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Author: Manash Ranjan Pathak

Bench: Manash Ranjan Pathak

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GAHC010165372021

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/5342/2021

DHARAMPAL SATYAPAL LTD. AND 2 ORS.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT, 1956 AND HAVING THE REGISTERED OFFICE AT 98,
OKHLA INDUSTRIAL ESTATE, PHASE-3, NEW DELHI, THROUGH
AUTHHORIZED SIGNATORY MR. SHANTANU SARMA S/O LT. TARAK
CHANDRA SARMA AGED ABOUT 45 YEARS, R/O DISHA ENCLAVE FALT
NO. 5B2, ARUNODAY PATH CHRISTIANBASTI, GUWAHATI, -781005

2: ABHIJIT MEDHI
NOMINEE M/S DHARAMPAL SATYAPAL LTD. SHED NO. OS/1/R/4 AND 5
OS/2/R/16 AND 17
OS/1/2/6 BAMUNIMAIDAN INDUSTRIAL ESTATE GUWAHATI
ASSAM-781021
S/O LT. DHIRENDRA NATH MEDHI
R/O HOUSE NO. 21
BY LANE NO. 2
PARAG DAS PATH
GUWAHATI COLLEGE ROAD
BAMUNIMAIDAN
GUWAHATI-781021

3: GAUNOV TALUKDAR
NOMINEE
M/S DHARAMPAL SATYAPAL LTD. SHED NO. OS/6/L/44
OS/7/R/47 AND 59 BAMUNIMAIDAN INDUSTRIAL ESTATE GUWAHATI
ASSAM-781021
S/O SRI NAGENDRA NATH TALUKDAR H/NO. 8 M.C. ROAD
NEAR GUWAHATI CLUB GUWAHATI-781000

VERSUS

DESIGNATED OFFICER AND CENTRAL LICENSING AUTHORITY AND 2
ORS.
NORTH EASTERN REGION FOOD SAFETY AND STANDARD AUTHORITY

Page N

OF INDIA, 3RD FLOOR HOUSEFED COMPLEX, DISPUR, GUWAHATI,
ASSAM-781006

2:COMMISSIONER OF FOOD SAFETY
HEALTH AND FAMILY WELFARE DEPTT. ASSAM SECRETARIAT
BLOCK D
4TH FLOOR
DISPUR GUWAHATI-781006 ASSAM

3:CHIEF EXECUTIVE OFFICER
3RD AND 4TH FLOOR FDA BHAWAN KOTLA ROAD NEAR BAL BHAWAN
NEW DELHI-11000

Advocate for the Petitioner : MR. A LAL

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE HON'BLE MR. JUSTICE MANASH RANJAN PATHAK 08.10.2021 Heard Mr. D. K. Mishra, learned senior counsel assisted by Mr. U. Pathak, learned counsel for the petitioners and Mr. R.K.D Choudhury, learned Assistant Solicitor General of India for the respondent Nos.1 and 3. Also heard Mr. B. Gogoi, learned Standing Counsel, Health and Family Welfare Department, Assam for the respondent No.2.

Petitioner No.1 is a registered company incorporated under the Companies Act, 1956 where the petitioner Nos.2 and 3 are its nominees. The respondent No.1 Designated Officer and Central Licensing Authority, North East Region, Food Safety and Standards Authority of India, Guwahati granted licence to the petitioner No.1 to manufacture Pan Masala which is classified as a food product and it is standardized under Regulation 2.11.5 of Food Safety and Standards (Food Products Standards & Food Additives) Regulations, 2011. "Rajnigandha" Pan Masala is a premium product of the petitioner No.1 and it is manufactured in factories at Bamunimaidan, Guwahati.

Designated Officer and Central Licensing Authority, North East Region, Food Safety and Standards Authority of India, respondent No.1 in exercise of power conferred under Section Page No.# 3/5 32 of the Food Safety and Standards Act, 2006 (FSS Act in short) and by Clause-4 of Rule 2.1.8 of Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011 by Order under No.45/ Enforcement/FSSAI/NER/2019-20/106 dated 24.09.2021 forthwith suspended the Licence Nos.10012071000028 and 10013071000469 issued in favour of the petitioner No.1 as the report on the sample of said Pan Masala, "Rajnigandha" of the petitioner No.1 confirmed the presence of Magnesium Carbonate where the petitioner No.1 is manufacturing/selling an unsafe product in contravention to the provisions of FSS Act, 2006 and as there is reasonable ground to believe that consumption of the product of Pan Masala manufactured by the petitioner No.1 may put health of larger public at risk.

Being aggrieved with the same, petitioners have preferred this petition praying amongst others to set aside and quash the said order dated 24.09.2021 (Annexure-P8 to this petition).

Mr. Mishra, learned senior counsel for the petitioners placed the relevant provisions of FSS Act, 2006 including the definition Clauses Section 3 (zz) (v) pertaining to "Unsafe Food"; Regulation 2.11.5 relating to "Pan Masala" of Regulation 2.11 - "Other Food Products and Ingredients" of the Food Safety and Standards (Food Products Standards & Food Additives) Regulations, 2011; Clause (a) and (b) of Sub-Clause (10) - "Carry - Over of Food Additives into Foods" of Regulation 3.1 of said 2011 Regulations pertaining to Food Additives and Section 32 of said FSS 2006 Act that relates to "Improvement Notices".

By placing the "Nutritive Value of Indian Foods" published by National Institute of Nutrition, Indian Council of Medical Research, Hyderabad Mr. Mishra, learned senior counsel placed that raw Arecanut contains 66 mg of magnesium per 100 gms of edible portion whereas processed Arecanut contains 83 mg of magnesium per 100 gms of edible portion. From the same book, Mr. Mishra also placed that Cardamom contains 173 mg of magnesium per 100 gms of edible portion and from the International Journal of Pharmaceutical Sciences and Research, an International Journal placed that the Catechu in its root, stem, leaf, pod, bark contains 63.04, 29.69, 26.44, 12.04, 30.31 ppm of magnesium respectively.

From Section 2.11.5 of said 2011 Regulation, Mr. Mishra, learned senior counsel placed Page No.# 4/5 that amongst several items Pan Masala also contains betelnut, catechu, cardamom and lime. He submitted that as betelnut, catechu, cardamom contain magnesium inherently and when these ingredients are added with lime automatically forms magnesium carbonate. In this aspect, Mr. Mishra, learned senior counsel placed the provisions of sub-clause 10 of Regulation 3.1 of said 2011 Regulations.

From the testing/analysis report of Pan Masala Rajnigandha issued by National Food Laboratory dated 01.02.2021 considered by respondent No.1 for issuing the impugned order dated 24.09.2021, Mr. Mishra placed that it only shows test for magnesium carbonate as positive and unsafe as per Section 3(1) (zz)(v) of said FSS Act, 2006, but the said report did not state the quantity or percentage of magnesium carbonate in Pan Masala Rajnigandha.

From testing/analysis report of Pan Masala Rajnigandha issued by Referral Food Laboratory, Gajiabad dated 01.07.2021, Mr. Mishra, learned senior counsel for the petitioner placed that the said report shows that the concerned Pan Masala of respondent No.1 contains 0.26 percentage of magnesium carbonate and that the same does not conform the standard laid down under Regulation No.2.11.5 of 2011 Regulations as it shows the presence of magnesium carbonate which is unsafe under Section 3(1) (zz)(v) of said 2006 Act. Mr. Mishra also submits the respondent No.1 while issuing the impugned order dated 24.09.2021 also relied on this analysis report of Referral Food Laboratory, Gajiabad.

Mr. Mishra, learned senior counsel for the petitioners placed that when the ingredients of Pan Masala, as defined under Section 2.11.5 of 2006 Act, itself contains magnesium inherent in betelnut,

catechu, cardamom etc. and lime, and as together forms magnesium carbonate question of addition of magnesium or carbonate directly in Pan Masala Rajnigandha as specified in Section 3(1) (zz)(v) of said 2006 Act does not arise.

On being enquired, Mr. R. K. Dev Choudhury, learned ASGI could not place before the Court which provision of the said 2006 Act specifies that consumption of magnesium carbonate by human is unsafe for health and/or food particles containing what percentage of magnesium carbonate is unsafe for human consumption.

The Court also enquired when Pan Masala as specified at Regulation 2.11.5 of the said 2011 Regulations itself contains betelnut (Arecanut), catechu, cardamom (which contains Page No.# 5/5 magnesium) and lime (which is calcium carbonate), how the said brand of Rajnigandha Pan Masala of petitioner No.1 is not in conformity with the standards laid down under Regulation under 2.11.5 of the said 2011 Regulations. Mr. Dev Choudhury admitted the fact that the impugned order of the respondent No.1 dated 24.09.2021 does not specify elaborately to that extent.

Though the proviso to Section 32 of the 2006 Act provides that the Designated Officer may suspend any licence forthwith in the interest of public health for reasons to be recorded in writing but the impugned order dated 24.09.2021 of respondent No.1 did not specify as to how the Pan Masal Rajnigandha of petitioner No.1 violated the provisions of Section 2.11.5 of 2006 Act as well as Section 3(1)(zz)(v) of the said Act.

Issue notice, returnable by 01.11.2021.

The petitioners, during the course of the day, shall serve requisite extra copies of this petition along with the annexures appended thereto to Mr. R.K.D Choudhury, learned Assistant Solicitor General of India and Mr. B. Gogoi, learned Standing Counsel, Health and Family Welfare Department, Assam for the respondent Nos.1, 3 and 2 respectively for their necessary use.

The respondents shall file their respective affidavits in the matter on or before 26.10.2021 serving copies of the same on the counsels for the petitioners.

The petitioners shall file its reply to such affidavits of the respondents, if any, on or before 30.10.2021.

In the interim, till the returnable date i.e., 01.11.2021, the impugned order No.45/Enforcement/FSSAI/NER/2019-20/106 dated 24.09.2021 issued by the Designated Officer, Central Licensing Authority under Food Safety and Standard Authority of India (Annexure-P8 to this writ petition), shall remain suspended.

List accordingly.

JUDGE Comparing Assistant