

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE K.VINOD CHANDRAN

FRIDAY, THE 7TH DAY OF AUGUST 2015/16TH SRAVANA, 1937

WP(C).No. 4277 of 2015 (H)

PETITIONER :

K.K.ASHRAF AGED 51 YEARS
S/O.T.KUNHAMMED
'M/S.CITA PANI RESTAURANT' KMC 5/590 D
K.S.R.T.C. BUS STAND COMPLEX, KANNUR -670 002.

BY ADVS.SRI.A.K.ABDUL AZEEZ
SRI.T.K.SASINDRAN
SRI.A.K.NARAYANAN

RESPONDENT(S):

1. THE DIRECTOR, FOOD SAFETY AND
STANDARDS AUTHORITY OF INDIA
MINISTRY OF HEALTH AND FAMILY WELFARE
OFFICE OF THE DIRECTOR, CENTRAL FOOD LABORATORY, 3
KYD STREET, KOLKATA - 700 016.
2. THE COMMISSIONER OF FOOD SAFETY
THIRUVANANTHAPURAM - 695 001.
3. THE DESIGNATED OFFICER
OFFICE OF THE ASST.COMMISSIONER OF FOOD SAFETY
CIVIL STATION, KANNUR - 670 002.
4. THE FOOD SAFETY OFFICER
KANNUR MUNICIPALITY, KANNUR CIRCLE, KANNUR -670 001.

R-R1 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL
R4 BY ADV. SRI.K.K.CHANDRAN PILLAI (SR.)
R4 BY ADV. SRI.ARUN ANTONY
R BY GOVERNMENT PLEADER SMT C K SHERIN

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
07-08-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXT.P-1: TRUE COPY OF REPORT NO.836 IN FORM B DATED 4.9.2014 ISSUED BY THE FOOD ANALYST, REGIONAL ANALYTICAL LABORATORY, KOZHIKODE.

EXT.P-2: TRUE COPY OF THE REGISTERED NOTICE NO.492/2014 DATED 22.9.2014 ISSUED BY THE 3RD RESPONDENT

EXT.P-3: TRUE COPY OF THE REQUEST SUBMITTED BY THE PETITIONER BEFORE THE 3RD RESPONDENT DATED 5.12.2014 TO ISSUE THE CERTIFIED COPY OF CERTIFICATE OF ANALYSIS.

EXT.P-4: TRUE COPY OF THE CERTIFICATE OF ANALYSIS IN FORM A DATED 28.11.2014 ISSUED BY THE 1ST RESPONDENT

EXT.P-5: TRUE COPY OF THE DECISIONS OF THE HON'BLE DELHI HIGH COURT IN 2014(1) FAC 281 AND 2014(I) FAC 286.

RESPONDENT(S)' EXHIBITS: NIL

TRUE COPY

P.A TO JUDGE

jma

K. VINOD CHANDRAN, J

W.P(C) No. 4277 of 2015 M

Dated this the 07th day of August, 2015

J U D G M E N T

The petitioner in the above writ petition under Article 226 seeks to circumvent the proceedings under the Food Safety and Standards Act, 2006 on the basis of alleged discrepancies in Ext.P1 and P4.

2. Admittedly, food sample was taken from the petitioner's business premises and on analysis by the Food Analyst, Ext.P1 report was issued, which indicates that the said sample contains an added synthetic food colour, which was not permitted in the said food. The petitioner filed an appeal under Section 46(4) of the Act, and the certificate of Analysis by Ext.P4 found the presence of Monosodium Glutamate; which as per the prescription made under the Act, should not be present in the food item.

3. The petitioner relies on two decisions of the Delhi High Court produced as Ext.P5 to contend that prosecution should not be initiated and this Court should set aside the certiorari

issuance of Ext.P1 and P4 issued respectively by the Public Analyst and the Central Food Laboratory.

4. Primarily it is to be noticed that the decisions referred by the petitioner arise from orders in which the discharge was claimed before the Jurisdictional Magistrate under the Prevention of Food Adulteration Act, 1954. Since alternative remedies are available; this Court is not inclined to involve the extraordinary remedy under Article 226. The writ petition would stand dismissed leaving open the contentions of the petitioner and without making any observations on merits or the applicability of Ext.P5 judgments in the facts of the above case. The same would have to be urged before the appropriate Court at the appropriate time.

Writ petition would stand dismissed in limine.

Sd/-

(K. VINOD CHANDRAN, JUDGE)

jma

//true copy//

P.A to Judge