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STATE OF MAHARASHTRA

v.

HANS RAJ DEPAR ETC.

February 25, 1977

B [Y. V. CHANDRACHUD, P. K. GOSWAMI AND P. N. SHINGHAL, JJ.]

Maharashtra Scheduled Articles (Display and Marking of Prices) Order, 1966, Clauses 3(a) and (4)—Meaning intendment of.

Clause 3(a) of the Maharashtra Scheduled Articles (Display and Marking of Prices) Order, 1966 issued by the Maharashtra Government in exercise of the powers conferred by s. 3 read with s. 5 of the Essential Commodities Act C (Act 10 of 1955) provides that "every dealer shall in respect of the articles specified in Schedule I display a list of prices in the form prescribed in the Schedule", Schedule I lists under items 15 and 16 "Vanaspati tinned" and "Vanaspati loose" respectively. Clause (4) of the Order provides that no dealer shall (a) sell or agree or offer for sale any article at a price higher than the price displayed or (b) refuse to sell or withhold from sale of such articles to any person at the price displayed or marked. Section 7 of the Essential Commodities Act provides for punishment for contravention of the order made under s. 3.

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The four respondents, shopkeepers in Bombay—some run grocery shops, while some deal only in oils of different varieties—were charged for the offence of failure to display prices of vanaspati which they were selling in their shops in tinned and loose form. The defence of the respondents to the charge is that they were selling hydrogenated oils or vegetable ghee or vegetable oils and not "vanaspati". The learned Magistrate acquitted the respondents and held that the charge was unsustainable because (1) Even if the word 'vanaspati' may E have acquired a local meaning, it could not be said that the order used the word 'vanaspati' to include hydrogenated oils. (2) Since hydrogenated oils were not included in Schedule I, the respondents could not be expected to know that they were bound to disclose the prices of hydrogenated oil. Dismissing the States' appeal, the High Court held, on a different reasoning that the prosecution was not maintainable since non-compliance of clause (3) of the Order 1966, cannot be an offence punishable as contravention unless there is a contravention of clause 4, inasmuch as the intention of the Legislature which always made a distinction between contravention of law and failure to comply or non-compliance with it, F was to punish contravention of clause 4 and not of clause 3 *simpliciter.*

Dismissing the State's appeal, the Court,

HELD : (1) Clauses 3 and 4 of the Maharashtra Scheduled (Display and Marking of Prices) Order, 1966 deal with different matters because whereas clause 3 imposes an obligation on a dealer to display the prices of articles specified in Schedule I clause 4 prohibits him from selling an article at a price G higher than the one displayed or from refusing to sell it at the price displayed. A contravention of clause 3(a) is full and complete by mere reason of the fact that the dealer has failed to display the prices of articles specified in Schedule I. That contravention does not depend on the consideration where he has charged a higher price than the price marked or whether he has refused to sell an article at the price displayed. In other words, the first step which a dealer has to take is to display the prices of articles specified in Schedule I; if he fails to do that, he is guilty of contravention of clause 3(a) which is punishable under s. 7(1) of the Essential Commodities Act, 1955. The additional obligation which the H dealer has to discharge is to be ready and willing to sell articles at the prices displayed. Failure to do so is a different and distinct contravention which also attracts the application of s. 7(1). The view that clauses 3 and 4 of the Order 1966 are so interlinked that the Legislature did not intend to punish the contra-

vention of the former unless such contravention was accompanied by a contravention of the latter provision is not correct. The wedding of the two clauses in this fasion is entirely unwarranted. [81 E-H 82-A]

(2) The orders of acquittal, in the instant case, must be confirmed on the ground of total lack of evidence showing that the respondents are dealers in vanaspati and that they had kept vanaspati for sale in their shops. In view of the challenge that what was being sold was not vanaspati and that the tins did not contain vanaspati within the meaning of items 15 and 16 of Schedule I, the prosecution should have led evidence to show that the tins in fact contained vanaspati in the sense in which that expression is used in the Schedule. The mere *ipse dixit* of the Sub-Inspector who had merely assisted the Rationing Inspector in effecting the raid, without any inventory of the articles of which prices were not displayed, without examining the Panchas and without any sample of the "Vanaspati" alleged to have been sold being taken, cannot establish the charge which involves a punishment of as long a term as seven years and normally of not less than three months, as provided in s. 7(1)(a)(iii) of the Essential Commodities Act, 1955. [82 F-H, 84 C]

(3) Neither the Essential Commodities Act, 1955 nor the Maharashtra Scheduled Articles (Display and Marking of Prices) Order 1966 defines the expression "Vanaspati" and it was beside the point to say that "Vanaspati" is defined in the Bombay Sales Tax Act and the Prevention of Food Adulteration Rules. 1965 to include hydrogenated oil since the purposes of these three Acts are quite different. The prosecution has failed to establish as to what is the true meaning and connotation of the expression "Vanaspati" and what kinds of articles are comprehended within the scope of that expression. [83 B-H]

(4) According to the fundamental principle of criminal jurisprudence which reflects fair play, a dealer must know with reasonable certainty and must have a fair warning as to what his obligation is, and what act of commission or omission on his part would constitute a criminal offence. The State Government ought to have expressed its intention clearly and unambiguously by including hydrogenated oil within items 15 and 16 which refer to "Vanaspati". If that were done, a type of predicament which arises in this case could easily have been avoided with profit to the community. [84 A-B]

State of Bihar v. *Bhagirath Sharma*, (1973) 3 S.C.R. 937, referred to;

[The Court expressed its hope that the lacuna in the Schedule I items 15 and 16 of the Maharashtra Scheduled Articles (Display and Marking of Prices) Order, 1966 would be rectified expeditiously.]

CIVIL APPELLATE JURISDICTION : Criminal Appeals Nos. 156-159 of 1973.

(Appeals by special leave from the Judgment and Order dated 3-3-1971 of the Bombay High Court in Criminal Appeals Nos. 1475/69 and 370-372 of 70).

M. N. Phadke, and *M. N. Shroff*, for the appellant in all appeals.

Y. S. Chitale, M. Mudgal and *Rameshwar Nath*, for respondent in Crl. A. No. 158/73.

Rameshwar Nath, for respondent in Crl. A. No. 159/73).

The Judgment of the Court was delivered by

CHANDRACHUD, J.—These four appeals arise out of four prosecutions which were disposed of by a common judgment by the learned Presidence Magistrate, 25th Court, Mazgaon, Bombay. The facts leading to the prosecution are not in all respects identical in the four

A cases but it is obvious from the judgments under consideration that the cases were heard and disposed of on the basis that the variation in the facts would not make difference to the result. The four respondents in these appeals are shopkeepers in Bombay—some run grocery shops while some deal only in oils of different varieties. The charge against the respondents is that they failed to display prices of 'vanaspati' which they were selling in their shops in tinned and loose B form.

Section 3 of the Essential Commodities Act, 10 of 1955, empowers the Central Government, by order, to provide for regulating or prohibiting the production, supply and distribution or trade and commerce in any essential commodity for the purposes mentioned in sub-s. (1) thereof. Sub-section (2) of s.3 specifies various matters C in regard to which the Central Government may pass orders contemplated by sub-s.(1). The power conferred by s. 3 was delegated by the Central Government to the State Governments in pursuance of the provision contained in s. 5. Section 7 provides for punishment for contravention of an order made under s. 3.

In exercise of the powers conferred by s. 3 read with s. 5 of the D Essential Commodities Act, 1955 the Government of Maharashtra issued the Maharashtra Scheduled Articles (Display and Marking of Prices) Order, 1966". Clause 3(a) of that order provides that every dealer shall, in respect of the articles specified in Schedule I, display a list of prices in the form prescribed in that schedule. We are concerned with items 15 and 16 of the Schedule which read: "15. Vanaspati, Tinned" and "16. Vanaspati, Loose." E

Stated broadly, the defence of the respondents to the charge is that they were selling hydrogenated oils or vegetable ghee or vegetable oils and not 'vanaspati'.

The learned Magistrate acquitted the respondents in all the four cases holding that even if the word 'vanaspati' may have acquired a F local meaning, it could not be said that the order used the word 'vanaspati' to include hydrogenated oils. Since the respondents, according to the learned Magistrate, could not be expected to know that they were bound to disclose the prices of hydrogenated oils also and since hydrogenated oils were not included in Schedule I, the charge was unsustainable.

G The appeals filed by the State of Maharashtra against the orders of acquittal were heard and disposed of by a common judgment dated March 3, 1971 by a learned Single Judge of the High Court. Observing that there was considerable force in the contention of the State Government that 'vanaspati' would include hydrogenated oils also, the learned Judge felt that it was unnecessary to go into that question since H the prosecution was not maintainable for another reason. That reason, according to the learned Judge, was that legislative draftsmen always made a distinction between 'contravention' of law and 'failure to comply or non-compliance' with it. If the Court is called upon to decide, says the learned Judge, whether a particular contravention is

an offence, it was bound to enquire whether mere non-compliance was also intended to be punished. Guided by that principle, the learned Judge came to the conclusion that the duty to display prices was "a subsidiary matter to the prohibition which is contained in clause 4 which prohibits a dealer from selling an article at a price higher than the price displayed or from refusing to sell or from withholding from sale such articles at the price displayed or marked." The sustance of the order was thus thought to be contained in clause 4 and accordingly, the judgment proceeds; "Mere non-compliance of clause 3 cannot be an offence punishable as contravention unless there is a contravention of clause 4." Since the intention was said to be to punish contravention of clause 4 and not of clause 3 *simpliciter,* the learned Judge held that the prosecution was not maintainable and the accused were entitled to an acquittal. These appeals by special leave are directed against the correctness of the High Court's judgment.

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It is necessary in the larger public interest to dispel the misunderstanding regarding the true meaning and intendment of clauses 3 and 4 of the 1966 Order. We will therefore deal first with the reasoning of the High Court that a mere contravention of clause 3 without the contravention of clause 4 is not contravention within the meaning of s. 7 of the Essential Commodities Act 1955 and cannot therefore be punished. As stated earlier, clause 3(a) of the Order of 1966 imposes an obligation on every dealer to display a list of prices of the article specified in Schedule I. Clause 4 of the Order provides that no dealer shall (a) sell or agree or offer for sale any article at a price higher than the price displayed or (b) refuse to sell or withhold from sale such articles to any person at the price displayed or marked. We find ourselves totally unable to appreciate that there can be no contravention of clause 3(a) unless there is a contravention of clause 4 also. The two clauses deal with different matters because whereas clause 3 imposes an obligation on a dealer to display the prices of articles specified in Schedule I, clause 4 prohibits him from selling an article at a price higher than the one displayed or from refusing to sell it at the price displayed. A contravention of clause 3(a) is full and complete by mere reason of the fact that the dealer has failed to display the prices of articles specified in Schedule I. That contravention does not depend on the consideration whether he has charged a higher price than the price marked or whether he has refused to sell an article at the price displayed. In other words, the first step which a dealer has to take is to display the prices of articles specified in Schedule I; if he fails to do that, he is guilty of contravention of clause 3(a) which is punishable under s. 7(1) of the Essential Commodities Act, 1955. The additional obligation which the dealer has to discharge is to be ready and willing to sell the articles at the prices displayed; failure to do so is a different and distinct contravention which also attracts the application of s. 7(1). We find it impossible to subscribe to the view that clauses 3 and 4 of the Order of 1966 are so interlinked that the legislature did not intend to punish the contravention of the former unless such contravention was accompanied by a contravention of the latter provision. The wedding of

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A the two clauses in this fashion is entirely unwarranted. The ground on which the High Court has acquitted the respondents is therefore untenable and we reject the reasoning in that behalf as unsustainable. Were we satisfied that the respondents were selling 'vanaspati', tinned or loose, we would have had no hesitation in setting aside the order of acquittal and in convicting the respondents, since the non-display of prices is admitted.

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That raises the question whether there is evidence to hold that the respondents were dealing in 'vanaspati'. The evidence on this question is woefully inadequate and we regret to notice that no serious attempt was made by the prosecution to establish the charge. The articles of which the prices were not displayed were not properly in-
C ventoried, which makes it difficult to predicate that the articles bore any particular description. Panchanamas were made of the articles but except in one case, where the panchanama was exhibited by consent, the panchas were not examined with the result that the panchanamas remained unproved and therefore unexhibited. In none of the cases was even a sample taken of the articles displayed for sale. If that were done, the nature, quality and components of the goods
D could easily have been proved by analysing the sample chemically. One could then have said with easy facility that what was being sold was 'vanaspati'. Instead of doing what was easy and necessary to do, the prosecution offered, as a substitute for its plain duty, the vague recollections of a Rationing Inspector and a Sub Inspector of Police as to what was being sold by the respondents in their shops.

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For illustrating how cavalierly the prosecution approached its task, we will take the facts of appeal No. 156 of 1973 in which the respondent is one Hansraj Depar. The charge framed by the learned Magistrate alleges that the respondent had failed to display the price list of 'vanaspati ghee'. The charge should have been not in respect of any type of ghee but in respect of 'vanaspati' which is the
F item mentioned in Schedule I. The Rationing Inspector, K. N. Joshi (P.W. 1), stated in his evidence that the respondent had not exhibited the price of 'vanaspati ghee' which again is beside the point. Nothing at all, not even a sample of the articles alleged as vanaspati, was taken charge of from the shop and the witness admitted that he did not remember what variety of articles were sold in the shop and as to how many tins of what is said to be vanaspati ghee were found
G therein. The other witness, Sub Inspector Kurdur (P.W. 2) does say that the respondent was selling vanaspati as also oil and that there were in his shop "3 K. O. tins of Ravi Vanaspati, 2 K. O. tins of prabhat Vanaspati and one loose tin of Malali Vanaspati". In view of the challenge that what was being sold was not vanaspati and that the tins did not contain vanaspati within the meaning of items 15 and 16 of Schedule I, the prosecution should have led evidence to show
H that the tins in fact contained vanaspati in the sense in which that expression is used in the Scheduled. The *ipse dixit* of the Sub Inspector who had merely assisted the Rationing Inspector in effecting the raid cannot establish the charge which involves a punishment of as long

a term as seven years and normally of not less than three months, as provided in s. 7(1)(a)(ii) of the Essential Commodities Act, 1955. A

The prosecution did not make any attempt to establish as to what is the true meaning and connotation of the expression 'vanaspati' and what kind of articles or goods are comprehended within the scope of that expression. The witnesses did not even say in their evidence, perfunctory as it is, that the word had acquired a popular meaning and was understood locally in a certain sense. Neither the Act of 1955 nor the Order of 1966 defines the expression 'vanaspati' and it was beside the point to say that 'vanaspati' is defined in the Bombay Sales Tax Act and the Prevention of Food Adulteration Rules, 1965 to include hydrogenated oil. The purpose of the Sales Tax Act is to bring within the tax not as large a number of articles as possible, that of the Prevention of Food Adulteration Act and the Rules thereunder is to ensure that the health of the community is not endangered by adulterated or spurious articles of food while that of the Essential Commodities Act with which we are concerned in the instant case is to ensure the availability of essential goods to the community at a proper price. This last Act was passed in order "to provide, in the interests of the general public, for the control of the production, supply and distribution of, and trade and commerce in, certain commodities". Sub Inspector Kurdur is no expert for the purposes of this Act and we cannot, without more, accept the dogmatic assertion made by him in one of these cases that vanaspati and hydrogenated oil "mean the same thing." Hydrogenation is a specialised process and is described in Encyclopaedia Britannica (1951 ed., Vol 11, p. 978) as "the treatment of a substance with hydrogen so that this combines directly with the substance treated. The term has, however, developed a more technical and restricted sense. It is now generally used to mean the treatment of an "unsaturated" organic compound with hydrogen, so as to convert it by direct addition to a "saturated" compound." The witness, excusably, seems unaware of this scientific sidelight and greater the ignorance, greater the dogma. If the witness were right, it is difficult to understand why "groundnut oil, Safflower oil, Sesamen oil and Mustard seed oil" and "coconut oil" find a separate and distinct place in Schedule I at items 5 and 6. Perhaps what the witness guessed, science may show to be true but that has to be shown, not guessed. B C D E F

In *State of Bihar* v. *Bhagirath Sharma*(1) a question arose whether motor car tyres were included within the meaning of the expression 'component parts and accessories of automobiles' used in a similar order issued in 1967 by the Bihar Government under the Essential Commodities Act. It was held by this Court that it was not enough that from a broad point of view the tyres and tubes of motor cars may be considered to be covered by the particular expression. After considering and comparing the various items in the particular schedule it was held by this Court that motor car tyres were not comprehended within the expression. It is apposite for our purpose to call at- G H

(1) [1973] 3 S.C.R. 937.

A tention to what the Court said in that case, namely, that according to the fundamental principle of criminal jurisprudence which reflects fair play, a dealer must know with reasonable certainty and must have a fair warning as to what his obligation is, and what act of commission or omission on his part would constitute a criminal offence. Bearing in mind this principle the State Government ought to have expressed its intention clearly and unambiguously by including hydro-
B genated oils within items 15 and 16 which refer to 'vanaspati'. If that were done, a type of predicament which arises in this case could easily have been avoided, and with profit to the community. We hope this lacuna in the schedule will be rectified expeditiously.

It is to be regretted but we are left with no option save to confirm the acquittal, though for entirely different reasons. Therefore,
C while setting aside the reasoning of the High Court that there can be no contravention of clause 3 unless there is also a contravention of clause 4 of the order of 1966, we dismiss the appeals and confirm the orders of acquittal on the ground of total lack of evidence showing that the respondents are dealers in 'vanaspati' and that they had kept 'vanaspati' for sale in their shops.

S.R. *Appeals dismissed.*