

# **M/S. Hindustan Lever Limited vs Sri A. Nayak on 13 January, 2021**

**Author: S.Pujahari**

**Bench: S.Pujahari**

CORAM : HON'BLE SHRI JUSTICE S.PUJAHARI

CRLMC No.2001 of 2006

M/s. Hindustan Lever Limited...	Petitioner
- Versus -	
Sri A. Nayak, Food Inspector, Rourkela Municipality, At/P.O.-Rourkela, Dist.-Sundargarh & Another. ...	Opp. Parties

## **ORDER**

24. 13.01.2021 In the wake of the pandemic Covid-19, the case was taken up through V.C.

2. This application under Section 482 of Cr.P.C. has been filed by the petitioner-company to quash the order of cognizance dated 09.01.2006 passed by the learned S.D.J.M., Panposh, Rourkela in 2(c)C.C. No.18 of 2006 so also the entire prosecution launched against it, its C&F Agent and its Nominee, inasmuch as the continuance of the proceeding against the petitioner- company, its C&F Agent and its Nominee shall be an abuse of the process of Court.

3. I have already heard the learned counsel for the petitioner and the learned counsel for the State through V.C.

4. The prosecution allegation is that the opposite party no.1-Food Inspector, Rourkela Municipality, Rourkela along with his staff inspected the premises of Mangal Trading Company located in plantsite Road, Rourkela-1, of which, one Shiv Shankar Mangal (A-1 in the complaint), the sole proprietor. The aforesaid firm is wholesale distributor dealing with edible oils, iodized salt, tea, Dalda Vanaspati, Jam & Jelly etc. During his inspection, he found the said proprietor was there in his premises and selling different types of food articles. As such, giving his identity, he inspected the physical condition of different types of food articles stored and kept exposed in the said premises. During such inspection, as he suspected the stock of flora refined sunflower oil contained in 1 litre poly pouch and stock of Dalda Vanaspati contained in 500 ml. poly pouch, both with self-life six months from the date of package, to be adulterated, he purchased sunflower oil, which was stated to have been manufactured by M/s. Shree Sidhivinayak Agro Extraction Pvt. Ltd., Survey No.74/2, Part D-N-6-56, Village-Alipur, Mandal Zaheerabad, Medal-500220(A) and marketed by Bunge India Pvt. Ltd. NH-12, P.O.-Ramgani Balaji, Dist.- Bundi-323001, Rajasthan and also Dalda Vanaspati stated to have been manufactured by Mihijam Vanaspati Ltd., P.O.-Mihijam-815354,

Dist.-Jamtara, Jharkhand and marketed by Bunge India Pvt. Ltd. NH- 12, P.O.-Ramgani Balaji, Dist.-Bundi-323001, Rajasthan. On further inquiry, he came to know from the disclosure of the proprietor that the mentioned stocks, i.e., flora refined sunflower oil and Dalda Vanaspati had been purchased by him from the carrying and forwarding agent of the present petitioner registered LOC-Add-Mahanadi Clearing House, N.H.-5, Gopalpur, Cuttack-753011 (A-3 in the complaint). Thereafter, he expressing his intention to send the same for analysis under the P.F.A. Act and Rules made packing and sealing of the samples collected as required under the P.F.A. Act and Rules and labelled the same in presence of the proprietor and put his brass seal impression as required and sent one of the sealed sample packets of each of the above mentioned articles to the Public Analyst to Government of Orissa, Bhubaneswar by Registered Parcel on 24.09.2005 under intimation to the L.H.A. & C.D.M.O., Sundargarh, and also sent the respective copies of the Memorandums and specimen impressions of the seal used to seal the above food samples, in separate sealed packets to the said Public Analyst and kept the remaining two parts of the samples of each of the items with respective two copies of the Memorandum in separate sealed packets with the L.H.A. & C.D.M.O., Sundargarh. On 26.09.2005, notice in Form-VI was given to the C&F Agent of the company in Odisha with intimation to the petitioner as required under P.F.A. Act and Rules. On 14.10.2005, the Assistant Legal Manager of Hindustan Lever Limited, Kolkata Office intimated the opposite party no.1 vide his letter dated 22.11.2005 that the concerned stock of Flora refined sunflower oil and Dalda Vanaspati out of which the above mentioned samples were drawn were received by its Clearing & Forwarding Agent (C&F) at Cuttack, Orissa from Bunge India Pvt. Ltd. vide its stock transfer notes and later on the same were dispatched to their distributors at different places, without any bill/invoice/cash memo or purchase challan. In response to such letter, even if the opposite party no.1 demanded in writing to furnish the bill/invoice/cash memo or purchase challan in support of the claim of the petitioner, but the same was not responded to. As such, notice in Form-VI of P.F.A. Act and Rules was not sent to Bunge India Pvt. Ltd., Mumbai-400051, as required under the provision of P.F.A. Act and Rules. On 28.11.2005, however, report having been received from the Public Analyst indicating that the Dalda Vanaspati was of prescribed standard, but the Flora refined sunflower oil was found to be adulterated. In such premises, prosecution was launched by the opposite party no.1-Food Inspector against Sri Shiv Shankar Mangal of the Mangal Trading Company (A-1 in the complaint), the wholesale distributor, the Nominee and Regional Sales Manager of the petitioner- company (A-2 in the complaint) and its LOC-Add- Mahanadi Clearing House, Gopalpur, Cuttack (A-3 in the complaint) and petitioner-company, Hindustan Lever Limited (A-4 in the complaint) for selling adulterated Flora refined sunflower oil on 23.09.2005. Pursuant to such complaint, cognizance of the offence under Section 16(1)(a)(i) of the P.F.A. Act for contravention of Section-7(1) read with Section 2(ia)(m) and para-A-17-22, A-17-154 of Appendix-'B' of P.F.A. Act & Rules is taken by the learned S.D.J.M., Panposh, Rourkela and the petitioner and other accused are being proceeded with by the learned S.D.J.M., Panposh, Rourkela vide the order impugned in this case.

5. The petitioner has challenged the same in this case denying the prosecution allegation that the food to be adulterated and also on the ground that the prosecution is incompetent in the absence of the manufacturer and the marketeer, particularly when the petitioner has intimated the opposite party no.1-Food Inspector regarding the stock transfer. Further, it has also been pleaded that since the petitioner was given warranty by the marketeer about the quality of the products and there was

an agreement of agency, the petitioner and all other accused persons are thus covered under Section 19(2) of the Prevention of Food Adulteration Act. Hence, the prosecution against the petitioner and its C&F Agent as well as its Regional Sales Manager is misconceived. Furthermore, it has also been pleaded that the methodology, i.e., DGHS having not been prescribed by the Government of India till then for analysis of the sample by the Public Analyst, such analyst report could not have been used against the petitioner.

6. Pleading the aforesaid, the petitioner-company has sought for quashment of the proceeding initiated against it and its C&F Agent so also its Nominee.

7. During the course of hearing, learned counsel appearing for the petitioner placed reliance on a decision of the Apex Court rendered in the case of Pepsico India Holdings Private Limited v. Food Inspector and Another, reported in (2011) 1 SCC 176 wherein it has been held that samples declared adulterated by adopting standards prescribed by Director General of Health Services in the absence of parameters which ought to have been defined by Central Government, i.e., the laboratories where samples of articles of food or adulterants may be analysed by public analysts under the Act as well as the methods of analysis as contemplated under Section 23(1-A)(ee) and (hh) and Rule-65(2), could not be considered as adulterated, particularly when content of pesticide residue was within tolerable limits prescribed subsequently vide Notice dated 17.06.2009.

Furthermore, reliance has also been placed on a decision of this Court in the case of Ashok Kumar Khandelwal v. Pramananda Singh and another, reported in 2018 (2) FAC 215 wherein relying on the aforesaid decision, this Court has also held the aforesaid. To persuade this Court, learned counsel for the petitioner has also placed reliance on different decisions of Kerela High Court, Bombay High Court, Madhya Pradesh High Court and Punjab & Haryana High Court wherein similar view has been taken. The decisions relied on are as follows:-

- (i) 2016 (1) FAC 211 : K.N. Sadanandan  
v. Food Inspector and others
- (ii) 2016 (1) FAC 213 : Benjamin Chandy  
and another v. The Chief Food  
Inspector and another
- (iii) 2016 (1) FAC 216 : N. Sreedharan

Nair, Quality Supervisor, White Field Diary (P) Ltd. and another v. Food Inspector, Municipal Office and another

(iv) 2016 (1) FAC 370 : V. Prasanth and another v. Food Inspector and another

(v) 2016 (1) FAC 372 : M.V. Thomas v.

- (vi) Food Inspector and another  
2016 (1) FAC 374 : Pushpangadhan  
T.D. v. The Food Inspector and  
another
- (vii) 2016 (1) FAC 385 : P.P. Ajith Kumar

and another v. Food Inspector and  
another

(viii) 2016 (1) FAC 386 : S. Pradeep Kumar v. Food Inspector and another

(ix) 2016 (1) FAC 388 : Ganesh Pandurang Jadhao and others v. The State of Maharashtra and others

(x) 2016 (1) FAC 497 : R. Gopalakrishnan v. The Food Inspector and others

(xi) 2016 (1) FAC 502 : S. Pathak v. State of M.P.

(xii) 2016 (1) FAC 512 : A.V. Lohidakshan and others v. Food Inspector and others

(xiii) 2016 (1) FAC 513 : Subhash Ch.

	Samantray v. State of Punjab and another
(xiv)	2018 (1) FAC 282 : Rehna Beegum & others v. State of Kerala
(xv)	2018 (1) FAC 283 : Jaison T.J. & another v. State of Kerala & another
(xvi)	2018 (1) FAC 284 : K. Sudhakaran & others v. State of Kerala & others
(xvii)	2018 (1) FAC 286 : Tata Coffee Limited v. Food Safety Officer and another

(xviii) 2018 (1) FAC 287 : K. Durai Murugan v. Food Inspector (xix) 2019 (1) FAC 42 : Rajeev v. Food Inspector and anr.

(xx) 2019 (1) FAC 282 : P.R. Santhosh Kumar v. Food Inspector (xxi) 2019 (1) FAC 285 : Mahesh Chander @ Mahesh Chand v. State of Haryana

8. The petitioner has also sought for quashment of the cognizance and the proceeding against it as well as its nominee and its C&F Agent with the averment that since it is a commission agent and act as a distributor of the marketer of the adulterated products, i.e., M/s. Bunge India Pvt. Ltd. and the commission agency agreement with the said M/s. Bunge India Pvt. Ltd. with regard to the standard and quality of the product manufactured guaranteed on the date of transfer of the same to the distributor, they are protected under Section 19(2) of the P.F.A. Act, especially when the adulterated product was not seized from their possession. So also it has been argued that since the Public Analyst Report suggests that the product is adulterated due to increase in acidic value which can be attributed to the manufacturer or delay in analysis of the food for which the petitioner merely the carrying and forwarding agent could not be made responsible.

9. Per contra, learned counsel for the State submits that in the absence of the warranty agreement entered between the distributor company and the manufacturer, the distributor dealer company, who had sold the stock to the wholesaler, cannot wriggle out of the prosecution on the ground of existence of agency agreement with the manufacturer, that too when the same was not also produced. So far as the dispute to the examination by DGHS method is concerned, it has also been submitted that the contention raised in the absence of any prescribed standard by any Rules framed under Section-23(1A) (hh) of the P.F.A. Act, the analysis of the adulterated articles by the Public Analyst requires to be accepted. In this regard, reliance has been placed in a decision of the Apex Court in the case of *Ranbir Arya v. The State (U.T. of Chandigarh)* (MANU/SC/1195/2015), wherein the Apex Court has upheld the conviction basing on the report of the Public Analyst rejecting such a contention of the counsel for the appellant therein. So also, reliance has been placed in the case of *Mithilesh v. State of NCT, Delhi* (MANU/SC/0515/2014) wherein the Apex Court also confirmed the conviction basing on the report of the Public Analyst discarding the contention made with regard to non-prescription method of any analysis of the food item. Placing reliance on the same, learned counsel for the State submits that the contention advanced for quashment of the prosecution is without any substance.

10. It is not in dispute that the warranty agreement was not produced before the complainant so also there is no agency agreement with the accused- company. In the absence of the same, the prosecution, therefore, was launched against them. Since the accused persons did not fulfill the criteria as provided under Section 19(2) of the P.F.A. Act and Rule-12-A of the P.F.A. Rules, the contention raised by the learned counsel for the petitioner challenging the prosecution on the said ground is without any substance.

11. Now, coming to the contention that since in the case of *Pepsico India Holdings Private Limited* (supra), it has been held that in the absence of any prescription made by the Central Government regarding the laboratories for analysis of the food items and method of analysis under Section 23(1A)(ee) and (hh) of the P.F.A. Act, the prosecution launched basing on the Public Analyst report using DGHS standards cannot be sustained.

12. In the case of *Pepsico India Holdings Private Limited* (supra), the Apex Court framed, inter alia, one issue for consideration before the Court was whether in the absence of any prescribed and validated method of analysis under Section 23(1A)(hh) of P.F.A. Act, could a prosecution have been launched against the appellants based on a report submitted by the Public Analyst using the method of the Directorate General of Health Services (DGHS)?

13. The Apex Court answered the said issue as follows:-

"41. The High Court summarised its view into several grounds of challenge. Grounds 1 and 2 relate to the non-framing of Rules under Section 23(1A)(ee) and (hh) of the 1954 Act.....

42. As far as Grounds 1 and 2 are concerned, the High Court was not convinced with the submission made on behalf of the Appellants that in the absence of any

prescribed and validated method of analysis under Section 23(1A)(ee) and (hh) of the 1954 Act, the report of the Public Analyst, who had used the DGHS method, could not be relied upon, especially when even the Laboratories, where the test for detection of insecticides and pesticides in an article of food could be undertaken, had not been specified.

43. The observation of the Division Bench of the High Court that if the submissions made on behalf of the Appellants herein were to be accepted, the mechanism of the Act and the Rules framed thereunder would come to a grinding halt, is not acceptable to us, since the same could lead to a pick- and-choose method to suit the prosecution.....

44. The High Court also misconstrued the provisions of Section 23(1A)(ee) and (hh) in holding that the same were basically enabling provisions and were not mandatory and could, in any event, be solved by the Central Government by framing the Rules thereunder, by which specified tests to be held in designated Laboratories could be spelt out. Consequently, the High Court also erred in holding that the non-formulation of Rules under the aforesaid provisions of the 1954 Act could not be said to be fatal for the prosecution.

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47. Both the questions regarding the failure of the Central Government to frame Rules to define the Laboratories, where samples of food could be analysed by the Public Analyst, or to define the validated methods of analysis and the liability of the Directors, who are the Appellants before us, are of great importance for the purpose of bringing home a charge against the accused for violation of the provisions of Rule 65 of the 1955 Rules and Section 2(i-a)(h) of the 1954 Act and for holding that the Sweetened Carbonated Water manufactured by the Appellants was adulterated in terms of the said Rules.....The High Court does not appear to have considered the implications of the failure of the Central Government to frame Rules for the aforesaid purpose....."

14. Learned counsel for the State has submitted that subsequent to the decision of Pepsico India Holdings Private Limited (supra), the Apex Court in the cases of Ranbir Arya and Mithilesh (supra) did not accept the submission regarding absence of prescription of method of analysis under Section 23(1A)(hh) of the P.F.A. Act to be a ground for acquittal of the appellants therein.

15. However, in the case of Ranbir Arya as well as Mithilesh (supra), the aforesaid contention of non- compliance of Section 23(1A)(ee) and (hh) of the P.F.A. Act was neither specifically raised nor the case of Pepsico India Holdings Private Limited (supra) was taken note of.

16. In such premises, when the prosecution for non-compliance of Section 23(1A)(ee) and (hh) of the P.F.A. Act has been held to be fatal to prosecution case in the Pepsico India Holdings Private

Limited (supra) by the Apex Court which has also been followed by this Court in the case of Ashok Kumar Khandelwal (supra) as well as in the different cases cited hereinbefore by Kerala High Court, Bombay High Court, Madhya Pradesh High Court and also Punjab & Haryana High Court, I am of the view that the prosecution launched against the petitioner, its C&F Agent, its Nominee and the dealer basing on the report of the Public Analyst that the edible flora refined sunflower oil to be adulterated as per the DGHS method, cannot be sustained and as such, liable to be quashed for non-prescription of the method of analysis under Section 23(1A)(hh) of the P.F.A. Act.

17. Hence, taking note of the aforesaid facts and circumstances of this case and the law laid down in this regard in the case of Pepsico India Holdings Private Limited (supra), this Court is of the view that the criminal prosecution against the accused persons is required to be quashed, as otherwise the same would be an abuse of the process of court.

18. Accordingly, the Criminal Misc. Case is allowed. Consequently, the prosecution launched in 2(c)C.C. No.18 of 2006 against the petitioner and all other accused persons, who are non-petitioners, stands quashed.

The parties may utilize the copy of this order as per the High Court's Notice No.4587 dated 25.03.2020.

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S.Pujahari, J.

DA/MRS