

Sri Yogesh vs The State Of Karnataka on 29 January, 2024

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NC: 2024:KHC:3763
WP No. 10954 of 2020

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF JANUARY, 2024

BEFORE

THE HON'BLE MR JUSTICE ASHOK S.KINAGI

WRIT PETITION NO. 10954 OF 2020 (GM-RES)

BETWEEN:

SRI. YOGESH
S/O THIMMEGOWDA,
AGED ABOUT 46 YEARS,
PRESIDENT OF SAHARA JANASEVA TRUST
HAVING ITS OFFICE AT AMRUTHADARE
3RD CROSS, NEAR HELIPAD,
UDAYAGIRI BADAVANE
HASSAN - 573 201.

...PETITIONER

(BY SRI. VENUGOPAL M S., ADVOCATE)

AND:

Digitally signed
by SUNITHA
GANGARAJU

Location: High
Court of
Karnataka

1. THE STATE OF KARNATAKA
DEPARTMENT OF FOOD AND CIVIL SUPPLIES
VIKASA SOUDHA,

BENGALURU - 560 001
REPRESENTED BY ITS SECRETARY
2. THE STATE OF KARNATAKA
DEPARTMENT OF REVENUE,
VIKASA SOUDHA,
BENGALURU - 560 001
REPRESENTED BY ITS SECRETARY
3. THE DEPUTY COMMISSIONER
AND DISTRICT MAGISTRATE
HASSAN DISTRICT
1ST FLOOR, ZILLA PANCHAYATH BUILDING

BANGALORE HASSAN HIGH WAY
HASSAN - 573 201.

4. THE ADDITIONAL DEPUTY COMMISSIONER
AND ADDITIONAL DISTRICT MAGISTRATE
AND ADJUDICATING OFFICER
FOOD SAFETY STANDARDS ACT 2006
HASSAN DISTRICT
1ST FLOOR, ZILLA PANCHAYATH BUILDING
BANGALORE HASSAN HIGH WAY
HASSAN - 573201.
5. FOOD SAFETY OFFICER
AUTHORITY OF FOOD SAFETY AND STANDARD
HASSAN TALUK
OFFICE OF DISTRICT HEALTH AND FAMILY WELFARE
HASSAN - 573 201.
6. SUPERINTENDENT OF ENGINEER
O AND M CIRCLE,
CHAMUNDESHWARI ELECTRICITY
SUPPLY COMPANY LTD.,
HASSAN - 573 201.
7. THE THASILDAR
HASSAN TALUK
HASSAN - 573 201.

...RESPONDENTS

(BY SRI. BASAVARAJ GODACHI, AGA FOR R1 TO R7)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO
QUASH THE ORDER DATED 26.08.2020 IN CASE NO.MAG
245/2020-21 PASSED BY THE R-4 VIDE ANNEXURE-G.

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

ORDER

The petitioner filed this writ petition challenging the order dated 26.08.2020 passed by the respondent No.4 vide Annexure-G has filed the present writ petition.

2. Brief facts leading rise to filing of this petition are as under:

Sahara Janaseva Trust which has been found to run with main object to provide support and assist in project meant for the economic and social uplift of the poor, which may include employment opportunities, village improvement schemes, construction on roads, house drainages, sanitization, pure drinking water, better farming methods etc. The petitioner used to supply pure drinking water to the poor /lower strata of the society. The Trust decided to supply pure drinking water to the public by levying charge of Rs.5/- per 20 liters for purified drinking water and said trust is not involved in supply or sale of packaged drinking water. The said trust established units at various places. The District Health and Family NC: 2024:KHC:3763 Welfare office visited the unit of the trust and submitted report on 14.02.2017 stating that there is no package of water is done in the unit. The Deputy Commissioner, Hassan, vide order dated 04.03.2017 passed the order to open and run water supply unit. The licensing authority has sanctioned power connection to be provided to the unit vide communication dated 18.04.2017. The Trust has established units without any profit motive. Respondent No.5 lodged the complaint before the respondent No.4 on 18.07.2020 to disconnect the power supply to the unit of the trust. The petitioner was served with the notice. On the service of notice, the trust has submitted reply along with documents and prayed to drop the proceedings contending that there is no package of drinking water is sold. It is permissible to keep ISI certificate and unit is kept clean as per the rules. The respondent No.4 without conducting any enquiry passed the order dated 26.08.2020. The petitioner aggrieved by the order passed by the respondent No.4 vide Annexure-G has filed this writ petition.

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3. Heard learned counsel for petitioner and learned Additional Government Advocate for the respondents.

4. Learned counsel for the petitioner while inviting the attention of this Court to the Rule 2.10.8 of the Food Safety and Standards (Food Products Standards and Food Additives) Rules, 2011 (hereinafter referred to as 'Rules, 2011' for short) submits that since the trust is not selling package drinking water, therefore, the petitioner is not required to obtain ISI certificate under the Food Safety and Standards Act, 2006. Hence, he submits that the respondent No.4 without considering the Rule 2.10.8 of Rules, 2011 has passed impugned order. He also further submits that the respondent No.4 except extracting submissions of the learned counsel for the parties and extracting the provisions has not assigned any reasons in the impugned order. He also submits that respondent

No.4 has not applied his mind while passing the impugned order. Hence, on these grounds, he prays to allow the writ petition.

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5. Per contra, learned Additional Government Advocate for the respondents submits that the trust is carrying on business of package drinking water and they are charging Rs.5/- per 20 liters of water. Hence, as per Rules 2011, the petitioner-trust is required to obtain the 1st certificate from the competent authority and without obtaining ISI certificate it is running the business. Hence, respondent No.4 is justified in passing the impugned order. Hence, on these grounds, he prays to dismiss the writ petition.

6. Perused the records and considered the submissions made by learned counsel for the parties.

7. It is not in dispute that the petitioner- trust is a registered trust and is supplying pure drinking water to the public and it is the case of the petitioner that they were collecting Rs.5/- per 20 liters of water towards maintenance of the unit and further contended that the petitioner is not involved in the supply or selling of NC: 2024:KHC:3763 packaged drinking water. Respondent No.5 has lodged the complaint before the respondent No.4, the respondent No.4 on the complaint submitted by the respondent No.5, issued a show cause notice to the petitioner. The petitioner has submitted reply to the said show cause notice. After receipt of reply from the petitioner, the adjudicating officer was required to give a reasonable opportunity for making representation and required to hold an enquiry as per Section 68 of the Food Safety and Standards Act, 2006 , which reads as under:

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 NC: 2024:KHC:3763 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.

8. Section 68 contemplate that the Adjudicating officer must provide an opportunity for making representation and on such inquiry and on satisfaction that person has committed the contravention of provisions of the Act & Rules impose penalty.

9. Further as per rules 3.1 of the Food Safety and Standards Rules 2011, which reads as under:

NC: 2024:KHC:3763 3.1: Adjudication proceedings 3.1.1: Holding of inquiry (1) xxx (2) xxx (3) xxx (4) xxx (5) xxx (6) For holding an inquiry for the purpose of adjudication under section 68 of the Act as to whether any person(s) has /have committed contravention of any of the provisions of the Act referred to in rule 3.1.1.(5) herein or the rules or regulations in respect of which the offence is alleged to have been committed, the Adjudicating Officer shall, in the first instance, issue a notice to such person or persons giving him or them an opportunity to make a representation in the matter within such period as may be specified in the notice (not being less than 30 days from the date of service thereof) (7) xxx (8) xxx (9) The Adjudicating Officer shall then give an opportunity to such person or persons to produce such documents or evidence as he may consider relevant to the inquiry and if necessary the hearing may be adjourned to the future date:

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NC: 2024:KHC:3763 Provided that the notice referred to in rule 3.1.1. (6) may, at the request of the person concerned, be waived:

Provided further that the Adjudicating Officer shall pass the final order within 90 days from the date of first hearing mentioned in rule 3.1.1(8).

10. Sub Rule-6 contemplate that the Adjudicating Officer shall issue a notice to person how has committed contravention of any provision of the Act and give him/them an opportunity to make a representation in the matter. Sub-Rule-9 provide that Adjudicating Officer shall give opportunity to produce documents or evidence.

11. Admittedly, in the instant case after receipt of reply from the petitioner, the respondent No.4 has not conducted any enquiry, as stipulated under without conducting any enquiry has passed the impugned order. Further, the said impugned order is in violation of the principles of natural justice and contrary to Rule 3.1.1 of Rules 2011. Further, the respondent No.4 except recording the submissions of the learned counsel for the

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NC: 2024:KHC:3763 parties and also extracting provisions of the Acts and Rules has proceeded to pass the impugned order. From the perusal of the impugned order, respondent No.4 has not assigned any reasons to come to the conclusion. On these grounds itself the impugned order is liable to be set aside.

12. Accordingly, I proceed to pass the following:

ORDER The writ petition is allowed.

Impugned order vide Annexure-G is set aside. The matter is remitted to the respondent No.4.

Respondent No.4 is directed to consider the reply and provide an opportunity for hearing to the petitioner and pass the detail order by assigning the reasons in accordance with law.

SD/-

JUDGE SKS