

M/S Baba Biryani, Kanpur Thru. ... vs State Of U.P. Thru. Addl. Chief/Prin. ... on 21 March, 2023

Bench: Rajan Roy, Manish Kumar

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Court No. - 3

Case :- WRIT - C No. - 1758 of 2023

Petitioner :- M/S Baba Biryani, Kanpur Thru. Proprietor Mahfooz Umar And Another

Respondent :- State Of U.P. Thru. Addl. Chief/Prin. Secy. Deptt. Food Safety, Civil Secr

Counsel for Petitioner :- Syed Ali Rehan, Mohd. Mansoor

Counsel for Respondent :- C.S.C.

Hon'ble Rajan Roy, J.

Hon'ble Manish Kumar, J.

Heard.

This petition has been filed seeking following reliefs:

"(i) Issue a writ, order or direction in the nature of Mandamus commanding the Commissioner, Food Safety and Standards, Lucknow not to proceed against the petitioners or take any coercive steps against the petitioners in pursuance of the letter of the Designated Officer, Kanpur dated 01.10.2022 as contained in Annexure No. 01 to this writ petition.

(ii) Issue a writ, order or direction in the nature of Certiorari quashing the impugned order dated 25.06.2022 passed by the Designated Officer, Kanpur Nagar as contained

in Annexure No.02 to this writ petition.

(iii) Issue a writ, order or direction in the nature of Mandamus commanding the Commissioner Food Safety and Standards, Lucknow to direct the Food Safety Officer to remove the seal from the premises of the petitioner namely shop no.70 Food Court Area, 2nd floor, Rave Moti, Gutayya Crossing, Kanpur Nagar.

(iv) Issue any other writ, order or direction which this Hon'ble Court may deem fit and proper under the circumstances of the case.

(iv) Allow the writ petition with costs in favour of the petitioners."

As far as first relief is concerned, we find that the letter has been issued by the Assistant Commissioner (Food)-II, Food Safety and Drugs Administration, Kanpur Nagar. It is addressed to Commissioner, Food Safety and Drugs Administration, Lucknow.

On being confronted, learned counsel for the petitioner submitted that this is a recommendation which would be taken into consideration by the Commissioner, Food Safety and Drugs Administration at Lucknow for grant of sanction under Section 30(2)(e) of the Food Safety and Standards Act, 2006.

Learned Additional Chief Standing Counsel says that sanction for prosecution has been granted and based thereon prosecution has been launched before the Chief Metropolitan Magistrate, Kanpur Nagar.

If the petitioner is aggrieved in this regard, it may avail the remedies as prescribed in law, but, the present writ petition on the civil side is not maintainable for relief no. 1. Even otherwise, it has outlived its utility.

As regards relief no. 2, we find that it is an order passed by the Designated Authority/Licensing Authority, Food Safety and Drugs Administration, District Kanpur Nagar on 25.06.2022 which is also not within the territorial jurisdiction of this Court. Moreover, there is a provision of an appeal under Section 32(4) of the Act 2006 which has not been availed by the petitioner.

In these circumstances, this petition, at this stage, is not maintainable. We leave it open for the petitioner to avail other remedies in this regard.

The petition is disposed of.

[Manish Kumar, J.] [Rajan Roy, J.] Order Date :- 21.3.2023 Santosh/-