

Sri K S Taslim vs Deputy Commissioner on 23 June, 2022

Author: S.G.Pandit

Bench: S.G.Pandit

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF JUNE, 2022

BEFORE

THE HON'BLE MR.JUSTICE S.G.PANDIT

WRIT PETITION NO.29352/2013 (GM-EC)

C/W

WRIT PETITION NO.45271/2013 (GM-RES)

W.P.NO.29352/2013

BETWEEN:

SRI A RAGHAVENDRA RAO
S/O D.L. GOVINDA RAO
AGED ABOUT 36 YEARS
SRI DURGA TRADERS, YERMALU
UDUPI TALUK AND DISTRICT.

...PETITIONER

(BY SRI H. JAYANTHA POOJARY, ADV.)

AND:

1. DEPUTY COMMISSIONER
UDUPI TLAUK AND DISTRICT
UDUPI - 576101.
2. THE FOOD SAFETY OFFICER
UDUPI TALUK AND DISTRICT-576101.
3. K.S.TASILIM
S/O K.S.MOHAMEED
AGED ABOUT 31 YEARS
K S BAZAAR MARKET ROAD

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PADUBIDRI
UDUPI TALUK AND DISTRICT-574111.

...RESPONDENTS

(BY SMT. RASHMI PATEL, HCGP FOR R1 & R2
R3 - SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLE 227 OF
THE CONSTITUTION OF INDIA PRAYING TO CALL FOR THE
RECORDS FROM THE R1 DATED 20.02.2012 AND QUASH THE
ORDER DATED 20.02.2012 PASSED BY THE R1 VIDE ANNEX-A.

W.P.NO.45271/2013

BETWEEN:

SRI K.S.TASLIM
S/O K.S.MOHAMEED
AGED ABOUT 31 YEARS
K S BAZAAR MARKET ROAD
PADUBIDRI
UDUPI TALUK AND DISTRICT-574111.

...PETITIONER

(BY SRI RAJESH SHETTIGAR, ADV.)

AND:

1. DEPUTY COMMISSIONER
UDUPI TALUK AND DISTRICT
UDUPI - 576101.
2. THE FOOD SAFETY OFFICER
UDUPI TALUK AND DISTRICT-576101.
3. SRI A RAGHAVENDRA RAO
S/O D.L. GOVINDA RAO
MAJOR

3

SRI DURGA TRADERS, YERMAL
UDUPI TALUK AND DISTRICT-576101.

...RESPONDENTS

(BY SMT. RASHMI PATEL, HCGP FOR R1 & R2
R3 - SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE
ORDER DATED 20.02.2013 PASSED BY R1 VIDE ANNEX-A.

THESE PETITIONS COMING ON FOR PRELIMINARY
HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE
FOLLOWING:-

ORDER

Petitioners in both the writ petitions are before this Court, challenging the common order bearing No.Jr¹.JYsij, ij.zÄÆ., ÄÄ: 1/2012-12 dated 20.02.2013 passed by the first respondent under Section 68 of the Food Safety and Standards Act, 2006 (for short "2006 Act") imposing fine of Rs.50,000/- on petitioner in W.P.No.29352/2013 and Rs.25,000/- on the petitioner in W.P.No.45271/2013.

2. Heard learned counsel Sri.Jayanth Poojary and Sri.Rajesh Shettigar for petitioners in both the writ petitions and learned HCGP Smt.Rashmi Patel for official respondents. Perused the writ petition papers.

3. Learned counsel for the petitioners would submit that the petitioner in W.P.No.29352/2013 is a distributor and 3rd respondent is a retailer. It is submitted that the Food Safety Officer, Udupi visited the shop of 3rd respondent on 29.09.2012 and submitted a report on 12.10.2012 as per Annexure-F reporting that the Tea packet manufactured and packed by Thirupathi Tea Belnders on which, month and year of manufacturing was not visible properly. Further, it is also alleged that the product sold by the 3rd respondent was misbranded. Based on the report submitted by the Food Safety Inspector, Udupi District, Udupi, 2nd respondent filed a Complaint No.1/2012-13, before the first respondent as per Annexure-E on 08.11.2012. In the complaint, it is alleged that four food articles are seized, including the Tea Packets. The petitioners were issued with notice of the complaint and they were directed to appear before the first respondent- Tribunal on 30.01.2013. Accordingly, the petitioners appeared before the first respondent on 30.01.2013. The first respondent noted the presence of the petitioners as well as filing of written statement. The matter was adjourned to 13.02.2013. On that day, the petitioners were not present. However, it was noted that the petitioners have already filed their written statement and posted the matter for orders. Under impugned order the petitioner as well as 3rd respondent in W.P.No.29352/2013 are imposed with fine of Rs.50,000/- and Rs.25,000/- respectively. Challenging the same, the petitioners are before this Court.

4. Learned counsel for the petitioners would contend that no opportunity was provided and order was passed in total violation of principles of natural justice. Learned counsel invites attention of this Court to section 68 of 2006 Act and contends that the Adjudicating Officer shall, after giving the person a reasonable opportunity for making representation in the matter and on such inquiry, if he is satisfied that the person has committed the contravention of provisions of 2006 Act or the rules could impose such penalty as he thinks fit in accordance with the provisions relating to that offence. In the instant case, learned counsel would submit that no such enquiry was conducted by the first respondent. Further, learned counsel would draw attention of this Court to Section 70 and 71 of 2006 Act.

5. Section 71 of the Act prescribes the procedure and powers of Tribunal in the matter of enquiry. Further, he submits that sub-Section (3) of Section 71 makes it clear that proceedings before the first respondent under 2006 Act is deemed to be a judicial proceeding. Section 68(3)(a) makes it clear that all proceedings before the Adjudicating Officer shall be judicial proceedings within the meaning

of Sections 193 and 228 of the Indian Penal Code. Learned counsel would submit that unless the first respondent-Adjudicating Officer conducts enquiry, the order of penalty would become illegal. Learned counsel would submit that Food Safety Officer who had filed report as well as complaint before the first respondent is not examined nor an opportunity is provided to the petitioner to cross-examine the Food Safety Officer. Learned counsel invites attention to the procedure followed by the first respondent-Adjudicating Officer and submits that it is opposed to the provisions of 2006 Act and is totally in violation of principles of natural justice. Thus, he prays for setting aside the impugned order against both the petitioners.

6. Learned HCGP on the other hand would justify the order passed by the first respondent-Adjudicating Officer. Further, it is pointed out that the petitioners were provided with copy of the report submitted by the Food Safety Officer which is placed by the petitioners themselves at Annexure-F. Therefore, it is not open for the petitioners to say that they were not given proper opportunity. Referring to the statement of objections, learned HCGP submits that the petitioners in both the writ petitions were selling Tea packets showing the name of "Sooryam Tea Powder" on which, month and year on each packet was not visible. Further, it is also submitted that the Food Safety Officer has in his report stated that the petitioners were selling misbranded food articles which attracts penalty under Section 52 of the Act. Learned HCGP referring to Section 68 of the Act would submit that the provision requires affording reasonable opportunity for making representation in the matter which was provided to the petitioners. Petitioners were given notice to appear before the first respondent and accordingly, the first respondent recorded statement of the petitioners and proceeded to pass impugned order which according to the learned HCGP is proper and correct. Learned HCGP would submit that Section 71 of 2006 Act provides appeal against the order passed by the Adjudicating Authority to the Tribunal. Hence, it is submitted that the writ petition without availing alternate remedy is not maintainable.

7. Having heard the learned counsel for the petitioners as well as learned HCGP, the only point which falls for consideration is as to whether the impugned order imposing penalty on the petitioners is sustainable?

8. Answer to the above point would be in the negative for the following reasons:

The petitioner is before this Court challenging the order of penalty passed by the first respondent/Adjudicating Authority under Section 68 of 2006 Act. Section 70 of 2006 Act provides appeal to the Food Safety Appellate Tribunal from the decision of the Adjudicating Officer under Section

68. Even though the State Government is obliged to establish the Food Safety Appellate Tribunal under 2006 Act, till this date, the State Government has not constituted the Food Safety Appellate Tribunal. Since the Tribunal is not constituted, the petitioners are before this Court, challenging the order passed by the Adjudicating Authority. Hence, the writ petition under Article 226 of the Constitution of India would be maintainable.

9. The Food Safety Officer, admittedly visited the retail shop of the petitioner in W.P.No.45271/2013 and submitted a report on 12.10.2012 to the Designated Officer under 2006 Act. The report with regard to L.G.Sooryan Chai Premium Assam CTC Tea sold by the retailer as well as distributor reads as follows:

1 Sample Description Sooryan Tea Powder 2 Physical Appearance Satisfactory 3
Label: LG Sooryan Chai Premium assam CTC Tea

(a)Mfd. & Pkd, by Tirupati tea blenders, Goragacha road, Jainkunj Hide Road,
Kolkata-700043.

(b) Month & year paked: Not visible properly

(c) Batch No.40

(d) Best before 12 months from packaging.

10. Based on the said report, the Food Safety Officer also filed a complaint before the 3rd respondent/Adjudicating Authority (Annexure-E) wherein it is alleged that the petitioners were selling misbranded Tea packets. The word "misbranded" is defined under Section 3(zf) of 2006 Act, which reads as follows:

3(zf) "misbranded food" means an article of food-

(A) if it is purported, or is represented to be, or is being-

(i) offered or promoted for sale with false, misleading or deceptive claims either; (a)
upon the label of the package, or

(ii) sold by a name which belongs to another article of food; or

(iii) offered or promoted for sale under the name of a fictitious individual or company
as the manufacturer or producer of the article as borne on the package or containing
the article or the label on such package; or (B) if the article is sold in packages which
have been sealed or prepared by or at the instance of the manufacturer or producer
bearing his name and address but-

(i) the article is an imitation of, or is a substitute for, or resembles in a manner likely
to deceive, another article of food under the name of which it is sold, and is not
plainly and conspicuously labelled so as to indicate its true character; or

(ii) the package containing the article or the label on the package bears any
statement, design or device regarding the ingredients or the substances contained
therein, which is false or misleading in any material particular, or if the package is

otherwise deceptive with respect to its contents; or

(iii) the article is offered for sale as the product of any place or country which is false; or (C) if the article contained in the package-

(i) contains any artificial flavouring, colouring or chemical preservative and the package is without a declaratory label stating that fact or is not labelled in accordance with the requirements of this Act or regulations made thereunder or is in contravention thereof; or

(ii) is offered for sale for special dietary uses, unless its label bears such information as may be specified by regulation, concerning its vitamins, minerals or other dietary properties in order sufficiently to inform its purchaser as to its value for such use; or

(iii) is not conspicuously or correctly stated on the outside thereof within the limits of variability laid down under this Act.

The allegation of 2nd respondent-Food Safety Officer would fall within the meaning of Section 3(zf) (B) of 2006 Act. On the complaint filed by the Foods Safety Officer, the petitioners were issued with notice to appear before the first respondent- Adjudicating Officer on 30.01.2013. On 30.01.2013, the petitioners said to have appeared before the first respondent. The first respondent recorded statements of both the petitioners and also noted that both the petitioners have filed their written statement. Thereafter, posted the matter for orders on 13.02.2013. Under impugned order dated 20.02.2013 (Annexure-A), the first respondent imposed penalty of Rs.50,000/- on petitioner in W.P.No.29352/2013 and Rs.25,000/- penalty on the petitioner in W.P.No.45271/2013.

11. A perusal of the impugned order would not indicate conducting of enquiry as contemplated under Section 68(2) of 2006 Act. Section 68 of 2006 Act reads as follows:

68. Adjudication.-

(1) For the purposes of adjudication under this Chapter, an officer not below the rank of Additional District Magistrate of the district where the alleged offence is committed, shall be notified by the State Government as the Adjudicating Officer for adjudication in the manner as may be prescribed by the Central Government.

(2) The Adjudicating Officer shall, after giving the person a reasonable opportunity for making representation in the matter, and if, on such inquiry, he is satisfied that the person has committed the contravention of provisions of this Act or the rules or the regulations made thereunder, impose such penalty as he thinks fit in accordance with the provisions relating to that offence.

(3) The Adjudicating Officer shall have the powers of a civil court and-

(a) all proceedings before him shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).

(b) shall be deemed to be a court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

(4) While adjudicating the quantum of penalty under this Chapter, the Adjudicating Officer shall have due regard to the guidelines specified in section 49.

Sub-Section(2) of the above provision is abundantly clear that the Adjudicating Officer shall, after giving the person a reasonable opportunity for making representation in the matter, and if, on such enquiry, is satisfied that a person has committed contravention of the provisions of the Act or the rules or the regulations made thereunder, impose such penalty as he thinks fit. In sum and substance, the first respondent-Adjudicating Authority is required to afford reasonable opportunity to make representation as well as to conduct enquiry on the allegations or complaint submitted to it. Moreover, the complaint is based on the report submitted by the Food Safety Officer. Neither the report of Food Safety Officer is before the Adjudicating Officer nor the report is taken on record in accordance with law. As the first respondent/Adjudicating Officer has failed to follow the mandate of Section 68(2) of 2006 Act, and no opportunity was given to the petitioners to cross-examine the Food Safety Officer, the order would be perverse and erroneous and is in violation of principles of natural justice.

12. Wherefore, the following order:

Both the writ petitions are allowed.

The impugned order No.Jr¹.JYsiJ , iJ.zÀÆ. , ÅA: 1/2012-12 dated 20.02.2013 passed by the first respondent under Section 68 of the Food Safety and Standards Act, 2006 is set aside.

Sd/-

JUDGE mpk/-* CT:bms