

Mumbai Jivdaya Mandali, [The Bombay ... vs Standard Review Call on 3 May, 2024

Author: Sunita Agarwal

Bench: Sunita Agarwal

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C/WPPIL/172/2017

ORDER DATED: 03/05/2024

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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/WRIT PETITION (PIL) NO. 172 of 2017

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MUMBAI JIVDAYA MANDALI, [THE BOMBAY HUMANITERIAN LEGUE]

Versus

STANDARD REVIEW CALL & ORS.

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Appearance:

MR NM KAPADIA(394) for the Applicant(s) No. 1
MR RJ GOSWAMI(1102) for the Applicant(s) No. 1
MR UTKARSH SHARMA AGP for the Opponent(s) No. 3
MR AKSHAY V MATANI(11363) for the Opponent(s) No. 1
NOTICE SERVED BY DS for the Opponent(s) No. 2

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CORAM:HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE
SUNITA AGARWAL
and
HONOURABLE MR. JUSTICE ANIRUDDHA P. MAYEE

Date : 03/05/2024
ORAL ORDER

(PER : HONOURABLE THE CHIEF JUSTICE MRS. JUSTICE SUNITA AGARWAL)

1. This is a wholly vague petition filed in the nature of Public Interest Litigation seeking the following reliefs :-

"[A] YOUR LORDSHIPS be pleased to issue writ of mandamus or any other order or direction, directing the respondent authorities to implement the provisions of "Food Safety and Standards Act, 2006 and Food Safety and Standards (Packaging and Labelling) Regulations, 2011 and other rules and regulations made there under urgently, strictly and in true spirit, to ascertain whether any green labelled food item contains any non-vegetarian ingredient and submit detailed report to this Hon'ble Court.

[B] YOUR LORDSHIPS be pleased to issue a writ of
mandamus or any other appropriate writ, order or

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direction, directing the respondent authorities to act urgently and periodically by obtaining samples of food items from open market, and doing inspection periodically at regular intervals and to carry out test thereon as per provisions of "Food Safety and Standards Act, 2006" and rules and regulations made there under, to ascertain whether any green labelled food item contains any non- vegetarian ingredient and submit detailed report to this Hon'ble Court.

[C] YOUR LORDSHIPS be pleased to issue a writ of mandamus or any other appropriate writ, order or direction directing the respondent authorities to produce and furnish necessary documents and information and other details as to how many prosecutions are being initiated in case of misbranding of food products which are not as per the vegetarian and non-vegetarian provisions of said regulation and Act.

[D] That pending hearing and final disposal of this petition, YOUR LORDSHIPS be pleased to direct the respondent no.03 to obtain samples of all different types of food items sold in open market in the State of Gujarat, to ascertain whether any green labelled food item contains any non-vegetarian ingredient and submit detailed report to this Hon'ble Court.

[E] Any other appropriate relief deemed just, fit and proper may pleased be granted."

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2. At the outset, we may note that all prayers made in the Writ Petition are vague and in absence of specific prayer, pointing out any instance of violation of the provisions of Food Safety and Standards Act, 2006 and Food Safety and Standards (Packaging and Labelling) Regulations, 2011, it is not possible for us to issue any general mandamus asking the authorities to provide the documents and information and other details as to how many prosecutions are being initiated in case of misbranding of food products, which are not as per the vegetarian and non-vegetarian provisions of said Regulations. The prayers made in the Writ Petition to issue a general mandamus commanding the respondent authorities to act urgently and periodically by obtaining samples of food items from open market and making inspection periodically at regular intervals and to carry out test thereon as per provisions of Food Safety and Standards Act, 2006, is too vague to entertain. In the first prayer made in the Writ Petition as noted herein above, a general mandamus is sought for to direct the respondents to implement the provisions of Food Safety and Standards Act, 2006 and Food Safety and Standards (Packaging and Labelling) Regulations, 2011 made there under to ascertain whether any green labelled food item contains any non-vegetarian ingredient.

3. During the course of arguments, when this flaw in the prayers has been pointed out to the learned counsel for the petitioner, he has invited the attention of the Court to the order dated 31.08.2021 passed by this Court, wherein this Court has taken a note of Regulation 4 of Food Safety and Standards (Packaging and Labelling) Regulations, 2011 and further, the definitions in Regulation 1.2.11 of "Vegetarian Food", "ingredient" defined under Section 3(y) and "food additive" defined under Section 3(k) of the NEUTRAL CITATION C/WPPIL/172/2017 ORDER DATED: 03/05/2024 undefined Act, 2006. Noticing the said provisions, this Court has directed requiring the detailed affidavits from the State Government as well as the Central Government. This Court has also noted that the affidavit already filed by the Central Government by Assistant Director of the Food Safety and Standards Authority of India under the Ministry of Health and Family Welfare, Government of Gujarat, FDA, was already on record. However, the additional affidavit was sought for. In a previous order dated 10.08.2021, the learned Government Counsel was directed to explain the availability of the adequate infrastructure facilities with all the Government Laboratories for maintaining Food Standards in the State of Gujarat, particularly with reference to Green Label Products (Vegetarian). It seems that on the letter dated 29.09.2015 issued by the Senior Scientific Officer (Food), Foods and Drugs Laboratory, Vadodara, it was noted by this Court that they do not have such facility. It was further noted that the said laboratory did not have such adequate facility to issue certain lab reports for various products, which were annexed along with the reply filed by the State Government. It was thus opined that the samples were not properly tested in the laboratory and the reports of the laboratory produced with the reply of the State Government did not satisfy the scope of the Writ Petition.

4. We may further note that after the order dated 31.08.2021, when the matter was listed on 28.06.2022, nothing much had happened on the said date. Thereafter, the matter had been adjourned on 18.08.2022, when the leave note was sent. The order was passed on 09.02.2023

permitting the learned advocate representing the first respondent to retire noticing that he had circulated a note to retire. Mr. Devang Vyas, Additional Solicitor NEUTRAL CITATION C/WPPIL/172/2017 ORDER DATED: 03/05/2024 undefined General of India had been permitted to appear on behalf of the first respondent. On 28.02.2023, time was granted to the State Authorities to file their response, which was again granted vide order dated 27.03.2023. The matter has thereafter been adjourned either on request or leave note of learned advocates appearing for the petitioner and the respondent No.1. The fact remains that nothing much has proceeded in the Writ Petition for a period of about 7 years. The fact that there is an admission on the part of the respondents in the letter issued in the year 2015 by the Senior Scientific Officer (Food), Foods and Drugs Laboratory, Vadodara that they do not have adequate facility and the reports of the State Government were found faulty, cannot be the sole reason to issue any further direction in the nature of vague assertions made in the Public Interest Litigation and the prayers as noted herein above.

5. We may further note the averments in the affidavit of the respondent that the responsibility of implementation and enforcement of Food Safety and Standard Act, 2006, Rules and Regulations made there under primarily lies with the States and Union Territories. In order to ensure the availability of safe and wholesome food to the consumer, regular surveillance, sampling and inspections are being conducted by the Food Safety Officials of the State and Union Territories. It is stated in the affidavit of the Assistant Director, Food Safety and Standard Authority of India set up under the Food Safety and Standards Act, 2006 that during such surveillance and inspection, if food business operators are found violating the provisions of the Food Safety and Standards Act, 2006, penal action is initiated against such defaulting food business operators. Section 26 of the Act, 2006 outlines the responsibilities of the food business operators and specifies as under :-

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"26. Responsibilities of the food business operator.-

"(1) Every food business operator shall ensure that the articles of food satisfy the requirements of this Act and the rules and regulations made thereunder at all stages of production, processing, import, distribution and sale within the businesses under his control.

(2) No food business operator shall himself or by any person on his behalf manufacture, store, sell or distribute any article of food-

- (i) which is unsafe; or
- (ii) which is misbranded or sub-standard or contains extraneous matter; or
- (iii) for which a licence is required, except in

accordance with the conditions of the licence; or

(iv) which is for the time being prohibited by the Food Authority or the Central Government or the State Government in the interest of public health;

or

(v) in contravention of any other provision of this Act or of any rule or regulation made thereunder.

(3) No food business operator shall employ any person who is suffering from infectious, contagious or loathsome disease.

(4) No food business operator shall sell or offer for sale any article of food to any vendor unless he also gives a guarantee in writing in the form specified by regulations NEUTRAL CITATION C/WPPIL/172/2017 ORDER DATED: 03/05/2024 undefined about the nature and quality of such article to the vendor: Provided that a bill, cash memo, or invoice in respect of the sale of any article of food given by a food business operator to the vendor shall be deemed to be a guarantee under this section, even if a guarantee in the specified form is not included in the bill, cash memo or invoice.

(5) Where any food which is unsafe is part of a batch, lot or consignment of food of the same class or description, it shall be presumed that all the food in that batch, lot or consignment is also unsafe, unless following a detailed assessment within a specified time, it is found that there is no evidence that the rest of the batch, lot or consignment is unsafe."

6. It is stated in the said affidavit filed in the month of September, 2021 that the Food Commissioner of Gujarat is being assisted by team of 38 Designated Officers, 178 Food Safety Officers and 33 Adjudicating Officers for efficient implementation of Food Safety and Standards Act, 2006. With regard to the testing infrastructure, it is stated that there are six State Food Testing Laboratories (SFTLs) functioning under the Government of Gujarat. The testing laboratories are accredited by National Accreditation Board for Testing and Calibration Laboratories. Nine National Accreditation Board for testing and Calibration Laboratories accredited private food testing laboratories have also been recognized by Food Safety and Standards Authority of India in the State of Gujarat for the purpose of testing of food articles/samples. In addition to the above, one Referral Laboratory has also been recognized and notified by Food Safety and Standards Authority of NEUTRAL CITATION C/WPPIL/172/2017 ORDER DATED: 03/05/2024 undefined India in the State of Gujarat. A list of State Food Testing Laboratories and Private Food Testing Laboratories has also been appended there with.

7. It is further stated therein that the primary focus of the Food Safety and Standards Authority of India in the State of Gujarat is on compliance rather than enforcement. It is the duty of the food business operators to comply with the regulations regarding declaration of vegetarian and non-vegetarian food. It is the duty of the food business operators that the green dot products should not contain any non-vegetarian contents into it. However, if the food business operators fails to comply with the aforesaid requirement of green dot product not containing any non-vegetarian contents in it, it amounts to violation and is construed as an adulteration. If such adulteration is found to be rampant, it is the duty of the Food Analyst to test such products for that particular

adulterant as per the methods in the Rules, framed under the Act, 2006.

8. It is stated that the testing infrastructure in the State of Gujarat is adequate and appropriate for testing of food products. However, there is no method available in the existing Food Safety and Standards Authority of India Manuals with regard to detection and analysis of egg or egg yolk contents in cakes, pasta and other green dot products. There are some research articles available in public domain which deal with various methods on such determination. The details with regard to detection and analysis of animal fats in cooked and vegetarian products by various methods has also been mentioned therein.

9. In the compliance affidavit dated 21.04.2023 filed on behalf of the respondent Nos.1 and 3, it is stated that the Food Safety and Standards Authority of India (FSSAI) has been created for laying NEUTRAL CITATION C/WPPIL/172/2017 ORDER DATED: 03/05/2024 undefined down science based standards for articles of food and to regulate their manufacturing, storage, distribution, sale and import to ensure availability of safe and wholesome food for human consumption. The FSSAI is empowered to issue method of analysis or standards on the basis of scientific study under Section 16(2)(f) of the Act, 2006. The FSSAI is the Approval Authority for any scientific method of analysis of food samples. The respondent No.3, i. e. Food Safety Commissioner for Gujarat has issued letters dated 14.10.2021 and 01.11.2021 to FSSAI requesting to approve the method of analysis (DNA based kit, QPCR technology method of analysis) for identification of Non-veg ingredient in food item like cake, pastries, biscuits, ice cream etc. However, the manufacturer of the kit has not filed any application with the FSSAI for approval of the DNA kit. It is stated that the FSSAI has not approved the DNA Kit, Seqlo QPCR technology method of analysis for detention of non-vegetarian ingredient in food item for the fact that the manufacturer of the kit has not filed any application with the FSSAI for approval of the kit and the Commissioner of Food Safety, Gujarat has not submitted any kit to FSSAI for approval.

10. It is further stated that the FSSAI is empowered to constitute scientific committee and as per sub section (3) of Section 14 of the Act, 2006, such committee will be responsible with regard to the adoption of working procedure and harmonization of working methods of scientific panels. The FSSAI is empowered to establish the method of analysis of samples of food items and its aims to establish scientific methods for holistic and efficient identification of ingredients in food items in pursuance to effective compliance of the Act, 2006 and the regulations made therein.

11. From the above noted facts on record, it is evident that the petitioner seeks for implementation of additional method of analysis NEUTRAL CITATION C/WPPIL/172/2017 ORDER DATED: 03/05/2024 undefined for identification of non-vegetarian food ingredients in vegetarian food items, which are DNA based kit, i. e, Seqlo QPCR technology, which is highly scientific method for such identification. As such kit or technology is not available as alternative additional method of analysis in the market and no manufacturer has come forward before the FSSAI to approve the said method as scientific method for analysis of food items, it is difficult for us to issue any positive direction to implement the said technology as additional method of analysis.

12. As regards the other contentions made by the learned counsel for the petitioner in the Writ Petition filed in the year 2017, it may be noted that much water has been flown and current status has not been produced on record by the petitioner after the period of seven years to show any infirmity committed on the part of the Commissioner of Food Safety, Government of Gujarat in implementation of the Act, 2006 and Regulations, 2011 made thereunder. There is no response to the compliance affidavit filed on behalf of the respondent Nos.1 and 3, the contents of which have been noted herein before.

13. For the above, we do not find any good ground to keep the Writ Petition pending. However, the petition is being disposed of with the observation that it is the duty and responsibility of the respondent No.3, i. e. Food Safety Commissioner of Gujarat and Commissioner, Food and Drugs Control Administration to ensure strict implementation of Food Safety and Standards Act, 2006 and Food Safety and Standards (Packaging and Labelling) Regulations, 2011, as also rules made thereunder and any violation of the said statutory provisions has to be handled with firm hands. The periodical inspection at regular intervals are to be carried out to ensure that food business operators do not violate the provisions of NEUTRAL CITATION C/WPPIL/172/2017 ORDER DATED: 03/05/2024 undefined the Act, Regulations and rules made thereunder. Any such violation should not go unattended and strict penal action shall be taken against all such violators. Any future violation by the State Authority in strict implementation of the Act, 2006 and Regulations, 2011 made thereunder would give rise to a cause of action to the petitioner to file a fresh petition.

14. The Writ petition is accordingly disposed of.

(SUNITA AGARWAL, CJ) (ANIRUDDHA P. MAYEE, J.) cmk