

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.11.2016

CORAM

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

WP.No.39719/2016 & WMP.No.33981/2016

The Nilgiri Diary Farm P Ltd
No.327, Bommasandra Industrial
Estate, 20th KM Hosur Main Road
Bommasandra, Bangalore 560099
rep.by its Authorised Signatory
Prasantha M.S.

.. Petitioner

Versus

1.The Adjudicating Officer cum
District Revenue Officer,
Thiruvallur.

2.The Food Safety Officer
Ambattur Town-I, Mark No.523,
O/o.DD Health Services Campus
No.54/1, Asoori Street, Thiruvallur.

3.The Designated Officer
Food Safety cum Medical Administration
I/o.DD, Health Services Campus,
No.54/1, Asoori Street, Thiruvallur.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the records of the 1st respondent comprised in the order dated 24.10.2016 bearing Na.Ka.No.19548/2015/SI and quash the same.

For Petitioner : Mr.T.K.Bhasker
For Respondents : Mr.A.Kumar, Spl.GP

ORDER

Heard the learned counsel for the petitioner and Mr.A.Kumar, learned Special Government Pleader who accepts notice on behalf of the respondents and with the consent on either side, the writ petition is taken up for final disposal.

2 The case of the petitioner is that the petitioner is the manufacturer of dairy and dairy products and that on 24.02.2015, the petitioner received a Notice u/s.47[1][a] of the Food Safety and Standards Act, 2006 and under Rule 2.4.1 [4] of the Food Safety and Standards Rules, 2011, from the Food Safety Officer, that the 500ml packet of standardized milk manufactured by the petitioner / company, was sent for analysis and it was found that it contained Milk Solids Not Fat of only 7.7% as against 8.5% and hence, the sample was categorised as "Sub Standard" under section 3[1][zx] of the Act. Pursuant to the same, the petitioner also received a letter dated 05.08.2015 from the District Revenue Officer, Thiruvallur, calling upon the petitioner to appear for an enquiry on 01.09.2015 and the petitioner, also promptly appeared before the DRO,

Tiruvallur, on that day and also filed an affidavit stating that the periodical internal quality check of the dairy and dairy products were conducted and the petitioner also conducted an external analysis of the products in its own lab as well as in the lab accredited by the National Accreditation Board for Testing and Calibration and the reports of the said analysis were also annexed along with the said affidavit. It is the further case of the petitioner that the order was pronounced by the 1st respondent in respect of the petitioner's case after a delay of one year, imposing a penalty of Rs.2 lakhs without citing any reason whatsoever as to how the quantum of penalty was arrived at under the said Act. Challenging the legality of the same, the petitioner is constrained to approach this Court by filing the present writ petition.

3 The learned counsel for the petitioner would submit that in the enquiry conducted by the District Revenue Officer, on 01.10.2015, though the petitioner has accepted that he has committed a mistake for the first time, he has also given an undertaking that he will not indulge in such activities in future and hence, he was imposed with a penalty of Rs.2,00,000/-. The learned counsel for the petitioner, without prejudice to his rights and contentions would pray that imposing a penalty of Rs.2 lakhs

is on a higher side and that the same may be reduced.

4 The learned Special Government Pleader, citing the impugned order, would submit that though the retailer who commits an offence under the said Act, is to be imposed with a maximum penalty of Rs.5,00,000/-, under section 51 of the Act, the 1st respondent, considering the facts and circumstances of the case, has imposed only Rs.2,00,000/- on the petitioner and the same warrants no interference.

5 This Court considered the rival submissions made on either side and also perused the materials placed before it.

6 Though the petitioner has prayed for quashment of the impugned order of the 1st respondent dated 24.10.2016, the only contention raised by the petitioner before this Court today is that the quantum of penalty imposed on the petitioner at the rate of Rs.2,00,000/, be reduced and that it is the submission of the learned counsel for the petitioner that the said mistake had occurred for the first time and that the same would not occur in the near future.

7 Considering the said submission of the learned counsel

for the petitioner, though this Court is not inclined to interfere with the findings of the 1st respondent, is inclined to modify the quantum of imposition of fine amount alone.

8 Accordingly, the impugned order of the 1st respondent dated 24.10.2016 is modified **insofar as the imposition of penalty is concerned and the amount of penalty is reduced from Rs.2 lakhs to Rs.1,00,000/- [Rupees one lakh only] and the petitioner is directed to pay a sum of Rs.1,00,000/-** towards penalty in tune with the penalty imposed on others within a period of fifteen days from the date of receipt of a copy of this order, failing which, the order of the 1st respondent in imposing the penalty of Rs.2,00,000/- shall stand restored.

9 The writ petition stands disposed of with the above direction. No costs. Consequently, the connected miscellaneous petition is closed.

14.11.2016

AP

B.RAJENDRAN, J.,
AP

To

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Thiruvallur.
- 2.The Food Safety Officer
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