

Abdul Hakheem vs The Competent Authority / on 21 July, 2023

Author: G.R.Swaminathan

Bench: G.R.Swaminathan

W.P(MD)No.14213 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.07.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.14213 of 2015
and
M.P(MD)Nos.2 & 3 of 2015

1.Abdul Hakheem
2.Ramachandran
3.Balusamy

... Petitioners

Vs

1.The Competent Authority /
Appointing Officer,
Food Protection and Medicine
Administrative Wing,
Food Protection Section,
Ramanathapuram,
Ramanathapuram District.

2.The Commissioner,
Food Protection and Medicine
Administrative Wing,
Food Protection Section,
Ramanathapuram,
Ramanathapuram District.

3.The District Revenue Officer,
Ramanathapuram,
Ramanathapuram District.

... Respondents

<https://www.mhc.tn.gov.in/judis>

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the impugned order dated 22.12.2014 made in Na.Ka.No.838/A1/FSSA/D0/RMD passed by the first respondent and consequential impugned order following the same passed by third respondent dated 09.07.2015 made in Na.Ka.J5/29396/2015 and quash same as illegal, and devoid of merits.

For Petitioners : Mr.S.Palanivelayutham
For Respondents : Mr.S.Shanmugavel
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2. The first petitioner is a retail seller. The second petitioner is a distributor. The third petitioner is a manufacturer. The petitioners are dealing in iodized salt. On 04.02.2014, the respondents inspected the first petitioner's shop and took a sample of Sri Yoga Gold Iodized Crystal Salt. It was sent for analysis to Palayamkottai Analysis Laboratory. The laboratory report indicated that the sample was tested and the result showed negative for the presence of iodine. The petitioners were informed about the test result vide communication dated 22.12.2014. They were informed that they had breached the relevant provisions set out in the Food Safety and Standards Act, 2006 and the rules framed thereunder. The petitioners had the right to insist that the sample should be sent to the referral lab. The petitioners did not avail the opportunity. Thereupon, the third respondent passed the impugned order dated 09.07.2015 levying the fine of Rs.1 Lakh on the first petitioner, Rs.50,000/- on second petitioner and Rs.25,000/- on the third petitioner. Challenging the same, the present writ petition came to be filed.

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned proceedings and grant relief as prayed for.

4. The respondents have filed counter affidavit and the learned Additional Government Pleader took note through its contents.

5. Mr.Dharmar, Food Safety Officer, Ramanathapuram is present in person to assist the Court. The respondents contended that as against the impugned order, the petitioners can very well move the Tribunal. He relied on the order dated 13.03.2023 made in W.P(MD)No.395 of 2022 (Balaji & Others Vs. The Adjudicating Authority & Another) in support of his contention that this petition is not maintainable for non-exhaustion of alternative remedy. It is further submitted that the petitioners after having conceded during enquiry cannot now do a U-turn and contest a finding of fact. The result of the test lab cannot now be dislodged. Mr.Dharmar, Food

Safety Officer pointed out that the petitioners cannot take advantage of the lab report given in respect of another sample. He pointed out that unlike other companies, the third petitioner herein had been manually mixing the iodine with salt and that is why one sample cannot be compared with another sample. The respondents pressed for dismissal of the writ petition.

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

7. I endorse the stand of Mr.Dharmar, Food Safety Officer, Ramanathapuram that the petitioner cannot take advantage of the favourable results rendered in their favour by Guindy Food Lab. It is seen that for Ariyalur District the jurisdictional lab is at Guindy. Since one sample cannot be compared with another sample, the petitioners cannot take advantage of the results given in respect of the Ariyalur sample. That apart, the petitioners could have very availed the option of seeking further reference. They have not done so. More than anything else during the enquiry <https://www.mhc.tn.gov.in/judis> the petitioners had virtually pleaded guilty. For these reasons, I have to concur with the findings of the third respondent that there has been a breach of the provisions of the Food Safety and Standards Act, 2006 and the rules framed thereunder. To this extent, the impugned order is sustained.

8. Next comes the question of levying penalty. The learned counsel drew my attention to the Section 49 of the Food Safety and Standards Act, 2006. It 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:—

(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.” In this case, the third respondent had mechanically levied penalty without taking into account the particular facts and situation obtaining in this case. The <https://www.mhc.tn.gov.in/judis> learned counsel for the petitioners states that the petitioners are small time operators and that they cannot be compared with large scale manufacturer. The third petitioner is very old and it appears that he is no longer running his company “Sri Yoga Gold Iodized Crystal Salt”. Taking into account the overall facts and circumstances the penalty imposed on the petitioners is reduced as follows:

- a) The first petitioner shall pay a sum of Rs.5000/- (Rupees Five Thousand only);
- b) The second petitioner shall pay a sum of Rs.7,500/- (Rupees Seven Thousand and Five Hundred only);
- c) The third petitioner shall pay a sum of Rs.15,000/- (Rupees Fifteen Thousand only) This writ petition is partly allowed. There shall be no order as to costs.

Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

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G.R.SWAMINATHAN, J.

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