

Ct. 05
Item No.09
09.02.2023
(Suvendu)

WPA 1521 of 2023

**Krishna Chandra Dutta (Spice)
Pvt. Ltd. & Anr.
Vs.
Food Safety and Standards
Authority of India & Ors.**

Mr. Ratnanko Banerji
Mr. Mainak Bose
Mr. Jishnu Chowdhury
Mr. Sachin Sukla

.....for the petitioners

Ms. Manika Roy
Mr. S.A. Munshi

.....for the FSSAI

The affidavit of service is taken on record.

The petitioners are aggrieved by a Test/Analysis Report dated 22nd December, 2022 carried out by the Joint Director –Cum- Food Analyst of the Biriyan Masala manufactured by the petitioner no.1. The relief sought for also relates to an order dated 2nd January, 2023 of the Deputy Director /Designated Officer of the Food Safety and Standards Authority of India by which it was found that the sample did not conform to the standards under the 2020 Regulations.

According to learned counsel appearing for the petitioners, both the Test Report as well as

the order are liable to challenge. Counsel places the relevant Act and the Regulations to show that the Maximum Residue Limits prescribed in Clause 2.3 of the 2011 Regulations applies only to cabbage and Okra which do not form part of the ingredients mentioned on the back cover of the petitioners' Biryani Masala packaging. Counsel further says that the period mentioned in the Analysis Report is contrary to Section 46(3) of the 2006 Act.

Learned counsel appearing for the answering respondent is represented and seeks to explain the permissible insecticides limit found in the petitioners' product.

Section 46(4) of The Food Safety and Standards Act, 2006 provides for an appeal which may be filed by an aggrieved party against the Report of the Food Analyst before the Designated Officer who may refer the matter to the referral food laboratory as notified by the Food Authority for an opinion.

Admittedly, the petitioners have challenged the findings of the Analysis Report dated 22nd December, 2022 on the basis of the findings being contrary to the Food Safety and Standards (Contaminants, Toxins and Residues) Regulations, 2011 which came into force on 5th

August, 2011 and specifically rely on the table under Regulation 2.3 indicating the permissible residue limits prescribed for two foods which the petitioners say are not part of the Masala/ product manufactured by the petitioner no.1.

The order of 2nd January, 2023 makes the petitioners aware of the appeal provision under the Act and that the appeal would have to be filed within thirty days from the receipt of the Analysis Report under The Food Safety and Standards Rules, 2011. The time to file the appeal has expired.

This Court is of the view that the points raised by the petitioners under the Act and the Regulations with regard to the time within which a sample must be analyzed and the maximum residue limits in respect of the foods which would not be relevant for the petitioner no.1 can very well be taken before the Authorities prescribed under Section 46(4) of the Act.

The other apprehension of the petitioners that the petitioners may be directed to recall the products which are already out in the market with reference to a Notification dated 18th January, 2017 under the Food Safety and Standards (Food Recall Procedure) Regulations, 2017 shall be considered by the appellate forum since any order

for recall will cause prejudice to the petitioners apart from the larger public issue.

The Authority shall decide the appeal or refer the matter to the referral food laboratory as notified within three weeks from the date on which the petitioners approach the appellate authority. The time to file the appeal is extended by two weeks from date.

Since this Court has directed the petitioners to exhaust the alternative remedy provided under the statute, it is expected that the Authority shall not take any further steps against the petitioners until the appeal is disposed of in accordance with the relevant Act and the Regulations.

WPA 1521 of 2023 is disposed of in terms of the above.

Urgent photostat certified copy of this order, if applied for, be given to the parties on usual undertakings.

(Moushumi Bhattacharya, J.)