

CRIMINAL REFERENCE.

Before Panckridge J.

SHAILESHCHANDRA LAHIRI

v.

NEHALCHAND MARWARI.*

1931.

April 22.

Authorisation—Sanitary Inspector, if can be authorised by the chairman of a municipality to seize adulterated food—Sanitary Inspector so authorised, if a public servant—Health officer, when can be appointed by the chairman—Bengal Food Adulteration Act (Beng. VI of 1919), ss. 2(4), 10, 12, 21—Indian Penal Code (Act XLV of 1860), ss. 21, Expl. (2), 186.

The chairman alone of a municipality cannot authorise a Sanitary Inspector to exercise powers under sections 10 and 12 of the Bengal Food Adulteration Act and the resistance to seizure of adulterated food by an Inspector so authorised is no offence under section 21 of the Act. Such authorisation can only be done by the municipal commissioners, who are the local authority, as defined by section 2, sub-section (4). Section 44 of the Bengal Municipal Act has no application to such a case.

The chairman of a municipality has no power to appoint a health officer whose salary is more than rupees fifty a month.

A Sanitary Inspector, authorised under section 12 of the Bengal Food Adulteration Act by the chairman alone of a municipality, is nevertheless a public servant within the meaning of section 21 read with explanation 2 of the Indian Penal Code and the resistance to him is an offence under section 186 of the Code.

CRIMINAL REFERENCE under section 438 of the Code of Criminal Procedure.

The material facts appear from the judgment.

Sureshchandra Talukdar (with him *Surajit-chandra Lahiri*) for the accused, in support of the Reference. The complainant, who was only a Sanitary Inspector, had no right to inspect and examine the alleged adulterated oil. He was not duly authorised to exercise the powers under sections 10 and 12 of the Bengal Food Adulteration Act. He produced an order by the chairman of the municipality purporting to authorise him to exercise such powers. Such an order by the chairman was entirely without jurisdiction. Under the rules, it could only be done

*Criminal Reference, No. 9 of 1931, made by S. N. Modak, Sessions Judge of Nadia, dated Jan. 14, 1931.

by the entire body of municipal commissioners. It is conceded that there was no resolution of the commissioners to that effect. Read rule 5 and section 2, sub-section (4). It was also suggested that, at that time, he was acting as the Health Officer. The order of the chairman showed that he was merely directed to carry on the duties of a health officer. That was quite different from his appointment as a health officer. Moreover, the chairman had no authority to appoint any health officer. Read section 46, proviso of the Bengal Municipal Act. If the sanitary inspector had no authority either to inspect or seize articles, suspected to be adulterated, conviction under section 186 of the Indian Penal Code was also bad.

Debendranarayan Bhattacharya for the municipality, opposing the Reference. The authorisation of the Sanitary Inspector by the chairman was valid and operative. The Bengal Food Adulteration Act merely indicates the authority that can properly authorise a Sanitary Inspector. Here the chairman was purporting to act on behalf of the municipal commissioners. Under section 44 of the Bengal Municipal Act, he had the power to do so and his order was, therefore, a valid order. Moreover, the complainant was then acting temporarily as a health officer. Section 46, proviso, contemplates cases of permanent appointments. In case of emergency, the chairman has ample authority to appoint any one to act temporarily on behalf of the commissioners pending their final sanction. Otherwise the whole administration may break down suddenly. In any case, the Sanitary Inspector was a public servant, whatever may be defect in his appointment or authorization and any resistance to the discharge of his duties was an offence under section 186 of the Indian Penal Code. Read section 19 of the Bengal Food Adulteration Act and section 21, explanation 2 of the Indian Penal Code.

Talukdar, in reply. Explanation 2 to section 21 of the Indian Penal Code does not help the other side in the least. It is meant for cases of technical

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defects only. It does not apply where the appointing authority had no jurisdiction at all.

PANCKRIDGE J. This Reference, which has been made to this Court under section 438 of the Criminal Procedure Code by the learned Sessions Judge of Nadia, raises a point of some importance and interest. The accused, Nehalchand Marwari, was convicted by the Deputy Magistrate of Krishnagar of offering resistance and obstruction to an authorized person inspecting or examining food, believed to be adulterated, and thereby committing an offence under section 21 read with section 12 (2) of the Bengal Food Adulteration Act (Bengal Act VI of 1919). He was also convicted of an offence punishable under section 186 of the Indian Penal Code, namely, voluntarily obstructing a public servant in the discharge of his public functions.

The facts are that the accused person was in possession of certain tins of mustard oil. A Sanitary Inspector of the municipality seized the tins on the ground that their contents were adulterated. It is alleged, and the trying court has found, that the accused offered resistance to and obstructed the seizure.

The question, in respect of which the Reference is made, is whether the Sanitary Inspector was duly authorized to inspect and examine food alleged to be adulterated and, if that is answered in the negative, there is a further question whether he is a public servant within the meaning of the Indian Penal Code. By rules made under the Act by the Local Government, the powers exercisable under sections 10 and 12 can be exercised by the health officer or, when specially authorised by the local authority, the Sanitary Inspector. On the 11th July, 1927, the chairman of the municipality, which is in the circumstances of the case, the local authority for the purposes of the Act, purported to authorize the Sanitary Inspector to exercise the powers and to perform the duties mentioned in sections 10 and 12. By another order of the

20th July, 1930, also signed by the chairman, the Sanitary Inspector is directed to perform the duties of health officer until further orders. Both these orders were in existence in the sense that they had not been revoked or otherwise modified at the date of the alleged offence. With regard to the first order, that is to say, the order authorizing the Sanitary Inspector to perform the duties and exercise the powers mentioned in sections 10 and 12, it is pointed out that the order has to be made by the local authority. The local authority, in a case of municipality, is defined by section 2, sub-section (4) as the municipal commissioners. There is no power, under the Act, for the chairman of the municipality to act on behalf of the municipal commissioners and I am of opinion that the learned Sessions Judge is right in saying that, in his opinion, section 44 of the Bengal Municipal Act of 1884 is not applicable to the present case, because I do not think that the authorization of the Sanitary Inspector under the Food Adulteration Act can be described as a transaction connected with the Municipal Act, or an exercise of powers vested by the Municipal Act in the commissioners. I think, therefore, as far as the Food Adulteration Act is concerned, the Sanitary Inspector was not authorized in the manner provided by the Act.

It is suggested, on behalf of the prosecution, that, by virtue of the order of the 20th July, 1930, the Sanitary Inspector was a health officer within the meaning of rule 5. Again I agree with the Sessions Judge that he cannot be regarded as a health officer by reason of that order. The order does not purport to appoint him as an officiating health officer or a substantive health officer, but merely directs him to perform the duties of a health officer until further orders. Apart from that difficulty, however, it is not denied that the appointment of a health officer is an appointment falling within the proviso to section 46 of the Bengal Municipal Act, that is to say, an appointment to a post the salary of which is Rs. 50 per mensem or upwards. That being so, the chairman of

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the municipality has no power to make the appointment without the sanction of the commissioners at a meeting and it is not contended that any such sanction has been given. I am of opinion, therefore, that the conviction under section 21 of the Bengal Food Adulteration Act read with section 12 (2) of the same Act is bad and with regard to this the Reference was properly made by the learned Judge.

But that, however, does not conclude the matter and the learned judge, evidently, has taken the view that the conviction under the local Act and the conviction under the Indian Penal Code stand on the same footing. With that view I cannot agree. Under section 19 of the Food Adulteration Act, every person, authorized under section 12, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code. Explanation 2 to that section says: "Wherever the words 'public 'servant' occur, they shall be understood of every "person who is in actual possession of the situation "of a public servant, whatever legal defect there may "be in his right to hold that situation."

Now, it may be conceded that the sanitary inspector in this case was not in actual possession of the situation of a health officer, but it appears to me that he was undoubtedly in actual possession of the situation of a Sanitary Inspector, who had been authorized under rule 5 of the Rules in the Act. It may be that his authorization was defective, but in pursuance of the order of the chairman he had assumed and had been performing exactly the same duties as he would have assumed and performed if properly and validly appointed with the sanction of the municipal commissioners.

Mr. Talukdar, who appears in support of the Reference, has sought to distinguish between what he has described as a technical defect in an appointment and a defect which was occasioned by want of jurisdiction in the appointor to make the appointment. The explanation, however, does not speak of technical

defect; on the contrary it says "whatever legal defect "there may be in his right to hold that situation." I am of opinion that he was actually, on the date of the incidents in question, holding the situation of a public servant and for that reason, although the conviction under section 21 read with section 12 (2) of the Food Adulteration Act must be set aside, the conviction under section 186 of the Indian Penal Code must stand.

The Reference is accepted with regard to the first conviction and rejected as regards the second. I see no reason to interfere with the fine inflicted by the Deputy Magistrate and it will be treated as a fine imposed under section 186 of the Indian Penal Code.

Reference accepted in part.

A. C. R. C.

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