



W.P.(MD)Nos.1635 and 1640 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 23.04.2024

DELIVERED ON : 11.06.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)Nos.1635 and 1640 of 2021

and

W.M.P.(MD)Nos.1383, 1387, 4188 and 4191 of 2021

W.P.(MD)No.1635 of 2021:

Amway India Enterprises Private Limited,
having its Registered Office at
Ground Floor, Elegance Tower,
Plot No.8,
Non-Hierarchical Commercial Centre,
Jasola,
New Delhi-110025
and having another office at
New door NO.58, Old Door No.97,
Q Block, Plot No.3701, Third Avenue,
Anna Nagar, Chennai 600 040,
represented by its Nominee/Authorised Signatory,
Parthasarathy Govindasamy. ... Petitioner

Vs.

1. The District Revenue Officer,
Tiruchirapalli District,
Tiruchirapalli Collectorate,
Tiruchirapalli – 620 001.



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2. The Food Safety Officer,
Office of the Deputy Director of Health Services,
Near Jamal Mohammed College,
Race Course Road,
Tiruchirapalli – 620 020.

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the Adjudication Proceedings No.DRO/DO/33/2018 before the first respondent ie., Tiruchirapalli District Revenue Officer (DRO Trichy), consequent to a complaint dated 23.01.2018 filed by the second respondent, quash the same as illegal, arbitrary and devoid of merit and consequently restrain the respondents from initiating action against the petitioner consequent to Food Analyst Report dated 11.12.2017 vide No.ACT 949/2017-18, R.No.5901/G2/2017.

W.P.(MD)No.1640 of 2021:

Parthasarathy Govindasamy

... Petitioner

Vs.



W.P.(MD)Nos.1635 and 1640 of 2021

1. The District Revenue Officer,
Tiruchirapalli District,
Tiruchirapalli Collectorate,
Tiruchirapalli – 620 001.

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For Petitioner
in both petitions

: Mr.Raguvaran Gopalan



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For Respondents
in both petitions : Mr.A.K.Manikkam
Special Government Pleader
for R.1

: No Appearance for R.2

COMMON \JORDER

Both the Writ Petitions are directed against the adjudication proceedings No.DRO/DO/33/2018 before the first respondent, consequent to a complaint dated 23.01.2018 filed by the second respondent and for directions to the respondents not to initiate any action against the petitioner consequent to Food Analyst Report dated 11.12.2017.

2. The petitioner in W.P.(MD)No.1635 of 2021 is a company engaged in the business of manufacturing and trade of cosmetics, health supplements, nutraceutical and other products. The petitioner in W.P. (MD)No.1640 of 2021 is the authorised signatory of Amway India Enterprises Private Ltd., and is a party to the adjudication proceedings pending before the first respondent.



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3. The case of the prosecution is that on 25.09.2017 at about 11.30a.m., the second respondent had inspected the food business operator Amway distributor shop and lifted food sample of nutriline, all plant protein powder and sent to Food Analysis Laboratory, Guindy for analysis, that the Food Analyst after analysis has declared the sample as misbranded and substandard, vide his report dated 11.12.2017, that the second respondent, after getting necessary sanction from the Designated Officer, Tiruchirapalli, has filed a complaint before the first respondent under Sections 51, 52(1) of the Food Safety and Standards Act, 2006 against the company Amway India Enterprises Private Limited and its nominees including the petitioner in W.P.(MD)No.1640 of 2021. Pending adjudication proceedings, the said Company and its authorised signatory Parthasarathy Govindasamy have filed the present revision petitions challenging the adjudication proceedings pending before the first respondent which came to be initiated by the second respondent.

4. At the time of admission of the above two writ petitions, this Court vide order dated 29.01.2021 has granted an order of interim stay.



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When the interim order was in force, the first respondent has passed an order dated 30.01.2021 imposing penalty on all the accused including the writ petitioners herein. The writ petitioners have filed applications in W.M.P.(MD)No.4188 of 2021 in W.P.(MD)No.1635 of 2021 and W.M.P.(MD)No.4191 of 2021 in W.P.(MD)No.1640 of 2021 seeking stay for the operation of the order dated 30.01.2021 passed by the first respondent. A learned Judge of this Court, by observing that the present order of penalty, in view of the stay granted by the learned Single Judge of this Court in W.M.P.(MD)Nos.1383 and 1387 of 2021 in W.P.(MD)Nos.1635 and 1640 of 2021, is prima facie unsustainable and granted an order of interim stay.

5. The main contention of the writ petitioner is that the Food Safety and Standards Authority of India has issued the Food Safety and Standards (Health Supplements, Nutraceuticals, Food for Special Dietary Use, Food for Special Medical Purpose, Functional Food and Novel Food) Regulations 2016 came into force only on 01.01.2018, that the second respondent has taken sample on 25.09.2017, that the Food Analyst has sent his report on 11.12.2017, much before the Rules came



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into force and that therefore, the question of any violation of Nutraceutical Regulations prior to 01.01.2018 does not arise at all.

6. The learned Counsel for the writ petitioners would submit that the adjudication proceedings have been instituted without application of mind and in an arbitrary manner as there can be no question of violation of the Nutraceutical Regulations on 25.09.2017, when the sample was taken and on 11.12.2017 when the Food Analyst gave his report as the Nutraceutical Regulations were required to be complied with only from 01.01.2018, that there can be no penalty for the alleged violation of a law which is yet to come into force and was therefore, inapplicable at the time of the alleged contravention, that the petitioner has not committed any violation as per the Food Safety and Standards (Packaging & Labelling) Regulation, 2011 and that therefore, the petitioners are constrained to file the above writ petitions.

7. The learned Special Government Pleader would mainly contend that the FSSAI had issued the food safety and standards (Health supplements, Nutraceutical, food for special dietary use, food for special



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medical purpose, functional food and novel food) Regulations, 2016, that subsequently FSSAI had issued an order dated 24.11.2016 directing the operation of nutraceutical regulation came into effect on 24.11.2016, that all the food business operators have to follow the regulations in a strict manner and that the lifting of nutraceutical food sample and food analysis report prior to 01.01.2018 is clearly sustainable and that since the said regulations were in place, the objections raised by the writ petitioners cannot be sustained.

8. No doubt, as rightly pointed out by the learned Special Government Pleader, the FSSAI had issued an order dated 24.11.2016 and the same is extracted hereunder:

“Gazette publication of final regulations would take some more time as the regulations are being translated in Hindi. Considering that the regulations are final, the FSSAI had made the above regulations (as enclosed) operational with immediate effect (ie., 24.11.2016) in order to facilitate food business”.



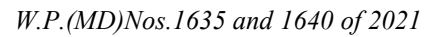
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9. The learned Special Government Pleader would submit that since the regulations came into force from 24.11.2016 itself and as the sample was taken on 25.09.2017 and the Food Analyst report was received on 11.12.2017, the prosecution initiated by the second respondent is perfectly in order.

10. It is pertinent to note that the Food Safety and Standards (Health Supplements, Nutraceuticals, Food for Special Dietary Use, Food for Special Medical Purpose, Functional Food and Novel Food) Regulations 2016 came to be published in the official Gazette on 01.01.2018 and the regulation No.2 of the said Regulations, 2016 reads as follows:

“They shall come into force on the date of their publication in the Official Gazette and Food Business Operator shall comply with all the provisions of these regulations by 1st January 2018. “

11. Though FSSAI had made the above regulations operational from 24.11.2016, the same can be considered as recommendatory in nature, but not mandatory. The respondents have not shown any Rule or





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14. Ex post facto law is derived from Latin words. Ex post facto which means “out of the aftermath”. It is a law that has a retrospective consequence on any act committed, which is not prohibited by law, before the enactment of a preceding law. Article 20(1) of the Indian Constitution is divided into two parts and according to the first part, no person is to be convicted for an offence, except for an act that is illegal or prohibited by the already enacted law at the time of commission of that particular act. A law which is enacted after the commission of the act means that the act which is done before the enactment of that law, which was not an offence earlier can be criminalised by an ex post facto law. But Article 20(1) of the Indian Constitution will safeguard the individual's interest and will not make the person liable for conviction under it. Admittedly, it is not the case of the respondents that the regulations was given retrospective effect.

15. Considering the above, this Court has no hesitation to hold that the impugned prosecution which was initiated before the Regulations 2006 came into force on 01.01.2018 cannot be sustained legally. Consequently, this Court concludes that the impugned prosecutions are



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liable to be quashed. The learned Special Government Pleader's contention that the first respondent was not aware of the interim order passed on 29.01.2021, the order passed by the first respondent dated 30.01.2021 cannot be found fault with, cannot be accepted for the simple reason that the said order came to be passed when the interim order was in force. Since this Court decides that the impugned prosecution itself cannot legally be sustained, the consequent action of passing orders on 30.01.2021 cannot also legally be sustained.

16. In the result, both the Writ Petitions are allowed and the impugned prosecution dated 23.01.2018 and the order passed by the first respondent dated 30.01.2021 are quashed. Consequently, the connected Miscellaneous Petitions are closed. There shall be no order as to costs.

11.06.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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K.MURALI SHANKAR,J.

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PRE-DELIVERY ORDER MADE IN

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and**

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