

## **Mr.Kanakal Laxminarayana, Ranga Reddy ... vs Joint Collector li And Adjudicating ... on 4 September, 2024**

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SK, J

W.P.No.12423 of 2015

THE HON'BLE SRI JUSTICE K.SARATH

W.P.No.12423 of 2015

ORDER:

This writ petition is filed seeking to declare the order passed by the respondent No.1 in Rc.No.003/2014-15 dated 28.02.2015 in imposing penalty of Rs.5,000/- to the petitioner No.1 and Rs.1,00,000/-each to the petitioner Nos.2 and 3 on the complaint made by the respondent No.2 as illegal and arbitrary.

2. Heard learned counsel for the petitioners, learned Assistant Government Pleader for Civil Supplies and learned Assistant Government Pleader for Medical and Health.

3. Learned counsel for the petitioners submits that the respondent No.2 has inspected the shop of the petitioner No.1 on 12.06.2013 at about 3.00 PM., seized the oil packets manufactured by the petitioner Nos.2 and 3, sent the same for analysis and the Food Analyst, after conducting analysis, issued a report on 24.06.2013 opining that the sample article was of sub-standard and after following other formalities, the respondent No.1 filed application for adjudication on 29.08.2013. The SK, J respondent No.1 issued notices under Rule 3.1.1.(6) of Food Safety Standard Rules, 2011 directing the petitioners to be present on 28.02.2015, on which date the respondent No.1 passed the impugned order imposing penalty of Rs.5,000/- to the petitioner No.1 and Rs.1,00,000/- each to the petitioner Nos.2 and 3, without serving the copies of the case, analyst report and without giving opportunity of hearing. He further submits that the respondent No.1 has failed to give 30 days' time to the petitioners after receipt of the notice, which is contrary to law and against the principles of natural justice and requested to set aside the impugned order.

4. Learned Assistant Government Pleader for Civil Supplies based on the counter averments submits that as per Section 49(3) of the Food Safety and Standards Act, 2006 ( For short 'the FSS Act'), 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 the Act or the Rules and the Regulations, imposed such penalty and in the present case, the Adjudicating Officer has issued notice on 04.02.2015 to the SK, J petitioners for their appearance as per Section 68 of the FSS Act with relevant material and posted the case for further hearing on 28.02.2015, on which date the petitioners were present and on examination, they pleaded their guilt and on perusal of the record, the respondent No.1 imposed penalty duly following

the provisions of the FSS Act.

5. Learned Assistant Government Pleader further submits that Section 77 of the FSS Act provides that prosecution can be approved within the extended period up to 3 years and Rule 3.1.1(9) of FSS Rules provides that the Adjudicating Officer shall pass final order within 90 days from the date of first hearing and accordingly, the date of offence was 12.06.2013 and prosecution was launched on 05.05.2014 within the ambit of Section 77 of FSS Act and order of Adjudicating Officer is within 90 days as mandated under Rule 3.1.1.(9) of Food Safety Standard Rules. He further submits that on perusal of entire material on record and after following due procedure under the FSS Act, the respondent No.1 passed the impugned order and the writ petition is liable to be dismissed.

SK, J

6. After hearing both sides and perusal of the entire material on record, this Court is of the considered view that the inspection was conducted on 12.06.2013 and the cognizance of the case was taken by the respondent No.1 on 04.02.2015 when notices were issued directing the petitioners to appear on 28.02.2015 and on the same day, the respondent No.1 passed the impugned order imposing penalty of Rs.5,000/- to the petitioner No.1 and Rs.1,00,000/-each to the petitioner Nos.2 and 3. It appears that on the date of appearance of the petitioners on 28.02.2015, the impugned order was passed without giving opportunity of making representation and of hearing them in contravention of Section 68(2) of the FSS Act.

7. Section 68(2) of the FSS Act reads as under;

68. Adjudication.

(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 penalty as he thinks fit in accordance with the provisions relating to that offence.

8. In the instant case, admittedly the respondents have not given opportunity to the petitioners under Section 68(2) of the FSS Act. In the counter, the respondents have SK, J stated that the petitioners have pleaded guilty on 28.02.2015 and in view of the same, the impugned order was passed by the respondent No.1. In fact, in the impugned order, the respondent No.1 has not mentioned with regard to pleading guilty of the petitioners and only recorded their appearance. The respondent No.1, without mentioning the contentions raised by the petitioners or their explanation, passed the impugned order and the same is arbitrary, illegal and violation of Section 68(2) of the FSS Act.

9. In view of the above, the Writ Petition is disposed of by setting aside the impugned order in Rc.No.003/2014/15 dated 28.02.2015 passed by the respondent No.1 and remitted the matter back to the respondent No.1 for passing order afresh by giving opportunity of hearing to the petitioners. No order as to costs.

10. Miscellaneous Applications, if any pending in this writ petition, shall stand closed.

\_\_\_\_ JUSTICE K.SARATH Date:04.09.2024 sj