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the learned Prescribed Authority be upheld. His reason is that if the approach of the learned Prescribed Authority is correct, it comes to this, that if the Returning Officer had not made the mistake in invalidating the four ballot-papers in favour of respondent 1 this respondent must have been elected, and on discovery of the mistake by the learned Prescribed Authority, the same result must follow. This logic cannot prevail against the express words of the statute under which on the setting aside of election the only course provided is a fresh election and not declaration of election of a defeated candidate. I do not consider that without express statutory enactment that in certain circumstances a defeated candidate may be declared elected, an authority hearing an election petition has any such power on consideration of the type of arguments that have been urged by the learned counsel. In any case, in the present case, the question does not arise because of the approach to the case as above.

In consequence this petition is accepted and the order of the Prescribed Authority, respondent 2, dated January 2, 1962, setting aside the election of the petitioner is quashed. In this petition the parties are left to bear their own costs.

Shamsher Bahadur, J.

SHAMSHER BAHADUR, J.—I agree.

B.R.T.

APPELLATE CRIMINAL

Before S. B. Capoor and R. P. Khosla, JJ.

THE STATE,—*Appellant*

versus

MOTI RAM AND ANOTHER,—*Respondents*

Criminal Appeal No. 750 of 1961.

1962

August, 1st.

Prevention of Food Adulteration Act (XXXVII of (1954)—S. 20—Food Inspector duly authorised by State

Government—Whether can institute prosecution without consent of State Government—Food Inspector himself filing the complaint—Whether should formally record sanction to prosecute.

Held, that the prosecution to be valid under the Prevention of Food Adulteration Act, 1954, has either to be launched by or with the written consent of the following:—

(1) The State Government; or

(2) a local authority; or

(3) a person authorised in this behalf by the State Government; or

(4) a person authorised in this behalf by a local authority.

If anyone of the above itself institutes the prosecution, obviously no question of there being additional written consent of any other authority or person can arise. A contrary interpretation would be reading the word "and" instead of "or" between the words "except by" and "with the written consent of".

Held, that when the Food Inspector has himself instituted the prosecutions (as he was admittedly authorised to do), it would be not only redundant but absurd for him to add that he gave sanction to the instituting of that particular prosecution.

Held, that the Food Inspector who was authorised by the State Govenment to file the complaint, had himself to consider the reasonableness and propriety of the prosecution, and this requirement must be deemed to have been fulfilled when he chose to file the complaint.

Appeal from the order of Shri A. S. Gilani, Magistrate, 1st Class, Simla, dated the 27th April, 1961, acquitting the respondents.

K. L. JAGGA, ASSISTANT ADVOCATE-GENERAL, for the Appellant.

D. D. JAIN, ADVOCATE, for the Respondents.

JUDGMENT

Capoor, J.

CAPOOR, J.—These are 55 appeals by the State directed against the orders of acquittal in respect of offences under sub-clause (1) of clause (a) of sub-section (1) of section 16 of the Prevention of Food Adulteration Act, 1954 (Act No. 37 of 1954), hereinafter to be referred to as the Act. They involve a common point as to the interpretation of section 20 of the Act and it will, therefore, be convenient to dispose of all of them in the course of this judgment.

Criminal Appeals Nos. 754 to 763, 767, 769 to 793 of 1961 challenge the order of acquittal made by Shri A.S. Gilani, Magistrate First Class, Simla, dated the 27th April, 1961; Nos. 829 to 834 of 1961 impugn the order of the same Magistrate in a number of cases decided by him on the 4th May, 1961, which was identical to those in the earlier set of cases decided by him. On behalf of the accused persons a preliminary objection had been made to the effect that the prosecution was vitiated in law because the terms of sub-section (1) of section 20 of the Act were not complied with. Criminal Appeals Nos. 1081 and 1082 of 1961 *State* v. *Babu Ram* and *State* v. *Partap Singh* arise, respectively, from the two judgments *Babu Ram* v. *State* and *Partap Singh* v. *State*, decided by Shri E.F. Barlow, Sessions Judge, Bhatinda, on the 18th July, 1961, whereby he accepted the appeals of convicts. They had taken a similar preliminary objection as to the prosecutions not being in compliance with the terms of sub-section (1) of section 20 of the Act and the learned Sessions Judge on the basis of *City Corporation of Trivandrum* v. *V. P. N. Arunachalam Reddiar and another* (1), upheld this preliminary objection and set aside the conviction and sentence of the accused persons. Criminal Appeals Nos.

(1) A.I.R. 1960 Kerala 356.

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1187, 1199, 1201 to 1209 of 1961 arise from the order dated the 15th July, 1961, of Shri A. P. Chaudhry, Magistrate First Class, Bhatinda, in a number of criminal cases in which on the basis of the same authority he accepted the preliminary objection advanced on behalf of the accused persons and dismissed the complaints.

In each of these cases, the complaints under sub-clause (i) of clause (a) of sub-section (1) of section 16 of the Act had been filed by a Food Inspector for the local area concerned. It is not disputed that each of these Food Inpectors was authorised under sub-section (1) of section 20 of the Act by the State Government to institute prosecutions for offences under the Act. Each of these complaints, after giving a reference to the notification of the Punjab Government whereby the Food Inspector was so authorised for the relevant local area, went on to give a brief recital of the facts, the nature of the adulteration and the substance of the offence committed and ended with the prayer that the accused be dealt with in accordance with law.

Sub-section (1) of section 20 of the Act, so far as it is relevant for the present purpose, is as follows:—

> "No prosecution for an offence under this Act shall be instituted except by, or with the written consent of, the State Government or a local authority or a person authorised in this behalf by the State Government or a local authority."

Since it is not denied that the Food Inspector was in each case duly authorised by the State Government to launch prosecutions for offences under the Act, the terms of the statute would apear to have been fulfilled. The argument which has

found favour with the Courts below in the impugned judgments seems to be that the written consent of the State Government or delegation by the State Government to the Food Inspector must relate to each particular case. This argument, however, proceeds upon erroneous reading of the statute and upon misconception as to the exact scope of the judgment in *City Corporation of Trivandrum* v. *V. P. N. Arunachalam Reddiar and another* (1), The prosecution to be valid under the Act has either to be launched by or with the written consent of the following:—

(1) The State Government, or

(2) a local authority, or

(3) a person authorised in this behalf by the State Government, or

(4) a person authorised in this behalf by a local authority.

If anyone of the above itself institutes the prosecution, obviously no question of there being additional written consent of any other authority or person can arise. A contrary interpretation would be reading the word "and" instead of "or" between the words "except by" and "with the written consent of".

In the case cited as *City Corporation of Trivandrum* v. *V. P. N. Arunachalam Reddiar and another* (1), the prosecution under the Act had been instituted by the Food Inspector of the Trivandrum Corporation. The sanction upon which the prosecution relied was a general authority conferred by the Commissioner of the Corporation on the Food Inspector to prosecute all persons who might be found to have been committing offences under the Act. There was no proof that the Commissioner of the Corporation had been authorised by the State

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Government or the local authority to issue any such sanction, and obviously, therefore, there was no compliance with the requirements of sub-section (1) of section 20 of the Act. The learned Judges, after coming to this conclusion, observed that even otherwise the authority purported to be conferred by the sanction relied upon was couched in vague and general terms, and they added that the sanction required by section 20 was not an empty formality and must show that the authority giving the sanction had applied his mind to the alleged commission of an offence by the accused person and was satisfied that the accused had to be prosecuted for the said offence, and that the conferring of an authority or giving the sanction in such vague and and general terms was not sufficient compliance with section 20 of the Act.

The above case was discussed and explained by a learned Single Judge of the same Court in *Municipal Health Officer and Food Inspector, Kozhikode* v. *Arthala Tea Estate Co.* (2). A complaint in this case was laid by a Food Inspector, and all Food Inspectors had been generally authorised by the State Government of Kerala to institute prosecutions for offences under the Act. The learned Judge held that sub-section (1) of section 20 enabled general delegation of the power given to the State Government and local authorities, and the words "authorised in this behalf" meant the authority to institute or give consent to institute a prosecution for an offence under the Act, in other words, to exercise the power conferred on the State Government and local authorities. He further held that the use of the words "an offence" in the opening part of the section would not justify the interpretation that authorisation must be in respect of

(2) A.I.R. 1961 Kerala 84.

each particular offence; such a restrictive interpretation would defeat the very object of the section which was to enable the State Government and the local authority to appoint some other person to exercise on their behalf the discretion vested in them. If the State Government or the local authorities had to consider each particular case and determine whether a prosecution should be launched or not, there would be no point at all in conferring on them the power to delegate, and, moreover, the section would become altogether unworkable having regard to the large number of offences that are committed. Adverting to the former authority *City Corporation of Trivandrum* v. *V. P. N. Arunachalam Reddiar and another* (1), the learned Judge commented that the question whether the section permitted the State Government or a local authority to make a general delegation, did not arise for decision and was not decided in that case.

The latter case from the Kerala High Court *Municipal Health Officer and Food Inspector, Kozhikode* v. *Arthala Tea Estate Co.* (2), was not cited before the Courts at Bhatinda and though Mr. A. S. Gilani, Magistrate First Class, Simla, has mentioned this case, he has not understood its real purport.

The earlier decision of the Kerala Court *City Corporation of Trivandrum* v. *V. P. N. Arunachalam Reddiar and another* (1), was also considered by Falshaw J. (as he then was) in *Gurnam Singh* v. *The State* (Criminal Revision No. 999 of 1961 decided on the 21st November, 1961), and it was observed as follows:—

> "With due respect it seems that this decision is based on a misunderstanding of the purport of the section which has been

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interpreted by the learned Judges as if the words "by or with the written consent of the State Government . . ." were "by and with the written consent of the State Government . . . ." In my opinion the written consent is only necessary where the prosecution is being instituted by some person who has not already been given powers to institute such prosecutions. The learned counsel for the petitioner was quite right in suggesting that it would be meaningless for a person authorised to institute prosecutions under the Act to give himself written consent to institute a particular prosecution, but in my opinion as far as persons who have been duly delegated with authority to institute prosecutions under the Act are concerned, the section can be read as if the words "or with the written consent of" were omitted altogether, and what the section means in my opinion is that the prosecution must be instituted either by some person duly authorised with delegated power or else by some person not so authorised but with the written consent of an authorised person."

With respect, I entirely agree with these observations. Mr. D. D. Jain, arguing on behalf of some of the respondents to these appeals, went to the length of saying that the prosecution in these cases would have been perfectly valid if the Food Inspector concerned in addition to mentioning the facts, as he has done in the complaints, went on to add that he had considered the facts of each particular case and considered it an appropriate one for giving sanction for prosecution. This argument is only to be stated in order to be rejected. When

the Food Inspector has himself instituted the prosecutions (as he was admittedly authorised to do), it would be not only redundant but absurd for him to add that he gave sanction to the instituting of that particular prosecution.

The learned counsel for the respondents relied, as did Mr. Gilani, Magistrate First Class, on certain observations made by the learned Judges of the Supreme Court in *State of Bombay (now Gujrat)* v. *Parshottam Kanaiyalal* (3). These observations are as follows:—

> "To read by implication that before granting a written consent, the authority competent to initiate a prosecution should apply its mind to the facts of the case and satisfy itself that a *prima facie* case exists for the alleged offender being put up before a Court appears reasonable."

These observations have, however, been considered without the context. In the case giving rise to that appeal the prosecution had been filed on the basis of a written consent granted for the specific case by the Chief Officer, Baroda Municipality, who had been authorised by the Baroda Municipal Borough under sub-section (1) of section 20 of the Act to grant sanction for the filing of the complaints in regard to the offences under the Act. The consent did not specify the name of the complainant. The complaint was filed by the Food Inspector of the Municipality and the question arose whether it was necessary under the statute that the name of the complainant should have been specified in the consent. This question was answered by their Lordships of the Supreme Court in the negative and it was held that the prosecution was instituted on a complaint which fulfilled the

(3) A.I.R. 1961 S.C. 1 at pages 3 and 4.

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requirements of sub-section (1) of section 20 of the Act. Analysing the statute, the learned Judges observed that "the sub-section itself contains an indication that the written consent is for the launching of a specified prosecution, and not one 'in favour' of a complainant authorising him to file the complaint. Omitting for the moment 'the State Government' and 'the local authority' which are specified in the provision as competent by themselves to initiate prosecutions, persons 'authorised by' these two authorities are further included. The expression 'person authorised in this behalf' obviously refers to a named person who is so authorised. In the case of these four categories, the authority or person filing the complaint has itself or himself to consider the reasonableness and propriety of the prosecution and be satisfied that the prosecution is not frivolous and is called for. Turning next to the other class, the relevant words are 'no prosecution . . . shall be instituted except . . . with the written consent of' . . . Here the emphasis is on the consent to the filing of the prosecution, not to the person filing it. These observations contain to my mind a complete answer to the argument put forward on behalf of the respondents. In the cases before us no question of any written consent arises. The Food Inspector who was authorised by the State Government to file the complaint, had himself to consider the reasonableness and propriety of the prosecution, and this requirement must be deemed to have been fulfilled when he chose to file the complaint.

In view of this pronouncement by the Supreme Court it is unnecessary to consider the case *Jiwan Dass* v. *Rabin Sen and others* (4), which was relied upon by the learned Judges of the Kerala Court in *City Corporation of Trivandrum* v. *V. P. N. Arunachalam Reddiar and another* (1). That was

(4) A.I.R. 1956 Cal. 64.

a case relating to the interpretation of Section 34 of the Industrial Disputes Act, 1947, which is differently worded from section 20 of the Act under consideration.

In the end, learned counsel for the respondents referred to sub-section (4) of section 495 of the Code of Criminal Procedure, which is as follows:—

> "An officer of police shall not be permitted to conduct the prosecution if he has taken any part in the investigation into the offence with respect to which the accused is being prosecuted."

It was urged that the Food Inspector, who took part in the investigation of the case, should not be allowed to conduct it in Court. This question does not, however, arise before us at this stage, and accordingly we express no opinion on it.

The conclusion, therefore, is that the Courts below in the impugned decisions went wrong in holding the prosecutions to be vitiated for non-compliance with the provisions of sub-section (1) of section 20 of the Act. Each of these appeals is allowed and the order of acquittal of each of the respondents set aside. The appeals giving rise to Criminal Appeals Nos. 1081 and 1082 of 1961 of this Court must now be decided on merits by the Sessions Judge, Bhatinda, and the parties are directed to appear in his Court for further hearing of the appeals on the 3rd September, 1962. Similarly, the Criminal cases giving rise to the remaining appeals will have to be decided on merits by the Magistrates concerned before whom the parties are directed to appear on the 3rd September, 1962, for further proceedings.

R. P. KHOSLA,—I agree.

R. P. Khosla, J.

R.S.