

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

MONDAY, THE 23RD DAY OF FEBRUARY 2015/4TH PHALGUNA, 1936

WP(C).No. 7366 of 2011 (U)

PETITIONER :

**P.V.PAPPACHAN,
PUNNASSERY HOUSE, YORDHANAPURAM P.O.,
KALADY (VIA), ERNAKULAM DISTRICT.**

BY ADV. SRI.P.NANDAKUMAR

RESPONDENT(S):

- 1. COMMISSIONER OF FOOD SAFETY,
THIRUVANANTHAPURAM. PIN-695 001**
- 2. DISTRICT FOOD INSPECTOR,
KOZHIKODE. PIN-673 001**

R1 & R2 BY SR GOVERNMENT PLEADER SRI.S.JAMAL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 23-02-2015, ALONG WITH WPC.NO. 12205/2011 AND CONNECTED
CASES, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:**

sts

WP(C).NO.7366/2011

APPENDIX

PETITIONER'S EXHIBITS:

- P1 COPY OF THE NOTICE DATED 25/01/2011 ISSUED BY THE 2ND RESPONDENT.**
- P2 COPY OF THE GAZETTE NOTIFICATION DATED 29/07/2010.**
- P3 COPY OF THE JUDGMENT IN WPC.NO.8254 OF 2010 OF ALLAHABAD HIGH COURT.**

RESPONDENT'S EXHIBITS: NIL

/TRUE COPY/

P.S.TO.JUDGE

sts

A.M. Shaffique, J.

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W.P (C) Nos.7366, 12205, 15665,
17939 & 17940 of 2011

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Dated this, the 23rd day of February, 2015.

J U D G M E N T

These cases have been filed by the petitioners who are traders/retailers in various food products. Their main contention is that Food Safety and Standards Act, 2006 having come into force in the State of Kerala on 29.7.2010, the respondent authorities have, after conducting search after the said notified date, initiated proceedings under the Prevention of Food Adulteration Act, 1954, which stands repealed as on the date of promulgation of the Act.

2. Counter affidavit has been filed by the respondent authorities indicating that till the standards are prescribed under the provisions of the 2006 Act, the standards prescribed under the Prevention of Food Adulteration Act continues to be in force.

3. By virtue of operation of Section 98 of the Act, it may be true that the standards prescribed under the Prevention of Food Adulteration Act, 1954 may be relevant if no such standards had been prescribed under the 2006 Act. But the fact remains that the procedure which is to be followed for search, seizure, analysis etc., has to be in accordance with the provisions of 2006 Act. There cannot be any dispute regarding the aforesaid position which is

clear from Section 97 of the Act, which reads as follows:

“97. Repeal and savings:- (1) With effect from such date as the Central Government may appoint in this behalf, the enactment and Orders, specified in the Second Schedule shall stand repealed:

Provided that such repeal shall not affect:-

(i) the previous operations of the enactment and Orders under repeal or anything duly done or suffered thereunder; or

(ii) any right, privilege, obligation or liability acquired, accrued or incurred under any of the enactment Orders under repeal; or

(iii) any penalty, forfeiture or punishment incurred in respect of any offences committed against the enactment and Orders under repeal; or

(iv) any investigation or remedy in respect of any such penalty, forfeiture or punishment,

and any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed:

(2) If there is any other law for the time being in force in any State, corresponding to this Act, the same shall upon the commencement of this Act stand repealed and in such case, the provisions of Section 6 of the General Clauses Act 1897 (10 of 1897) shall apply as if such provisions of the State law had been repealed.

(3) Notwithstanding the repeal of the aforesaid enactment and Orders the licences issued under any such enactment or Orders, which are in force on the date of commencement of this Act, shall

continue to be in force till the date of their expiry for all purposes, as if they had been issued under the provisions of this Act or the rules or regulations made thereunder.

(4) Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act or Orders after the expiry of a period of three years from the date of the commencement of this Act.”

By virtue of Section 97, only those matters which are taken prior to the commencement of the Act is saved, if the search was conducted and the procedure had been initiated prior to 29.7.2010. That is not the situation here. Admittedly, the procedure followed was under the provisions of 1954 Act, which was already repealed by coming into force of 2006 Act.

Accordingly, the writ petitions are only to be allowed. The impugned notices are quashed. It is made clear that if the respondent authorities can initiate proceedings under the 2006 Act, it shall be open for them to do so in accordance with the procedure prescribed.

Sd/-

A.M. Shaffique, Judge.

Tds/