



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 28.04.2016
Pronounced on : 22.07.2016

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THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Writ Petition(MD) No. 19499 of 2014

R. Chandramohan

.. Petitioner

Versus

1. The Food Safety Officer,
Vikaramasingapuram,
Tirunelveli District.
2. The Designated Authority,
Tamil Nadu Food Safety and Drug
Administration Department,
Medical College Campus,
Tirunelveli District.
3. The Adjudicating Authority,
The District Revenue Officer,
Tirunelveli District.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorari calling for the records relating to the impugned order passed by the third respondent in Na.Ka.No.N4/23719/2014 dated 10.10.2014 and quash the same.

For Petitioner : Mr. M. Rajaraman
For Respondents : Mr. N.S. Karthikeyan
Additional Government Pleader

ORDER

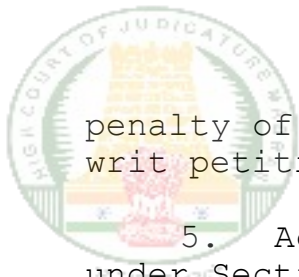
This writ petition has been filed by the petitioner questioning the correctness of the order dated 10.10.2014 of the third respondent, in and by which, the third respondent passed final orders in the proceedings initiated by him under the Food Safety and Standards Act (hereinafter called as The Act) and imposed a penalty of Rs.3,00,000/- as against the petitioner.



2. According to the petitioner, he is engaged in the business of selling non-edible gingelly oil in the name of Chandramohan traders and involved in packing and marketing of the oil under the brand name 'Shanmugha Gingelly Oil'. It is the assertion of the petitioner that the oil packed and marketed by him is a non-edible oil meant for the purpose of lighting only and it is not meant for human consumption. It is his specific contention that the words "non-edible oil" is clearly printed in the packets marketed by him.

3. During the course of such business of the petitioner, on 19.03.2013, the first respondent had collected samples of the oil marketed by the petitioner from a store at Vikramasingapuram in Tirunelveli District. According to the petitioner, the first respondent appeared to have sent the samples so collected by him to the Food Analyst at Vikramasingapuram area. However, the petitioner was not put on notice regarding the collection of the samples or the sending of the samples to the Food analyst. It is the specific assertion of the petitioner that a notice under form V-A ought to have been served on him as contemplated under the Act either before collecting the samples or before sending the samples to the Food Analyst and non-serving of the notice vitiates all the action taken thereof. Further, a report has been forwarded by the Food Analyst and even such report has not been sent to him. Such a procedure adhered to by the first respondent, according to the petitioner, is in gross violation of the principles of natural justice.

4. According to the petitioner, the first respondent, without complying with any of the mandatory procedures contemplated under the Act has filed a charge sheet before the third respondent herein for the offences punishable under Section 3 (1) (zx), 26 (i), 26 (2) (ii), 26 (4), 27 (1) and 27 (2) (e) of the Act read with Section 2.2.1 (12) of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011. In the charge sheet filed before the third respondent, being the adjudicating authority under the Act, the petitioner was arrayed as the third accused. The first accused in the proceedings was the employee and the second accused was the owner of the shop from where the samples were collected. On the basis of the charge sheet filed by the first respondent, the third respondent issued summons to the petitioner and the petitioner also appeared before the third respondent. According to the petitioner, during the course of enquiry before the third respondent, he has categorically stated that the product was not sold as a consumable product and it was a non-edible gingelly oil which is meant only for the purpose of lighting. Therefore, according to the petitioner, the provisions of the Act cannot be pressed into service and consequently the entire proceedings before the third respondent are vitiated. However, the third respondent, without taking into account such submissions made by the petitioner, passed the impugned order dated 10.10.2014 finding the petitioner guilty of the offences complained of and consequently imposed



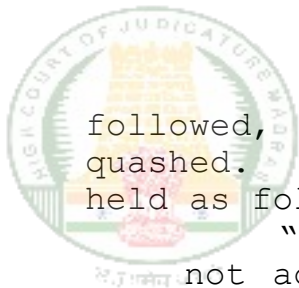
penalty of Rs.3,00,000/- on him. Aggrieved by the same, the present writ petition has been filed.

5. According to the petitioner, an appeal remedy is provided under Section 70 of the Act before the Appellate Tribunal as against the impugned order passed by the third respondent. However, the Appellate Tribunal has not been established till date. Therefore, the petitioner would contend that there is no alternative or efficacious remedy available to him to challenge the impugned order dated 10.10.2014 of the third respondent, hence, this writ petition is maintainable before this Court.

6. The learned counsel appearing for the petitioner would attack the impugned order of the third respondent significantly on three grounds. According to the learned counsel for the petitioner, as per Section 47 (1) (a) of the Act read with Rule 2.4 of the Food Safety and Standard Rules (hereinafter referred to as The Rules) the Food Safety Officer under the Act ought to have issued a notice in Form V-A to the petitioner herein before taking the samples from the shop. However, such notice has not been sent to the petitioner even though the samples have been lifted on 19.03.2014. Secondly, the learned counsel for the petitioner would contend that the Food Analyst has given a report, but the same has not been furnished to the petitioner, which is in gross violation of Rule 2.4.2 of The Rules. The learned counsel for the petitioner therefore would contend that the non-furnishing of the report of the Food Analyst and relying upon the same against the petitioner is in gross violation of the principles of natural justice. Thirdly, the learned counsel for the petitioner attacked the impugned order by contending that if the report of the Food Analyst is served on the petitioner, the petitioner would have questioned the same before the Central Agency thereby valuable right of appeal provided under the Act has been deprived to the petitioner.

7. The learned counsel for the petitioner would further contend that under Section 47 (1) (a) of the Act read with Rule 2.4 of the Rules, the first respondent ought to have sent the 4 packets said to have been seized by him to the Food Analyst as it is. However, the first respondent had opened the packets and drawn the sample of the oil in an open container which is legally impermissible. Such a procedure followed by the first respondent vitiates the entire proceedings. In any event, the gingelly oil marketed by the petitioner is only meant for lighting purpose and it is not meant for human consumption. In such circumstances, the provisions of the Act or the Rules cannot be made applicable in this case.

8. In order to lend support to his submissions, the learned counsel for the petitioner relied on the decision of the Honourable Supreme Court in **(State of Punjab vs. National Organic Chemical Industries Limited) 1996 (11) SCC 613** to contend that when the mandatory procedures contemplated under the Act has not been



followed, the impugned order of the third respondent has to be quashed. In Para No.6 of the order, the Honourable Supreme Court held as follows:-

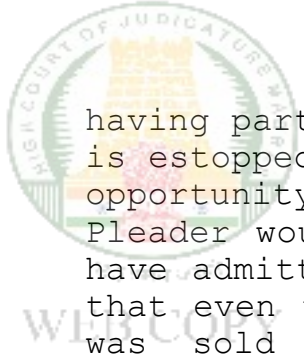
"6. Unfortunately, in this case, the appellant did not adopt the course as was required under the Act. Of course, the respondent, without availing of the remedy of report by Director of CIL, may not be entitled to plead deprivation of the statutory defence. But the complaint should be lodged with utmost dispatch so that the accused may apt to avail the statutory defence. The appellant had not given third sample to the respondent. As a result, the respondent has been deprived of his statutory opportunity to have the sample tested by the CIL. Resultantly, the respondent has been deprived of a valuable defence statutorily available to him. Under these circumstances, we think that further proceedings in the Court of the Chief Judicial Magistrate would be rendered fruitless....."

9. The learned counsel for the petitioner also relied on the decision of this Court in the case of **(M/s. Embiotic Laboratories (P) Ltd., Kanthilal Jain and Harish K. Jain vs. Drugs Inspector) 2013 (2) Law Weekly (Crl) 475** to contend that non-furnishing of the report of the Food Analyst has deprived the petitioner of his valuable statutory right provided under the Act. In Para No.11, this Court held as under:-

"11.A valuable right had been conferred on the accused to have the sample tested from the Central Insecticides Laboratory and in the circumstances of the case the accused have been deprived of that right, thus, prejudicing them in their defence. Thus, petitioners had been deprived of valuable right for having sample tested from Central Drugs Laboratory because of delay in filing complaint"

10. The learned counsel for the petitioner also relied on the order passed by this Court in the case of **(Hatsun Agro Product Limited, represented by its Authorised Signatory, Chennai vs. The State of Tamil Nadu by its Secretary, Animal Husbandry and Dairy Development Department and others) 2008 (5) CTC 40** wherein this Court held that when mandatory procedures prescribed under the Act has not been followed, the entire proceedings are vitiated.

11. The learned Additional Government Pleader appearing for the respondents would justify the order passed by the third respondent. According to the learned Additional Government Pleader, the first respondent as well as the third respondent have followed the provisions contained in the Act and Rules and therefore, the impugned order does not call for any interference by this Court. It is his contention that the petitioner was given adequate opportunity to putforth his case before the third respondent. The petitioner,



having participated in the enquiry conducted by the third respondent, is estopped from contending that he was not given proper or adequate opportunity to put forth his case. The learned Additional Government Pleader would further contend that the accused 1 and 2 in the case have admitted their guilt before the third respondent to the effect that even though it is printed in the packet as non-edible oil, it was sold as edible oil. Therefore, the learned Additional Government Pleader prays for dismissal of the writ petition.

12. I heard the learned counsel on either side and perused the materials placed on record. It is mainly contended by the petitioner that he is dealing in the business of selling non-edible gingelly oil meant for the purpose of lighting only and it is not meant for human consumption. According to the petitioner, in the oil packet the word "non-edible oil" is clearly printed to make the consumer aware and understand that the oil is not fit for human consumption and that it is only a non-edible oil. While so, the first respondent has allegedly seized 4 packets of the oil from a shop at Vikramasinghapuram, sent it for analysis and obtained a report indicating that the oil has been tested and found to be adulterated. Such a report, according to the petitioner, has been obtained behind the back of the petitioner and the report was the basis for launching prosecution against the petitioner and two others.

13. Admittedly, the samples have been collected by the first respondent from a shop at Vikramasinghapuram. However, soon after collecting such samples, the first respondent did not issue a notice as mandated under Form V A of the Act. It is also an admitted fact that the report received from the Food Analyst indicating that the contents of the oil are adulterated has also not been furnished to the petitioner. It is the specific case of the petitioner that had the report of the Food Analyst is sent to the petitioner, he would have sought for a re-test before the competent laboratory or preferred an appeal before the Appellate Authority provided in this regard. When the report of the Food Analyst has not been served on the petitioner by the first respondent, I am of the view that a valuable right of the petitioner has been deprived to send the samples for a second examination or test before the notified laboratory. In any event, the non-furnishing of the report by the first respondent is in gross violation of the principles of natural justice. I also hold that the first respondent did not adhere to the procedures contemplated under the Act and Rules while initiating action against the petitioner and two others.

14. The learned counsel for the petitioner relied on the Circular dated 17.12.2014 of the Commissioner of Food Safety and Drug Administration, Chennai wherein it is stated as follows:-

"III. (b) **Lifting of oil samples:-** If the Label clearly mentions that oil is not for edible use, it is not covered under Food Safety and Standards Act. This is the very basic point and it cannot be overlooked. If



minor errors are found like declaration in small letter, unclear language etc., notice should be issued to follow the norms. The Designated Officers should address to the Commissioner of Food Safety for necessary clarification, if they have any doubt on such label declarations.

(c) The Designated Officers should send details of all adjudicating cases pending with the District Revenue Officers to the Commissioners in DO letter. During adjudication, Designated Officers should be present and inform the District Revenue Officers of proper legal provisions.

15. It is evident from the Circular issued by the Commissioner that if the label of a product clearly mentions that the oil contained in it is not for edible use, then it is not covered under the Food Safety and Standards Act at all. Of course, the designated Officers were only authorised to bring to the notice of the dealers regarding the size of the letter or font size of the letters in which the nature of the oil is printed so as to enable the dealer to correct it. In this case, when it is clearly mentioned in the label of the product marketed by the petitioner that it is only a non-edible oil and not fit for human consumption, then the Act and Rules does not apply to the case and therefore, I hold that the entire action initiated by the first respondent is vitiated by non-application of mind besides that it is contrary to the Circular dated 17.12.2014 of the Commissioner of Food Safety and Drug Administration mentioned supra.

16. It is seen from the records that even during the course of enquiry before the third respondent, the first accused, who is the employee employed in the shop in question, has stated that he has no idea as to whether the contents of the oil is fit for human consumption or not as he is only an employee. The second accused, who is the owner of the shop, has categorically stated that the oil is being sold as non-edible oil and it is not fit for human consumption. The second accused *inter alia* denied the suggestion that the contents of the oil is adulterated. Similarly, the petitioner, who is arrayed as third accused, has categorically stated that the oil marketed by him under the brand name 'Shanmugha Gingelly Oil' is a non-edible oil and it is not fit for human consumption. The petitioner also clearly stated that in such circumstances, the provisions of the Act and Rules are not attracted. In spite of the same, the third respondent, without any reason, much less valid reason has concluded that the petitioner is guilty of the offence complained of and directed him to pay a sum of Rs.3,00,000/- as penalty for having sold adulterated oil. The impugned order therefore suffers from non-disclosure of reasons for the conclusion.

17. In sum up, the first respondent has launched prosecution against the petitioner and others without following any of the



procedures contemplated under the Act and Rules. There are lot of deficiencies in the prosecution launched by the first respondent. The first respondent did not issue notice in Form V-A after collecting the samples. The report received from the Food Analyst has not been served on the petitioner. Had it been served on the petitioner, as rightly pointed out by the learned counsel for the petitioner, he would have sought for a second test from a competent notified laboratory. In the absence of the same, the petitioner is deprived of a valuable statutory right and on that ground alone, the impugned order of the third respondent has to be interfered with. In this context, in the decision relied on by the learned counsel for the petitioner in **State of Punjab vs. National Organic Chemical Industries Limited) 1996 (11) SCC 613** it was clearly held by the Honourable Supreme Court that the respondent therein has been deprived of his statutory opportunity to have the sample tested by the CIL inasmuch as he was not furnished with the report relied on by the investigating agency. The same view was reiterated by this Court in **(M/s. Embiotic Laboratories (P) Ltd., Kanthilal Jain and Harish K. Jain vs. Drugs Inspector) 2013 (2) Law Weekly (Cr1) 475** holding that non-furnishing of the report of the Food Analyst has deprived the accused of his valuable statutory right provided under the Act.

18. In **(Hatsun Agro Product Limited, represented by its Authorised Signatory, Chennai vs. The State of Tamil Nadu by its Secretary, Animal Husbandry and Dairy Development Department and others) 2008 (5) CTC 40** relied on by the learned counsel for the petitioner, this Court held that when mandatory procedures prescribed under the Act has not been followed, the entire proceedings are vitiated. This decision rendered by this Court is squarely applicable to this case. In this case also, the first respondent failed to follow the mandatory procedures prescribed under the Act and Rules and therefore, the entire complaint as well as the order passed by the third respondent are vitiated in so far as it relates to the petitioner.

In the result, the impugned order dated 10.10.2014 of the third respondent is set aside. The writ petition is allowed as prayed for. No costs.

Sd/-

Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar



To

1. The Food Safety Officer,
Vikaramasingapuram,
Tirunelveli District.

2. The Designated Authority,
Tamil Nadu Food Safety and Drug
Administration Department,
Medical College Campus,
Tirunelveli District.

3. The Adjudicating Authority
The District Revenue Officer
Tirunelveli District.

+ 1 CC TO M/S.M.RAJARAMAN, ADVOCATE IN SR No. 39072

RSH

TE/SK-SKN/SAR-I : 17/08/2016 : 8P/5C

WP (MD) No. 19499 of 2014
22-07-2014