
**Government of Andhra Pradesh and Another Vs J.B. Educational Society,
Hyderabad and Another**

W.A. No"s. 1571 of 1997 and Batch

Court: Andhra Pradesh High Court

Date of Decision: April 28, 1998

Acts Referred:

All India Council for Technical Education Act, 1987 â€” Section 10#Andhra Pradesh Education (Amendment) Act, 1987 â€” Section 20#Andhra Pradesh Education Act, 1982 â€” Section 2(12), 20, 20(1), 20(2), 20(3)#Andhra Pradesh Intermediate Education Act, 1971 â€” Section 2#Constitution of India, 1950 â€” Article 246, 248, 254, 372

Citation: AIR 1998 AP 400 : (1998) 3 ALD 736 : (1998) 3 ALT 584 : (1998) 2 APLJ 76

Hon'ble Judges: Umesh Chandra Banerjee, C.J; Syed Saadatulla Hussaini, J

Bench: Division Bench

Advocate: A.G, for the Appellant; Mr. Koka Raghava Rao, Mr. M.V.S. Suresh Kumar, Mr. C. Kodandaram and Mr. B. Adinarayana Rao, SC for CG, for the Respondent

Judgement

This Judgment has been overruled by : Govt. of A.P. and Another Vs. J.B. Educational Society and Another etc., AIR 2005 SC 2014

: (2005) 3 CTC 555 : (2005) 2 ESC 184 : (2005) 2 JT 521 : (2005) 3 SCC 212 : (2005) 2 SCR 302

@JUDGMENTTAG-ORDER

A. Gopal Reddy, J.

The principal question to be decided in this batch of criminal petitions filed u/s 482 of the Code of Criminal Procedure

(for short ""the Code"") is with regard to the jurisdiction of the Drug Inspector appointed u/s 21 of the Drugs and Cosmetics Act, 1940 (for short

the Act"") to launch prosecution u/s 32 for the alleged offences said to have been committed under the Act in connection with the manufacture and

sale of Ayurvedic drugs Ozomen capsules and Ozomen Forte.

2. As these petitions raise a point of some significance in relation to the proper construction and Interaction of Sections 33A, 33B, 33EEC, 33G,

33M of the Act. Therefore, they are extracted hereunder:

33-A Chapter not to apply to Ayurvedic, Siddha or Unani drugs : Save as otherwise provided in this Act, nothing contained in this Chapter shall

apply to ""Ayurvedic (including Siddha) or Unani"".

33-B Application of Chapter IV-A:

This Chapter shall apply only to Ayurvedic, Siddha and Unani drugs.

33-EEC Prohibition of manufacture and sale of certain Ayurvedic, Siddha and Unani drugs:

From such date as the State Government may, by notification in the Official Gazette, specify in this behalf, no person, either by himself or by any

other person on his behalf, shall -

(a) manufacture for sale or for distribution -

(i) any misbranded, adulterated or spurious Ayurvedic, Siddha or Unani drug;

(ii) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof the true list, of all the

Ingredients contained in it; and

(iii) any Ayurvedic, Siddha or Unani drug in contravention of any of the provisions of this Chapter or any rule made thereunder;

(b) shall, stock or exhibit or offer for sale or distribute any Ayurvedic, Siddha or Unani drug which has been manufactured in contravention of any

of the provisions of this Act, or any rule made thereunder;

(c) manufacture for sale or for distribution, any Ayurvedic, Siddha or Unani drug, except under, and in accordance with the conditions of, a licence

issued for such purpose under this Chapter by the prescribed authority:

Provided that nothing in this section shall apply to Vaidyas and Hakims who manufacture Ayurvedic, Siddha or Unani drug for the use of their own

patients:

Provided further that nothing in the section shall apply to the manufacture, subject to the prescribed conditions, of small quantities of any

Ayurvedic, Siddha or Unani drug for the purpose of examination, test or analysis.

33-G Inspectors:

(1) The Central Government or a State Government may by notification in the Official Gazette, appoint such persons as it thinks fit, having the

prescribed qualifications, to be Inspectors for such areas as may be assigned to them by the Central Government or the State Government, as the

case may be.

(2) The powers which may be exercised by an Inspector and the duties which may be performed by him and the conditions, limitations or

restrictions subject to which such powers and duties may be exercised or performed shall be such as may be prescribed.

(3) No person who has any financial interest in the manufacture or sale of any drug shall be appointed to be an inspector under this section.

(4) Every Inspector shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code and shall be officially

subordinate to such authority as the Government appointing him may specify in this behalf.

33-M Cognizance of offences:

(1) No prosecution under the Chapter shall be instituted except by an Inspector with the previous sanction of the authority specified under Sub-

section (4) of Section 33G.

(2) No Court inferior to that of a Metropolitan Magistrate or of a Judicial Magistrate of the first class shall try an offence punishable under this

Chapter.

3. In this context it is appropriate to notice the provision for taking cognizance of the offence for violation of Chapter IV, Section 32 reads as

under:

32. Cognizance of offences : (1) No prosecution under this Chapter shall be instituted except by an Inspector or by the person aggrieved or by a

recognized consumer association whether such person is a member of that association or not.

(2) No Court inferior to that of a Metropolitan Magistrate or of a Judicial Magistrate of the first class shall try an offence punishable under this

Chapter.

(3) Nothing contained in this Chapter shall be deemed to prevent any person from being prosecuted under any other law for any act or omission

which constitutes an offence against this Chapter.

4. A reading of both the provisions, namely Section 32 and 33M there is a procedural difference for launching prosecution under Chapter IV and

Chapter IV-A. Section 32 postulates that no prosecution under Chapter-IV shall be instituted except by an Inspector or by the person aggrieved

or by the recognized consumer association whether such person is a member of that association or not. Whereas Section 33M deals with violation

of Chapter IV-A which postulates that no prosecution under Chapter IV-A shall be instituted except by an Inspector with the previous sanction of

the authority specified under Sub-section (4) of Section 33G which provides appointment of an authority by the Government and other Inspector

appointed u/s 33G(1) shall be officially subordinate to such authority.

5. It will be out of place to notice the word "Inspector" as defined u/s 3(e), which reads thus:

Inspector"" means -

(i) in relation to Ayurvedic, Siddha or Unani drug, an Inspector appointed by the Central Government or a State Government u/s 33G and (ii) in

relation to any other drug or cosmetic, an Inspector appointed by the Central Government or a State Government u/s 21.

6. The substratum of the grievance in this batch of criminal petitions is that despite Chapter-IV of the Act is not applicable to Ayurvedic, Sidda and

Unani drugs, Inspector appointed for due implementation of the Act. In relation to Chapter-IV inspected the various business premises, where

Ozomen Capsules and Ozomen Forte are available for sale, and took the samples. After picking up samples, he sent the same to the Government

Analyst, Hyderabad for analysis. On Government Analyst submitting his report declaring that the drug Ozomen capsules, under different batches,

contains 45.2 mg of sildenafil citrate per capsule. Accordingly, the persons from whom samples were taken called upon to disclose the name of the

manufacturer and on disclosure of the name of the manufacturer, prosecution was launched against the petitioners/A-1 and A-2 for contravention

of Sections 18(c), 18(a)(i)/w 17(B)(b) and 17(b) of the Act, namely, prohibition of manufacture and sale of certain drugs and cosmetics which are

misbranded, spurious and have been substituted wholly or in part by another drug or substance, and Central Government prohibited manufacture

etc. of the drugs and cosmetics in public interest under notification issued u/s 26A, vide notification No. GSR. 577 (E) dated 23-7-1983, and

punishable under Sections 27(b)(ii), 27(c), 27(d) and 28B of the Act.

7. Sri P. Gangaiah Naidu, learned Senior Counsel appearing for the petitioners would contend that Inspector appointed u/s 21 of the Act cannot

prosecute the petitioners for the offences under Chapter IV-A which deals with Ayurvedic, Siddha or Unani drug, unless he is appointed u/s 33G.

The said contention was amplified in this manner, namely, Section 33A clearly envisages that Chapter-IV shall not, except as provided under the

Act, apply to Ayurvedic (including Siddha) or Unani drug. Whereas Chapter IV-A is made applicable to Ayurvedic, Siddha and Unani Drugs u/s

33B and only Inspector appointed by the Central Government or State Governments u/s 33G authorized to launch prosecution for the alleged

offences, if any, committed under Chapter IV-A. Further, u/s 33M, no prosecution under Chapter IV-A shall be instituted except by an Inspector

with the previous sanction of the authority specified under Sub-section (4) of Section 33G. When the first petitioner who is manufacturing Ozomen

Capsules and Ozomen Forte under a valid licence and even if they contain sildenafil citrate, as per the analysis report is only misbranded or

spurious drug u/s 33EE or 33EEA(d) cannot be prosecuted for the offence under Chapter IV. Therefore, entire prosecution launched by the

Inspector without previous sanction of the authority appointed u/s 33G is without jurisdiction and falls under Exception No, 6 as specified by the

Supreme Court in the State of Haryana and others Vs. Ch. Bhajan Lal and others, where there is an express legal bar engrafted u/s 33M of the

Act to institute and continue the proceedings and the same are liable to be quashed. In support of his contentions, he placed reliance on the

decision of the Delhi High Court in Dr. Om Prakash Singh Vs. State, .

8. Learned Additional Public Prosecutor fairly submits that Inspector appointed to launch prosecution against the petitioners is only u/s 21 of the

Act and the appointment of Inspector under various GOs do no indicative about his appointment u/s 33G for due implementation of Chapter IV-A

of the Act. He fairly submits that no sanction has been obtained u/s 33M before launching the prosecution.

9. It is not in dispute xerox copies of the Notifications with regard to appointment of Drugs Inspectors filed along with complaint produced by the

Additional Public Prosecutor, clearly disclose that they are appointed u/s 21 of the Act but not u/s 33G. Further, prosecution launched against the

petitioners for the alleged offences is in respect of Chapter IV but not with regard to Chapter IV-A, which deals with Ayurvedic, Siddha or Unani

drugs. Section 33EEC prohibits manufacture and sale of certain Ayurvedic, Siddha and Unani drugs, which is in part materia with Section 18(c) of

Chapter IV. Likewise, 18(a)(i), and 17(b), 17-B(d) and 26-A for which the petitioners were prosecuted deals with only allopathic medicines,

whereas 33-EE(a), 33-E, 33-EEA and 33EE are the relevant sections akin to above sections of Chapter IV.

10. Section 33EEC prohibits manufacture and sale of certain Ayurvedic, Siddha and Unani drugs. The scheme of the Act in Chapters IV and IV-

A, as referred to above, deal with two kinds of drugs, namely, manufacture, sale and distribution of drugs and cosmetics; and Ayurvedic, Siddha

or Unani drugs respectively. Once different procedure has been prescribed for prosecution under Chapter IV-A, previous consent of the authority

specified under Sub-section (4) of Section 33G has to be obtained for launching the prosecution. Further Inspector who has not been designated

officer has been legally authorized by the State Government u/s 33G for institution of prosecution of the offence, and no sanction, as such, has been

obtained for institution of the prosecution, which is mandatory for taking cognizance of the offence.

11. The Delhi High Court in Dr. Om Prakash Singh Vs. State, after considering the distinction and conspicuous difference in the language of

Sections 32 and 33M of the Act quashed the proceedings initiated by the Drug Inspector appointed u/s 21 of the Act for the offence under

Chapter IV-A.

12. Admittedly, in the present cases, there is no notification appointing an authority by the Government under Sub-section (4) of Section 33G to

whom Inspector appointed under Sub-section (1) of Section 33G of the Act was officially subordinate to him, from whom he can obtain previous

saction for launching the prosecution.

13. In view of the fact that there is an express legal bar for institution of prosecution by the Inspector for the alleged offences, taking cognizance of

the offence by the Magistrate suffers from incurable jurisdictional deficiency and continuing the same would result in abuse of process and

unnecessary harassment to the petitioners.

14. All the Criminal Petitions are accordingly allowed and the proceedings initiated in different calendar cases pending on the file of the Courts of

the Judicial Magistrates of First Class against the petitioners are hereby quashed.