

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3571 OF 2015

ADM Agro Industries Latur & Vaizag Pvt. Ltd. .. Petitioner

Vs.

Food Safety and Standards Authority of India,
Ministry of Health and Family, Welfare & Ors. .. Respondents

Mr.Pravin Samdhani, senior advocate a/w. Mr.Harsh H. Gursahani &
Mr.Rahul Totala for petitioner.

Mr.Mehmood Pracha a/w. Mr.Abhishek Tripathi I/b Ms.Yogita R. Singh for
respondent no.1.

Mr.V.N.Sagare, AGP for respondent nos.2, 3, 5 & 7.

**CORAM : ANOOP V. MOHTA,
K.R.SHRIRAM, JJ.**

DATE : 28TH APRIL, 2015

ORAL JUDGMENT (PER ANOOP V. MOHTA, J.)

1 Rule made returnable forthwith and heard finally.

2 Since 1999, the petitioner is engaged in the business of manufacturing and selling the packaged edible oil all over India. The petitioner has also registered the brand name in the Trade Mark Registry in the year 2005, and has been using the trade mark/name. The petitioner has been selling its products under a brandname “*Health Fit Toh Sab Fit*”. This brand of the petitioner, according to the petitioner, over the years, has acquired goodwill

and reputation in the market. Respondent no.1 is Food Safety and Standards Authority of India (hereinafter referred as 'FSSAI') established under Section 4 of Food and Safety Standards Act, 2006 (hereinafter referred to as the "Act of 2006). Respondent no.2 is the Commissioner of Food Safety for the State of Maharashtra appointed under Section 30 of the Act of 2006. Respondent no.3 is designated officer (zone 1), and Assistant Commissioner (Food) appointed under Section 36 of the Act of 2006 (hereinafter referred to as "DO") and has passed an order impugned in the petition. Respondent No.4 is Food Safety and Standards Officer appointed (hereinafter referred to as "FSO") under Section 37 of the Act of 2006, who has passed an order for seizure of the petitioner's goods. Respondent no.5 is also a Food Safety Officer. Respondent no.6 is the adjudicating officer (hereinafter referred to as "AO") who functions under the Food Safety and Standards Rules, 2011. Respondent no.7 is a food analyst appointed under the provisions of Act of 2006 to analyse the samples and submit report of the same to respondent no.3.

3 On 16.10.2014, respondent no.4 along with his colleagues namely respondent no.5 and independent witnesses visited the depot of the petitioner located at ship no.9, Sharatchandraji Pawar Market Yard, Peth Road, Panchavati Nashik for the purpose of inspection. FSO, in accordance

with the provisions of Act of 2006, collected 4 samples of one litre pouches of refined soyabean oil, in the presence of an independent witness and attached a paper slip and prepared a memorandum in presence of the petitioner's representative and independent witnesses stating out the sampling and had the same executed by all present. On the same day of visit, FSO issued an order dated 16.10.2014 of seizure to Food Business Operation, i.e., the petitioner, seizing 2996 units of refined soyabean oil (Health fit toh sab fit) 1 ltr. Pouches) weighing 2726.36 kgs. Bearing batch no.-LLL 007. The petitioner, by order was directed to keep the seized goods in safe custody till further orders. This seizure order was passed by FSO under section 38(1) of Act of 2006 on the ground that the packages might be in violation of section 26(1) and 26(2)(ii) of the Act of 2006. On the same day, FSO also issued a notice dated 16.10.2014 to petitioner informing the petitioner of the right to get the 4th part of the sample analyzed from authorized Food Analyst of his choice. FSO- respondent no.4 issued another notice dated 17.10.2014 informed the petitioner regarding the search and seizure of the petitioner's product and enquiring if the petitioner wishes to get the fourth part of the sample examined by an NABL accredited laboratory, in addition to parts sent to the public food analyst. The notice was received by the petitioner sometime in November 2014.

4 The petitioner in reply to the notice and order of seizure dated 16.10.2014, requested respondent no.4 to send the fourth sample to NABL accredited laboratory of the petitioner's choice. Respondent no.7 rendered its report in respect of petitioner's goods. The petitioner came to know about the same in last week of November 2014. On receipt of the report, the petitioner raised an objection to the report on the basis of these reports by the analyst which do not provide any reasons and the analysts have not applied their mind and not followed the procedure of law. Respondent no.4-FSO made application to DO in respect of seized material for the disposal of the seized stock of food article pouch. A copy of the modified application was received by the petitioner in March 2015. On 18.03.2015, respondent no.3 passed an order directing to release of seized articles. However, by the order directed the petitioner to remove the description of the label on the petitioner's product.

5 Respondent no.1 has passed impugned order dated 18th March 2015 . Respondent no.2 to 7, by their affidavit dated 18th April 2015, tried to support the opinion so expressed by respondent no.1 and also the order so passed. The counsel for respondents, however, conceded that there was no complaint about the quality of the seized edible oil. The issue is only with regard to the status being deceptive and misleading words on the label.

There was no objection if the goods labels were removed from the seized packages and the petitioner would be able to sell the seized articles on or before 31st March 2015. That stage is also over. Whether the petitioner can use or re-use the said produce again need not be gone into at this stage in this petition. The petitioner, as well as, the department have gone through the rules and regulations to deal with this aspect of this products after the expiry date.

6 So far as, opinion expressed by the Food Analyst, which read as under :

“Objectionable Sentences on label :- Heart Sketch, Naturally Rich in Omega -3 and Brand Name – Health Fit Toh Sub Fit.

*Opinion :- I am of the opinion that the heart like sketch along with the statement Naturally Rich in Omega-3 indicates that this oil has properties of curing cardiac problem, the brand name **health Fit Toh Sub Fit** indicate that the said oil has health giving properties thereby causing misleading perception and deception in the minds of people in terms of Regulation 2.2.1(3), 2.3.1(1) & 2.3.1(5) of FSS (P & L) regulation 2011. The combination of antioxidants of INS 319 (Tertiary butyl hydroquinone) and INS 330 (Citric acid) used in the product is not given in the provision related to it and in the table 4 of the Appendix -A of the Food Safety and Standard (Food Products Standards and Food Additives) Regulations, 2011 thereby contravening the provision of Regulation 3.1.5.(2) of the Food Safety and Standard (Food Products Standards and Food Additives) Regulation, 2011 in terms of its use at GMP*

level. ”

No reasons are provided how this trade name is causing misleading perception and deception in the minds of people in terms of regulations referred above. There is no contra material to show that the product has no natural Rich in Omega-3. There is no contra material that the product has no properties of curing cardiac problem. Mere heart like sketch along with the statement *health fit toh sub fit* amount to misleading and deceptive. There is no question of taking such action on assumption and presumption. There is no dispute that the petitioner got this registered under the Trade Marks Act as brand name in the year 2005. Based upon the brand name, they are producing various other products and marketing since 2005 without any objection from the department. The brand name so registered has its own legal effect. The role of concerned department referring to the provisions of the Act of 2006 and regulations 2011 as stated to be prevailing over the said registered brand name, if it is in contravention of the regulations so referred above, it must be reflected in the reasons. Even Sections 22 and 23 of the Act of 2006 so read and referred contemplates basically that there should be no misleading and/or deceptive statement/sentence/words on such labels. The basic material should be placed on record by the department to show how it is in breach of those provisions and/or how it is misleading and/or

deceptive. The burden definitely will shift upon the manufacturer and/or purchaser of such goods but by allowing statement/sentences/words so recorded in the present opinion as well as in the order that cannot be accepted as decision/conclusion by giving opportunity to the parties. Therefore, in the present facts and circumstances, we are inclined to observe that we are not concerned and/or dealing with the power of jurisdiction of authority in this regard so also the power and authority of respondent no.1. But we are definitely concerned with the lack of reasons in this regard before labelling and/or giving opinion/allowed and confirmed by the higher authority as recorded in the present matter. Even otherwise, the basic information should have been with reason. The appellate and/or higher authority just cannot add the reasons for the first time during hearing and there is no question of giving those reasons in arguments. It is desirable that the authorities while taking such action based upon the provisions of law must provide the reasons and basic conclusion with supportive material that such label and/or sentence and/or words on the label including on the registered brand name is misleading and/or false. The common parlance, words or any statement or slogan on the label/package if used connected to the contents of the products, to what extent it is deceptive and/or misleading must be clarified on record. Once the department gives reasons, it will be open for all to decide and/or take note of and to pass appropriate order.

Therefore, keeping all points open, without expressing anything on merits, for the reasons so stated above, we are inclined to quash and set aside the opinion given/order so passed on 30.10.2014 passed by respondent no.7, order dated 18.03.2015 passed by respondent no.1 and order dated 16.10.2014 passed by respondent no.5. All points are kept open. The goods which are seized are also directed to be released and to be dealt with in accordance with law. The respondents are at liberty to take action in accordance with law.

7 The petition is disposed of. No costs.

8 Rule made absolute in above terms.

(K.R. SHRIRAM, J.)

(ANOOP V MOHTA, J.)