

Praveen vs The State Of Madhya Pradesh on 3 September, 2024

Author: Pranay Verma

Bench: Pranay Verma

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IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE
BEFORE
HON'BLE SHRI JUSTICE PRANAY VERMA
ON THE 3rd OF SEPTEMBER, 2024
WRIT PETITION No. 10219 of 2024
BHARAT
Versus
THE STATE OF MADHYA PRADESH AND OTHERS
WITH
WRIT PETITION No. 10223 of 2024
RAJKUMAR
Versus
THE STATE OF MADHYA PRADESH AND OTHERS
WITH
WRIT PETITION No. 10527 of 2024
PRAVEEN
Versus
THE STATE OF MADHYA PRADESH AND OTHERS
WITH
WRIT PETITION No. 10532 of 2024
MAHAKAL MAWA BHANDAR THROUGH PROPRIETOR PINKY
Versus
THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Akash Rathi - Advocate for the petitioners.

Shri Shrey Raj Saxena- Deputy Advocate General for respondent/State.

Signature Not Verified
Signed by: JYOTI
CHOURASIA
Signing time: 4-9-24 17:49:49

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ORDER

Since these petitions raise common questions and facts in law they have been heard together and are being decided by a common order.

2. Facts have been taken from W.P. No.10223 of 2024.

3. The petitioner is a 'Mawa Vendor' and had stored his mawa in a cold storage. On 17.08.2023 the Food Safety Officer conducted a search in his premise and took the samples of the mawa. Thereafter the samples was sent to the food analyst, State Food Testing laboratory, Bhopal. the said laboratory furnished a report to the effect that the sample of mawa has been found to be 'Within norms'. Thereafter, the petitioner was informed that on 19.10.2023 the samples have been sent for testing to a Referral Food Laboratory, Pune. On 26.10.2023 the report of Referral Food Laboratory, Pune dated 16.11.2023 were received. As per which the samples of the mawa belonging to the petitioner were found to be of "Substandard quality". Thereafter, the order has been passed on 21.12.2023 for destroying the entire mawa. The report of the testing laboratory has been challenged by the petitioner on the ground that upon receipt of the report from food analyst , for the same to be sent to Referral Food Laboratory, it was imperative for the Designated Officer, who have recorded reasons in writing before forming a new opinion that the report delivered by the food analyst is erroneous. However, the same was not done and the sample was sent to the Referral Food Laboratory. The report received from the such laboratory is hence vitiated.

4. Per contra, learned counsel for the respondent/State has submitted 3 WP-10527-2024 that upon receipt of report from food analyst the same was found to be unsatisfactory and erroneous by designated authority who thereafter by letter dated 19.10.2023 [Annexure R/2] sent to the said to the referral laboratory. He had every jurisdiction to do the same in terms of the applicable rules hence no error can be found in the same.

5. I have considered the submissions of learned counsel for the parties and have perused the record.

6. Clause 2.4.3 of the Food Safety and Standards Rules, 2011 is as under:

"2.4.3: Action by Designated Officer on the report of Food Analyst. If, after considering the report, the Designated Officer is of the opinion for reason(s) to be recorded in writing, that the report delivered by the Food Analyst under Rule 2.4.2 (5) is erroneous, he shall forward one of the parts of the sample kept by him to referral laboratory, for analysis and if the analysis report of such referral laboratory is to the effect that the article of food is unsafe or sub-

standard or mis-branded or containing extraneous matter, the provisions of Rule 3.1 shall, so far as may be, apply.

7. As per the aforesaid rules, upon receipt of the report from the food analyst under Rule 2.4.2 '5' be designated officer has to form in opinion which has to be recorded in writing giving reasons that the report of food analyst is erroneous. Thereafter, he may forward the sample to the referral laboratory for analysis. However, in the 4 WP-10527-2024 present matter the designated officer by his letter dated 19.10.2023 has only recorded that the report received from the food analyst is erroneous and unsatisfactory. However, opinion based reasons to be recorded in writing has not been found. It was imperative for him to record his reasons in writing as to why he has found an opinion that the report delivered by the food analyst is erroneous.

However, the same has not been done. The second report hence received from the referral laboratory is hence in contravention to the aforesaid rule and consequently cannot be sustained.

8. As a result of aforesaid discussion, the petition deserves to be and is accordingly allowed. The reports received from the Director, Referral Food Laboratory, Pune are hereby set aside. As a consequence, the orders of destruction of the mawa passed on 21.12.2023 are also set aside. However, it is made clear that this order shall not permit the petitioner to use the mawa which has been kept in the cold storage for the reason that it has been in such cold storage for a period of almost one year. On the other hands, the respondents are directed to destroy the entire mawa has been confiscated by them and while doing so, in the facts and circumstances of the case, it would not be necessary for them to comply with the provision of Section 38(4) of the Food Safety and Standards Act, 2006. However, the respondents would issue notice to the petitioner for the date fixed for destruction of the mawa. The petition would be at liberty to institute such legal proceedings as may be permissible under the law as a consequence of the reports 5 WP-10527-2024 having been set aside as aforesaid.

(PRANAY VERMA) JUDGE jyoti