

Surinder Singh v. State of Punjab (Ujagar Singh, J.)

and it would be unthinkable that the State Government would be paying running grade to some Masters and denying the same to other Masters, who were identically situated.

(14) There is no denying the justness of the proposition enunciated by their Lordships.

(15) Such a situation is not going to arise in the present case in view of the decisions cited on behalf of the petitioners, because the effect of the said decisions is only this that in regard to the petitioners who had filed those petitions, the State Government would hear them and then discontinue the payment of city compensatory allowance. Unlike the *Tilak Raj's case* (supra), those decisions have not acquired the cast iron mould.

(16) We will direct the State Government to comply with the formality of hearing in regard to the petitioners of those cases and take an immediate decision, particularly in regard to such employees to whom the payment of city compensatory allowance was liable to be discontinued as a result of the later instructions dated 14th January, 1980 (Annexure R-3).

(17) For the reasons aforementioned, we find no merit in these petitions and dismiss the same *in limine*.

R.N.R.

Before Ujagar Singh, J.

SURINDER SINGH,—Petitioner.

versus

STATE OF PUNJAB,—Respondent.

Criminal Revision No. 631 of 1986

March 4, 1987.

Prevention of Food Adulteration Act (XXXVII of 1954)—Sections 7, 9, 16(1) (a)(i), 20(1)—Prevention of Food Adulteration Rules, 1958—Rule 3—Power to appoint Food Inspectors and authority to sanction prosecution under the Act delegated by the Central

Government to the Food (Health) Authority—Food Authority further delegating power to Food Inspectors to institute prosecution for offences under the Act—Sub-delegation of such power—Whether permissible—Proceedings based on complaints filed by such Food Inspectors—Whether liable to be quashed and the accused discharged.

Held, that the notification of the President of India delegating to the Food (Health) Authority the power of the State Government for appointing Food Inspectors and to authorise institution of prosecution for offences under the Prevention of Food Adulteration Act, 1954 and the Director, Food (Health) Authority further authorised the Food Inspectors to institute prosecution against persons committing offences under the Act it cannot be said that the State Government had authorised the Food Inspectors to institute prosecution. Hence it has to be held that the complaint filed by the Food Inspector on the basis of the authority sub delegated by the Director is bad in law as the Director was not competent to further delegate his powers to the Food Inspector. Consequently, the complaint from which the proceedings arise is without authority and is liable to be quashed and that the accused should be discharged.

(Paras 2 and 3).

Petition for revision under Section 401 of the Criminal Procedure Code against the order of the Court of Shri H. R. Nohria, Additional Chief Judicial Magistrate Patiala, dated 23rd April, 1986 charging Surinder Singh, petitioner, under section 16(1) (a)(1) of the Prevention of Food Adulteration Act.

Amarjit Markan, Advocate, for the Petitioner.

Nemo, for the Respondent.

JUDGMENT

Ujagar Singh, J.

(1) This Criminal revision has been filed against the order of the trial Court framing charge against the petitioner under Section 7 read with Section 16(1)(a) (i) of the Prevention of Food Adulteration Act. This revision was required to be filed before the Sessions Judge but in view of the very basis of prosecution being without authority, I have decided to dispose of this petition on the ground that the very launching of prosecution was bad and without authority and this will avoid unnecessary harassment to the petitioner.

Section 9 of the said Act provides—

“9. *Food Inspectors*—(1) The Central Government or the State Government may, by notification in the official

Surinder Singh v. State of Punjab (Ujagar Singh, J.)

Gazette, appoint such person as it thinks fit, having the prescribed qualifications to be food inspectors for such local areas as may be assigned to them by the Central Government or the State Government, as the case may be:

Provided that no person who has any financial interest in the manufacture, import or sale of any article of food shall be appointed to be a food inspector under this section.

- (2) Every food inspector shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code (45 of 1860) and shall be officially subordinate to such authority as the Government appointing him, may specify in this behalf."

This section shows that it is only the Central Government or the State Government to appoint persons having prescribed qualification to be Food Inspectors by notification in the official gazette. Section 20 of the said Act bars prosecution for an offence under the Act, not being an offence under Section 14 or Section 14-A except by, or with the written consent of, the Central Government or the State Government or a person authorised in this behalf by general or special order by the Central Government or the State Government or by a purchaser referred to in Section 12 of the Act producing a copy of the report of the public analyst along with his complaint.

(2) *Vide* notification No. 5575-2-HBII-68/29659, dated 10th October, 1968, the President of India delegated to the Food (Health) Authority powers of the State for appointment of Food Inspectors and to authorise it for instituting of prosecution for an offence under the Act. The notification is reproduced as under:—

"In pursuance of the provisions of rule 3 of the Prevention of Food Adulteration (Punjab) Rules, 1958, the President of India is pleased to delegate to the Food (Health) Authority also its powers of appointment of Food Inspectors and to authorise institution of prosecution for an offence under the Prevention of Food Adulteration Act, 1954".

Rule 3 of the Prevention of Food Adulteration (Punjab) Rules, 1958 empowers the State Government by an order in writing to delegate

its powers to appoint Food Inspectors, to authorise a person to institute prosecution for an offence under the Act and such other powers exercisable by it under the Act as may be specified in the order to the Food (Health) Authority of the State of Punjab. Section 20(1), 24(2)(e) and Rule 3 of the said Punjab Rules came up for consideration before their Lordships of the Supreme Court and it was held in *A. K. Roy and another v. State of Punjab and others* (1), that—

“A careful analysis of the language of Section 20(1) of the Act clearly shows that it inhibits institution of prosecution for an offence under the Act except on fulfilment of one or the other of the two conditions. Either the prosecutions must be instituted by the Central Government or the State Government or a person authorised in that behalf by the Central Government or the State Government, or the prosecutions should be instituted with the written consent of any of the four specified categories of authorities or persons. If either of these two conditions is satisfied, there would be sufficient authority for the institution of such a prosecution for an offence under the Act. The provision contained in Section 20(1) of the Act does not contemplate the institution of a prosecution by any person other than those designated. The terms of Section 20(1) do not envisage further delegation of powers by the person authorised, except that such prosecution may be instituted with the written consent of the Central Government or the State Government or the person authorised.”

(3) In the present case, the said notification of the year 1968 authorised only the Food (Health) Authority to exercise powers of the State Government for appointment of Food Inspectors and to authorise institution of prosecution for all offences under Prevention of Food Adulteration Act, 1954. It is not denied that the Director Health Services and Family Planning Punjab,—*vide* Notification No. E-IV-1-Punjab-73/1872, dated 9th March, 1973 appointed Sarvshri Tek Chand Goel, Dhani Ram, Som Parkash Chopra, Balwant Singh and Surjit Singh as Food Inspectors for the notified

(1) A.I.R. 1986 S.C. 2160.

Amar Nath Jain v. Ram Parkash Dhir (J. V. Gupta, J.)

areas of the district in which they were posted. The Director further authorised and said Food Inspectors to institute prosecution against the persons committing offence under the said Act, within the limits of their notified areas. The State Government had not authorised the Food Inspectors to institute the prosecution. This complaint has been filed by the Food Inspector on the basis of the authority delegated to him by the Director,—*vide* afore-mentioned notification of March 9, 1973. In view of the Supreme Court's dictum the Director was not competent to further delegate his powers to the Food Inspectors. The impugned complaint has, therefore, been filed against the petitioner by an incompetent person who had no authority to do so. Consequently the present complaint is without authority and I have no hesitation to quash the proceedings including the chargesheet based on this complaint. This criminal revision is accepted and the proceedings based on the complaint including the charge-sheet are held to be incompetent and unauthorised and as a consequence thereof the present petitioner is discharged.

R.N.R.

Before J. V. Gupta, J.

AMAR NATH JAIN,—*Petitioner.*

versus

RAM PARKASH DHIR,—*Respondent.*

Civil Revision No. 1113 of 1979.

March 6, 1987.

Specific Relief Act (XLVII of 1963)—Section 28—Decree for specific performance of contract—Amount deposited within stipulated period—Stay of execution on appeal—Withdrawal of amount