

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 267 OF 2022

Delilah S. Lobo

... Petitioner

Versus

State of Goa, Thr. The Chief Secretary & 2 ... Respondents

Ors.

Mr. Pankaj P. Vernekar, Advocate *with Ms. Cidalia Lobo,*
Advocate for the Petitioner.

Mr. D. Pangam, Advocate General, *with Ms. Maria Correia,*
Additional Government Advocate for the Respondents–State.

CORAM: SANDEEP K. SHINDE, J

DATED: 5th July 2022

ORAL ORDER

1. Heard Mr. Vernekar, learned Counsel for the Petitioner and Mr. D. Pangam, learned Advocate General for the Respondents–State.

2. The Petitioner is a Food Business Operator, within the meaning of Section 3(o) of the Food Safety and Standards Act, 2006 (*Act of 2006*, for short). Petitioner seeks to challenge the Order dated 27.06.2022, passed by the Senior Food Safety Officer/Registering Authority, Bardez (*'impugned Order'*, for short) purporting to suspend the registration of certificate dated 22.02.2021 issued by the

Respondent no.3 to the Petitioner and also purportedly directing the Petitioner to refrain from conducting any food business activities in the premises until further orders.

3. The principal contention of the Petitioner is that the impugned Order has been passed in disregard to mandatory procedural safeguards of provisions of Section 32(1)(d) of the Act of 2006 and clause 2.1.8(1) of the Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011, (*Regulations of 2011*, for short) and without jurisdiction.

4. Briefly stated, the facts of the case are like this :

On 24.06.2022, Mr. Rajaram Patil, Senior Food Safety Officer, served a notice purportedly issued under Section 31 of the Act of 2006 on the Petitioner, alleging that Petitioner was operating food business without a license in violation of Section 31 of the Act of 2006, which is punishable with imprisonment for a term which may extend six months and fine which may extend to ₹ 5 lakhs rupees under Section 63 of the said Act. Thus the Petitioner was directed to obtain the required licence within 15 days and stop business activity till such time the licence is obtained. On the same day i.e. 24.06.2022, the Food Safety Officer in exercise of power under

Section 38(2) of the Act, inspected the premises of the Petitioner and found that General Hygienic and Sanitary practices set out in Schedule 4 appended to Licensing and Registration of Food Business Regulations 2011, were not followed. Whereupon, the Petitioner was directed to secure compliance and report to Officer with immediate effect. The inspection report-cum-notice suggest it was '*improvement notice*,' within the meaning of Section 32 of the Act. Section 32 contemplates that if the Designated Officer has reasonable grounds for believing that any food business operator has failed to comply with any regulations, he may require the food business operator to take measures within a period not being less than fourteen days, in order to secure compliance.

5. The premises of the Petitioner was re-inspected on 27.06.2022 i.e. within three days from the first inspection. Mr. Rajaram Patil (same person who had inspected on 24.06.2021), found that despite the instructions of Food Safety Officer, issued on 24.06.2022, the Petitioner was operating food business and thus violated Section 55 of the said Act. Also he noted, civil work was going on in the premises, simultaneously with food activity. Thus, for alleged non-compliance of hygienic and sanitary practices and the alleged misuse of registration certificate, the Registering Authority, suspended the

registration certificate and refrained the Petitioner from conducting the food business activities till further orders

6. Aggrieved Petitioner approached this Court in its writ jurisdiction complaining that the impugned order has been passed in flagrant violation of procedural safeguards of the Regulations of 2011 and Act of 2006.

7. Mr. Vernekar, learned Counsel for the Petitioner, submitted although the impugned order is amenable to appeal, yet, having regard to the facts of the case and in particular that impugned order was passed in gross violation of the principles of natural justice, this Court may set aside the impugned Order and relegate the parties to the notice stage. Mr. Vernekar submitted that the alleged deficiencies do not admit and constitute circumstances sufficient to suspend the license forthwith in the interest of public health as has been done by Food and Safety Officer in exercise of powers under first proviso to Section 32 of the Act of 2006.

8. On the other hand, Mr. Pangam, the learned Advocate General appearing for the State, strenuously contended that the inspection and the re-inspection reports in no uncertain terms, suggest that

Petitioner did not follow general hygienic and sanitary practices at the premises for safety of the food, manufacture, etc., which is indispensable to health and welfare of consumer, reason being food is perishable, commodity susceptible to spoilage and adulteration and thus basic sanitary and hygienic conditions are deemed necessary. Learned Advocate General read out the report of Food Safety Officer in support of his submission, besides the photographs of the premises to show civil work was being carried out simultaneously in the premises. Learned Advocate General submitted that taking, the deficiency singly or together, would lead to only inference that permitting the Petitioner to run the food business without first securing compliance of deficiencies would not be in the interest of public health. Learned Advocate General, therefore, submitted that in the given set of facts, suspension of Registration Certificate and order to restrain the Petitioner from doing food business was inevitable. As such, the Petitioner cannot be heard to say that Officer has flouted mandate of fourteen days notice, required under Section 32(1)(d) of the Act. Therefore, submissions of the State is that it was a fit case wherein the Officer has correctly invoked his powers in terms of the first proviso to Section 32 of the Act of 2006 and suspended the registration. Over and above, learned Advocate General submitted that Petitioner was carrying on food business without licence and

would rely on provisions of Section 31 of the Act and Section 63 of the Act, which provide for prosecution and punishment. As also, he submitted without first exhausting remedy of Appeal, Petitioner could not have filed writ Petition. On these grounds, learned Advocate General seeks dismissal of the Petition.

9. To appreciate the diverse contentions, it would be appropriate to read and understand relevant provisions of Act and Regulations, relied on by the respective Counsel in support of their submissions.

10. Thus, to say, 2006 Act has been enacted for laying down science based standards for articles of food and regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connect therewith or incidental thereto.

11. In the case at hand, in exercise of powers under Section 38(2), Senior Food Safety Officer inspected the premises twice, but without calling one or more persons at the time of inspection and, therefore, the inspection report dated 24.06.2022 and dated 27.06.2022, were drawn without securing the compliance of sub-section (7) of Section 38 of the Act. This procedural safeguard, *prima facie* renders the

inspection uncertain. Thus for want of compliance of the procedural safeguard, *prima facie*, further actions founded on such inspection reports, calls for deeper scrutiny, of the alleged non-compliance hygienic and sanitary practices.

12. On the re-inspection of the premises on 27.06.2022, Mr. Rajaram Patil, Food Safety Officer, suspended the registration certificate and directed Petitioner to stop food business activities till further orders. In fact, the powers to cancel licence (including power to suspend) and to prohibit the food business operator from selling any article of food for alleged contravention of the provisions of the Act and Rules and Regulations are vested in the Designated Officer under Section 36(3)(a) & (b) of the Act. However, Mr. Rajaram Patil who was not 'Designated Officer' exercised these powers and suspended the registration certificate and passed the consequential order, in a capacity of Registering Authority, for alleged non-compliance of the safety requirements set out in Schedule IV appended to the Regulations of 2011. In that view of the matter, *prima facie*, the impugned order dated 27.06.2022 passed by Mr. Rajaram Patil, was without authority and hence without jurisdiction.

13. Chapter VII of the Act provides for enforcement of Act. “Designated Officer” and “Food Safety Officer” are the two authorities amongst others, responsible for enforcement of Act. Section 36 empowers the Commissioner of Food Safety of the State to appoint Designated Officer, who shall not be below the rank of Sub-Divisional Officer, to be in charge of Food Safety Administration in such areas as may be specified. This Section enumerates the functions to be performed by the Designated Officer. One of such function is to issue or cancel licence of food business operators and another to prohibit sale of any article of food which is in contravention of the provisions of the said Act and Rules and Regulations made thereunder. Whereas Section 38 defines the powers of Food Safety Officer which, includes taking sample of any article of food, seizure of any article intended for food, which appears to the Food Safety Officer to be in contravention of the Act or Regulations or Orders made thereunder; and power to enter and inspect any place where article of food is manufactured or stored for sale, etc. Sub-section (7) of Section 38 mandates the Food Safety Officer to call one or more persons to be present at the time when he enters and inspects any place where the article of food is manufactured or stored for sale.

14. In the context of facts of the case, one may argue that Mr. Rajaram Patil, suspended registration certificate in capacity as a Registering Authority; The Clause 5 of Regulations 2011, defines 'Registering Authority' which mean and include Designated Officer/Food Safety Officer or any official in Panchayat, Municipal Corporation or any other local body or Panchayat in an area, notified as such by State Food Safety Commissioner for the purpose of registration as specified in these Regulations. Assuming Mr. Rajaram Patil, being Registering Authority, was empowered to suspend the registration certificate in terms of Regulation 2.1.8, which refers to Section 32 of the Act, however, the fact remains that Clause (d) of sub-section (1) of Section 32 contemplates that once improvement notice is caused, a reasonable period not less than fourteen days shall be afforded to noticee, for securing the compliance of the safety requirements set out in Schedule 4 appended to the Regulation. More so, Regulation 2.1.8 (1) says that registering or a licensing authorities would afford reasonable opportunity of being heard to the concerned food business operator before suspending any registration or any of the activities only if there is reason to believe that food business operator has failed to comply with the conditions within the period mentioned in any improvement notice served under Section 32 of the Act. Therefore, conjoint reading of Section 32(1)(d) with Regulation

2.1.8(1) makes it abundantly clear that neither Registering Authority nor Licensing Authorities could suspend the licence or registration certificate without affording reasonable opportunity of being heard to business operator not being less than fourteen days. Admittedly, in the case at hand, the registration certificate has been cancelled and the Petitioner was refrained from food business activities without affording the reasonable opportunity of being heard. Therefore, the primary evaluation of material on record suggests that the Respondents have not followed procedural safeguards in suspending the registration certificate of the Petitioner.

15. Insofar as the contention of the State that the Petitioner was not operating the food business without licence as required under Section 31 of the Act is concerned, it may be stated that sub-section (2) of Section 31 provides that petty manufacturer who himself manufactures or sells any article of food or a petty retailer, hawker, temporary stall holder shall only register their business with the concerned Municipality or Panchayat, as the case may be. The expression 'Petty Food Manufacturer' as defined in clause (4) of Regulations of 2011, means any food manufacturer, who :

(a) manufacturers or sells any article of food himself or a petty retailer, hawker or temporary stall holder or distributes foods including in any religious or social gathering except a caterer; or

(b) Such other food businesses including small scale or cottage or such other industries relating to food business or tiny food businesses with an annual turnover not exceeding Rs. 12 lakhs and/or whose–

(i) production capacity of food (other than milk and milk products and meat products) does not exceed 100 kg/ltr per day; or

(ii) procurement or handling and collection of milk is up to 500 litres of milk per day; or

(iii) slaughtering capacity is 2 large animals or 10 small animals or 50 poultry birds per day; or less.

In this case, whether the case of the Petitioner falls within the meaning of Petty Food Manufacturer or not as claimed by him, is a

distinct issue to be decided by the authorities in accordance with the Rules and Regulations prescribed therefor. However, merely because the Petitioner was not holding a licence but registration, by itself cannot be a ground either for issuing the improvement notice or for suspending the licence.

16. Insofar as contention of the State, that the Designated Officer is invested with the powers to suspend the licence forthwith in the interest of public health is concerned, in my view, these powers are to be exercised in its true spirit only in cases where sanitary and hygienic requirements and Food Safety measures were likely to cause and render the food under safe for consumption. Thus, these extraordinary powers, are to be exercised in exceptional circumstances where there is imminent danger to the public health is clear and self evident. In this case, the non-compliance of hygienic and sanitary requirement observed in the inspection report were not neither posing imminent danger to public health for suspending the licence forthwith and particularly when the inspection was carried out without observing procedural safeguards in terms of Section 38(7) of the Act.

17. In any case, the Petition involves several disputed questions of facts which cannot be addressed in the writ jurisdiction besides the impugned order is appeal-able. Therefore, it would be appropriate to relegate the parties, the Commissioner of Food Safety before whom the Petitioner may present/institute the appeal against the impugned order, as suggested by the Respondents and agreed by the Petitioner. Therefore, in case such an appeal is preferred, the Commissioner of Food Safety shall decide it in accordance with law and shall make an endeavour to conclude the same preferably within four weeks from its presentation.

18. Mr. Vernekar, learned Counsel for the Petitioner, on instructions, submits that the Petitioner shall present/institute the Appeal before the Commissioner within a week from the date on which the order is uploaded on the website. Statement is accepted.

19. Having regard to the fact of the case and for the aforesaid reasons, it would be in the interest of justice to stay the implementation of the impugned order till the appeal proceedings are concluded by the Commissioner of Food Safety and accordingly stayed.

20. All contentions of the Petitioner and the Respondents are expressly kept open. Needless to state that the Commissioner of Food Safety shall decide the appeal independently in accordance with law and without being influenced by the observations made herein.

21. In case of an adverse order passed by the Commissioner, effect shall not be given to such an order for a period of two weeks.

22. The Writ Petition is disposed of in the aforesaid terms.

SANDEEP K. SHINDE, J

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