

Ram Gaua Raksha Dal vs Union Of India & Ors on 9 December, 2021

Author: Vipin Sanghi

Bench: Vipin Sanghi, Jasmeet Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 12055/2021

RAM GAUA RAKSHA DAL

Through:

Mr. Rajat Aneja & Ms.
Advocates.

versus

UNION OF INDIA & ORS.

Through:

Mr. Chetan Sharma, AS
Mr. Ajay Digpaul, CGSC
Mr. Amit Gupta,
Gadeock, Mr. Sahaj Ga
Yadav, Mr. Rishav Dub
Mr. Kamal R. Digpaul,
the respondents No.1
Mr. Rakesh Chaudhary,
respondent No.2/ FSSA

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% 09.12.2021

1. Respondents No.1 & 3 seek further time to file their response.

2. So far as respondent No.2 is concerned, it has filed a report in the form of an affidavit. The same has been perused. The said report sets out the statutory scheme found in the Food Safety and Standards Act, 2006, and the Regulations framed thereunder.

3. So far as it is relevant for our purpose, we may take note of Regulation 1.2.1(7) of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011, which defines „Non-Vegetarian Food to mean "an article of food which contains whole or part of any animal including birds, fresh water or marine animals or eggs or products of any animal origin, but excluding milk or milk products, as an ingredient".

4. Regulation 1.1.1(11) of the same Regulations defines the „Vegetarian Food“ as "any article of Food other than Non-vegetarian Food as defined in Regulation 1.1.1(7)".

5. The affidavit - which is sworn by Ms. Smita Singh, Assistant Director (Legal), Food Safety and Standards Authority of India, points out that the requirements with regard to the declaration of vegetarian and non-vegetarian food articles is contained in Regulation 2.2.2 (4) of the aforesaid Regulations. Regulation (4) insofar, as, it is relevant reads as follows:

"4. Declaration regarding Veg. or Non-Veg. -

(i) Every package of "Non Vegetarian" food shall bear a declaration to this effect made by symbol and colour code as stipulated below to indicate that the product is Non- Vegetarian Food. The symbol shall consist of a brown colour filled circle having a diameter not less than the minimum size specified in the Table mentioned in the regulation 2.2.2(4) (iv), inside a square with brown outline having sides double the diameter of the circle as indicated below:-

Brown Colour

(ii) Where any article of food contains egg only as Non-

Vegetarian ingredient, the manufacturer, or packer or seller may give declaration to this effect in addition to the said symbol.

(iii) Every package or Vegetarian Food Shall bear a declaration to this effect by a symbol and colour code as stipulated below for this purpose to indicate that the product is Vegetarian Food.. The symbol shall consist of a green colour filled circle, having a diameter not less than the minimum size specified in the Table below, inside the square with green outline having size double the diameter of the circle as indicated below:

Green Colour

(iv). Size of the Logo "

6. She states that all Food Business Operators (which is defined in Section 3(1)(o) of the aforesaid Act) are already mandatorily required to mention list of ingredients used in manufacturing or processing of food products as per Regulation 2.2.2(2) of the aforesaid Regulations. Insofar, as, it is relevant, the same reads as follows:

2.2.2: Labelling of Pre-packaged Foods In addition to the General Labelling requirements specified in 2.2.1 above every package of food shall carry the following information on the label, namely,--

1. The Name of Food: The name of the food shall include trade name or description of food contained in the package.

2. List of Ingredients: Except for single ingredient foods, a list of ingredients shall be declared on the label in the following manner:--

(a) The list of ingredients shall contain an appropriate title, such as the term **Ingredients** ;

(b) The name of Ingredients used in the product shall be listed in descending order of their composition by weight or volume, as the case may be, at the time of its manufacture;

(c) A specific name shall be used for ingredients in the list of Ingredients; Provided that for Ingredients falling in the respective classes, the following class titles may be used, namely:-

Classes	Class Titles
Edible vegetable oils	Give name of the specific edible oil, such as mustard oil, groundnut oil, etc.
Edible vegetable fat	Give type of vegetable fat (interesterified vegetable fat, hydrogenated oils, partially hydrogenated oils, vegetable fats, margarine and spreads, such as mixed fat spreads, vegetable fat spreads)
Animal fat/oil other than milk fat	Give name of the source of fat or oil. Pork fat, lard and beef fat or extracts thereof shall be declared by specific names
Starches, other than chemically modified starches	Starch
All species of fish where the fish constitutes an ingredient of another food and provided that the labelling and presentation of such food does not refer to a species of fish	Fish
All types of Poultry meat where such meat constitutes an ingredient of another food and provided that the labelling and presentation of such a food does not refer to a specific type of	Poultry meat

Classes	Class Titles
poultry meat	
All types of cheese where cheese or mixture of cheeses constitutes an ingredient of another food and provided that the labelling and presentation of such food does not refer to a specific type of cheese	Cheese
All spices and condiments and their extracts	Spices and condiments or mixed spices/ condiments as appropriate
All types of gum or preparations used in the manufacture of gum base for chewing gum	Gum Base
Anhydrous dextrose and dextrose monohydrate	Dextrose or Glucose
All types of Caseinates	Caseinates
Press, expeller or refined cocoa butter.	Cocoa butter
All Candied, Crystallized and Glazed fruit or Vegetables or Rhizome or Fruit peel	Crystallized fruit
All milk and milk products derived solely from milk	Milk solids
Cocoa bean, Coconib, Cocomass, Cocoa press cakes, Cocoa powder (Fine/Dust)	Cocoa solids

Provided further that pork fat, lard and beef fat or extract thereof shall be declared by their specific names;

(d) Where an ingredient itself is the product of two or more ingredients, such a compound ingredients shall be declared in the list of ingredients, and shall be accompanied by a list, in brackets, of its ingredients in descending order of weight or volume, as the case may be: Provided that where a compound ingredient, constitutes less than five per cent of the food, the list of ingredients of the compound ingredient, other than food additive, need not to be declared;

(e) Added water shall be declared in the list of ingredients except in cases where water forms part of an ingredient, such as, brine, syrup or broth, used in the compound food and so declared in the list of ingredients:

Provided that water or other volatile ingredients evaporated in the course of manufacture need not be declared: Provided further that in the case of dehydrated or condensed food, which are intended to be reconstituted by addition of water, the ingredients in such reconstituted food shall be declared in descending order of weight or volume as the case may be, and shall contain a statement such as □Ingredients of the product when prepared in accordance with the directions on the label ;

(f) Every package of food sold as a mixture or combination shall disclose the percentage of the ingredient used at the time of the manufacture of the food (including compound ingredients or categories of ingredients), if such ingredient--

(i) is emphasised as present on the label through words or pictures or graphics; or

(ii) is not within the name of the food but, is essential to characterise the food and is expected to be present in the food by consumers, and if the omission of the quantitative ingredient declaration will mislead or deceive the consumer:

Provided that where the ingredient has been used as flavouring agent, the disclosure of such ingredient is not required: Provided further that where the drained net weight is indicated on the label as required or in case of such food products where specific provisions are stipulated under these regulations or where a pictorial representation of a serving suggestion is made for consumer information and use, the disclosure of such ingredient is not required:

Provided further that in case of any bottle containing liquid milk or liquid beverage having milk as an ingredient, soft drink, carbonated water or ready-to- serve fruit beverages, the declarations with regard to addition of fruit pulp and fruit juice shall invariably appear on the body of the bottle. (emphasis supplied)

7. At this stage, Mr. Aneja - learned counsel for the petitioner, points out that so far as animal fat is concerned, these Regulations specifically require the source of the animal fat/ oil, other than milk fat, to be disclosed. The Regulations specifically require the name of the source of the fat to be declared, namely, whether pork fat/ lard, beef fat or extracts thereof have been used. He submits that, however, when it comes to the obligation to make declarations with regard to other ingredients, such as cheese and gum base, there is no requirement for disclosing specifically the source from where such ingredients for the manufacture of the food article, such as, either cheese or gum base are sourced. He points out that both cheese and gum could be prepared with ingredients from vegetarian source, or non- vegetarian source. He further submits that the lack of insistence under clause 2(d) on disclosure of compound ingredients which constitute less than 5% of the food from disclosure (other than food additives) seriously infringes the rights of the consumers, as they

are kept in the dark by the Food Business Operators about the fact whether such compound ingredients are from a vegetarian or a non-vegetarian source. He submits that the said relaxation infringes the fundamental rights of the consumers under Articles 21, 19(1)(a) and 25 of the Constitution and impinges on their freedom of informed choice.

8. Mr. Chaudhry - who appears for respondent No.2, submits that Section 26 of the Food Safety & Standards Act, 2006 fixes the responsibilities on the Food Business Operators to ensure that the articles of food satisfy the requirements of the Act and the Rules & Regulations made thereunder at all stages of production, processing, import, distribution and sale within the businesses under the control of the Food Business Operator.

9. Having perused the provisions of the Act, the Rules & Regulations and the affidavit filed on behalf of respondent No.2, we find that the Act very clearly intends and expressly provides for declaration on all food items being made - as to whether they are vegetarian or non-vegetarian, as defined in the Act. This obligation cast on the Food Business Operators is independent of their obligation to make disclosure of ingredients in accordance with Regulation 2.2.2, regarding labelling. It appears, some Food Business Operators are taking advantage of - upon misreading of the Regulations, the fact that the Act does not specifically oblige the Food Business Operators to disclose the source from which the ingredients - which go into manufacture/ production of food articles, are sourced, except in respect of the specific express exceptions. In respect of compound ingredients, which constitute less than 5% of the food, there is exemption from making the declaration, as noticed hereinabove.

10. Our attention has been drawn to one such ingredient which is coded in the trade as E631 which denotes Disodium Inosinate, i.e. disodium salt of inosinic acid with the chemical formula $C_{10}H_{11}N_4Na_2O_8P$. This is used as a food additive and often found in instant noodles, potato chips, and a variety of other snacks. It is commercially prepared from meat or fish. A little search on Google search engine shows that it is often sourced from pig fat. Even though it is a food additive, yet, the Food Business Operators often do not disclose in their packaging - in terms of the Regulations taken note of hereinabove, that the food article wherein the said ingredient is used, is a non-vegetarian product. Even though several such like ingredients are used, merely the codes of the ingredients are disclosed, without actually disclosing on the packaging as to what is the source, i.e. whether it is plant based, or animal based, or it is a chemically manufactured in a laboratory. Many food articles which have ingredients sourced from animals, are passed off as vegetarian by affixing the green dot.

11. In our view, the failure of the respondent authorities in checking such lapses is leading to not only non-compliance of the Act and the Regulations

- taken note of hereinabove, but also leading to deceit by such Food Business Operators of the public at large, particularly those who wish to profess strict vegetarianism. It matters not - as to what is the percentage of such like ingredients (which are sourced from animals), which are used in the manufacture of food article. Even though their usage may constitute a miniscule percentage, the use of non-vegetarian ingredients would render such food articles non-vegetarian, and would offend the religious and cultural sensibilities/ sentiments of strict vegetarians, and would interfere in their

right to freely profess, practice and propagate their religion and belief. Every person has a right to know as to what he/ she is consuming, and nothing can be offered to the person on a platter by resort to deceit, or camouflage.

12. We, therefore, direct the respondents to ensure that there should be full and complete disclosure of all the ingredients which go into the manufacture of any food article, not only by their code names but also by disclosing as to whether they originate from plant, or animal source, or whether they are manufactured in a laboratory, irrespective of their percentage in the food article. It should also be fairly disclosed as to what is the plant source, or animal source - as the case may be, in respect of all the ingredients in whatever measure they are used. The Food Business Operators are directed to ensure full and strict compliance of Regulation 2.2.2(4) on the basis that the use of any ingredient - in whatever measure or percentage, which is sourced from animals, would render the food article as Non-Vegetarian.

13. We may observe that failure on the part of the Food Business Operators to comply with the above requirements would expose themselves to, inter alia, class action for violation of the fundamental rights of the consuming public and invite punitive damages, apart from prosecution. Respondent No.2 should verify all such claims made by the Food Business Operators, and the connivance or failure on the part of the respondent No.2 or its officers to perform their duties shall expose all such officers to claims by the aggrieved parties, and prosecution under the law. This order should be given adequate publicity to put everyone concerned to notice of their legal and constitutional obligations and rights.

14. Respondent No.2 should file a compliance report in respect of our aforesaid direction before the next date.

15. List on 31.01.2022.

VIPIN SANGHI, J JASMEET SINGH, J DECEMBER 09, 2021 B.S. Rohella