

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 6th November, 2015

+ W.P.(C) No.9204/2015 & CM No.21014/2015 (for stay)

M/S PUNJAB STORES

..... Petitioner

Through: Mr. K. Radha Krishnan, Sr. Adv. with
Mr. M.Y. Deshmukh, Adv.

Versus

**CHIEF EXECUTIVE OFFICER, FOOD SAFETY AND
STANDARDS AUTHORITY OF INDIA & ORS Respondents**

Through: Ms. Tasneem Ahmadi, Mr.
Yashvardhan Bandi and Mr. Pramod
Kumar, Advs. for R-1&2.
Mr. Deepak Dhingra and Mr. Atul
Parmar, Advs. for R-3.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition seeks a mandamus to the respondent No.2 Food Safety and Standards Authority of India (FSSAI) and its Chief Executive Officer impleaded as respondent No.1 to collect samples of skimmed milk powder delivered by the respondent No.3 M/s Dharampal Satyapal Limited (Dairy Division) (DSL) to the petitioner, inspect and test the same on the spot under commission comprising of professionally qualified panel under the Chairmanship of a retired Judge of the Supreme Court or of the High Court and to submit a report to this Court.

2. It is the case of the petitioner that it is the agent of the respondent No.3 DSL and that the goods dispatched by the respondent No.3 DSL to the petitioner are not in accordance with the Regulations of FSSAI. The petitioner had earlier filed W.P.(C) No.5766/2015 in this Court and in which, on the statement of the counsel for FSSAI appearing on advance notice that testing would be done, it was so directed. This petition has been filed stating that FSSAI is required to carry out on the spot testing.

3. This petition came up first before this Court on 28th September, 2015, when I wondered as to why the petitioner, if an agent of the respondent No.3 DSL, instead of complaining to the respondent No.3 DSL or returning the goods to the respondent No.3 DSL, has indulged in this exercise. It was enquired from the counsel for the petitioner, whether the petitioner had any other disputes with the respondent No.3 DSL and how the petitioner came to know of the goods being substandard. The counsel for the petitioner, on that day, though denied that there were any disputes with the respondent No.3 DSL stated that the petitioner had come into custody of the goods in March, 2014 and had supplied the samples of the said goods to the retailers for marketing and who complained thereagainst and whereafter the petitioner itself got the goods tested from the respondent No.4 Gujarat Laboratory. To

satisfy that the petition is not an abuse of the process of the Court, to blackmail the respondent No.3 DSL, the petitioner, vide order dated 28th September, 2015 was directed to file an affidavit stating, (i) whether there are any disputes, claims, counter-claims and complaints between the petitioner and the respondent No.3 DSL, (ii) seals of what quantity of the goods have been broken by the petitioner, and (iii) which of the retailers objected to the goods and on what basis and to furnish proof of complaints received as well as the correspondence, if any of the petitioner with the respondent No.3 DSL in this regard. Time of two weeks as sought by the counsel for the petitioner to file the affidavit was granted and the petitioner was also directed to inform the respondent No.3 DSL of the next date of hearing.

4. However the petitioner did not file the affidavit till 14th October, 2015 and till 3rd November, 2015. The counsel for the respondent No.3 DSL on 3rd November, 2015 contended that the petitioner has concealed material facts from this Court; it was informed that the warehouse of the petitioner has been sealed by the Axis Bank, being the Banker of the petitioner, and the petitioner being thus unable to sell the goods has devised this methodology. On request of the counsel for the petitioner, the matter was adjourned to 4th

November, 2015 and thereafter to today.

5. The counsel for the petitioner has today handed over a voluminous affidavit along with annexures comprising of as many as 225 pages.

6. The senior counsel for the petitioner, the counsel for the respondents No.1&2 FSSAI and the counsel for the respondent No.3 DSL have been heard.

7. The petitioner, in the affidavit handed over today in Court, has a) in the first fifteen pages pointed out errors in the order dated 28th September, 2015 supra in this petition; b) from pages sixteen to twenty four reproduced the letter dated 18th April, 2015 stated to have been addressed to the respondent No.3 DSL; c) in para 13 of the affidavit stated, (i) that the contract dated 10th March, 2014 of the petitioner with the respondent No.3 DSL was upto 31st March, 2015 only; (ii) that it was obligatory on the part of the respondent No.3 DSL to take back the unsold quantity of Skimmed Milk Powder and to remit the security deposit furnished by the petitioner along with interest; (iii) the respondent No.3 DSL neither took back the unsold stock of Skimmed Milk Powder nor refunded the security deposit; d) in paras 14 to 23 (i.e. till page 32) again found fault with the order dated 28th September, 2015 supra in the present proceedings; e) in para 24 stated that i)

there was no question of breaking of seal of the product; ii) only 10 bags out of 12000 bags had been utilised for testing and offered by way of samples; that the petitioner could not sell a single bag out of 12000 bags in view of the fact that the same are adulterated and substandard; iii) that the petitioner has taken loan by way of pledge of warehouse receipts/storage receipts from the Axis Bank Limited and the goods are in the safe custody and lock and key of the Axis Bank Limited; iv) that the petitioner has to pay huge amount of interest on the loan and is in a financial crisis; f) in para 25, again quoted the letter dated 18th April, 2015 supra; and, g) paras 26 to 29 are either a reproduction of what is stated in the earlier paragraphs or quote of the judgments of the Courts.

8. What becomes evident from the aforesaid is that by the time W.P.(C) No.5766/2015 earlier filed by the petitioner came up before this Court on 28th May, 2015, the contract between the petitioner and the respondent No.3 DSL was over (on 31st March, 2015) and there indeed are disputes between the petitioner and the respondent No.3 DSL relating to the said contract. The petitioner of course in the affidavit handed over today in the Court has also stated that this Court in the order dated 28th September, 2015 has wrongly recorded the statement of the counsel for the petitioner that there

are no disputes, claims, counter-claims and complaints between the petitioner and the respondent No.3 DSL.

9. I have today also enquired from the senior counsel for the petitioner, when the subject goods were received by the petitioner and when did the petitioner found the same to be substandard and / or adulterated, as is alleged.

10. The senior counsel for the petitioner has stated that the goods were delivered between 10th March, 2014 and 26th March, 2015 and the petitioner detected the goods to be adulterated and substandard in March, 2015 and asked the respondent No.3 DSL to take back the goods on 18th April, 2015.

11. I further enquired from the senior counsel for the petitioner, what was the expiry date of the aforesaid goods.

12. The senior counsel for the petitioner stated that he does not know of the same and in fact does not even know, whether there is any expiry date of such goods.

13. Having not found the petitioner to, in the affidavit handed over in the Court today, disclosed the complaints if any received by it from its retailers, as the petitioner was vide order dated 28th September, 2015 directed to disclose, it was again enquired from the senior counsel for the petitioner.

14. The senior counsel for the petitioner confirms that no complaints from the retailers of the petitioner have been filed.

15. The senior counsel for the petitioner has drawn attention to the letter dated 28th April, 2015 of the petitioner to the respondents No.1&2 FSSAI at page 145 of the paper book and to the order dated 28th May, 2015 in W.P.(C) No.5766/2015 earlier filed by the petitioner. He has argued that FSSAI vide the said order was directed to do the needful in the matter as indicated in the said order but has not complied therewith.

16. The counsel for the respondent FSSAI controverts that FSSAI is in non-compliance with the order aforesaid in the earlier writ petition and has handed over in the Court a copy of the letter dated 17th August, 2015 of the Advocates for the respondent No.3 DSL to the FSSAI and states that though in accordance with the said order, FSSAI issued notice to the respondent No.3 DSL and sought the presence of the representative of the respondent No.3 DSL for drawing the sample but neither the petitioner nor the respondent No.3 DSL have been cooperating with the FSSAI to enable the FSSAI to comply therewith. She has further drawn attention to Rule 2.2.10 of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011 which provides for the best before and use by date to be provided and

to Regulation 2.4.4 in this regard specifically dealing with the labels on containers of infant milk substitute and contends that best before date has to be provided.

17. The counsel for the respondent No.3 DSL, with respect to the report obtained by the petitioner from the respondent No.4 Gujarat Laboratory contends that the same does not indicate to which and to whose goods it pertains. He has also drawn attention to the letter dated 15th June, 2015 of the FSSAI to the petitioner at page 198 of the paper book asking the petitioner to inform the location of the goods to be tested and the response dated 24th June, 2015 of the petitioner thereto at page 200 of the paper book stating that the stock is under the lock and key of the Axis Bank Limited and the petitioner will have to request the Axis Bank Limited to facilitate opening of the godown for taking the samples.

18. The senior counsel for the petitioner of course controverts that the label of the containers of Skimmed Milk Powder has to have any best before date and has also contended that if FSSAI was unable to implement the order dated 28th May, 2015 in the earlier writ petition, it should have approached the Court for direction and which it did not do, necessitating the present petition.

19. I have considered the rival contentions and am of the view that no case for entertaining this writ petition is made out. This Court has already vide order dated 28th May, 2015 in the writ petition i.e. W.P.(C) No.5766/2015 earlier filed by the petitioner, though without hearing the respondent No.3 DSL and on the statement of the counsel for the respondent FSSAI that FSSAI would take a sample from the consignment stated to be supplied by the respondent No.3 DSL and have the same tested, directed FSSAI to do the same, after issuing notice to the respondent No.3 DSL and seeking the presence of the representatives of the respondent No.3 DSL at the time when the sample is drawn. It was further directed that the objections if any of the respondent No.3 DSL would also be entertained and dealt with and that FSSAI, after generation of the report, act further in accordance with law. No case for entertaining a second writ petition on the same facts is made out. The petitioner apparently was satisfied with the directions contained in the order dated 28th May, 2015 and did not pursue the matter further. If the grievance of the petitioner is that FSSAI is in non-compliance of the said order, the remedy therefor is in contempt jurisdiction of this Court and not by way of a second writ petition. The petitioner at that time did not insist upon samples to be tested on the spot and claiming which

relief the present petition is filed. Now that a direction has already been given to FSSAI, if the petitioner still feels that under the Law, Rules and Regulations the samples have to be tested at the spot or in any manner, the petitioner is free to represent to the FSSAI in that respect.

20. The Supreme Court recently in *John D'souza Vs. Aldila Braganza* (2014) 15 SCC 321 has held that it is not open for the High Court in a subsequent writ petition to pass any order enlarging the order and direction issued in the earlier writ petition and at best the High Court could have only directed compliance of the direction issued in the earlier writ petition.

21. This is more so as the reason for the petitioner to approach FSSAI is the alleged wrongful refusal of the respondent No.3 DSL to take back the goods from the petitioner. This Court in exercise of jurisdiction under Article 226 of the Constitution of India would not come to the assistance, more than required, of a party having contractual dispute with another. The needful has already been done vide order dated 28th May, 2015 in W.P.(C) No.5766/2015 earlier filed by the petitioner. This Court cannot allow its process under Article 226 of the Constitution of India to be used by a party to the contract to settle scores with the other party to the contract and the remedy wherefor is either by way of a suit or arbitration. Reference if any

required in this regard can be made to ***Hari Chand Vs. Government of NCT of Delhi*** MANU/DE/8077/2006 and to my judgment ***Bijender Singh Vs. North Delhi Municipal Corporation*** MANU/DE/3770/2015.

22. With the aforesaid observations, the petition is dismissed

No costs.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 06, 2015

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(corrected and released on 5th January, 2016).