In fact, it has not expired. Hence, it has to be held that prosecution can be continued.

(Para 6).

Held, that a perusal of sub-clause (3) of clause 1 and opening lines of Clause 2 which are underlined of the Control Order and sub-clause (3) of clause 1 of the Haryana Control Order makes it manifest that the two statutory provisions are substantially different, whereas there is no time-frame enacted on the period of operation of the Control Order, the Haryana Control Order is enacted every year and it comes into force from 5th of day of May and ceases to be operative on the expiry of the 31st day of July. The Haryana Control Order is clearly a temporary measure.

(Para 8).

These are two connected appeals Crl. A. No. 206-SB/87 and Crl. A. No. 212-SB/87.

CrI. Appeal No. 206-SB/87 was referred to a larger Bench by Hon'ble Mr. Justice I. S. Tiwana on 27th February, 1987 for decision of question of law involved in those cases. Under orders dated 19th May, 1988 of Hon'ble the Chief Justice these appeals were

listed before a Division Bench consisting of Hon'ble Mr. Justice S. S. Kang and Hon'ble Mr. Justice N. C. Jain who decided both the appeals on 18th July, 1988.

Appeal against the order of the Court of Shri S. S. Sohal Special Judge, Patiala, dated 28th March, 1985 convicting and sentencing the appellants:—

Charges & Sentences:—Amarjit Singh to under R.I., for one year and to pay a fine of Rs. 500 or in default of payment of fine further R.I. for 2 months under section 7 of the Essential Commodities Act.

S. C. Sibal, Advocate, for the appellant.

G. S. Bains, D.A.G., Punjab, for the respondents.

JUDGMENT

Sukhdev Singh Kang, J.

(1) Whether the provisions of the Punjab Milk Products Control Order, 1966 (hereinafter referred to as "the Control Order") are a temporary statutory measure and for that reason the trial and the resultant conviction of the appellants in the two criminal appeals (Criminal Appeal No. 212-SB of 1985, *Amarjit Singh vs. State of Punjab* and Criminal Appeal No. 206-SB of 1985, *Surjeet Singh v. State of Punjab*) under section 7 of the Essential Commodities Act, 1955 (for short 'the Act') for violation of the provisions of the Control order is illegal and invalid, are the two related questions raised in these appeals and these have been referred by the learned Single Judge for decision by a larger Bench because he noticed a cleavage in the judicial opinion as articulated in *Suresh Kumar v. State of Haryana* (1) and *Ishar Dass and another v. The State* (2). A broad brush factual backdrop would help delineate contours of the forensic controversy.

(2) On 18th June, 1983, Atma Singh, Dairy Extension Officer, Nabha, visited Patiala to check up whether the provisions of the Control Order were complied with. He directed Hardev Singh, driver of his jeep, to go to the premises of New Chawla Dairy situated in Anardana Chowk, and to find out if cream was being sold there.

(1) 1987 P.L.R. 104.

(2) CrI. Rev. 677 of 1977 decided on May 9, 1980.

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Hardev Singh returned and informed Atma Singh that cream was on sale. On this, Atma Singh along with Hardev Singh raided the aforesaid dairy and found Amarjit Singh present there. A bucket containing cream was lying there. On enquiry made by Atma Singh, Amarjit Singh told him that the bucket contained curd. Since Atma Singh had a strong suspicion that the contents of the bucket were cream and not curd, he took three samples of 250 grams each from the bucket and sealed them and got the signatures of the accused on each of the sample. The sample bottles were sent to the Public Analyst, Punjab, Chandigarh, for his opinion. On receipt of the report of the Public Analyst that the sample contained cream. Atma Singh lodged a complaint with the police on 10th November, 1983. A case was registered under section 7 of the Essential Commodities Act. The accused appellant was challaned. He was tried by the learned Special Judge. The prosecution examined Hargobind Singh (PW 1), Public Analyst, Punjab, Chandigarh, who deposed that the sample analysed by him was cream. Atma Singh appeared as P.W. 5 and has supported the above mentioned story. He was corroborated by Hardev Singh (P.W. 6). Raghbir Singh (P.W. 2), Atma Ram (P.W. 3) and Gurlal Singh (P.W. 4) are the police officers who had investigated the case. Their evidence is of formal nature and need not be recounted. Appellant Amarjit Singh in his statement under section 313 of the Code of Criminal Procedure denied the prosecution allegations and stated that he had no connection whatsoever with New Chawla Dairy, Patiala and he is doing business of bakery in his own premises at some distance from this dairy. Learned Special Judge accepted the prosecution evidence and held that the prosecution had established the guilt of the accused beyond reasonable doubt, convicted him under section 7 of the Act and sentenced him to undergo R.I. for two months. Aggrieved, he filed the present appeal.

(3) At the threshold, we may read the relevant provisions of the Control Order.

“1. Short title, extent and commencement :

- (1) This Order may be called the Punjab Milk Products Control Order, 1966.
- (2) It extends to the whole of the State of Punjab.
- (3) It shall come into force on 13th June, 1966.

2. Prohibition of the manufacture, sale, service or supply of milk products :—

No person shall—

- (a) use milk of any kind for the manufacture of cream, casein, skimmed milk, khoa, rubree, paneer or any kind of sweets in the preparation of which milk or any of its products except ghee is an ingredient; or
- (b) sell, serve or supply or cause to be sold, served or supplied any cream, casein, skimmed milk, khoa, rubree, paneer or any kind of sweets in the preparation of which milk or any of its products except ghee is an ingredient :

Provided that nothing in this clause shall apply to the use of milk—

- (i) for the manufacture of paneer intended to be used in curries ;
- (ii) for the manufacture, sale, service or supply of ice-cream, kulfi or kulfa in the preparation of which no khoa, rubree or cream is used;
- (iii) for the manufacture, sale, service or supply of such milk products as the Milk Commissioner may, having regard to the needs of the Defence Forces, by an order, permit;
- (iv) by such milk factories engaged in the processing of milk for consumption in fluid form, for the manufacture of condensed milk, milk-powder, baby food or any other such product, as are permitted to do so by the Milk Commissioner, and no such permission shall be granted, unless the Milk Commissioner is satisfied that the daily intake of such factory is not less than six thousand litres;
- (v) for the manufacture, sale, service or supply of khoa, rubree or any sweets in the preparation of which

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milk or any of its products except ghee is an ingredient on such occasions and subject to such terms and conditions as the Milk Commissioner may, by order, specify in this behalf".

The Control Order was amended on January 3, 1968 by Punjab Milk Products Control (First Amendment) Order, 1968. It is set down below :—

"(2) In the Punjab Milk Products Control Order, 1966, in clause 2, after the words "No person", the following words shall be inserted, namely:—

"every year during the period from the 15th April to the 15th July."

After the amendment, clause 2, reads as under :—

"2. *No person, every year during the period from the 15th April to the 15th July, shall—*

- (a) use milk of any kind for the manufacture of cream, casein, skimmed milk, khoa, rubree, paneer or any kind of sweets in the preparation of which milk or any of its products except ghee is an ingredient; or
- (b) sell, serve or supply or cause to be sold, served or supplied any cream, casein, skimmed milk, khoa, rubree, paneer or any kind of sweets in the preparation of which milk or any of its products except ghee is an ingredient ;

(4) In order to maintain the increase of supplies and distribution in the Punjab of milk in fluid form, a commodity essential to the life of the community, the Control Order was made in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955, read with the Government of India, Ministry of Food and Agriculture Order dated June 28, 1961. The concurrence of the Central Government had been obtained for this purpose. Milk in the fluid is a commodity which is essential to the life of the community. Demand for milk is not seasonal. It is needed by the

people throughout the year. To ensure the regular uninterrupted and adequate supply and distribution of the milk in the fluid form, the Control Order was framed and enforced. It seems that in due course of time the supplies of the milk in fluid form has improved for better part of the year. Still due to hot and dry weather, paucity of green fodder and other similar factors the supplies of fluid milk dwindled in the summer months especially for the period from April 15 to July 15. Every year this is a lean period so far as the production of milk is concerned. Therefore, clause 2 of the Control Order was amended and the restrictions and the prohibitions contained therein were confined to the period from 15th April to 15th July of every year.

(5) The learned counsel for the petitioner has argued that the Control Order is a temporary statutory measure. It is enforced every year on 15th of April and expires on 15th of July of that year and it ceased to have any effect thereafter till the 15th of April of the next following year and any person accused of violating or contravening the provisions of the Control Order must be prosecuted, convicted and punished before 15th of July of that particular year in which the offence is alleged to have been committed. Even if any proceedings are taken against a person for violation of the provisions of the Control Order and the same are not completed by 15th of July of that year, they shall *ipso facto* come to an end of that day. Inspiration for this argument seems to have been drawn from a passage appearing at page 409 of "Craies on Statute Law" 7th Edition which reads as under:—

"Expiration : As a general rule, and unless it contains some special provision to the contrary, after a temporary Act has expired, no proceedings can be taken upon it, and it ceases to have any further effect. Therefore, offences committed against temporary Acts must be prosecuted and punished before the Act expires, and as soon as the Act expires any proceedings which are being taken against a person will *ipso facto* terminated."

In support of his contention, Mr. Sibal relied upon the decision of the final Court in *State of Uttar Pradesh v. Seth Jagmandar Das* (3). Our pointed attention is drawn to the following passage in the judgment :—

"When a Statute is repealed or comes to an automatic and by efflux of time, no prosecution for acts done during the

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continuance of the repealed or expired Act can be commenced after the date of its repeal or expiry because that would amount to the enforcement of a repealed or a dead Act. In cases of repeal of statutes this rule stands modified by Section 6 of the General Clauses Act. An expiring Act, however, is not governed by the rule enunciated in that section."

The learned counsel has also referred us to *M/s. Rawala Corporation (P.) Ltd. and another v. The Director of Enforcement, New Delhi*, (4), wherein similar view as in *Seth Jagmandar Dass's case* (supra) has been taken. The principles enunciated by Craies applied by the final Court in the above-mentioned two decisions are not attracted to the Control Order.

(6) The Control Order is not a temporary statutory measure. It was made in 1966 and though amended in 1968 on a particular aspect, it is in operation even today and has remained so throughout. It had not been framed for a specific period. It was intended to remain in force. The mischief which is sought to be remedied is perennial. It did not arise all of a sudden and did not, therefore, require a temporary solution. Because of the factors like hot weather, scarcity of green-fodder, depletion of clean water and such other factors, the supplies of milk in the hot weather spanning the period from April 15 to July 15 substantially decreases every year and to meet the situation the Control Order has been framed. It cannot be plausibly argued that the Control Order is a temporary measure. With the onset of monsoon in mid July, weather does not remain dry and that hot, green fodder become available in abundance. The yield of milk in the milch cattle also appreciably increases resulting in improved supply and availability of the fluid milk. It is no longer necessary to regulate the supply and distribution of fluid milk. The penal provisions of the Control Order are not enforced for the period from 16th of July to the 14th of April of the next year. This, however, does not mean that the Control Order does not remain on the Statute book. Since June 9, 1966 when it was framed, Control Order is on the statute book. It has never ceased to be operative except for the specified period. Because the manufacture of specified items of food out of milk or its products is prohibited for a particular period, it does not render the Control Order

(4) A.I.R. 1970 S.C. 494.

a temporary measure. Since the Control Order has continued to be operative since 1966, it cannot be urged that the prosecution is launched after its expiry. In fact, it has not expired.

(7) The decisions in *Suresh Kumar's case* and *Ishar Das's case* (supra) have not been rendered in relation to the provisions of the Control Order. Both the cases arose out of the provisions of the Haryana Milk Products Control Order (for short, Haryana Control Order). The provisions therein regarding the enforcement and the period of operation and cessation are materially different from the provisions of the Control Order. In order to appreciate the difference between the provisions in the two Control Orders, it will be apposite to juxtapose them.

*Sub-Clause (3) of Clause 1 of
Haryana Control Order*

*Sub-Clause (3) of Clause 1
of Control Order*

"It shall come into force from 5th day of May, 1984 and shall cease to be operative at the expiry of the 31st day of July, 1984, except as regards things done or omitted to be done before such cession of operation".

"It shall come into force on 13th June, 1966."

(8) A perusal of sub-clause (3) of clause 1 and opening lines of clause 2 which are underlined of the Control Order and sub-clause (3) of clause 1 of the Haryana Control Order makes it manifest that the two statutory provisions are substantially different, whereas there is no time-frame is enacted on the period of operation of the Control Order, the Haryana Control Order is enacted every year and it comes into force from 5th of day of May and ceases to be operative on the expiry of the 31st day of July. The Haryana Control Order is clearly a temporary measure. That is why the principles enunciated in *Seth Jagmandar Das's case* and *Rawala Corporation's case* (supra) were applied to a prosecution under the Haryana Control Order in *Suresh Kumar's case* (supra). Since in the present case, the provisions of the Haryana Control Order are not applicable and the State of Haryana is not represented before us, we think it will not be appropriate to express any opinion on their legality and constitutional validity and to endeavour to resolve the conflict between *Suresh Kumar's case* and *Ishar Dass's case* (supra).

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(9) In the result, we held that the Control Order is not a temporary measure and answer the question posed in the beginning of the judgment in the negative,

(10) Now reverting to the merits, the case of the prosecution as disclosed in the F.I.R. is that on June 18, 1983 Atma Singh, Dairy Extension Officer, went to New Chawla Dairy, Patiala. Amarjit Singh, appellant, had kept a bucket of cream inside the shop. When Atma Singh asked him (Amarjit Singh) as to what was in the bucket, Amarjit Singh, replied that there was curd in the bucket. On this Atma Singh took three samples. There is nothing to suggest that the cream was kept for sale. While appearing as a witness also, Atma Singh has not stated that the accused had sold the cream to anybody or that he was willing to sell cream to Atma Singh. When Atma Singh asked as to what was in the bucket, Amarjit Singh stated that it was curd. Even while taking sample, Atma Singh did not make any payment to Amarjit Singh. In other words, he did not purchase the cream. Hardev Singh had only, in a general manner, stated that Amarjit Singh had stated that cream was available at the rate of Rs. 22 per kilogram. This seems to be a clear improvement. The other witness had not deposed about this aspect of the case. There is no cogent evidence on the file that Amarjit Singh had any connection with this dairy or the bucket of the cream lying in the dairy. Neither the licence of the dairy nor any records therefrom were taken into possession to establish that Amarjit Singh had any connection with this dairy. No witness of the locality has been examined to establish this fact. Amarjit Singh has clearly and categorically denied that he had anything to do with this dairy or cream lying in the bucket. Furthermore, it was stated by the witness that 4-5 other persons were also present. Brother of Amarjit Singh was also present. It has not been stated by the witnesses as to why they picked up Amarjit Singh out of these persons and made him liable.

(11) It was argued by the learned State counsel that Amarjit Singh had used milk for the manufacture of cream and in any case cream was found present in the dairy and this suggested that milk had been used by Amarjit Singh for manufacture of cream. We are not impressed by this argument. No witness has stated that Amarjit Singh had used milk for the manufacture of cream. Atma Singh and Hardev Singh, of course, have tried to improve upon their statements by stating that a cream separating machine and

20 kilograms of milk was found present in the back room. However, these facts were not mentioned in the F.I.R. which had been lodged after about 5 months of the incident. So the statements of the witnesses regarding the presence of the milk and the milk separating machine cannot be accepted. There is no evidence to hold that Amarjit Singh had used milk in the preparation of cream.

(12) From a bare reading of clause 2 *ibid*, it is apparent that mere possession of cream is no offence. Only using milk for manufacturing the cream, or the sale, serving, supply of cream and other milk products had been prohibited. There is no prohibition on the mere possession of the cream.

(13) The case of Surjit Singh is also similar. It is also alleged that on 10th June, 1983 Atma Singh, Dairy Extension Officer, Nabha, along with Narinder Kumar Sharma, Assistant Dairy Extension Officer, raided the business premises of Punjab Dairy, Anardana Chowk, Patiala. Surjit Singh was present there. He was found cleaning the cream separating machine at that time. The cream was also found lying there in a container and three samples were taken which were found to contain cream. There is no evidence that Surjit Singh had used milk in the preparation of the cream. It is quite possible that the cream might have been prepared by someone else. The mere fact that Surjit Singh was cleaning the cream separating machine will not lead to irresistible conclusion that he used milk in preparation of the cream. No milk was found there. In the case of Surjit Singh, there is another flaw. No case was registered against Surjit Singh. He has been challaned only on the basis of the F.I.R. registered against Amarjit Singh referred to in the earlier part of the judgment. That related to a separate premises. The two have no connection whatsoever.

(14) In the result, we find that the prosecution has not been able to establish its case against Amarjit Singh and Surjit Singh appellants. We allow their appeals and set aside their convictions and sentences and acquit them. Fine, if recovered from Surjit Singh be repaid to him.