

**Rehaman and anr. Vs. the Corporation of the City of Nagpur and anr.**

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**Court :** Mumbai

**Decided On :** Feb-12-1970

**Reported in :** AIR1970Bom394; (1971)73BOMLR344; 1970CriLJ1436; 1970MhLJ618

**Judge :** Bhole, J.

**Acts :** [Prevention of Food Adulteration Act, 1954](#) - Sections 2, 7, 12, 16 and 20; City of Nagpur Corporation Act, 1948 - Sections 5(12), 6, 7, 9, 408, 409, 409(2) and 409(3); [General Clauses Act, 1897](#) - Sections 2(31) and 18; [Bengal Municipal Act, 1932](#); Companies Act - Sections 446; Bengal Municipal (Amendment) Act, 1954; Rajasthan Municipalities Act - Sections 295(5);

**Appeal No. :** Criminal Revn. Appln. No. 232 of 1969

**Appellant :** Rehaman and anr.

**Respondent :** The Corporation of the City of Nagpur and anr.

**Advocate for Def. :** C.S. Dharmadhikari, ;S.M. Hajarnavis, Advs. and ;M.M. Qazi, Asst. Govt. Pleader

**Advocate for Pet/Ap. :** B.V. Gaikwad, Adv.

**Judgement :**

ORDER

1. The two accused who are aggrieved by an order passed by the special Judicial Magistrate First Class (Corporation) Nagpur and whose order is confirmed by the Additional. Sessions Judge, Nagpur, have come here in revision.

2. Accused No. 1 is a servant of accused No. 2. They are being prosecuted for an offence punishable under Section 7(i) read with Section 16 of the [Prevention of Food Adulteration Act, 1954](#) (hereinafter referred to as 'the Food- Adulteration Act'). It is alleged that they were stocking as well as selling adulterated oil on 19-2-1968. The complaint was filed by the Municipal Secretary against the two accused on 4-10-1968. It is the case of the accused that the Nagpur Corporation had been superseded under Section 408 (i) of the City of Nagpur Corporation Act, 1948 in 1965 and that an Administrator had been appointed. At the time when this offence is alleged to have been committed the Administrator was in charge of the Administration of the City of Nagpur Municipal Corporation.. The case of the accused is that the Administrator's authority to the Municipal Secretary to prosecute the accused is neither valid nor proper. According to them it is only the Municipal Corporation that could permit the Municipal Secretary to prosecute the accused. It is, therefore, their plea' that the

Administrator cannot authorise the Municipal Secretary to prosecute the case. On the other hand the contention of the Corporation of the City of Nagpur is that the authorisation to the Municipal Secretary by the Administrator is quite legal and proper under the Food Adulteration-Act.

3. For the purposes of understanding the contention of the learned Advocate for the accused it is better to recite Section 20 of the Food Adulteration Act. Section 20 Of the Food Adulteration Act is as follows:-

'20.(1) No prosecution for an offence under this Act shall be instituted except by, or with the written consent of, the Central Government or the State Government or a local authority or a person authorised in this behalf, by general or special order, by the Central Government or the State Government or a local authority.

Provided that a prosecution for an offence under this Act- may be instituted by a purchaser referred to in Section 12, if he produces in Court a copy of the report of the public analyst along with the complaint.

(2) No Court inferior to that of a Presidency magistrate or a magistrate of the first class shall try any offence under this Act'.

It is, therefore, clear from Section 20 that a prosecution under the Food Adulteration Act has to be instituted only with the written consent of a local authority or a person authorised in this behalf, by general or special order by a local authority. We are not much concerned here with the consent either of the Central Government or the State Government. Section 2(viii) of the Food Adulteration Act defines 'Local authority' as follows:--

'local authority' means in the case of-

(1) a local area which is-

(a) a municipality, the municipal board or municipal corporation;

(b) a cantonment, the cantonment authority;

(c) a notified area, the notified area committee;

(2) any other local area, such authority as may be prescribed by the Central Government or the State Government under this Act'.

The 'local authority' is either a municipality, a cantonment or any other notified area. Reading, therefore, Section 20 along with Section 2 (viii) of the Food Adulteration Act, It is plain that no prosecution for an offence under the Act could be instituted except with the written consent of the local authority. The local authority may be a municipality or a cantonment or a notified area.

4. It is now the contention of the learned Advocate for the applicants that the prosecution could be therefore, only, with the consent of the local authority of Nagpur, It is argued by him that 'Municipal Corporation' Is the local authority and, therefore. It is only the 'Municipal Corporation' as contemplated in the Food Adulteration Act, that could give the consent, and nobody else. In this particular case

admittedly the Nagpur Corporation was superseded and an Administrator was appointed under the City of Nagpur Corporation Act. It is his contention therefore; that when the word 'Municipal Corporation' is used in the Food Adulteration Act this word must be construed to mean which was intended by the Parliament to it. He argues that the meaning of the words 'local authority' or 'Municipal Corporation' should not be gathered from the State Legislation. He relies for this proposition on a number of cases. One of the cases is, *Narasimha Iyengar v. Corporation of City of Bangalore* 1964 Mad LJ (Cri) 437 (Mys) which is noted in the yearly digest of the All India Reporter of August 1965. The reasoning given by the Mysore High Court in the judgment is naturally not given in this note but it is a case of consent given by the Commissioner and not by the Municipal Corporation. We are not concerned here with any particular officer of the existing Municipal Corporation but we are concerned here with the Administrator and a superseded Municipal Corporation.

5. He relies also on *District Board, Farrukhabad v. Prag Dutt* : AIR1948All382 , *Damodar Mukherjee v. Banwarilal Agarwalla*, : AIR1960Cal469 and *Ram Narain v. State of U. P.*, : [1956]1SCR664 for the proposition that the meanings of words and expressions used in an Act must take their colour from the context in which they appear and for the proposition that the same expression used in different Acts may not mean the same thing. It is on the basis of these propositions in the above cited cases, his contention is that it is no sound principle of construction to interpret expressions used in one Act with reference to their use in another Act. It is, therefore, his contention on the basis of the law laid down in the above cited cases by the different High Courts including our Supreme Court that it is not right to refer to or rely on the provisions of one statute in construing those of another, particularly when they are not in part materia. Accordingly, therefore, he argues that we have to construe the word 'local authority' or 'Municipal Corporation' according to the context of the Food Adulteration Act in which this word appears. He also does not want to refer to the State Legislation viz., the City of Nagpur Corporation Act, 1948, to find out what the local authority or Municipal Corporation is. Now their Lordships of the Supreme Court were dealing with a tax, on 'circumstances and property as referred to in the U. P. District Boards Act. The Allahabad High Court was also referring to the word 'circumstances' occurring to Bengal Municipal Act. The Calcutta High Court was construing the expression 'other legal proceeding' in Section 446 of the Companies Act. It is in the context of the facts of those cases that the Courts were construing those ordinary expressions used in the different enactments. It was, therefore, right and proper for those Courts to recapitulate the healthy proposition that for the purposes of construing expressions in one statute it is not right to refer or to rely on the provisions of the other statute. Here we are confronted with the word 'local authority' or 'Municipal Administration', How shall we construe this word ?, The learned Advocates for the applicants says that this word should be construed simpliciter as Municipal Corporation and nothing else.

6. The learned Advocate for the applicants also relies upon *State v. Parshot-tam*, AIR 1960 Bom 244. This High Court was dealing with the provisions of the [Prevention of Food Adulteration Act, 1954](#). They were considering a case of a written consent of the Chief Officer by a resolution of the Baroda Borough Municipality. The Borough Municipality had authorised the Chief Officer and the Health Officer, as per Section 20 of the [Prevention of Food Adulteration Act, 1954](#) to allow them to give permission to file complaints for the commission of offences under the said Act. The Chief Officer accorded sanction for prosecuting the accused by a letter. It was stated that under the authority vested in the Chief Officer of the Baroda Borough Municipality by a

resolution, sanction was given for instituting prosecution against the accused. The question, therefore, arose before this Court at that time in the above said circumstances- The question before the Court was whether the written consent or the sanction as it was described by the Chief Officer was a proper written consent authorising the Food Inspector to Institute the prosecution. In the context of the facts of that case, a written consent of the nature which was before them or a written consent without mentioning the person to whom such consent or sanction was 'given, was not considered to be a sufficient compliance with the terms of the sanction. That was a case where the consent did not name the person who should be the prosecutor. It was observed in that case that whereas in the case before the Court, certain special offences have been created in a special Act and where that special Act itself makes a further' provision as to who should be the prosecutors in regard to the offence specified in that Act, then a prosecution which does not conform to the provisions of that Act would be ' obviously without jurisdiction and it was not open to the complainant to say that the complaint had been filed in the exercise of his right under the common law, that it was not difficult to conceive of the complications that might arise If the written consent were not to specify and name the person as the prosecutor duly authorised to Institute the prosecution under Section 20. It was further observed that if the consent were not to name the person who is to be the prosecutor, and if the prosecution were undertaken, or instituted by any other person who is not named in that consent, then, it may well be that the local authority, or the person who has accorded such consent under the provision of Section 20 may not thereafter retain any control over such prosecution. According to the Court, therefore, a valid written consent, under Section 20 of the Food Adulteration Act would be a written consent which names a particular person as the person competent to institute the prosecution. It is in the context of those circumstances that this Court has mentioned in that judgment that 'where certain special offences have been created in a special Act, such as the Prevention of Food Adulteration Act, and where that special Act itself makes a further provision as to who should be the prosecutors in regard to the offences specified in that Act, then, a prosecution which does not conform to the provisions of that Act would be obviously without jurisdiction'. The learned Advocate for the applicants relies on the last- observation mentioned by me herein\_ above and says that our case also is on par with the facts and circumstances of that case and, therefore, these observations help him. We have seen how they, were made in a different context. I cannot therefore, accept this contention. It is true that there was an appeal against the decision of this Bombay case before the Supreme Court. The Supreme Court In *State of Bombay v. Parshottam Kanaiya-lal*, : [1961]1SCR458 have approved these observations but these observations as 1 have mentioned above, are in the context of quite another point that was being considered by this Court. I do not, therefore, think that this case also helps the accused.

7. The learned Assistant Government Pleader contends here that the word 'Municipal Corporation' should be construed as the word which was understood at the time when the Food Adulteration Act was passed. If we have to' deal with this expression, according to him, we will have to take the assistance of the City of Nagpur Corporation Act. He also relies upon the cases of the Calcutta High Court cited in *Rampada Majhi v. Nagandranath Chakravarty* 1968 Cri LJ 557 (Cal). That High Court was considering the provisions of Bengal Municipal Act (15 of 1932) (as amended by Act 21 of 1954) and the expression 'local authority' there. That was also a case where an administrator had been appointed on supersession of the Municipality, It was a case of a sanction for prosecution under Prevention of Food Adulteration Act granted by the Administrator. It was held by that Court that the Administrator appointed on

supersession of the Municipality is a 'local authority' within the meaning of Section 2(viii) of the Prevention of Food Adulteration Act for purposes of granting sanction under' the latter Act. That High Court relied also on a decision of the Rajasthan High Court cited in Gulab Chand v. State 1963 (2) Cri LJ 589 . It was also held by the Rajasthan High Court in that case that an administrator of a superseded Municipality is a 'local authority' within the meaning of Section 295(5) (b) of Rajasthan Municipalities Act and he has, therefore, the power under Section 20 to authorise any person to launch prosecution under the Prevention of Food Adulteration Act. With respect I agree with these propositions laid down by the two High Courts.

8. Moreover while construing the expression 'local authority' in the Central Act viz., the Prevention of Food Adulteration Act let us see what it means under the General Clauses Act. Under Section 2 (31) of the [General Clauses Act, 1897](#) the expression 'local authority' is defined: 'Local authority' shall mean, according to this definition a municipal committee, district board, body of 'port commissioners or other authority legally entitled to, or entrusted by the Government with, the control or management of a municipal or local fund. It can, therefore, be safely construed that the 'local authority' means- the Municipal Corporation of the City of Nagpur. Under Section 18 of the General Clauses Act there is a provision regarding the successors. Under this section, in any Central Act or Regulation made after 'the commencement of this Act, it shall be sufficient for the purpose of indicating the relation of a law to the successors of any functionaries or of corporations having perpetual succession, to express its relation to the functionaries or corporations. And the Administrator can easily be spelt out as the successor to the superseded Corporation.

9. Under Section 5(125 of the City of Nagpur Corporation Act, 1948 (hereinafter called the Corporation Act), the Corporation means the Municipal Corporation of the City of Nagpur constituted under Section 9. Section 9 provides the constitution of the Corporation. Under this section it is provided that the Corporation shall consist of such number of Councillors elected at ward elections as the State Government may from time to time by notification In the Official gazette fix. Under Section 6, the Municipal authorities charged with carrying out the provisions of the Act shall be, (a) the Corporation, (b) the Standing Committee and (c) the Chief Executive Officer. Under Section 7 the Corporation shall by the name of the Corporation of the City of Nagpur be a body corporate, and have perpetual succession and a common seal, and shall by that name sue and be sued. Therefore, the City of Nagpur Corporation is a body corporate and has a perpetual succession and a common seal. Section 408 of the Corporation Act deals with the power of Government to supersede Corporation In case of incompetency or default or excess or abuse of powers. Section 409 of that Act deals with the consequences of supersession. When the Corporation is superseded, all members of the Corporation shall, from the date of the notification, vacate their office; all powers and duties of the Corporation, Standing Committee and the Chief Executive Officer may, until the Corporation is reconstituted, be exercised, and performed by such person, as the State Government may appoint in that behalf, and the person so appointed shall be called the Administrator of the City and all property vested in the Corporation shall, until the Corporation is reconstituted vest in such person in trust for the purpose of the Corporation Act. It is also provided under Section 409(2) of the Corporation Act that the Administrator of the City shall be a Corporation sole and may sue and be sued in the name of 'The Administrator of the City'. Under sub-section (3) of Section 409 of the Corporation Act, the Administrator of the City shall be subject to the control of the State Government and such other person or persons as it may direct, and shall be subject also to all other restrictions,

limitations, and conditions imposed by this Act on the Corporation, the Standing Committee and the Chief Executive Officer. All these provisions, therefore, clearly show that the Corporation does not cease to exist. On the other hand the Corporation is a body corporate and has a perpetual succession. It, therefore, continues to exist even on its supersession, and all the powers and duties of the superseded Corporation are exercised by the Administrator under Section 409 of the Corporation Act. Therefore, it appears to me that an Administrator of a superseded municipality is also a local authority so far as the City of Municipal Corporation is concerned.

10. We would come to the same decision even by looking at this point from another angle. Even assuming that the Administrator succeeded the Municipal Corporation on its supersession, Section 18 of the [General Clauses Act, 1897](#), will be applicable and the Administrator must be held to be the local authority of the Municipal Corporation within the meaning of Section 2(viii) of the Food Adulteration Act. It would, therefore, be difficult for me to construe the word 'local authority' in any other way than the one above. It appears to me, therefore, that the order passed by the trial Court is quite legal and proper. Interim stay is vacated.

11. This application therefore is dismissed with costs.

12. Revision dismissed.

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