PETITIONER:
THE STATE OF BOMBAY

Vs.

RESPONDENT:
VIRKUMAR GULABCHAND SHAH

DATE OF JUDGMENT:
27/05/1952

BENCH:
FAZAL ALI, SAIYID
BENCH:
FAZAL ALI, SAIYID
BOSE, VIVIAN

CITATION:
1952 AIR 335 1952 SCR 877
CITATOR INFO :
D 1977 SC1027 (40)
RF 1981 SC1485 (17,18)
D 1982 SC 798 (10)
R 1983 SC1015 (5)
RF 1989 SC 644 (5)

ACT:
Essential Supplies (Temporary Powers) Act (XXIV of 1946), ss. 2(a), 17(2)--Spices (Forward Contracts Prohibition) Order,1946, cls. 2, 3--Turmeric, whether "foodstuff"--Meaning of "foodstuff".

HEADNOTE:
The term "foodstuff" is ambiguous. In one sense it has a narrow meaning and is limited to articles which are eaten as food for purposes of nutrition and nourishment and so would exclude condiments and spices such as yeast, salt, pepper, baking powder and turmeric. In a wider sense it includes everything that goes toto the preparation of food proper (as understood in the narrow sense) to make it more palatable and digestible. Whether the term is used in a particular statute in its wider or narrower sense cannot be answered in the abstract
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but must be answered with due regard to the background and context.
Turmeric is a "foodstuff" within the meaning of cl. (3) of the Spices (Forward Contract Prohibition) Order of 1944, read with s.2 (a)of the Essential Supplies (Temporary Powers) Act (XXIV of 1946). The said order of 1944 falls within the purview of s. 5 of Ordinance No. XVIII of 1946, which was later reenacted as Act XXIV of 1946, and it is equally saved by s. 17 (2) of the Act.
James v. Jones [1894] 1 Q.B. 304, Hinde v. Allmond (87 L.J. K.B. 893), Sainsbury v. Saunders (88 L.J.K.B. 441) referred to.

JUDGMENT:
CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 26 of 1950.

On appeal by special leave from the judgment and order dated the 13th November, 1950, of the High Court of Judicature at Bombay (Bavdekar and Dixit JJ.) in Criminal Appeal No. 712 of 1950, arising out of judgment dated the 14th August, 1950, of the Court of the Sessions Judge, South Satara, SangIi, in Criminal Appeal No. 85 of 1950 and Criminal Case No. 614 of 1950.

C.K. Daphtary, Solicitor-General of India (G. N. Joshi, with him) for the appellant.

B. Somayya (B. K.V. Naidu, with him)for the respondent.

1952. May 27. Fazl Ali and Bose JJ. delivered Judgment as follows:

FAZL ALI J. --I agree that the acquittal of the respondent should not be disturbed, and I also agree generally with the reasoning of my brother, Bose. The question whether turmeric is foodstuff is not entirely free from difficulty. In one sense, everything which enters into the composition of food so as to make it palatable may be described as 'foodstuff', but that word is commonly used with reference only to those articles which are eaten for their nutritive value and which form the principal ingredients of cooked or uncooked meal, such as wheat, rice, meat, fish, milk, bread, butter, etc. It seems to me desirable that the Act ShoUld be amended so as to expressly include

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within the definition of the somewhat elastic expression "foodstuff" turmeric and such other condiments as the Legislature intends to be treated as' such for achieving the objects in its view.

BOSE J.--The question in this case is whether turmeric is a "foodstuff" within the meaning of clause 3 of the Spices (Forward Contracts Prohibition) Order, 1944, read with section 2 (a) of the Essential Supplies (Temporary Powers) Act, 1946, (Act XXIV of 1946).

The respondent was charged with having contravened clause 3 of the Order of 1944 because he entered into a forward contract in turmeric at Sangli on the 18th of March, 1950, in contravention of clause 3 of the Order. He was convicted by the trial Court and sentenced to three months' simple imprisonment together with a fine of Rs. 1,000 and in default, a further three months. But he was acquitted on appeal by the Sessions Court. An appeal to the High Court against the acquittal failed.

The State of Bombay appeals here but makes it plain that it does not want to take any further steps against the respondent in this matter but merely wants to have the question of law decided as a test case as the judgment of the Bombay High Court will have far-reaching effects in the State of Bombay.

It will be necessary to trace the history of this legislation. In the year 1944 the then Central Government of India promulgated the Spices (Forward Contracts 'Prohibition) Order, 1944, under Rule 81 (2) of the Defence of India Rules. Clauses 2 and 3 read together prohibited forward contracts in any of the "spices" specified in the first column of the schedule to that Order. Among the articles listed in the schedule was turmeric. The conviction is under that Order and it is admitted that if that Order is still valid the conviction would be good.

The Defence of India Act was due to expire on the 30th of September, 1946, and with it the Spices Order of 1944. But before it expired an Ordinance called

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the Essential Supplies (Temporary Powers) Ordinance of 1946

was issued. This was Ordinance No. XVII of 1946. The object of the Ordinance, as set out in the preamble, was to provide for the control of what it called "essential commodities". It defined this to mean, among other things, "foodstuffs", and by a further definition "foodstuffs" was defined to include edible oilseeds and oils. Neither spices in general nor turmeric in particular were mentioned.

Section 5 of this Ordinance embodied a saving clause which saved certain Orders which would otherwise have expired along with the Defence of India Rules. The section ran as follows:

"Any order ..... made ..... under rule 81 (2) of the Defence of India Rules, in respect of any matters specified in section 3, which was in force immediately before the commencement of this Ordinance, shall, notwithstanding the expiration of the said Rules continue in force so far as consistent with th.is Ordinance and be deemed to be an order made under section 3."

The Ordinance was later replaced by the Act with which we are now concerned, the Essential Supplies (Temporary Powers) Act, 1946, (Act XXIV of 1946). The Act merely reproduces the language of the Ordinance in all material particulars and it is conceded that if the matter falls under the Ordinance it will also fall under the Act.

The appellant's contention is that turmeric is a foodstuff, therefore the Order of 1944 is saved. The respondent's contention is that turmeric is not a foodstuff. He contends that the Order of 1944 was limited to spices and. that turmeric was included in the term by reason of a special definition which specifically included it; and as the Act of 1946 and the Ordinance are limited to "foodstUffs" the Order of 1944 dealing with turmeric was not saved. The question therefore is, is turmeric a "foodstuff"?

Much learned judicial thought has been expended upon this problem--what is and what is not food and what is and what is not a foodstuff; and the only conclusion I can draw from a careful consideration of all

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the available material is that the term "foodstuff" is ambiguous. In one sense it has a narrow meaning and is limited to articles which are eaten as food for purposes of nutrition and nourishment and so would exclude condiments and spices such as yeast, salt, pepper, baking powder and turmeric. In a wider sense, it includes everything that goes into the preparation of food proper (as understood in the narrow sense) to make it more palatable and digestible. In my opinion, the problem posed cannot be answered in the abstract and must be viewed in relation to its. background and context. But before I dilate on this, I will examine the dictionary meaning of the words.

The Oxford English Dictionary defines "foodstuff" as follows:

"that which is taken into the system to maintain life and growth and to supply waste of tissue."

In Webster's International Dictionary "food" is defined as:

"nutritive material absorbed or taken into the body of an organism which serves for purposes growth, work or repair and for the maintenance of the vital processes."

Then follows this explanation:

"Animals differ greatly from plants in their nutritive processes and require in addition to certain inorganic substances (water, salts etc.) and organic substances of unknown composition (vitamins) not ordinarily classed as foods (though absolutely indispensable to life and contained

in greater or less quantities in the substances eaten) complex organic substances which fall into three principal groups, Proteins, Carbohydrates and Fats.

Next is given a special definition for legal purposes, namely--

"As used in laws prohibiting adulteration etc., 'food' is generally held to mean any article used as food or drink by man, whether simple, mixed or compound, including adjuncts such as condiments etc., and often excluding drugs and natural water."

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The definition given of "foodstuff" is

1. Anything used as food.

2. Any substance of food value as protein, fat etc. entering into the composition of a food."

It will be seen from these definitions that "foodstuff" has no special meaning of its own. It merely carries us back to the definition of "food" because "foodstuff" is anything which is used as "food"

So far as "food" is concerned, it can be used in a wide as well as a narrow sense and, in my opinion, much must depend upon the context and background.Even in a popular sense, when one asks another, "Have you had your food ? ", one means the composite preparations which normally go to constitute a meal--curry and rice, sweetmeats, pudding, cooked vegetables and so forth. One does not usually think separately of the different preparations which enter into their making, of the various condiments and spices and vitamins, any more than one would think of separating in his mind the purely nutritive elements of what is eaten from their non-nutritive adjuncts.

So also, looked at from another point of view, the various adjuncts of what I may term food proper which enter into its preparation for human consumption in order to make it palatable and nutritive, can hardly be separated from the purely nutritive elements if the effect of their absence would be to render the particular commodity in its finished state unsavoury and indigestible to a whole class of persons whose stomachs are accustomed to a more spicely prepared product. The proof of the pudding is, as it were, in the eating, and ii the effect of eating what would otherwise be palatable and digestible and therefore nutritive is to bring on indigestion to a stomach unaccustomed to to such unspiced fare, the answer must, I think, be that however nutritive a product may be in one form it can scarcely be classed as nutritive if the only result of eating it is to produce the opposite effect; and if the essence of the definition is the nutritive element, then the commodity in question must cease

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to befood, within the strict meaning of the definition, to that particular class of persons, without the addition of the spices which make it nutritive." Put more colloquially, "one man's food is another man's poison." I refer to this not for the sake of splitting hairs but to show the undesirability of such a mode of approach. The problem must, 1 think, be solved in a commonsense way.

I will now refer to the cases which were cited before us. In The San Jose, Cometa and Salerno(1) sausage skins--the envelope in which sausage meat is usually contained---were held to be foodstuffs. But this was a case of conditional contraband captured during the war in pursuance of a war-time measure, and the decision was given in accordance with international law. This does not appear from the judgment but is plain from an earlier judgment of the same learned President on which his later decision was based. The

earlier judgment is reported in The Kim(2). He explains there at page 27 that the law of contraband is based on "the right of a belligerent to prevent certain goods from reaching the country of the enemy for his military use," and he states, also at page 27, that

"International law, in order to be adequate well as just, must have regard to the circumstances the times, including the circumstances arising out the particular situation of the war, or the condition the parties engaged in it."

One of the changing circumstances he felt he had to take into consideration is set out at page 29:

"The reason for drawing a distinction between foodstuffs intended for the civil population and those for the armed forces or enemy Government disappears when the distinction between the civil population and the armed forces itself disappears...Experience shows that the power to requisition will be used to the fullest extent in order to make sure that the wants of the

military are supplied, and however much goods may be imported for civil use it is by the military that

(1) 33 T.L.R. 12. (2) 32 T.L.R. 10,

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they will be consumed if military exigencies require it, especially now that the German Government have taken control of all the foodstuffs in the country."

It is understandable that viewed against a background like that, the word "foodstuffs" would be construed in its wider sense in order to give full effect to the object behind the law, namely the safety and preservation of the State.

It is also perhaps relevant to note that the term which was under consideration in those cases occurred in a war-time measure, namely a Proclamation promulgated on the 4th of August, 1914, the day on which the first world war started. There is authority for the view that war-time measures, which often have to be enacted hastily to meet a grave pressing national emergency in which the very existence of the State is at stake, should be construed more liberally. in favour of the Crown or the State than peace-time legislation. The only assistance I can derive from this case is that the term "foodstuffs" is wide enough to cover matter which would not normally fall within the definition of what I have called food proper. I do not think it is helpful in deciding whether the wider or the narrower definition should be employed here because the circumstances and background are so different.

The next case to which I will refer is James v. Jones(1). That was a case of baking powder and it was held that baking powder is an article of food within the meaning of the English Sale of Food and Drugs Act, 1875. Now it has to be observed here that the object of that Act was to prevent the adulteration of food with ingredients which are injurious to health. It is evident that the definition would have to be wide so as to include not only foodstuffs strictly so called but also ingredients which ultimately enter into its preparation, otherwise the purpose of the legislation, which was to conserve the health of the British people, would have been defeated.

(1) [1894] 1 Q,B. 304.

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Next comes a case relating to tea in which a narrower view was taken: Hinde v. Allmond(1). The question there was whether tea was an "article of food" within the meaning of an Order designed to prohibit the hoarding of food, namely

the Food Hoarding Order of 1917. The learned Judges held it was not. But here it is necessary to note the background and at any rate some of the reasons given for the decision. The prosecution there was directed against an ordinary housewife who had in her possession a quantity of tea which exceeded the quantity required for ordinary use and consumption in her household. The Food Hoarding Order did not specify tea or indeed any other article. It merely prohibited generally the hoarding of any "article of food" by requiring that no person should have in his possession or under his control at any one time more than the quantity required for use and consumption in his household or establishment. Shearman J. said that he rested his judgment on the "commonsense interpretation of the word 'food' in the Order, apart from its meaning in any other statute" and said :--

"I agree with my brother Darling that if it had been intended to include tea as food, it ought to have been expressly so provided in the Order."

Darling J. explained what he meant in this case in a later decision, Sainsbury v. Saunders(2), and said that there was nothing to prevent the Food Controller from saying that a person should not have, for example, so much wine in his possession, provided he did not simply call it "food" and provided also that he let a person who was to be punished know what it was that he was not to do.

I think it is clear that the learned Judges were influenced in their judgment by the fact that the Order in the earlier case was one which affected the ordinary run of householders and housewives who would not have lawyers at their elbows to advise them regarding their day to day marketing. In the circumstances, they decided that the word should be given

(1) 87 L.J.K.B. 893. (2) 88 L.J. K.B. 441.

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its ordinary and popular meaning, otherwise many innocent householders, who had no intention of breaking the law, would be trapped; and this seems to be the ratio decidendi in the decision of the Bombay High Court in Hublal Kamtaprasad v. Goel Bros. & Co. Ltd. (Appeal No. 14 of 1950) which is the decision virtually, though not directly, under appeal here, though the learned Judges also take into consideration two further facts, namely that the law should be construed in favour of the freedom of contracts and a penal enactment in favour of the subject.

The English decision about tea just cited is to be contrasted with another decision, also about tea, given a few months later in the same year: Sainsbury v. Saunders(1). Two of the Judges, Darling and Avory, JJ. were parties to the earlier decision; Salter J. was not. He held that though tea had been held in the earlier case not to be a "food" for the purpose of the Food Hoarding Order of 1917, it was a "food" within the meaning of the expressions used in certain Defence of the Realm Regulations read with the New Ministries and Secretaries Act of ,1916 which empowered the Food Controller to regulate "the food supply of the country" and the "supply and consumption and production of food." Avory J. also considered that tea was an article of food for the purposes of these laws though Darling J. preferred to adhere to his earlier view. All three Judges also held that the provisions were wide enough to enable the Food Controller to hit at articles which were not food at all, such as sacks and tin containers (Darling J.) so long as he was able by these means even indirectly to regulate the supply of "food",-but that portion of the decision does not

concern us here because the laws they were interpreting were more widely phrased.

Now the comparison of one Act with another is dangerous, especially when the Act used for comparison is an English Act and a war-time measure, and I have no intention of falling into that error. I am concerned here with the Act before me and must

(1) 88 L.J.K.B. 441.

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interpret its provisions uninfluenced by expressions, however similar, used in other Acts. I have referred to the cases discussed above, not for purposes of comparison but to show that the terms "food" and "foodstuffs" can be used in both a wide and a narrow sense and that the circumstances and background can alone determine which is proper in any given case.

Turning to the Act with which we are concerned, it will be necessary again to advert to its history. Rule 81 (2) was wide and all embracing and the Order of 1944 clearly fell within its ambit. It is also relevant to note that one of the purposes of the Order, as disclosed in its preamble, was to "maintain supplies essential to the life of the community." As turmeric was specifically included with certain other spices, it is clear that turmeric was then considered to be a commodity essential to the life of the community, that is to say. it was considered an essential commodity and not merely a luxury which at a time of austerity could be dispensed with.

Then, when we turn to the Ordinance and the Act of 1946, we find from the preamble that the legislature considered that it was still necessary--"to provide for the continuance ..... of powers to control the production, supply and distribution of, and trade and commerce in, foodstuffs..."Section 3 (1) of the Act continues this theme:

"The Central Government, so far as it appears to it to be necessary or expedient for maintaining or increasing supplies of any essential commodity, or for securing their equitable distribution and availability at fair prices, may by notified order provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein."

The Ordinance is in the same terms.

Now I have no doubt that had the Central Government re-promulgated the Order of 1944 in 1946 after the passing of either the Ordinance of the Act of 1946, the Order would have been good. As we have seen, turmeric falls within the wider definition of "food"

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and "foodstuffs" given in a dictionary of international standing as well as in several English decisions. It is, I think, as much a "foodstuff", in its wider meaning, as sausage, skins and baking powder and tea. In the face of all that I. would find it difficult to hold that an article like turmeric cannot fall within the wider meaning of the term "foodstuffs". Had the Order of 1944 not specified turmeric and had it merely prohibited forward contracts in "foodstuffs" I would have held, in line with the earlier tea case, that that is not a proper way of penalising a man for trading in an article which would not ordinarily be considered as a foodstuff. But in the face of the order of 1944, which specifically includes turmeric, no one can complain that his attention was not drawn to the prohibition of trading in this particular commodity and if, in spite of that, he chooses to disregard the Order and test its validi-

ty in a court of law, he can hardly complain that he was trapped or taken unawares; whatever he may have thought he was at any rate placed on his guard. As I see it, the test here is whether the Order of 1944 would have been a good order had it been repromulgated after the Ordinance of 1946. In my opinion, it would, and from that it follows that it is saved by the saving clauses of the Ordinance and the Act.

I have already set out section 5 of the Ordinance. In my opinion, the Order of 1944 falls within its purview, and ii it is saved by that, it is equally saved by section 17 (2) of the Act. The section is in these terms:

"Any order ..... deemed to be made under the said Ordinance and in force immediately before the commencement of this Act shall continue in force and be deemed to be an order made under this Act."

In my opinion, the conviction was good and the High Court was wrong in setting it aside, but though the matter has no relevance here because of the undertaking given by the learned Solicitor-General not to proceed against the respondent any further in this matter, I think it right to observe that. the attitude of

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the learned English Judges in the first tea case would not be without relevance on the question of sentence in many, cases of this kind. There can, I think, be no doubt that businessmen who are not lawyers might well be misled into thinking that the Ordinance and the Act did not intend to keep the Order of 1944 alive because the Order related to certain specified spices while the Ordinance and the Act changed the nomenclature and limited themselves to "food-stuffs", a term which, on a narrow view, would not include condiments and spices. However, these observations are not relevant here because we are not asked to restore either the conviction or the sentence. In view of that, there will be no further order and the acquittal will be left as it'-stands.

Order accordingly:

Agent for the appellant: P.A. Mehta.

Agent for the respondent: M.S.K. Sastri.