

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1239 of 2015

Arising Out of PS.Case No. -null Year- null Thana -null District- MADHEPURA

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Anil Kumar Son of Sri Ramanand Prasad Proprietor M/s Lucknow Sweet House,
Main Road, Madhepura, P.O., P.S. & District - Madhepura

.... Petitioner/s

Versus

1. The State of Bihar Through The Commissioner of Food Safety, Bihar, Patna
2. Adjudicating Officer -cum- Additional Collector, Madhepura.
3. Designated officer, Kosi Division Saharsa.
4. Food Safety Officer, Kosi Division Saharsa.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gyanand Roy, Advocate
Mr. Sheo Nandan Mishra, Advocate
For the Respondent/s : Mr. Pawan Kumar, AC to GA1

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

CAV JUDGMENT

Date: 03-08-2018

Petitioner has challenged the order dated 24.08.2015 passed learned Adjudicating Officer-cum-Additional Collector, Madhepura in Adjudication Case No. 02/2015 as contained in Annexure-1 to the present writ application. It appears that vide Annexure-1, the petitioner has been held guilty for using non-permitted colour in preparation of sweets and thereby not complying with the standards provided under the Food Safety and Standards Act, 2006 (hereinafter referred to as the 'Act of 2006') and after finding the petitioner's guilty, the Adjudicating Officer has imposed a fine of Rs. 1,00,000/- (Rs. One lac) in terms of the provisions of Section 59 of the Act of 2006 and the petitioner has been directed to deposit the fine amount through the *Challan* in Government treasury within the



prescribed period of 15 days. The petitioner also wants a Declaration that the impugned order has not been passed in accordance with the provisions of the Act of 2006 and the Rules framed therein.

2. Learned counsel representing the petitioner submits that on perusal of Annexure-2 to the present writ application it will appear that the seizure of *Laddu Dana* is said to have been made in presence of one Rajesh Kumar who has received the seizure list and in whose presence four packets were prepared and sealed by the Food Safety Officer. It is the submission of learned counsel that said Rajesh Kumar is not known to the petitioner and in fact the *Laddu Dana* which was seized from the shop of the petitioner was not sent to the laboratory at Kolkata. It is submitted that from Annexure-3 to the writ application which is in form of a notice it would appear that the *Laddu Dana* was prepared with the ingredients of Besan+Tumeric+Soyabin+Refined which are all permissible additives and therefore, it can not be said that the *Laddu Dana* was containing any unsafe ingredients.

3. Learned counsel further submits that laboratory report nowhere indicates that how the sample of *Laddu Dana* was non-confirming and if the non-permitted were used in preparation thereof than what was the nature of these materials. Learned counsel submits that the Adjudicating Officer has not specified as to which provision of the Act, Rule or Regulation has been violated. It is



submitted that he has not followed the provision of Section 49 of the Act of 2006 while imposing penalty. According to the petitioner the Adjudicating Authority has acted in violation of Rule 3.1.1 (6) and Rule 3.1.1 (7) of the Food Safety and Standards Rules, 2011.

4. On the other hand learned counsel representing the State submits that at this belated stage by way of a oral submission only the petitioner is trying to disown the seizure list made in presence of one Rajesh Kumar who was running the shop in question and was present at the time of seizure. Learned counsel has drawn the attention of Court towards Annexure-3 showing that it mentions the name of the shop from where the sample of food were collected. The name of the shop mentioned in Annexure-3 is M/s. Lucknow Sweet House which is owned by the present petitioner.

5. Learned counsel submits that even the notice as contained in Annexure-3 to the writ application was issued in the name of the present petitioner and the same was received by Sri Rajesh Kumar. It is not in dispute that in presence of said Sri Rajesh Kumar the food samples were collected and sealed in accordance with law.

6. Learned counsel submits that pursuant to the notice before the Adjudicating Officer when the petitioner filed his show cause/reply as contained in Annexure-9 to the present application, he did not raise any issue or contention against the service



of notice on Sri Rajesh Kumar. He has never raised any question as to the procedure adopted by the Food Safety Officer at the time of preparation of samples and sealing them in four parts. Learned counsel submits that on record there is a sanction order of the Designating Officer, Kosi Pramandal, Saharsa and only after examining the analysis report which was received from the food analyst when it was found there is a contravention of Section 26(2)(ii) of the Act of 2006, the final order of imposition of fine of Rs. 1,00,000/- has been passed.

7. Having heard learned counsel for the parties and after perusal of the notes of argument filed on behalf of the petitioner as also on going through the records, this Court finds that the plea which is being taken now on behalf of the petitioner, nowhere finds mentioned either in the show cause filed before the Adjudicating Officer or specifically in the writ petition before this Court. It is not in dispute that food samples were collected from the sweets shop of the petitioner where one Mr. Rajesh Kumar was present and in his presence the samples were sealed in packets. The petitioner has not disowned said Sri Rajesh Kumar and no statement has been made even at this stage in the writ application that said Sri Rajesh Kumar was a stranger and had nothing to do with the sweet shop in question. In paragraph-5 of the writ application, in fact it is said that a notice in form VA was also prepared on 22.10.2013 by the Food Safety



Officer, Kosi Division, Saharsa showing the details and seizure, which was sent to the food analyst for examination and copy of the same was also given to the person, who was available at the shop at that time. If this is the stand of the petitioner in the writ application, I do not find any reason to accept the oral submissions or now stated in notes of argument. On perusal of the report of the food analyst this Court finds his opinion as under :-

“Opinion : The sample of Laddu Dana is non-conforming to the provisions stipulated under Food Safety & Std. Regulation (Reg. 2.12) for, Proprietary Food contains non permitted food color hence, violating the provision under Food Safety and Standards (Food Products and Food Additives) Regulations, 2011. As under appendix-A, table 1, list of food additives, serial no. G(b) synthetic (food colour).”

8. On perusal of Annexure-‘9’ which is the reply of the petitioner before the Adjudicating Officer, this Court finds that virtually he has not alleged procedural lapses or violation of any Rule in the matter of collection of sample, sealing of the sample and in preparation of the food analyst report. A vague kind of plea has been taken that the sample collected from his shop has not been examined properly and by mistake in place of the sweet collected from his shop, some other sweets were examined. This kind of vague plea in the show cause of the petitioner indicates that he had no valid reason to



assail the findings of the food analyst. The materials available on the record clearly indicates that the food samples collected from the shop of the petitioner was sealed in presence of Sri Rajesh Kumar and the same was packed with a Code No. MDP-15/13. This is apparent from the Annexure-3 to the writ application.

9. The office of Designated Officer received the sealed container bearing Paper Slip Code No. MDP-15/13 which will be apparent from Annexure-‘4’ to the writ application and the food analyst report bearing Certificate No. C/13-14/793 and Sample No. MSK/F/13-14/743 corresponding to the sample of *Laddu Dana* received from D.O., FSSA, Bihar, Patna, Govt. of Bihar bearing No. MDP-15/13 was received in the laboratory on 31.10.2013 in tact condition of seals. The analysis report opinion has already taken note of hearinabove. The copy of this report was also made available to the petitioner vide Memo No. 17/FSSA dated 24.03.2014 which apparent from the Annexure-6 to the writ application. The petitioner has accepted receipt of the same in the writ application but he never objected to the report. The submissions that the Adjudicating Authority has violated Rule 3.1.1 (6) and Rule 3.1.1 (2) have no basis and those are liable to be rejected. In the facts of the case it cannot be said that the Adjudicating Authority has imposed fine without following the Rules.

10. In the given facts and circumstances of the case,



this Court is fully satisfied that there is no lapse in the procedures followed by the authorities under the Act of 2006.

11. This Court does not find any merit in the writ application. It is dismissed, accordingly.

(Rajeev Ranjan Prasad, J)

Arvind/-
Ved/-

AFR/NAFR	NAFR
CAV DATE	27.07.2018
Uploading Date	03.08.2018
Transmission Date	03.08.2018

