

Haldiram Bhujawala Limited vs The State Of Jharkhand & Others on 9 February, 2022

Author: Kailash Prasad Deo

Bench: Kailash Prasad Deo

IN THE HIGH COURT OF JHARKHAND AT RANCHI
(Civil Writ Jurisdiction)
W.P. (C) No. 5063 of 2018
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Haldiram Bhujawala Limited Petitioner Versus The State of Jharkhand & Others
Respondents CORAM: HON'BLE MR. JUSTICE KAILASH PRASAD DEO (Through :- Video Conferencing)

For the Petitioner : Mr. Amit Kumar Das, Advocate. For the Respondent/State : Ms. Shalini Sahdeo, A.C. to Mr. Mukesh Kumar Sinha, Sr. S.C.-I.

04/09.02.2022.

Heard, learned counsel for the petitioner, Mr. Amit Kumar Das and learned counsel for the respondent / State, Ms. Shalini Sahdeo, A.C. to Mr. Mukesh Kumar Sinha, Sr. S.C.-I. Haldiram Bhujawala Limited has preferred this writ petition for quashing the order dated 27.07.2018 passed by the Collector-cum-District Magistrate, Bokaro in Food Security Case No. 03 of 2014, whereby and whereunder he has imposed penalty of Rs. 50,000/- to the petitioner and further cautioned the petitioner not to repeat any default.

Learned counsel for the petitioner, Mr. Amit Kumar Das has submitted that it is peculiar case of high-handedness of the Administrative Officer, as no proceeding has been initiated, rather some articles were purchased from the outlet of the petitioner at Bokaro. The seized food material was sent for examination before the State Food and Drug Laboratory, Namkum, Ranchi under the Food Safety & Standard Act, 2006. The seized food material was examined and report was submitted that the sample of Kaju Burfi is mis- branded within the meaning of Section 3(1)(zf) read with Section 23 of the Food Safety & Standard Act, 2006 for non-compliance & contravention of prescribed provisions meant for packaging and labelling of food items under the regulations made under the Act.

Learned counsel for the petitioner, Mr. Amit Kumar Das has further submitted that as per report of State Food and Drug Laboratory, Namkum, Ranchi, test of sugar is positive, test for saccharin is negative, test for starch is positive, added colouring matter is negative, examination of warq is silver detected and level observation : Detail of ingredients, net wt, Batch No., Date of Packing / Mfg. B.B. Date and Nutritional facts - Not mentioned on label. Violation of Reg. 2.2.2.3, 2.2.2.2., 2.2.2.8, 2.2.2.7., 2.2.2.9 and 2.2.2.10 of the FS & S (Packing & Labelling) Regulations 2011.

Learned counsel for the petitioner, Mr. Amit Kumar Das has submitted that declaring such material to be misbranded by the State Food and Drug Laboratory, Namkum, Ranchi is bad in law as Section 3(1)(zf) of the Food Safety and Standards Act, 2006 reads as follows :-

(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

(b) through advertisement, 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.

Section 23 of the Food Safety and Standards Act, 2006 reads as follows:-

23. Packaging and labelling of foods.-

(1) No person shall manufacture, distribute, sell or expose for sale or despatch or deliver to any agent or broker for the purpose of sale, any packaged food products which are not marked and labelled in the manner as may be specified by regulations:

Provided that the labels shall not contain any statement, claim, design or device which is false or misleading in any particular concerning the food products contained in the package or concerning the quantity or the nutritive value implying medicinal or therapeutic claims or in relation to the place of origin of the said food products.

(2) Every food business operator shall ensure that the labelling and presentation of food, including their shape, appearance or packaging, the packaging materials used, the manner in which they are arranged and the setting in which they are displayed, and the information which is made available about them through whatever medium, does not mislead consumers.

Section 3 (zh) of the Food Safety and Standards Act, 2006 reads as follows:-

(zh) "package" means a pre-packed box, bottle, casket, tin, barrel, case, pouch, receptacle, sack, bag, wrapper or such other things in which an article of food is packed".

Learned counsel for the petitioner, Mr. Amit Kumar Das has further submitted that even if the report discloses misbranding as submitted by the State Food and Drug Laboratory, Namkum, Ranchi, but the same has to be declared misbranded in accordance with the provisions of law. If the net weight, batch number, date of packing / manufacturing is not mentioned on the label, this does not constitute an offence under the misbranding as defined under Section 3(1)(zf) of Food Safety and Standards Act, 2006 and the objection, which has been raised by the State Food and Drug Laboratory, Namkum, Ranchi is not sustainable in the eyes of law, as the articles has been purchased loose as it appears from the Annexure-1 to the writ petition, wherein at Column (i) Sample Description itself shows loose in analysis report.

Learned counsel for the petitioner has thus submitted that the report does not bring the case of the petitioner under mis-branded and as such, the impugned order passed by the Collector-cum-District Magistrate, Bokaro is bad in law.

M/s Shalini Sahdeo, A.C. to Mr. Mukesh Kumar Singh, Sr. S.C.-I has submitted that even after taking adjournment by the petitioner, the petitioner has not filed any show cause before the competent authority, as such competent authority has passed the impugned order giving a minimum cost as penalty to such a big business house and warned not to repeat the same in future.

After hearing learned counsel for the parties and on the basis of materials available on record, it appears that loose food articles was purchased by the informant, which was sent before the State Food and Drug Laboratory, Namkum, Ranchi, where nothing irregularity was found in the article sent for examination as such, no case is made out under Section 3(1) (zf) of the Food Safety and Standards Act, 2006, which deals with misbranding of food is made out.

So far the allegation, which has been levelled with regard to net weight, batch number, date of package / manufacturing are not mentioned on the article, the same does not arises in the present case as the articles has been purchased as loose and as such entire proceeding and impugned order passed by the respondent State is fit to be set aside.

Accordingly, the writ petition is hereby allowed.

(Kailash Prasad Deo, J.) Sunil/-