

Kanchan Oil Industries Ltd. & Anr vs Union Of India & Ors on 14 June, 2021

Author: Rajasekhar Mantha

Bench: Rajasekhar Mantha

14.06.2021.
Item no. 45.
Court No.13
ap

W.P.A. No. 10592 of 2021
(Through Video Conference)

Kanchan Oil Industries Ltd. & Anr.
Versus
Union of India & Ors.

Mr. Kalyan Bandyopadhyay, ld. Sr. Advocate,
Mr. Ram Anand Agarwal,
Mr. Kumar Gupta,
Mr. Rajesh Kumar Gupta,
Ms. Nibedita Pal,
Mr. Ramesh Dhara,
Mr. Ananda Gopal Mukherjee.

...For the petitioners.

Mr. Y. J. Dastoor, ld. A.S.G.
Mr. Vipul Kundalia.

...For the UOI.

Mr. Aditya Singla,
Mr. Cheshta Jetly,
Mr. Achin Sondhi,
Mr. Utsav Vasudeva.

...For the FSSAI.

Affidavit-of-service filed in Court today by the
Counsel for the petitioners be taken on record.

The subject matter of challenge in the instant
proceeding is an amendment effected to the Food
Safety and Standards (Food Products Standards and
Food Additives) Regulations, 2018.

The petitioners are particularly aggrieved by the amendment to Regulation 2.1 and Regulation 2.1.1.

The upshot of the amendment dated 8th March, 2021 and brought into force on 8th June, 2021, is that the petitioners would be prohibited from

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manufacturing any blend of edible oil which contains mustard oil.

The writ petitioners are admittedly engaged in the business of manufacture and trade of edible oil.

It is submitted by the learned Senior Counsel for the petitioners, Mr. Kalyan Bandyopadhyay, that the petitioners were granted a licence on 29th January, 2019 until 29th January, 2024 to, inter alia, manufacture such blended oil. He submits that the licence already granted would amount to an existing benefit and therefore the amendment to the Regulation introduced from March, 2021 would have the effect of depriving them of an existing right, retrospectively.

Mr. Banerjee, by placing reliance on a decision of the Division Bench of Patna High Court in the case of M/s. Omkar Agency - Vs. - Food Safety and Standards Authority of India & Anr. reported in A.I.R. 2016 Patna 160 particularly paragraph 95 thereof, submits that Section 92 and Section 16 of the Food Safety and Standards Act, 2006 did not empower

the Authority to issue any Regulation prohibiting sale of any product. He further argued that the amendment would have the effect of interfering with the rights conferred to the petitioners by another Statute. Specific reliance in this regard be made to paragraph 47 of the said decision of the Hon'ble Supreme Court of India in the case of Shri Sitaram Sugar Company

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Limited & Anr. - Vs. - Union of India & Ors. reported in (1990) 3 Supreme Court Cases 223. On the balance of convenience, for interim stay, Mr. Bandyopadhyay, submitted that his client has invested a sum of about Rs. 36 crores in plant machinery and personnel, for manufacturing under the new license. He, therefore, submits that continued enforcement of Amendment would have serious financial implications on his client.

The learned Additional Solicitor General, Mr. Dastoor would first submit that the amendment has a laudable object and purpose. It is submitted that the Government aims to ensure pure mustard oil to be sold as opposed to blended mustard oil. He further submits that this is the policy decision of the Union Govt. and should not be interfered with. It is further submitted that the petitioners have not been

restrained from selling the blended oil in India, already manufactured until 7th June, 2021. He, therefore, submits that even for the purpose of balance of convenience, the petitioners shall not be prejudiced in the event the Court wishes to entertain the writ application.

Mr. Aditya Singla, learned Counsel appearing for the Food Safety and Standard Authority of India submits that the amendment does not affect the right of the petitioners to export and sell the product out of

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India. It is submitted that the Delhi High Court is seized of a similar challenge to the said amendment in a batch of writ petitions and final hearing is fixed in July, 2021.

This Court has considered the rival submissions of the parties.

A practice in dealing with propriety of statutes is that there is a presumption of validity of any statute or amendment or new law, until it is dispelled. Therefore, the presumption that the amendment in question is in public interest and bona fide and an order interfering with such amendment or Regulations cannot be made at an ad interim stage of a writ proceeding.

This Court has also factored in the invitation of

objections to the draft amendment, when about 550 comments were received. Only about 15-16 of them objected to the amendment. The ammendmnts were passed on 8th March, 2021 and the writ petition has been filed on 7th June, 2021. There shall be no interim order at this stage.

This Court is, therefore, of the view that the matter should be decided after exchange of affidavits.

Let affidavit-in-opposition to the main writ application be filed by the respondents within four weeks from date. Reply, if any, thereto be filed one week thereafter.

This Court directs that the Ministry of Agriculture and Farmers' Welfare be impleaded as party respondent to the instant proceeding.

Let a copy of this order may be sent to the Secretary of such Ministry by the parties. The direction shall also apply to the added respondent.

At the request of Mr. Bandyopadhyay, the hearing of this matter is fixed on 9th July, 2021.

All parties are directed to act on a server copy of this order on usual undertakings.

(Rajasekhar Mantha, J.)