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The learned counsel also objected to the grant of only two instalments for such a large amount under section 33 of the Act but I see no reason to set aside or to alter that order. The appellant is a rich man and since 1925 he has been refusing to comply with the agreements entered into by him from time to time and by these tactics he has succeeded in depriving the widow of considerable amount due to her under the 1925 agreement. Hhis refusal to pay any allowance since 1947 is without any plausible excuse. It is admitted before me that the appellant has not paid any money due under the decree to Chattar Kaur nor has he paid Rs. 500 per mensem fixed by my Lord the Chief Justice on 19th May, 1954 on the application of the appellant. Under the circumstances I refuse to change the order regarding instalments passed by the Tribunal and also refuse to extend time for the payment of the amount due under the decree.

For the reasons given above I reduce the amount of the decree passed in suit No. 23 of 1952 from Rs. 40,600 to Rs. 37,800 and I remand the case for disposal of the application under section 34 of the Debts Adjustment Act in accordance with law. The parties have been directed to appear before the Tribunal on 29th November. 1954. The appellant shall pay the proportionate costs of this appeal to the respondent.

REVISIONAL CRIMINAL

Before Dulat and Bishan Narain, JJ.

PT. DEVI CHAND,—*Convict-Petitioner*

versus

THE STATE,—*Respondent*

1954

Oct. 5th

Criminal Revision No. 218 of 1954

Punjab Pure Food Act (VIII of 1929)—Section 22(5)—Procedure prescribed by, for framing rules, not followed—Rule framed—Whether legal—Constitution of India—Article 356—Proclamation under—Powers of the Legislature declared to be exercisable by the Parliament—Substitution of

Parliament for Punjab Legislative Assembly in section 22 (5)—Whether permissible—Procedure prescribed by Section 22(5)—Not possible to be followed—Whether compliance with that procedure excused—Legal Maxim "the law does not compel a man to do that which he cannot possibly perform"—Scope of.

On 20th June, 1951, the President of India issued a Proclamation under Article 356 of the Constitution of India assuming to himself all the functions of the Punjab Government and all the powers of the Governor, and declaring that the powers of the Punjab Legislature would be exercisable by or under the authority of the Parliament. The Punjab Government made the following rule on the 1st October, 1951, in accordance with the draft which had been published on the 11th August, 1951.

"Saccharine shall not be used in ice cream and ice candies in quantities more than 6.6 grains per gallon of milk or liquid as the case may be".

The question arose whether the rule was *ultra vires*.

Held, that the rule framed on 1st October, 1951, regulating the saccharine in ice creams and ice candies was not valid as the provisions of section 22(5) of the Punjab Pure Food Act, 1929, were not complied with.

Held, that the obligation on the State Government to comply with the procedure laid down in Section 22(5) before making a rule under the Act cannot be considered to be the functions and legislative powers of the Legislative Assembly as laid down in the Constitution. It is, therefore, not permissible to substitute "Parliament" for the "Punjab Legislative Assembly" in Section 22(5).

Held, that after 20th June, 1951, it was not possible for any authority to make any rule under the Punjab Pure Food Act inasmuch as during the time when the Proclamation was in force it was not possible to comply with the procedure laid down in section 22(5). It may be that the omission to amend section 22(5) of the Act by general or specific words was due to oversight or is a *casus omissus* but it is beyond the office of the Judge to amend the section and it is only for the Legislature to remedy the defect.

Held, that all that the legal maxim "the law does not compel a man to do that which he cannot possibly perform" lays down is that if a person under a statutory obligation is to do something which it is impossible to do under circumstances beyond his control, like the act of God or the King's enemies, then he is not compelled to do that act. This maxim does not authorise an authority to do an act which it is not competent to do under a statute even if it is impossible to perform the conditions laid down in the

statute for the exercise of that power by the authority. It is always open to the Legislative authorities to amend the law and give authority to the State Government to frame rules under section 22(5) without complying with any or all the conditions laid down therein.

The Queen v. *Dyott* (1), relied on.

(*Case referred to Division Bench by Hon'ble Mr. Justice Bishan Narain,*—vide *his Judgment, dated 11th August, 1954.*)

Case reported by Shri Sundar Lal, Additional Sessions Judge, Jullundur, with his No. J/J. 7, dated the 28th January, 1954, under Section 438, Cr. P. Code, for revision of the order of Shri Sham Lal Varma, Magistrate with Summary Powers, Jullundur, dated 7th October, 1952, convicting the petitioner.

The facts of the Case are as follows:-

This is a revision petition by one Pt. Devi Chand under Section 13(1)(a) of the Punjab Pure Food Act, read with section 13(8)(a) of the Act and the consequent sentence of a fine of Rs. 150.

The charge against him was that he had sold ice candies containing 203.4 grains of saccharine per *10 gallons instead of the prescribed limit of 6.6 grains per gallon.*

The accused had pleaded guilty in the trial court. The contention of the learned counsel for the petitioner is that the accused had pleaded guilty only regarding the question of fact, namely, that he had sold ice candies containing the above percentage of saccharine but had never pleaded that he was guilty of any offence thereby. It has been urged that the rule which fixed the percentage of saccharine at 6.6 grains per gallon is ultra vires. *The learned counsel for the State contends that the rule is not* ultra vires. *The question for determination, therefore, is whether the rule in question is* ultra vires *or not.*

Under section 22(2)(f) of the Punjab Pure Food Act the Punjab Government is authorised to make rules to prohibit the addition of any substance or of more than a specified proportion of any substance to any food. Sub-section 5 of section 22 of the Act, however, runs as follows:—

"Before making any rules under the provisions of this section the Provincial Government shall, in addition to observing the procedure laid down in section 21 of the Punjab General Clauses Act,

(1) (1882) 9 Q.B.D. 47

1898, published by notification a draft of the proposed rules for the information of persons likely to be affected thereby, at least thirty days before a meeting of the Punjab Legislative Assembly. The Provincial Government shall defer consideration of such rules until after the meeting of the Punjab Legislative Assembly next following the publication of the draft, in order to give any member of the Assembly an opportunity to introduce a motion for discussing the draft". Now the draft of the proposed rules including the rule in question was published in the Government Gazette on 11th August 1951,—vide Notification No. 6746-H.B. 51/II. 339. And by Notification No. 6746-3 H.B.-51/II-6362, dated 1st October, 1951, the Punjab Government made the following rule in accordance with the draft:—

"Saccharine shall not be used in ice creams and ice candies in quantities more than 6.6 grains per gallon of milk or liquid as the case may be."

Under Article 356 of the Constitution of India the President of the Union assumed to himself by Proclamation all the functions of the Punjab Government and all the powers of the Governor, and the powers of the Punjab Legislature were directed to be exercised by or under the authority of Parliament. The President further reserved to himself the right to act through the Governor of the Punjab to an extent to which he considers fit.

In accordance with the provisions of Article 357 of the Indian Constitution, Parliament conferred on the President the power of the Punjab Legislature to make laws which power had been directed by the Proclamation to be exerciseable by or under the authority of Parliament. The President was authorised to enact as President's Act, a Bill containing such provisions as he considered necessary. But the Act had to be laid before the Parliament and the Parliament could by a

resolution passed within 7 days from the date on which the Act had been laid before it, direct any modification in the Act. The President was also authorised to sub-delegate these delegated powers.

To put it briefly, the President assumed the powers and functions on 28th August 1951. The draft of the rule in question was published on 11th August 1951, and the rule was made on 1st October 1951. It is conceded on behalf of the State that draft of the rule in question was not published 30 days before the meeting of the Parliament—it had to be Parliament because powers of the Punjab State Assembly had to be exercised by the Parliament. It is thus clear that the provisions of sub-section 5 of section 22 of the Punjab Pure Food Act were, therefore, contravened.

The learned counsel for the State contends that the Parliament had delegated its powers of making laws to the President and the power of making laws includes the power of making rules. The only reservation was that an Act made by the President had to be laid before Parliament but that as a 'rule' is not an 'Act' the rule made by the President had not to be laid before Parliament. This contention is not sound. When the Parliament conferred on the President power to make laws it did not and could not delegate the power of making rules for the simple reason that it had no power to make them. The Punjab Legislature had authorised the Punjab Government to make rules under the Punjab Pure Food Act and therefore, when powers of the Legislature were transferred to the Parliament they did not include the powers to make rules because the Punjab Legislature as noted above had parted with that power in favour of the Punjab Government. In other words, the powers to make rules under the existing laws passed from the Punjab Government to the President and the President was again acting through the Governor of the Punjab

for such purposes. This means when the rule in question was made by the Government it was deemed to have been made by the President and instead of being laid before the State Assembly it had to be laid before Parliament and a member of the Parliament could introduce a motion for discussing the draft (under sub-section 5 of section 22 as noted above) just as a member of the State Assembly could have done if the Assembly had been in existence.

It follows from what has been said above that the rules in question not having been published 30 days before a meeting or the Parliament it could not be made a rule on 1st October, 1951. As the provisions of sub-section 5 noted above had not been complied with the rule in question is ultra vires. *The conviction of the petitioner for contravention of this rule is illegal and connot be maintained. I would, therefore, recommend to the High Court that the conviction and sentence of the petitioner be set aside.*

BHAGIRATH DASS, for Petitioner.

S. M. SIKRI, Advocate-General, for Respondent.

JUDGMENT

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BISHAN NARAIN, J. The petitioner Pt. Devi Chand was convicted under section 13(1)(a) of the Punjab Pure Food Act for selling ice candies containing 203.4 grains of saccharine per ten gallons instead of the prescribed limit of 6.6 grains per gallon and was sentenced under section 13(8)(a) of the Act to pay a fine of Rs. 150 and he filed a revision petition against his conviction and the Additional Sessions Judge, Jullundur, has recommended to this Court that his conviction and sentence be set aside as the rule prescribing the limit of saccharine was not validly framed.

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The only point involved in the case is whether the rule for the contravention of which the petitioner was convicted was validly made in accordance with the procedure laid down in section 22(5) of the Punjab Pure Food Act (Act VIII of 1929).

On 20th June, 1951, the President of India was pleased to issue a Proclamation under Article 356 of the Constitution of India and that Proclamation is printed *in extenso* at page 802 of Basu's Commentary on the Constitution of India, Second Edition. On 11th August, 1951, the Punjab Government framed a rule under section 22(5) of the Punjab Act directing that the ice candies should not contain more than 6.6 grains of saccharine per gallon. The question arises whether this rule was validly framed.

Under section 22(1) of the Act the State Government was authorised to make rules after previous publication, for the purpose of carrying into effect the provisions of the Act and under section 22(2)(f) the State Government was authorised to make rules prohibiting the addition of any substance, or of more than a specified proportion of any substance, to any food, and subsection (5) of section 22 reads as follows :—

> "22(5). Before making any rules under the provisions of this section, the State Govenment shall, in addition to observing the procedure laid down in section 21 of the Punjab General Clauses Act, 1898, publish by notification a draft of the proposed rules for the information of persons likely to be affected thereby at least thirty days

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before a meeting of the Punjab Legislative Assembly. The State Government shall defer consideration of such rules until after the meeting of the Punjab Legislative Assembly next following the publication of the draft in order to give any member of the Assembly an opportunity to introduce a motion for discussing the draft."

Under the Proclamation the powers of the Legislature were declared to be exercisable by the Parliament and under clause (iv) of the Proclamation it was laid down that any reference in the Constitution to the Legislature or Legislative Assembly shall be reference to Parliament. Therefore, the functions and powers of the Legislative Assembly as laid down in the Constitution were transferred to the Parliament. The Parliament then passed the Punjab State Legislature (Delegation of Powers) Act, 1951, which received the assent of the President on 28th August, 1951, and by this Act the Parliament conferred the Legislative powers which had been declared by the Proclamation to be exercisable by it on the President, whether the Parliament was in session or not. The result was that subject to certain conditions the powers and functions of the Punjab Legislature were transferred to the President. The learned Additional Sessions Judge came to the conclusion that under such circumstances the draft of the rule should have been published thirty days before a meeting of the Parliament and could not be made a rule on 1st October, 1951. It appears to me, however, that the obligation on the State Government to comply with the procedure laid down in section 22(5) before making a rule under the Act cannot be considered to be the functions and legislative powers of the Legislative Assembly as laid down in the Constitution.

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According to the Punjab Act the State Government cannot make a rule under the said Act without adopting the procedure laid down in subsection (5) of section 22. Section 22 (5) of the Act is mandatory in its terms and the State Government has no power to frame a rule without complying with its terms. Under this section no rule can be framed, the draft of which has been published, till after the meeting of the Punjab Legislative Assembly. It is therefore clear that the provisions of subsection (5) could not have been complied with by substituting "Parliament" for the "Punjab Legislative Assembly" and by waiting until after the meeting of the Parliament next following the publication of the draft rule. If it is however possible to substitute "Parliament" for the "Punjab Legislative Assembly" under section 22(5) then also admittedly the draft of the rule was not published thirty days before the meeting of the Parliament and the rule in question must be held to be invalid in law. I am of the opinion that the ground on which the Additional Sessions Judge has held the rule in question to be invalid is not sound in law.

That being so it appears to me that after the Proclamation of 20th June, 1951, it was not possible for any authority to make any rule under the Punjab Act inasmuch as during the time when the Proclamation was in force it was not possible to comply with the procedure laid down in section 22(5). The learned Advocate-General has urged before us that taking into consideration the terms of the Proclamation the procedure laid down in section 22(5) of the Act must be deemed to have been suspended by implication and in the alternative that it had become impossible to carry out the procedure laid down in that subsection and therefore the State Government was absolved

from following that procedure. His argument on the first point was that under clause (ii) of the Proclamation Article 174 of the Constitution which authorises the Governor to summon the Assembly was suspended and therefore the Assembly could not meet and if the Assembly could not meet then the procedure laid down in section 22 (5) must be deemed to have been suspended by implication. This argument does not appear to have much force inasmuch as it cannot be said that section 22 was impliedly repealed by the Proclamation or by Act XLVI of 1951. The Act continued in force according to its terms. If on account of the Proclamation it became impossible for the State Government to follow the procedure laid down in section 22 then it could not frame any rules under the Act. The Punjab Legislature by the Act in question delegated its powers of framing rules under the Act to the State Government but laid down that this power is not to be exercised unless certain procedure is adopted, and as far as I can see if the procedure cannot be adopted as laid down in the Act then the State Government has no power to frame rules under the Act. The learned Advocate-General pointed out in the course of arguments that it could not have been contemplated that no rule should be allowed to be made under this Act during the time the Proclamation is in force and urges that the intention was really to suspend the operation of the portion of section 22(5) which laid down that the State Government is to defer the consideration of the proposed rule until after the meeting of the Assembly. May be that the omission to amend section 22(5) of the Act by general or specific words was due to oversight or is a *casus omissus* BUT IT IS BEYOND THE office of the Judge to amend the section and it is only for the legislature to remedy the defect. It

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was laid down in *The Queen* v. *Dyott* (1), that where a statute provides that no rates will be levied in a parish unless public notice is given thereof in the church and if there is no church in a parish then the rate cannot be levied. Similarly no rule could be passed under the Punjab Pure Food Act till after the meeting of the Punjab Assembly as laid down therein. The learned Advocate-General was unable to cite any authority or refer to any principle of law under which it can be said that the Proclamation impliedly amended all the Punjab Acts which authorise the State Government to do particular things in a particular way. The argument of the learned Advocate-General comes to this that the Proclamation has impliedly repealed section 22 of the Punjab Act. Such repeal cannot be readily inferred by Courts and I can see nothing inconsistent between the two remaining in force side by side and being enforced at the same time. It only means that during the time the Proclamation was in force the State Government could not make any rule under the Act. It was open to the President or to the Parliament to amend this section, if it was desired that the State Government should continue to have the power of making rules.

The next contention of the learned Advocate-General is that inasmuch as it was impossible for the Punjab Legislative Assembly to meet during the time the Proclamation was in force, it became impossible for the State Government to adopt the procedure laid down in section 22(5) and therefore the State Government was absolved from adopting that procedure, and for this proposition he has relied upon a passage in Craies on Statute Law at page 248 under the heading "Impossibility as excuse for non-compliance with absolute

(1) (1882) 9 Q.B.D. 47

provisions". He has also relied upon a passage given at page 162 of Broom's Legal Maxims and the legal maxim therein stated is that "the law does not compel a man to do that which he cannot possibly perform". These passages, however, do not appear to me to be relevant to the present matter at all. All that is laid down in these passages is that if a person under a statutory obligation is to do something which it is impossible to do under circumstances beyond his control, like the act of God or the King's enemies, then he is not compelled to do that act. As far as I know these maxims have never been held to authorise an authority to do an act which it is not competent to do under a statute even if it is impossible to perform the conditions laid down in the statute for the exercise of that power by the authority. It is always open to the Legislative authorities to amend the law and give authority to the State Government to frame rules under section 22 (5) without complying with any or all the conditions laid down therein.

For the reasons given above I am of the opinion that the rule framed on 1st October, 1951, regulating the saccharine in ice candies was not valid as the provisions of section 22 (5) of the Punjab Pure Food Act, were not complied with. The conviction of the petitioner therefore for contravening this rule cannot be maintained. I, therefore, accept this petition, set aside the conviction and sentence of the petitioner and order that the fine, if paid, shall be refunded to him.

DULAT, J. I agree. Daulat, J

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