

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.06.2016

CORAM:

THE HONOURABLE MR. JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR. JUSTICE M. V.MURALIDARAN

W.A. Nos.281 to 283 of 2016
and
C.M.P.Nos.4598 to 4600 of 2016

M/s.Trivedi Trading Corporation
rep.by its Proprietor
Perumalla Amarnath
51-1-24, Acharappan Street
I Floor, Room No.24
Chennai 600 001.

..Appellant in W.A.No.281
of 2016

M/s.Karthikeya Dall Producers
rep.by its Partner
Jagarlamudi Srinivasa Rao
31-194, Enugupalaem Road
Vinukonda, Guntur District
Andhra Pradesh.

..Appellants in W.A.Nos.282
and 283 of 2016

Vs

The Authorized Officer
Food Safety and Standards Authority
of India, Ministry of Health and Family
Welfare, II Floor, Central Documentation
Complex (South Wing)
Chennai Port Trust Building
Rajaji Salai
Chennai 600 001.
all the

..Respondents in
appeals

Writ Appeals preferred under Clause 15 of the Letters
Patent challenging the common order dated 27.01.2016 passed in
W.P.No.38054, 38819 and 38820 of 2015.

W.P.No.38054, 38819 and 38820 of 2015:

To direct the respondent to draw samples in accordance with the
Food Safety and Standards Rules, 2011 from the consignment of the
petitioner in Bill of Entry Nos.2838612, 2846747 dated 7.10.2015 and
9560534 dated 13.6.2015 respectively and send the same for laboratory
testing again in terms of Notification No.1-17/FSSAI/7/2010 dated
20.01.2012 of the respondent in MP.1 of 2015 pending WPs.

For appellants :: Mr.N.V.Balaji
in all W.As.

For respondent :: Ms.Yasmeen Ali
in all W.As.

COMMON JUDGMENT

(Judgement of the Court was made by
HULUVADI G.RAMESH, J.)

Heard Mr.N.V.Balaji, learned counsel appearing for the appellants and Ms.Yasmeen Ali, learned counsel representing the respondent.

2. Challenging the common order dated 27.01.2016 passed by the learned Single Judge in rejecting the prayer sought for by the petitioners in the writ petitions, these writ appeals have been filed.

3. The case of the appellants in brief is as follows:

(i) The appellants are engaged in the business of importing pulses from various destinations. According to the appellants, if the consignment sought to be imported and it being an edible commodity, the same has to be certified by the Food and Safety and Standard Authority of India (in short, 'FSSAI') as standard commodity. One sample will be tested by FSSAI through its recognized lab and if it is found to be standard, the FSSAI would clear the cargo, otherwise a rejection order will be passed. If such rejection order is passed, the second sample will be drawn and sent to the Referral Food Laboratory, Mysore for testing. If the referral lab report also replies in negative, the FSSAI would again pass a rejection order. If a second rejection order is passed, the parties will seek permission to clean up the commodity/consignment, which has suffered rejection order twice as per the Notification of the respondent dated 20.01.2012 and after cleaning, once again draw samples and test the same for issuance of certificate.

(ii) In the case on hand, the recognized laboratory vide its order dated 16.10.2015 had rejected the consignment on the ground that it does not conform to the standards laid down under the Act. Therefore, on the online request made by the appellants, second sample was sent to Referral Lab, which also stated that the samples does not conform to the standard prescribed under the Act and hence, No Objection Certificate was

not issued by the respondent for import of the consignments.

(iii) Aggrieved by the said rejection orders, the appellants herein filed writ petitions seeking to draw samples in accordance with the Food Safety and Standards Act read with the Food Safety and Standards Rules as the respondent has not drawn samples earlier in accordance with the Rules prescribed under the Act.

(iv) This Court vide common order dated 27.01.2016 has rejected the prayer sought for by the appellants on the ground that the appellants even for the second time have got only non-confirmation report.

(v) Being dissatisfied with the said common order, the appellants are before this Court by way of these writ appeals.

4. Earlier when the matter was listed for hearing, since it was submitted by the appellants that the samples drawn from the consignments were taken in plastic covers stapled by the respondent and were not sealed, which are open to change and as such, they were not drawn in accordance with the Food Safety and Standards Act read with the Food Safety and Standards Rules, this Court vide order dated 13.06.2016, to give one more opportunity, had directed the respondent to draw one more sample from the respective consignments of the appellants in the presence of the appellants in accordance with the Rules and submit a report before this Court.

5. Accordingly, the matter is listed today on receipt of the analysis report from the Government recognized laboratory.

6. Learned counsel representing the respondent submitted copies of the report dated 16.06.2016 before this Court, based on the analysis made by Nawal Analytical Laboratories, which is an authorised lab at Chennai for the samples taken from the three different consignments with the Notified Table with Prescribed Standards as per 2.4.6(15) [Food Products Standards and Food Additives] Regulations, 2011. She also submitted that the samples were drawn in the presence of the appellants from all the three consignments and sent to the lab for analysis.

7. The learned counsel for the appellants on their part also have drawn samples from all the three consignments in question and sent for analysis to SMS Labs Services Private Limited, Chennai and submitted the copies of the report.

8. We have perused the reports filed on either side.

9. On a perusal of the report submitted by the learned counsel for the respondent-Department it is seen, in the opinion column, it is stated "that the the presence of Uric Acid in the sample Toor

Whole drawn does not meet the prescribed standard as per 2.4.6(15) of Food Products Standards and Food Additives Regulations, 2011 and further it is stated that the Test marked are not accredited by NABI. However, the learned counsel for the appellants themselves have obtained samples and also got tested elsewhere and submitted that it is fit for consumption.

10. Since the appellants submitted that the respondent has not followed the procedure as contemplated under the Regulations in drawing the samples, by way of giving one more opportunity to them, the respondent was directed to draw one more sample and sent the same for analysis. Even now, as per the reports submitted, the samples drawn does not conform to the standard as prescribed under the Regulations.

11. In view of the above, we are not inclined to differ with the view, taken by the learned Single Judge in rejecting the products, which have been obtained by the appellants for consumption.

12. Accordingly, all these writ appeals are dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

vj2

To

The Authorized Officer
Food Safety and Standards Authority
of India, Ministry of Health and Family
Welfare, II Floor, Central Documentation
Complex (South Wing)
Chennai Port Trust Building
Rajaji Salai
Chennai 600 001.

+ 1 CC to Mr.N.V.Balaji, Advocate SR NO 34241, 34240 and 34239

W.A. Nos.281 to 283 of 2016

GJ.II[CO]
GP/20.7.