



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.08.2021

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THE HONOURABLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

W.P. (MD) .No.1880 of 2021

and

W.M.P. (MD) .No.1621 of 2021

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K.N.Jagadesan

... Petitioner

Vs

The Designated Officer,
Tamil Nadu Food Safety and
Administration wing,
1st Floor, Office of the Deputy Director
of Health Services,
Multipurpose Health Supervisors,
Training School,
Viswanathapuram, Madurai-14

... Respondent

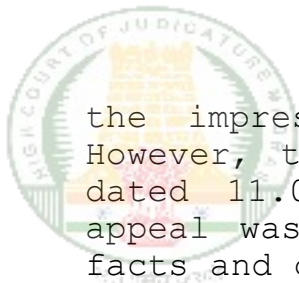
Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records and quashing the order dated 11.01.2021 in Na.Ka.No.188/U.Pa.Tha.Sa/2021 and direct the respondent to send the sample to the Referral Laboratory.

For Petitioner : Mr.M.Rajaraman
for Mr.R.Parthiban
For Respondent : Mr.R.Baskaran,
Counsel for State

ORDER

The petitioner assails an order dated 11.01.2021 of the appellate authority under the Food Safety and Standards Act, 2006 (the FSS Act) and consequently, seeks a direction to send the sample to the Referral Laboratory.

2.The petitioner states that he is engaged in an oil business, which is under taken under the name and style of "Rajalakshmi Oil Mill," at No.2/502, Narasingam Road, Kadachanendal, Madurai. Pursuant to the collection of sample of two types of oil, it was found that such products were misleading, misbranded, substandard and prohibited and restricted on sales. Such conclusion was challenged by the petitioner by filing an appeal in terms of Section 46 (4) of the FSS Act. Pursuant thereto, a notice dated 08.12.2020 was issued calling upon the petitioner to deposit the amount necessary to defray the expenses for sample analysis by the Referral Laboratory. Accordingly, it is stated that the petitioner was under



the impression that the sample would be sent for re-testing. However, the petitioner was shocked to receive the impugned order dated 11.01.2021, whereby the petitioner was informed that his appeal was rejected. The present writ petition is filed in these facts and circumstances.

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3. Learned counsel for the petitioner states that the impugned order is liable to be interfered with because the appellate authority has not applied its mind to the materials on record and mechanically affirmed the report of the Food Analyst. In this connection, learned counsel refers to Rule 2.4.6 of the Food Safety and Standard Rules 2011 (the FSS Rules) and contends that such Rule mandates that the appellate authority concerned should provide an opportunity to be heard before the appeal is decided. Learned counsel contends that the appellant was not provided with such opportunity. In addition, learned counsel contends that the sample should have been sent for re-testing by the Referral Laboratory and the appeal should have been decided upon receipt of the report of the Referral Laboratory. On account of not complying with the aforesaid requirements, learned counsel submits that the impugned order is liable to be quashed.

4. In response and to the contrary, Mr.R.Baskaran, learned counsel for the State, points out that Section 46(4) of the FSS Act confers discretion on the appellate authority to decide whether to refer the matter to the Referral Laboratory or not. According to learned counsel for the State, Rule 2.4.6 also makes it clear that the appellate authority has the discretion to decide whether to refer a sample to the Referral Laboratory. In the case on hand, learned counsel for the State submits that the appellate authority in exercise of such discretion was convinced that it was not necessary to refer the sample to the Referral Laboratory. Consequently, he states that the impugned order is not liable to be interfered with.

5. Section 46(4) of the FSS Act provides for a statutory appeal against the report of the Food Analyst before the Designated Officer. The FSS Rules specify the procedure to be followed in such regard. Rule 2.4.6 to the Rule of 2011 is material for the purpose of this case and, therefore, is set out below:

"1.When an appeal as provided under Sub-Section (4) of Section 46 is preferred to the Designated Officer by the Food Business Operator against the report of the Food Analyst, the Designated Officer, shall if he so decides, within thirty days from the receipt of such appeal after considering the material placed before him and

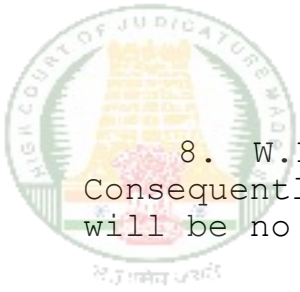


after giving an opportunity to Food Business Operator to be heard shall forward one part of the sample to the referral lab. Such appeal shall be in Form VIII which shall be filed within 30 days from the date of the receipt of the copy of the analysis report from the Designated Officer Report of the referral laboratory shall be final in this regard.

2.The Designated Officer shall forward one part of the sample under appropriate condition as specified for the product including transport, to retain the integrity of the sample. The cost of analysis of the sample shall be borne by the Food Business Operator. The remaining samples will also be safely kept under appropriate conditions to prevent deterioration."

6. Upon closely examining Rule 2.4.6, several requirements are evident. The first requirement is that the appellate authority is required to provide an opportunity of hearing to the Food Business Operator. In the case on hand, the documents on record do not evidence the provision of a reasonable opportunity to the appellant, Food Business Operator. Secondly, the Rule requires that the Designated Officer should consider the materials placed before him. Once again, the cryptic order of the Appellate Authority merely repeats what was stated in the report of the Food Analyst and there is no indication that the appellate authority considered the materials placed before him, including the memorandum of appeal. Although the State contended that the Designated Officer has the discretion to decide whether to forward the sample to the Referral Laboratory or not, such discretion cannot be exercised arbitrarily. In other words, there should be some indication in the order of the appellate authority as to why it was not necessary to refer the sample to the Referral Laboratory.

7. In the present case, the impugned order is vitiated for all the reasons stated above. Accordingly, impugned order dated 11.01.2021 is quashed. Consequently, the matter is remanded to the Designated Officer for rehearing strictly in accordance with the mandate of Section 46 (4) of the Food Safety and Standards Act, 2006 r/w Rule 2.4.6 of the Food Safety and Standards Rules 2011. The appeal shall be heard and disposed of expeditiously, preferably within a period of three months from the date of receipt of a copy of this order.



8. W.P.(MD).No.1880 of 2021 is allowed on the above terms. Consequently, connected W.M.P.(MD).No.1621 of 2021 is closed. There will be no order as to costs.

Sd/-

Assistant Registrar (Crl)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

sbn

To:

The Designated Officer,
Tamil Nadu Food Safety and
Administration wing,
1st Floor, Office of the Deputy Director
of Health Services,
Multipurpose Health Supervisors,
Training School,
Viswanathapuram, Madurai-14

+1 CC to M/s.GP (SR-25059[F] dated 03/08/2021)

W.P.(MD).No.1880 of 2021

and

W.M.P.(MD).No.1621 of 2021

02.08.2021

LS (CO)

LR (09.08.2021) 4P 3C