

# Burra Lingaiah Yadav vs The State Of Telangana on 22 June, 2021

THE HON'BLE SRI JUSTICE T.AMARNATH GOUD

WRIT PETITION NO.13278 OF 2021

ORDER:

This writ petition is filed seeking to declare the action of respondent No.3 in trespassing into the petitioner's property and collecting pan masala and other non prohibited material, destroying the same by putting into fire and respondent No.4 passing an order vide Rc.No.2, dated 05.06.2021 imposing penalty of Rs.2 lakhs to the petitioner as illegal and arbitrary and consequently direct the respondents to pay damages of Rs.10 lakhs to the petitioner for destroying the pan masala material without following due procedure laid down by law in Food Safety Act.

2. It is the case of the petitioner that he is running a kirana shop in the name and style of M/s. Laxmi Prasanna Traders at Nalgonda since long time. While so, on 03.06.2021, the 3rd respondent trespassed into the shop and godown, collected pan masala packets and other pan masala products in the absence of the petitioner and taken away the material without conducting any panchanama and that hearing was conducted before the 4th respondent and destroyed all the pan masala by putting to fire without following the procedure before passing the order and without sending the alleged seized material to the Forensic Science Laboratory, stating that the property worth was Rs.45 lakhs.

3. It is the further case of petitioner that the Government issued notification prohibiting selling of tobacco products in the State of Telangana vide No.505/FSS-I/2021, dated 06.01.2021, challenging the said notification, writ petitions have been filed and said writ petitions were dismissed by the High Court and aggrieved by the said orders, Special Leave Petition 4879 of 2021 was filed before the Supreme Court and the Supreme Court by order dated 17.02.2021 remitted the matter to the High Court for fresh hearing and the same is pending adjudication.

4. Heard both sides.

5. The record placed before this Court reveals that on 03.06.2021, the 3rd respondent Food Safety Designated Officer, Nalgonda District conducted raids in the premises of the petitioner and found prohibited Gutka and Tobacco products worth Rs.45,00,000/- and seized the same as per the provisions of Section 30(2)(e) of Food Safety and Standard Act, 2006 read with regulations 2.3.4 of FSS (Prohibition and restriction on sales) Regulation 2011 for human consumption. The 3rd respondent drafted the panchanama and obtained the signature of the petitioner.

6. The petitioner also attended the personal hearing before the 4th respondent on 05.06.2021 and requested to release of seized prohibited stock. On considering the material available on record, the 4th respondent came to the conclusion that the petitioner has violated the ban orders and therefore

instructed to discard the seized prohibited tobacco products worth of Rs.45,00,000/- and imposed a fine of Rs.2 lakhs.

7. The petitioner has not produced any evidence to show that the seized material is not prohibited by the Government and it is fit for human consumption. It is categorically stated in the impugned order that the seized products are Amber Tobacco, Miraj Tobacco, SR-1 Tobacco, RR Gutka, V1 Tobacco and hence, it is not pan masala as contended by the petitioner. It is not the case of the petitioner that he has licence to trade the Tobacco. The petitioner has not filed any application before the respondent authorities to send the samples to the Forensic Science Laboratory to test the same to know whether the samples contained any prohibitory material. The Government issued G.O.Rt.No.493, dated 26.06.20215 designating the Principal District and Sessions Courts as Food Safety Appellate Tribunals for the trial and disposal of cases filed under the said Act.

8. The petitioner without availing the efficacious alternative remedy under the Food Safety Act, 2006, by filing an appeal before the Principal District and Sessions Judge, Nalgonda, approached this Court under Article 226 of the Constitution of India and requested to direct the respondents to pay damages of Rs.10 lakhs for destroying the pan masala material. This Court cannot entertain the request of the petitioner while sitting under Article 226 of the Constitution of India and cannot decide whether the seized pan masala contains the prohibited material or not.

9. The petitioner in support of his claim for compensation has not made any specific contention and the issue of compensation cannot be gone into under Article 226 of the Constitution of India. Therefore, the case of the petitioner fails.

10. Accordingly, the writ petition is dismissed. No order as to costs. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

\_\_\_\_\_ T.AMARNATH GOUD,J Date: 22.06.2021.

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