

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

CRIMINAL APPLICATION (APL) NO. 933 OF 2021

(Nitin s/o Kaniyalal Tharwani ..vs.. Food Safety Officer, Food and Drug Administration, Nagpur)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. S.A. Mohta, Counsel for the applicant,
Mr. N. Rao, Addl.P.P. for the non-applicant.

CORAM : ROHIT B. DEO, J.

DATED : 17-09-2021

The challenge is to the order dated 17-8-2021 passed by Mr. Vinod Dhawad, the Food Safety Officer, purporting to seal the business establishment of the applicant, the trade name of which "M/s. Mahalaxmi Traders".

2. The order impugned purports to refer to the seizure of prohibited food items i.e. pan masala (combination of betel leaf and areca nut with or without tobacco) and scented tobacco and then invoking and relying on a Circular dated 06-4-2017 issued by the Commissioner, directs sealing of the business establishment.

3. I have heard the learned Counsel Mr. S.A. Mohta and the learned Additional Public Prosecutor Mr. N. Rao, at length. The officer Mr. Vinod Dhawad is personally present.

4. *Prima facie*, I am satisfied that the order of

sealing is a gross abuse of administrative power. The circular to which a reference is made, does not empower the Food Safety Officer to seal the business establishment, and even otherwise, such circulars cannot override the statutory provisions.

5. I repeatedly called upon the learned Additional Public Prosecutor Mr. N. Rao to clarify the source of power which enables the Food Safety Officer to seal the business establishment from which the prohibited food items i.e. pan masala (combination of betel leaf and areca nut with or without tobacco) and scented tobacco is seized. Mr. N. Rao, after consulting the Food Safety Officer Mr. Vinod Dhawad, submits that such power is available by virtue of the provisions of Rule 2.1.3(4) of the Food Safety and Standards Rules, 2011 (Rules).

Sub-rule (4) of Rule 2.1.3 of the Rules reads thus :

“4. Powers and Duties - (i) Without prejudice to the powers conferred on him under section 38 of the Act, where the Food Safety Officer is of the opinion or he has reason(s) to be recorded in writing that in the given situation it is not possible to comply with the provision of section 38(1)(c) or the proviso to section 38(1) for reasons like non availability of the Food Business Operator, the Food Safety Officer may seize the adulterant or food which is unsafe or sub-standard or mis-branded or containing extraneous matter, may seal the premises for investigation after taking a sample of such adulterant or food for analysis.

(ii) Where the Food Safety Officer is of the opinion or he has reason(s) to believe that any person

engaged in selling, handling or manufacturing any article of food is suffering from or harbouring the germs of any infectious disease, he may cause such person to be examined by a qualified medical professional duly authorized by the Designated Officer.

Provided that where such person is a female, she shall be examined by a qualified lady medical professional duly authorized by the Designated Officer.

If on such examination the qualified medical professional certifies that such person is suffering from any such disease, the Food Safety Officer may by order in writing under intimation to the Designated Officer direct such person not to take part in selling or manufacturing any article of food.

(iii) Furthermore, it shall be the duty of the Food Safety Officer

(a) To inspect, as frequently as may be prescribed by the Designated Officer, all food establishments licensed for manufacturing, handling, packing or selling of an article of food within the area assigned to him;

(b) To satisfy himself that the conditions of licenses are being complied with by each of the Food Business Operators carrying on business within the area assigned to him and report to the Designated Officer;

(c) To procure and send for analysis if necessary, samples of any article of food which he has reason to believe or on the basis of information received including from a purchaser are being manufactured, stocked or sold or exhibited for sale in contravention of the provisions of the Act, Or rules and regulations framed thereunder;

(d) To draw samples for purposes of surveillance, survey and research, which shall not be used for prosecution;

(e) To investigate any complaint which may be made to him in writing in respect or any contravention of the provisions of the Act, or rules framed thereunder;

(f) To maintain a data base of all Food Business within the area assigned to him;

(g) To recommend Designated Officer to issue of improvement notices to the Food Business Operator whenever necessary;

(h) To maintain a record of all inspections made and action taken by him in the performance of his duties, including the taking of samples and seizure of stocks, and to submit copies of such records to the Designated Officer as directed in this regard;

(i) To make such inquiries and inspections as may be necessary to detect the manufacture, storage or sale of articles of food in contravention of the Act or rules framed thereunder;

(j) To stop and inspect any vehicle suspected to contain any unsafe food or food which does not comply with the provisions of this Act and rules, intended for sale or delivery for human consumption;

(k) To recommend to the Designated Officer giving specific grounds, suitable action in regard to licenses issued to any Food Business Operator, if on inspection the Food Safety Officer finds that the Food Business Operator had violated the conditions for grant of license;

(l) To carry out food safety surveillance to identify and address the safety hazards;

(m) To respond to incidents of food poisoning in his area and to send report to and assist the Designated Officer to enable him to initiate corrective action;

(n) To facilitate preparation of Food safety plans for Panchayat and Municipalities in accordance with the parameters and guidelines given in schedule IV of Chapter 3 of Regulation.

(o) To detain imported packages which are suspected to contain articles of food, the import or sale of which is prohibited;

(p) To coordinate with the Food Business Operators within his area of operation and facilitate the introduction of food safety systems by the Food Business Operators.

(q) To perform such other duties, as may be

entrusted to him by the Designated Officer or Food Safety Commissioner having jurisdiction in the local area concerned.

6. *Prima facie*, I am satisfied that the provision pointed out has no applicability in the facts of the case.

7. However, no final opinion need be expressed since the Food Safety Officer Mr. Vinod Dhawad, who is personally present, has assured the Court that the order of desealing shall be withdrawn with immediate effect.

8. The statement is recorded.

9. The learned Counsel Mr. S.A. Mohta states that his grievance shall stand satisfied if the business establishment is desealed.

10. This application is accordingly disposed of. However, it is made clear that the non-applicant and/or the department shall be free to continue with and/or initiate such action as is permissible under the law. The observations in this order shall not prejudice the department if any action taken against the alleged violation of the Act or the Rules.

JUDGE

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