



W.P(MD)No.17767 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.17767 of 2015

and

M.P.(MD)No.1 of 2015

Jegadeesan

... Petitioner

Vs.

1.The Food Safety Officer,
Aruppukottai Region,
Virudhunagar.

2.The Designated Authority,
Tamil Nadu Food Safety and Drug
Administration Department,
Virudhunagar District.

3.The Adjudicating Authority,
The District Revenue Officer,
Virudhunagar District.
(R1 to R3 are amended vide order dated
13.07.2023 in W.M.P.(MD)Nos.2 & 2 of 2015)

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the third respondent in Na.Ka.No. 01/514/32/2014-15, dated 03.09.2015 and quash the same.



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For Petitioner : Mr.M.Rajaraman

For Respondents : Mr.S.Shanmugavel
Additional Government Pleader

ORDER

Heard both sides.

2. The petitioner is carrying on his retail business in the name and style of Sri Saravanabava Store, Arupukkottai. On 20.06.2014, the food safety officer, Arupukkottai lifted the sample of gingelly oil from the shop. It was sent to the food analyst laboratory, Palayamkottai. The report dated 01.07.2014 was received from the laboratory that the sample was substandard. Adjudication proceedings were initiated against the petitioner as well as the manufacturer. The adjudicating officer issued order dated 03.09.2015 levying a fine of Rs.50,000/- on the manufacturer as well as the petitioner.

3. The contention of the learned counsel appearing for the petitioner is three-fold:-

A. The analysis report was not served on the petitioner.

B. The authority has not taken into account the factors set out in Section 49 of the Food Safety and Standards Act, 2006 before quantifying the fine



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amount.

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C. The petitioner is only a retailer. He has sold the product in the same condition in which it was received by him. Therefore, he should not be treated on par with the manufacturer.

4. Shri.Mohamed Ismail Kasim, Food Safety Officer, Aruppukkottai is present in person to assist the Court. The learned Additional Government Pleader, on instructions, submitted that the report was served on the petitioner and that the impugned order is a well reasoned one and that no interference is warranted. He pressed for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record.

6. No doubt, as per Section 46(3) of the Act read with Rule 2.4.2.6 of Food Safety and Standards Rules, 2011, it is the duty of the authority to serve the analysis report on the retailer. Whether such service took place in this case or not is a pure question of fact. Before the adjudicating officer, this stand was not taken. The petitioner appeared before the adjudicating officer on 30.12.2014 and also gave his statement. When the petitioner failed to raise this



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question of fact before the original authority, he cannot be permitted to raise the same before this Court in writ proceedings. I therefore reject the first contention of the learned counsel appearing for the petitioner. I will take up the third contention next.

7. The learned counsel for the petitioner relied on the order dated 04.12.2019 made in CrI.O.P.(MD)Nos.13576 and 19449 of 2015 for the proposition that the retailer can escape from his liability by simply taking a stand that he sold the article in the same condition in which it was received by him and that he had no knowledge as to the quality of the contents. This proposition in my view will have to be confined only to criminal prosecution. My attention is drawn to Section 26 of Food Safety and Standards Act, 2006. Section 26(1), (2) and (4) of the Act is as follows:-

26. Responsibilities of the Food business operator.–

(1) Every food business operator shall ensure that the articles of food satisfy the requirements of this Act and the rules and regulations made thereunder at all stages of production, processing, import, distribution and sale within the businesses under his control.

(2) No food business operator shall himself or by any person on his behalf manufacture, store, sell or distribute any article of food–

- (i) which is unsafe; or
- (ii) which is misbranded or sub-standard or contains extraneous matter;



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or (iii) for which a licence is required, except in accordance with the conditions of the licence; or

(iv) which is for the time being prohibited by the Food Authority or the Central Government or the State Government in the interest of public health; or

(v) in contravention of any other provision of this Act or of any rule or regulation made thereunder.

(4) No food business operator shall sell or offer for sale any article of food to any vendor unless he also gives a guarantee in writing in the form specified by regulations about the nature and quality of such article to the vendor: Provided that a bill, cash memo, or invoice in respect of the sale of any article of food given by a food business operator to the vendor shall be deemed to be a guarantee under this section, even if a guarantee in the specified form is not included in the bill, cash memo or invoice.

8. The retailer would also fall within the term “Food Business Operator”.

When the statute imposes such responsibility on the retailer, the retailer cannot escape by contending that he was not aware of the quality of the contents of the articles received by him. I therefore reject the third contention of the petitioner's counsel.

9. As regards the second contention, I find considerable merit. Section 49 of the Act reads as follows:-

49. General provisions relating to penalty.— While adjudging the quantum of penalty under this Chapter, the Adjudicating Officer or the Tribunal, as the case may be, shall have due regard to the following:—



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- (a) the amount of gain or unfair advantage, wherever quantifiable, made as a result of the contravention,
- (b) the Amount of loss caused or likely to cause to any person as a result of the contravention,
- (c) the repetitive nature of the contravention,
- (d) whether the contravention is without his knowledge, and
- (e) any other relevant factor.

The adjudicating officer ought to take into account all the relevant parameters set out in the statutory provision before quantifying the fine amount. In this case, from the impugned order, one cannot come to any conclusion that parameters set out in Section 49 of the Act were taken into account by the adjudicating officer. In any event, the same quantum of fine amount cannot be levied on the manufacturer as well as the retailer. While the authority can be tough in the case of the manufacturer, certain amount of latitude will have to be shown in the case of the retailer. Against the impugned order, the manufacturer filed W.P.(MD)No.17766 of 2015. I had reduced the penalty from Rs.50,000 to Rs.20,000/-. Since the petitioner is only a retailer, interest of justice will be met by reducing the fine amount from Rs.50,000 to Rs.5,000/-. The impugned order is modified to this extent.



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10. The Writ Petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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