

Daily Need Milk Processing & Milk ... vs Union Territory Of Jk & Ors on 20 December, 2021

Author: Ali Mohammad Magrey

Bench: Ali Mohammad Magrey

Serial No. 53
Supplementary-2 Cau

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

LPA No. 177/2021; CM No. 8287/2021
Caveat Nos. 1691/2021 & 1692/2021

Dated: 20th of December, 2021.

Daily Need Milk Processing & Milk Products

... Appellant(s)

Through:

Mr A. H. Naik, Senior Advocate with
Mr Shabir Ahmad Najar, Advocate.

Versus

Union Territory of JK & Ors.

... Respondent(s)

Through: -

Mr Shah Aamir, AAG for R-1 to 3; and Mr Gulzar Ahmad Bhat, Advocate for R-4.

CORAM:

Hon'ble Mr Justice Ali Mohammad Magrey, Judge Hon'ble Mr Justice Mohd. Akram Chowdhary, Judge (JUDGMENT) Per Magrey; J (Oral):

01. By this appeal, filed under Clause 12 of the Letters Patent Rules, the appellant has assailed the validity of Judgment dated 27th of October, 2021 passed by the learned Single Judge in WP (C) No. 1198/2021 filed by the Writ Petitioner/ Respondent No.4 herein.

02. Shorn of unnecessary details, the brief facts relevant for determination of this appeal are that the Writ Petitioner/ Respondent No.4 herein filed a Writ Petition bearing WP (C) No. 1198/2021; claiming therein LPA No. 177/2021; CM No. 8287/2021 c/w Caveat Nos. 1691/2021 & 1692/2021 that he is running a milk processing unit under the name and style of 'M/S Insha Dairy Products, Lassipora, Pulwama'. It was further contended that the Writ Petitioner/ Respondent No.4 herein is manufacturing toned milk under the brand name of 'SAAF SHEER', whereas the Respondent No.4/ appellant herein is manufacturing toned milk under the brand name 'SAFA SHEER'. It was alleged in the Writ Petition that the Vice Chairperson, J&K Khadi and Village Industries Board, at the behest of Respondent No.4/ appellant herein, addressed a communication to Commissioner, Food Safety Department, Jammu and Kashmir, thereby asking it to stop the Writ Petitioner/ Respondent No.4 from using 'PLOYPACK' film of 'SAAF SHEER' as the same affects the goodwill of 'SAFA SHEER' by misguiding the consumers. Thereafter, as stated, the Respondent No.3, under the influence of the aforesaid communication, proceeded to issue the notice dated 12 th of June, 2021, directing the Writ Petitioner/ Respondent No.4 herein to stop the manufacturing of toned milk under the brand name of 'SAAF SHEER' with immediate effect. This communication dated 12th of June, 2021 issued by the Respondent No.3 was challenged by the Writ Petitioner/ Respondent No.4 herein before the learned Single Judge through the medium of the aforesaid Writ Petition on the grounds detailed out in the Petition. The learned Single Judge, after hearing the parties, in terms of Judgment dated 27th of October, 2021, allowed the Writ Petition and quashed the impugned notice dated 12 th of June, 2021. That apart, the learned Single Judge also gave liberty to the Respondent No.3 to pass a fresh order giving an opportunity of hearing to the LPA No. 177/2021; CM No. 8287/2021 c/w Caveat Nos. 1691/2021 & 1692/2021 Writ Petitioner/ Respondent No.4 herein. It is this Judgment dated 27th of October, 2021 passed by the learned Single Judge that has been assailed by the appellant herein in this appeal on the grounds detailed out in the memo of appeal.

03. Mr A. H. Naik, the learned Senior Counsel, appearing for the appellant, submitted that the learned Single Judge, while passing the impugned Judgment, has gone beyond the pleadings that were on record before it inasmuch as no challenge was thrown by the Writ Petitioner/ Respondent No.4 herein qua violation of any of the provisions of the Food Safety and Standards Act, 2006 (fort short 'the Act of 2006') and rules framed thereunder. It is contended that the Writ Court has raised a controversy with regard to the meaning of words 'SAAF' and 'SAFA' which never existed nor was the same pleaded in the Writ Petition.

04. We have heard the learned appearing Counsel for the parties, perused the pleadings on record and have considered the matter.

05. From the perusal of the impugned Judgment passed by the learned Single Judge, what emerges is that the learned Single Judge has allowed the Writ Petition filed by

the Writ Petitioner/ Respondent No.4 herein and quashed the impugned notice primarily on the count that no opportunity of hearing was afforded to the Writ Petitioner/ Respondent No.4 before issuing the said notice directing the Writ Petitioner/ Respondent No.4 herein LPA No. 177/2021; CM No. 8287/2021 c/w Caveat Nos. 1691/2021 & 1692/2021 to stop manufacturing toned milk under the brand name of 'SAAF SHEER'.

The Writ Court has also based its opinion in quashing the impugned Notice on the fact that the same has been issued by the Respondent No.3 against the mandate of the Act of 2006, in particular Section 36 thereof. However, on scrutiny of the pleadings and having regard to the contentions raised at the Bar by the learned Counsel for the parties, we feel that while the Writ Court has rightly quashed the impugned notice issued by the Respondent No.3 on the ground of no prior notice having been issued to the Writ Petitioner/ Respondent No.4 and has asked the Respondent No.3 to pass fresh order in the matter after hearing the Writ Petitioner/ Respondent No.4 herein, but, at the same time, the Writ Court has gone beyond the pleadings of the parties in making certain observations in the impugned Judgment qua the mandate and scope of the Act of 2006. These observations made and findings recorded by the learned Single Judge appear to have weighed heavily with the appellant in filing the instant appeal before this Court.

06. The afore being the position, we find force in the submission made by Mr Naik, the learned Senior Counsel representing the appellant, that the Writ Court has made certain observations/ returned findings on such issues which were seemingly not within the ambit of the pleadings of the parties. The Writ Court, after framing its opinion qua the impugned notice being in violation of principles of natural justice in absence of issuance of any prior notice to the affected person with the support of the relevant law cited in the Judgment and directing the Respondent No.3 to pass fresh order in the matter, LPA No. 177/2021; CM No. 8287/2021 c/w Caveat Nos. 1691/2021 & 1692/2021 ought not have touched the merits of the case and, instead, should have left it open for the said authority to proceed in the matter as per law/ rules governing the field. In this backdrop, while we concur with the portion of the Judgment of the learned Single Judge insofar as it quashes the impugned notice dated 12th of June, 2021 issued by the Respondent No.3 and directing the Respondent No.3 to pass fresh order in the matter after giving an opportunity of hearing to the Writ Petitioner/ Respondent No.4 herein, however, we, simultaneously, are of the view that the Respondent No.3 is required to pass the fresh order uninfluenced by any of the observations made/ findings recorded by the learned Single Judge, of course, as per the law and the rules governing the field.

07. In the above background, we dispose of this appeal by upholding the impugned Judgment dated 27th of October, 2021 passed by the learned Single Judge to the extent it quashes the impugned notice dated 12th of June, 2021 issued by the Respondent No.3 on the ground that no opportunity of being heard has been provided to the Writ Petitioner/ Respondent No.4 herein and directs the Respondent No.3 to pass fresh order in the matter. We, however, further direct that the Respondent No.3 shall consider the matter on its own merits and pass fresh order thereon after hearing both the parties in accordance with the law and the rules governing the field without getting influenced by any of the observations made/ findings recorded by the learned Single Judge. Let the consideration,

as aforesaid, be effected and decision LPA No. 177/2021; CM No. 8287/2021 c/w Caveat Nos. 1691/2021 & 1692/2021 taken by the Respondent No.3 most expeditiously, preferably within one month from the date of receipt of copy of this order.

o8. Letters Patent Appeal Disposed of as above, along with the connected CM. This shall also discharge the two connected Caveat Petitions bearing Nos. 1691/2021 and 1692/2021 accordingly.

(Mohd. Akram Chowdhary)
Judge

(Ali Mohammad Magr
Judge

SRINAGAR
December 20th, 2021
"TAHIR"

i.	Whether the Judgment is reportable?	Yes/ No
ii.	Whether the Judgment is speaking?	Yes/ No