

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL Nos. 8523-8524 OF 2011
(Arising out of S.L.P. (C) NOs.12308-12309 OF 2007)

The State of Rajasthan & Ors. Appellants

Versus

The High Court of Judicature for
Rajasthan, Jodhpur through its
Registrar General Respondents

J U D G M E N T

A. K. PATNAIK, J.

Leave granted.

2. These are the appeals against the orders dated 02.03.2007 and 19.03.2007 of the Division Bench of the Rajasthan High Court, Jaipur, in D.B. Civil Writ Petition No. 2677 of 2005.

3. The facts briefly are that on the basis of a news published in the Rajasthan Patrika on 04.04.2005 regarding the manufacture and sale of synthetic milk in the districts

of Alwar and Bharatpur in the State of Rajasthan, the High Court *suo motu* entertained the D.B. Civil Writ Petition No. 2677 of 2005 on 06.04.2005 and directed the Collectors of Alwar and Bharatpur Districts to appear in person before the Court. The Collector, Alwar, filed his reply before the High Court stating *inter alia* that the very next day after the news item was published, the Chief Medical Health Officer, Alwar, had initiated action and an inspection team had taken samples of the product and the samples were sent for testing in the laboratory. On 02.03.2007, the High Court found that Chief Medical Health Officers and Deputy Chief Medical Health Officers had been vested with the powers of the Food Inspector, though they did not have the requisite training to function as Food Inspectors. The High Court also observed in the order dated 02.03.2007 that the Chief Medical Health Officer/ Deputy Chief Medical Health Officer has to discharge duties of his post and has to remain at the Head Quarters and he may not effectively perform the duties of the post of Food Inspector. The High Court was of the view that the State Government should appoint sufficient number of Food Inspectors without which the menace of

food adulteration could not be checked. The High Court posted the matter to 19.03.2007 and directed that the Principal Secretary, Medical and Health Department should be personally present on that day.

4. On 19.03.2007, the High Court found that there were 34 posts of Food Inspectors and all of them were lying vacant and that a requisition had already been sent to the Rajasthan Public Service Commission to fill up the posts, but the Finance Department had not sanctioned the posts on the ground that these were non-plan posts. The High Court in the impugned order dated 19.03.2007 directed the Medical Health Department of the Government of Rajasthan to initiate the process of regular appointment against the 34 posts of the Food Inspectors and also directed the Finance Department not to stall the process of appointment on technical grounds. The High Court further directed in the order dated 19.03.2007 that till regular appointment is made, Sanitary Inspectors and others who possess the requisite qualifications may be given appointment to the posts of Food Inspector so that the provisions of the

Prevention of Food Adulteration Act and the Rules are properly implemented.

5. Dr. Manish Singhvi, learned Additional Advocate General appearing for the State of Rajasthan, submitted that Section 9 of the Prevention of Food Adulteration Act, 1954, vests power in the State Government to appoint such persons as it thinks fit, having prescribed qualifications to be Food Inspectors, and it is within the prerogative of the Government to determine the number of Food Inspectors required to be appointed and therefore the High Court could not have issued a *mandamus* to the State Government to make appointment of as many as 34 Food Inspectors. He further submitted that Rule 8 of the Prevention of Food Adulteration Rules, 1955, prescribes the qualifications for the purpose of appointment of Food Inspectors under Section 9 of the Act and it provides that the Medical Officer in-charge of health administration of a local area could be appointed as Food Inspector. He submitted that the High Court, therefore, could not have held that the Medical Officers cannot be continued as Food Inspectors.

6. Section 9 of the Prevention of Food Adulteration Act, 1954 (for short 'the Act') and Rule 8 of the Prevention of Food Adulteration Rules, 1955 (for short 'the Rules') are extracted hereinbelow:

“Section 9 of The Prevention of Food Adulteration Act, 1954:

9. Food Inspectors :- (1) The Central Government or the State Government may, by notification in the official Gazette, appoint such persons 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.

Rule 8 of The Prevention of Food Adulteration Rules, 1955:

8. Qualification of food inspector :- A person shall not be qualified for appointment as food inspector unless he:-

(a) is a medical officer in-charge of health administration of local area ; or

(b) is a graduate in medicine and has received at least one month's training in food inspection and sampling work approved for the purpose by the Central Government or a State Government; or

(c) is a graduate in Science with Chemistry as one of the subjects or is a graduate in Agriculture or Public Health or Pharmacy or in Veterinary Science or a graduate in Food Technology or Dairy Technology or is a diploma holder in Food Technology or Dairy Technology from a University or Institution established in India by law or has equivalent qualifications recognised and notified by the Central Government for the purpose and has received three months' satisfactory training in food inspection and sampling work under a Food (Health) Authority or in an institution approved for the purpose by the Central Government:

Provided that the training in food inspection and sampling work obtained prior to the commencement of 1[Rule 3 of the Prevention of Food Adulteration (Fourth Amendment) Rules, 1976], in any of the laboratories under the control of :-

(i) a public analyst appointed under the Act, or

(ii) a fellow of the Royal Institute of Chemistry of Great Britain (Branch E); or

(iii) any Director, Central Food Laboratory ; or

the training obtained under a Food (Health) Authority, prior to the commencement of the Prevention of Food Adulteration (Amendment) Rules 1980, shall be considered to be equivalent for the purpose of the requisite training under these rules :

Provided further that a person who is a qualified Sanitary Inspector having experience as such for a minimum period of one year and has received at least three months training in whole or in parts in food inspection and sampling work, may be eligible for appointment as food inspector, upto the period ending on the 31st March, 1985 and may continue as such if so appointed even though he does not fulfill the qualifications laid down in clauses (a) to (c)].

Provided also that nothing in this rule shall be construed to disqualify any person who is a food inspector on the commencement of the Prevention of the Food Adulteration (Amendment) Rules 1980 from continuing as such after such commencement.”

7. Sub-section (1) of Section 9 of the Act states that the Central Government or the State Government may, by notification in the official Gazette, appoint such persons 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. Rule 8 of the Rules prescribes the qualifications of Food Inspectors and it states in clause (a) that a medical officer in-charge of health administration of local area is qualified for appointment as Food Inspector. In clauses (b) & (c) a graduate in medicine who has received at

least one months' training in food inspection and sampling work and a graduate in Science with Chemistry as one of the subjects or a graduate in Agriculture or Public Health or Pharmacy or in Veterinary Science or a graduate in Food Technology or Dairy Technology or a Diploma Holder in Food Technology or Dairy Technology from a University or Institution established in India by law or having equivalent qualification and has received three months satisfactory training in food inspection and sampling work is also qualified to be a Food Inspector. The State Government could therefore appoint a medical officer in-charge of health administration of a local area as a Food Inspector. If the High Court found that the medical officers were not trained in food inspection and sampling work, it could also direct that the medical officers are given the required training to function as Food Inspector, but the High Court could not have issued a *mandamus* compelling the State Government to replace the Medical Officers by Sanitary Inspectors or other regular recruits as Food Inspectors. This Court has held in Divisional Manager, Aravali Golf Club and Another vs.

Chander Hass and Another [(2008) 1 SCC 683] at page 688

in para 15:

“The court cannot direct the creation of posts. Creation and sanction of posts is a prerogative of the executive or legislative authorities and the court cannot arrogate to itself this purely executive or legislative function, and direct creation of posts in any organization. This Court has time and again pointed out that the creation of a post is an executive or legislative function and it involves economic factors. Hence the courts cannot take upon themselves the power of creation of a post.”

8. We therefore set aside the direction in the impugned order directing appointment of Food Inspectors against 34 posts and directing appointment of Sanitary Inspectors as Food Inspectors in the meanwhile and allow the appeals. There shall be no order as to costs.

.....J.
(R. V. Raveendran)

.....J.
(A. K. Patnaik)

New Delhi,
October 11, 2011.