



Dr. Mohiuddin Farooque v. Government of Bangladesh (Radioactive Milk Case)

48 BLD (HDC) (1996) 438

Country: Bangladesh

Region: Asia

Year: 1996

Court: Supreme Court - High Court Division

Health Topics: Diet and nutrition

Human Rights: Right to food, Right to health, Right to life

Facts

The Petitioner, Secretary of Bangladesh Environmental Lawyers Association, filed a writ petition in the High Court, which contended that the importation of adulterated, radioactive skimmed milk into Bangladesh violated the fundamental right to life.

Danish Condensed Milk Bangladesh Ltd. had imported several consignments of skimmed milk into Bangladesh. The Radiation Testing Laboratory (RTL) of the Bangladesh Atomic Energy Commission tested the consignments for radioactivity. Amongst the tested samples, the laboratory found that one of the consignments exhibited levels of radiation much higher than Government-mandated levels. The Collector of Customs subsequently ordered the reshipment of the consignment back to the Netherlands because it was unfit for human consumption.

In response, Danish Condensed Milk Bangladesh Ltd. filed a class action suit requesting that the order of the Collector of Customs be recalled. This action was pending at the time this petition was filed in the High Court. Shortly after the initial testing, however, the Atomic Energy Commission performed more tests on the consignment. These tests had mixed results regarding the radiation level. The Atomic Energy Commission ultimately decided the consignment did not have to be reshipped.

The Petitioner argued that the Government should be compelled to reship the consignment because it had a duty under article 18 of the Constitution to improve public health. Petitioner further claimed that allowing the importer to market the contaminated consignment of skimmed milk would violate the right to life under articles 31 and 32 of the Constitution.

Decision and Reasoning

The Court held that the contaminated imported milk powder presented a danger to public health in violation of the Government's obligation to improve public health under article 18 and the right to life under articles 31 and 32 of the Constitution.

The Court first examined whether marketing and sale of the contaminated milk violated the right to life. The Court held that the right to life included "the right to protection of health and normal longevity of an ordinary human being." If the right was threatened by the consumption and marketing of contaminated food products, then the aggrieved party could move the Court to eliminate the threat. The Court held that the Government's duty to improve public health under article 18 of the Constitution meant it was "bound to protect the health and longevity of the people living in the country, as they were guaranteed a right to life"

As to whether the Government was inactive, the Court held that certain directions needed to be given in this regard. The laws governing were the Imports and Exports (Control) Act 1950, Nuclear Safety and Radiation Control Act 1993(Act XXI) and the Import Policy Order 1993-95 (the Order). Together, the Order and Act XXI provided that the Bangladesh Atomic Energy Commission would establish the acceptable level of radiation in food and drink meant for human and animal consumption. Moreover, they mandated the collection and testing of milk products for radioactive material up to a certain level. They also restricted the import of milk products with a radiation level higher than 95 Bq per kg.

The Court found that these laws demonstrated the Government's initiative in maintaining public health, but

they had not been fully implemented and they did not place a duty on public officials to collect more than one sample from a particular consignment. The Court expressed its dismay over the hazardous effect the latter could have on public health, as no two samples would ever have the same result and thus many food products were likely to have been imported that were injurious to health. The Court held it was necessary for the authorities to develop a more comprehensive system for the collection of food samples to test for radiation levels. In the meantime, the Court directed the Collector of Customs to collect more than one sample from consignments with multiple containers. The samples were to be sent to the Director, RTL to be tested; no testing was to be done by the Atomic Energy Commission, Dhaka until the Director, RTL filed a report in this regard.

Decision Excerpts

“A man has a natural right to the enjoyment of healthy life and a longevity upto normal expectation of life in an ordinary human being. Enjoyment of a healthy life and normal expectation of longevity is threatened by disease, natural calamities and human actions. When a person is grievously hurt or injured by another, his life and longevity are threatened. Similarly, when a man consumes food, drink, etc, injurious to health, he suffers ailments and his life and normal expectation of longevity are threatened. The natural right of man to live free from all the man made hazards of life has been guaranteed under the aforesaid Articles 31 and 32 subject to the law of the land. Use of contaminated food, drink, etc, be it imported or locally produced, undoubtedly affects health and threatens life and longevity of the people.” 48 DLR (1996), Para. 20.

“No one has the right to endanger the life of the people, which includes their health, and normal longevity of an ordinary healthy person by marketing in the country any food item injurious to the health of the people. We are therefore, of the view that the right to life under Article 31 and 32 of the Constitution not only means protection of life and limbs necessary for full enjoyment of life but also includes, amongst others, the protection of health and normal longevity of an ordinary human being.” 48 DLR (1996), Para. 20.

“It is the primary obligation of the State to raise the level of nutrition and the improvement of public health by preventing use of contaminated food, drink, etc. Though that obligation under Article 18(1) of the Constitution cannot be enforced, the State is bound to protect the health and longevity of the people living in the country as the right to life guaranteed under Articles 31 and 32 of the Constitution includes protection of the health and normal longevity of a man free from threats of man made hazards unless that threat is justified by law. The right to life under the aforesaid Articles of the Constitution being a fundamental right, it can be enforced by this Court to remove any unjustified threat to the health and longevity of the people as the same are included in the right to life.” 48 DLR (1996), Para. 21.