

Jay Anand Food Industries Thr Mr. Jay ... vs The State Of Maharashtra And Ors on 10 November, 2023

Author: M. M. Sathaye

Bench: B. P. Colabawalla, M. M. Sathaye

2023:BHC-AS:34715-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 14223 OF 2023

Jay Anand Food Industries

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signed by
LAXMI

Versus

LAXMI SUBHASH
SUBHASH SONTAKKE
SONTAKKE Date:
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The State of Maharashtra & Ors.

Mr. Ashutosh Kulkarni i/b. Vaibhav Gaikwad and Raviraj
Paramane for the Petitioner.

Ms Nisha Mehra, AGP for Resondent Nos. 1 to 3.

CORAM : B. P. COLABAWALLA
M. M. SATHAYE, J

DATE : NOVEMBER 10, 2023

P. C.

1. The above Writ Petition is filed challenging the notice dated 7th November, 2023 issued by Respondent No.3 inter-alia directing the Petitioner to close down their business for alleged violation of food safety norms. The urgent ad-interim relief sought is for stay of this notice in view of the ensuing Diwali festival.

2. Mr. Kulkarni, the learned Counsel appearing for the Petitioner submitted that firstly the notice issued and the directions passed therein are wholly without jurisdiction. He submitted that the NOVEMBER 10 2023 Laxmi 4 WP 14223-23.doc said notice has been issued under Rule 2.1.14(1) of the Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011. Under the said Rule, there is no power to ask the parties to close down their business. Mr. Kulkarni submitted that even otherwise Respondent No.3, who is the Food Safety Officer, under Section 38 of the Food Safety and Standards Act, 2006 could never have asked the Petitioner to close down the business as that is not the power conferred on the Food Safety Officer under the said Act.

3. Mr. Kulkarni also pointed out to us that even if one peruses the violations alleged in the impugned notice, the same have no merit. He submitted that one of the alleged violations is that no report from the authorized laboratory is available as to whether the water used is potable, and which was used for manufacturing. Mr. Kulkarni submitted that in fact the Petitioner has already obtained a report from the concerned laboratory certifying that water being used is potable. This report is dated 23rd October, 2023 and was obtained even prior to that issuance of the said notice. The other objection raised is that no medical examination of the employees is done to ensure that they are free from any infectious and other communicable disease. In answer to this, Mr. Kulkarni submitted the medical examination of the employees was done NOVEMBER 10 2023 Laxmi 4 WP 14223-23.doc periodically and lastly in the month of March, 2023 and the report of the examination was also submitted with the office of the Food and Drug Administration, Thane. Thereafter, a fresh medical examination was again conducted on 8th November, 2023 which shows that the employees of the Petitioner are not affected with any infectious or communicable disease. Mr. Kulkarni also pointed out to us that one of the other objections is that the pest control is not done in the premises when pest control is in fact done every fifteen days and a copy of the pest control certificate is also annexed to the Petition. He submitted that in these circumstances, and considering the ensuing Diwali festival, the impugned notice be stayed.

4. Ms. Mehra, the learned Counsel appearing on behalf of the Respondents sought time to take instructions and file an affidavit in reply to the above Writ Petition.

5. Acceding to her request, we direct that the Respondents shall file their affidavit in reply on or before 30 th November, 2023 and serve a copy of the same on the Advocates for the Petitioner.

6. If the Petitioner wants to file any affidavit in rejoinder, they may do so, by filing the same, on or before 7 th December, 2023 and serve a copy of the same on the AGP for the Respondents.

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7. We have heard Mr. Kulkarni on the question of interim relief. On going through the provisions of the Regulations as well as Food Safety and Standards Act, 2006, prima facie we find that the Food Safety Officer could not have directed the Petitioner to close down their business until the Food Safety Officer was satisfied that the objections raised in the notice were complied with by the Petitioner. In these circumstances, without prejudice to the rights and contentions of the parties, we stay the implementation and operation of the impugned notice dated 7th November, 2023 till the

next date.

8. We now place the above Writ Petition on board for ad- interim relief on 14th December, 2023.

9. This order will be digitally signed by the Private Secretary/ Personal Assistant of this Court. All concerned will act on production by fax or email of a digitally signed copy of this order.

[M. M. SATHAYE, J.]

[B. P. COLABAWALLA, J.]

NOVEMBER 10 2023

Laxmi