

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2017

CORAM

THE HON'BLE Mr. JUSTICE **M.M.SUNDRESH**

W.P.Nos. 3398 & 20313 of 2015, 41067, 41797, 42669, 44148,
44149, 44293 and 44294 of 2016
& W.M.P.Nos.36594, 36595, 37982, 37983 to 37986, 37986, 38140,
38141, 38143, 38144, 35059, 35060, 35773 & 35774 of 2016,
14777, 14068 14069 & 23631 of 2017

W.P.Nos.20313 of 2015

M/s Sha Madanraj Subhraj,
Rep., by its Partner M.Tarachand,
6, Police Patrol Road, Shevapet, Salem-2. Petitioner

Vs.

1.The Commissioner,
Food Safety and Drug Administration
Department, 5th Floor, DMS Compound,
Teynampet, Chennai-600 006.

2.The Designated Officer,
District Food Safety Office,
Salem-636 001.

3.N.Natarajan, aged about 47 years,
S/o Nallusamy, 8/19, Samayanpudur,
Thathatharipuram, Namakkal District.
(R-3 is impleaded as per order dated
09.02.2017 by CJ and MSJ in WMP
No.16948/16 in Writ Petition No.3398/2015) ... Respondents

Writ petition filed under Article 226 of the Constitution of India
praying for issuance of a Writ of mandamus calling for the records of
the second respondent comprised in Notice No.1/2014-15 dated
19.01.2015, quashing the same as arbitrary illegal without

jurisdiction and against the express provisions of the Foods Safety and Standards Act 2006 and Regulations and Rules framed thereunder besides being violative of the petitioners fundamental rights guaranteed under Articles 14 and 19(1)(g) of the constitution of India and consequently, directing the respondents not to in any manner interfere with the petitioners right of trading and/or dealing in sago products in the premises/godown(s) under the control of the petitioner without strictly complying with the provisions of the Foods Safety and Standards Act 2006.

For Petitioner in : Mr.Rahul Balaji
W.P.Nos.3398 &
20313/2015

For Petitioner in : Mr.V.R.Rajasekaran
W.P.Nos.41067, 41797,
42669, 44148, 44149,
44293, 442940 of 2016

For Respondents : Mr.K.Venkataramani, AAG., Asst.
1 & 2 in W.P.Nos.3398 by Mr.S.Karthikai Balan, G.A.,
20313/2015, R1 & R3
in W.P.Nos.41067,
41797, 42669, 44148,
44149, 44293, 442940
of 2016

For 3rd respondent in : Mr.G.Murugendran for R3.
W.P.Nos.3398
20313/2015,

For 2nd respondent in : Mr.Su Srinivasan, ACGI
W.P.Nos.44148, 44149,
44293, 44294/2016

For 2nd respondent in : Mrs.Sumita Kumari , CGSC.,
W.P.Nos.41067, 41797
& 42669/2016

COMMON ORDER

The petitioners are the manufacturers and traders of 'Sago'. In pursuant to the inspection made, the Designated Officer took samples of 'Sago' from the custody of the petitioners. After one sample was sent to the Food Analyst, the other was sent to the Referral Food Laboratory. Though the report of the Food Analyst indicated that the samples confirmed to the standards, the Referral Food Laboratory reported otherwise. Thus, the second respondent issued show cause notices asking for explanation from the petitioners. In most of the writ petitions these notices have been put into challenge and in few, even the proposed show cause notices were not allowed to be issued.

The learned counsel appearing for the petitioners would submit that the procedure adopted is contrary to the Section 47 of the Food Safety and Standards Act, 2016. The Referral Food Laboratory is not authorised. In any case, the petitioners must have been allowed to sell the products. There is an element of bias involved. There is no specific power preventing the petitioner from effecting the sale. There is a difference between misbranded, substandard and unsafe products. The Report should only be in accordance with the

parameter required under the Act as well as the Rules prevalent at the relevant point of time. Therefore, the writ petitions has to be allowed.

The learned Additional Advocate General appearing for the respondents and the learned counsels supporting the stand of the respondents would submit that what is challenged are only show cause notices. Thereafter a final order has to be passed followed by adjudication by a different authority. The procedure contemplated under the Rules has been followed, particularly, with reference to Rules 2.43 and 2.42 (5) of Food Safety and Standards Rules, 2011. The allocation of Referral Food Laboratory has been subsequently modified by the proceedings of the Director, FSSAI, New Delhi, dated 31.07.2013, by which, the Referral Food Laboratory is prescribed as Central Food Laboratory, Calcutta, which is a one furnished the reports leading to the impugned show cause notices. The question of release of the goods and how to deal with it would be subject to the final order to be passed. Hence, no interference is required.

We are dealing with the cases, which stands, on the show cause notices and prior to it. As there is no lack of jurisdiction, this Court cannot take the role of the Designated Officer at this stage. A

decision is yet to be made by the aforesaid authority. A report indicating the quality of the product cannot give cause of action to the petitioner to approach this Court. The petitioners ought to have given their replies before the Designated Officer instead of approaching this Court. There is a separate adjudicating authority, who is supposed to deal with the matter in a case where the Designated Officer finds that the samples do not confirm to the requisite standard prescribed. This Court does not find any materials to hold that there is indeed a malice in law or fact. After all, action is being contemplated only based upon the Report.

Though the learned counsel appearing for the petitioners would submit that on the alleged procedural violation, it is fairly stated that there is no need to give any finding on that. Hence, the learned counsel would state that the aforesaid issue may be left open to be placed before the Designated Officer. In view of the submission made by the learned Additional Advocate General, there is no difficulty in holding that the Reports will be taken into consideration by the Designated officer, after considering the submissions to the impugned show cause notices of the petitioners. This includes the compliance of the standard at the relevant point of time. This Court is also of the view that the petitioners are not entitled for the release

of the goods as a matter of course or right. This lies within the discretion of the Designated Officer, which in turn is based upon relevant materials. The Designated Officer can exercise its discretion at the time of passing the final order.

It has also been brought to the notice of this Court that in a public interest litigation, the Honourable First Bench has issued certain directions with respect to the higher standards to be maintained. It is also submitted that notifications have been issued though yet to be given effect to. However, it was agreed by all the stockholders though would be followed in future. We are concerned with the abovesaid aspect in these cases. The Designated Officer also can consider the issue pertaining to the disposal of the goods either in favour of the petitioners or otherwise at the time of passing the final orders.

Accordingly, these writ petitions stand disposed of with the following directions.

- (i) The petitioners are at liberty to give their respective reply to the impugned notices within a period of two weeks from the date of receipt of a copy of this order;
- (ii) The Designated Officer shall pass appropriate orders within a

period of four weeks thereafter;

(iii)The Designated Officer shall consider all the contentions raised by the petitioners and also the issue of disposal of the goods;

(iv)In the cases where no action is initiated after receiving the report against the petitioners concerned, the Designated Officer shall initiate the same within a period of two weeks **from the issuance of show cause notice.** The other direction issued to the other cases is also apply.

(v)All the issues are left open to be considered by the Designated Officer including the reliability of the reports of the Referral Food Laboratory.

The writ petitions stand disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

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06.11.2017

Index:Yes/No

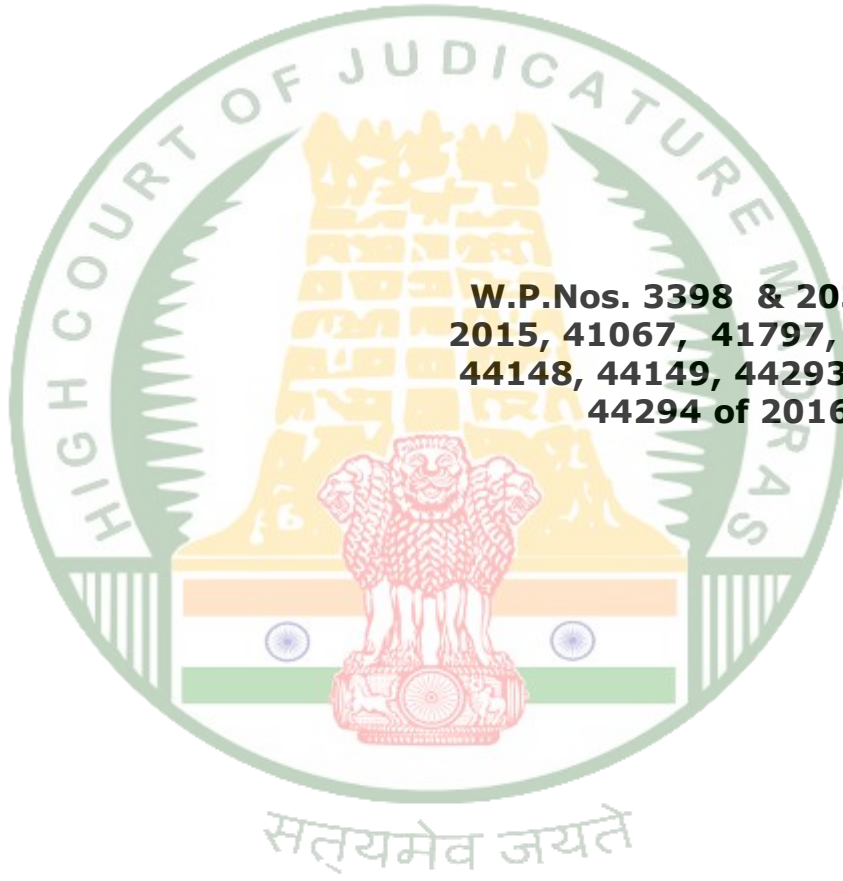
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M.M.SUNDRESH, J.

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