

Court No. - 40

Case :- WRIT - C No. - 29328 of 2023

Petitioner :- Shiv Kumar

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Sudhir Kumar Tiwari

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Prashant Kumar,J.

1. Heard Shri Sudhir Kumar Tiwari, learned counsel for the petitioner and learned Standing Counsel for State respondents.

2. Present writ petition has been preferred for the following reliefs:-

"I. Certiorari to quash order dated 25.08.2022 passed by the respondent no.3 by means of which the petitioner has been held guilty under Section 51 of Food Safety and Standards Act, 2006 and Rs.1,00,000 penalty has been imposed upon the petitioner and the warrant dated 26.05.2023 by means of which the respondent no.3 has authorized and respondent no.2 to recover the said amount of Rs.1,00,000/- as Land Revenue.

II. Mandamus commanding the respondents not to proceed to recover penalty of Rs.1,00,000/- in pursuance of the order dated 25.08.2022."

3. Learned Standing Counsel has raised a preliminary objection regarding maintainability of the writ petition on the ground that against the order impugned the petitioner has got efficacious alternative remedy to file an appeal before the Food Safety Appellate Tribunal under Section 70 of the Food Safety and Standards Act, 2006 (in short, Act, 2006) and as such, the writ petition is liable to be dismissed.

4. The objection so raised by learned Standing Counsel has been opposed by learned counsel for the petitioner on the ground that the order impugned cannot be challenged before the Food Safety Appellate Tribunal under Section 70 of the Act, 2006 as the order impugned does not fall in the category of final decision and as such, no appeal is maintainable.

5. In this background, we have proceeded to examine the record in question as well as the provisions of the Act, 2006. For ready reference Section 70 & 71 of the Act, 2006 are reproduced as under:-

"70. Establishment of Food Safety Appellate Tribunal. ?

1. The Central Government or as the case may be, the State Government may, by notification,

establish one or more tribunals to be known as the Food Safety Appellate Tribunal to hear appeals from the decisions of the Adjudicating Officer under section 68.

2. The Central Government or the State Government, as the case may be, shall prescribe, the matters and areas in relation to which the Tribunal may exercise jurisdiction.

3. The Tribunal shall consist of one person only (hereinafter referred to as the Presiding Officer of the Tribunal) to be appointed, by notification, by the Central Government or the State Government, as the case may be: Provided that no person shall be qualified for appointment as a Presiding Officer to the Tribunal unless he is or has been a District Judge.

4. The qualifications, appointment, term of office, salary and allowances, resignation and removal of the Presiding Officer shall be such as may be prescribed by the Central Government.

5. The procedure of appeal and powers of the Tribunal shall be such as may be prescribed by the Central Government.

71. Procedure and powers of Tribunal.--(1) The Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908) but shall be guided by the principles of natural justice and, subject to the other provisions of this Act and the rules made thereunder, the Tribunal shall have powers to regulate its own procedure including the place at which it shall have its sittings.

(2) The Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:--

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents or other electronic records;

(c) receiving evidence on affidavits;

(d) issuing commissions for the examination of witnesses or documents;

(e) reviewing its decisions;

(f) dismissing an application for default or deciding it ex parte;

(g) any other matter which may be prescribed by the Central Government.

(3) Every proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code (45 of 1860), it shall be deemed to be a civil court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

(4) The appellant may either appear in person or authorize one or more legal practitioners or any of its officers to represent his case before the Tribunal.

(5) The provisions of the Limitation Act, 1963 (36 of 1963), shall, except as otherwise provided in this Act, apply to an appeal made to the Tribunal.

(6) Any person aggrieved by any decision or order of the Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Tribunal to him on any question of fact or law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days."

6. Section 70 provides that the Central Government or the State Government, as the case may be, by a notification establish one or more Tribunals to be known as the Food Safety Appellate Tribunal to hear appeals from the decision of the Adjudicating Officer under Section 68. It is not disputed that the State of U.P. has notified the District Judges within the areas of their jurisdiction to exercise the powers of the Food Safety Appellate Tribunal, as the proviso appended to sub-section (3) of Section 70 itself provides that the Presiding Officer of the Tribunal has to be or has been a District Judge. Sub-section (5) provides that the procedure of appeal and powers of the Tribunal shall be such as may be prescribed by the Central Government.

7. Section 71 provides that the Tribunal shall have, for the purpose of discharging its function under the Act, the same powers as are vested in Civil Court under the Code of Civil Procedure 1908, while trying a suit in respect of certain matters. Sub-section (6) provides that any person aggrieved by a decision or order of the Tribunal may file an appeal before the High Court within 60 days from the date of communication of the decision or order of the Tribunal.

8. Considering the facts and circumstances, we are of the considered opinion that the petitioner has got efficacious remedy under Section 70 of the Act, 2006 to prefer an appeal before the Food Safety Appellate Tribunal and the order impugned can be assailed under Section 70 (1) before the Tribunal. Similarly against any decision or order of the Tribunal, appeal would lie to the High Court under sub-section (6) of Section 71 of the Act, 2006.

9. Once alternative remedy is available to the petitioner, we cannot come for rescue and reprieve of the petitioner at this stage. However, if the petitioner files an appeal before the Food Safety Appellate Tribunal within two weeks from today, the same would be considered on merits strictly in accordance with law.

10. The writ petition is, accordingly, ***disposed of***.

Order Date :- 22.11.2023

S.P.