

Sree Annaporna Foods vs The Commissioner Of Food Safety on 2 January, 2024

Author: S.M.Subramaniam

Bench: S.M. Subramaniam

2024:MHC:5578

WP No.109

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02-01-2024

CORAM

THE HONOURABLE MR.JUSTICE S.M. SUBRAMANIAM

WP No.10907 of 2020

And

WMP No.13248 of 2020

Sree Annaporna Foods,
S.F.No.643-3B, D.No.2/181,
Edayarpalayam Road,
Vadavalli,
Coimbatore-641 041 Represented by its
Authorised Signatory B.Karthikeyan.

.. Petitioner

- vs -

1.The Commissioner of Food Safety,
5th Floor, D.M.S.Building,
259, Anna Salai – DMS Campus,
Teynampet,
Chennai-600 018.

2.The Designated Officer,
Tamil Nadu Food Safety and Drug
Administration Department, (Food Wing),
Office of the Deputy Director of
Health Services Kancheepuram Campus,
42-A, Railway Road,
Kancheepuram-631 501.

<https://www.mhc.tn.gov.in/judis>

3.The Food Safety Officer,
Thiruporur Block,
Government Primary Health Centre,
Vendalur-Kelambakkam Road,
Kelambakkam,
Kancheepuram District-603 103.

.. Respond

Writ Petition is filed under Article 226 of the Constitution, praying for the issuance of a Writ of Certiorari and Mandamus, calling for the records comprised in Na.Ka.No.112/A1/FS/2020 dated 13.07.2020, the file of the second respondent, quash the same and consequently direct the second respondent to consider the appeal filed by the petitioner under VII in terms of Section 46(4) of the Food Safety and Standards Act, 2006, and Rule 2.4.6 of the Food Safety and Standards Rules 2011, dated 23.03.2020 after communicating the fees payable for the Referral Laboratory and send the sample to the Referral Laboratory.

For Petitioner : Mr.R.Bharanidharan

For Respondents : Mr.G.Ameedius,
Government Advocate.

ORDER

The writ on hand has been instituted questioning the validity of the order dated 13.07.2020 passed by the second respondent-Designated Officer under Food Safety and Standards Act, 2006.
<https://www.mhc.tn.gov.in/judis>

2. It is not in dispute that the Food Analyst under the provisions of the Food Safety and Standards Act, 2006, found that the products manufactured by the writ petitioner-Company are unsafe and consequently submitted a Report to that effect.

3. The Lab Report of the Food Analyst since against the petitioner-Company, an appeal was preferred under Section 46(4) of the Food Safety and Standards Act, 2006. Along with the appeal, a request was made to refer the food samples to the Referral Lab as contemplated under Section 46(4) of the Food Safety and Standards Act, 2006, which was rejected merely on the ground that there was a delay in filing an application, as against which the petitioner-Company is constrained to move the present writ petition.

4. The learned counsel for the petitioner-Company mainly contended that delay cannot deny an opportunity to the petitioner to test the product by availing the remedy provided under Section

46(4) of the Food Safety and Standards Act, 2006. The delay occurred due to COVID-19 and <https://www.mhc.tn.gov.in/judis> therefore, the order impugned is liable to be set aside.

5. The learned Government Advocate, appearing on behalf of the respondents, referred the notice issued by the second respondent- Designated Officer along with the Report of the Food Analyst on 27.02.2020. As per the said order, if the petitioner-Company is aggrieved from and out of the Report submitted by the Food Analyst, the petitioner- Company is at liberty to prefer an appeal seeking further examination through Referral Lab i.e., Central Government Lab.

6. In this regard, an application is to be submitted within a period of thirty days from the date of receipt of the notice. Since the appeal has been preferred after the expiry of the thirty days, the second respondent- Designated Officer rejected the same and thus there is no infirmity. Hence, the present writ petition is to be rejected.

7. Section 46 of the Food Safety and Standards Act, 2006 contemplates 'Functions of Food Analyst'. Under Sub Section (3) to Section 46 of the Food Safety and Standards Act, 2006, the Food Analyst has <https://www.mhc.tn.gov.in/judis> submitted his Report stating that that the food product manufactured by the petitioner-Company is unsafe.

8. The petitioner-Company preferred an appeal under Section 46(4) of the Food Safety and Standards Act, 2006 along with the request to send the samples to the Referral Lab for further Report. It is the statutory opportunity contemplated to an aggrieved person to have second lab examination, which need not be denied merely on the ground that an application was submitted beyond the period of thirty days. In the present case, the delay occurred on account of COVID 19 and therefore, the petitioner cannot be faulted.

9. Section 46(4) of the Food Safety and Standards Act, 2006 stipulates that "an appeal against the report of Food Analyst shall lie before the Designated Officer who shall, if he so decides, refer the matter to the Referral Food Laboratory as notified by the Food Authority for opinion".

10. In the present case, the notice dated 27.02.2020 states that the Referral Lab is the Central Government Lab to which the samples are to <https://www.mhc.tn.gov.in/judis> be sent for further analysis.

11. In view of the facts and circumstances, the reasons stated in the impugned order to reject the claim of the writ petitioner to have further opportunity to test the product through Referral Laboratory is neither candid nor convincing, but to be reconsidered.

12. It is made clear that even to send the samples to the Referral Lab, the Authority is empowered to exercise its discretion. Section 46(4) of the Food Safety and Standards Act, 2006 unambiguously stipulates that the Designated Officer who shall, if he so decides, refer the matter to the Referral Food Laboratory. Therefore, it is not an absolute right of an aggrieved person to send the samples to the Referral Food Laboratory contemplated. Test is to be taken by the Designated Officer for the purpose of sending the samples to the Referral Laboratory i.e., the Central Government Laboratory,

in the present case.

13. Therefore, the second respondent-Designated Officer shall take a decision whether the samples secured from the petitioner-Company <https://www.mhc.tn.gov.in/judis> necessarily have to be sent for further analysis to the Referral Laboratory i.e., the Central Government Laboratory and in the event of taking such a decision on merits, the samples are to be sent to the Referral Laboratory for further analysis and for submission of Report for further actions by following the due process of law. The said decision is directed to be taken by the second respondent-Designated Officer, within a period of two weeks from the date of receipt of a copy of this order. If the decision is taken to send the samples collected from the petitioner-Company to the Referral Lab, then it is to be sent to the Referral Laboratory without causing any undue delay.

14. With the above directions, the present writ petition stands disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

02-01-2024 Index : Yes/No Internet: Yes/No Speaking order/Non-Speaking order Neutral Citation : Yes/No Svn <https://www.mhc.tn.gov.in/judis> S.M.SUBRAMANIAM, J.

Svn To

1.The Commissioner of Food Safety, 5th Floor, D.M.S.Building, 259, Anna Salai – DMS Campus, Teynampet, Chennai-600 018.

2.The Designated Officer, Tamil Nadu Food Safety and Drug Administration Department, (Food Wing), Office of the Deputy Director of Health Services Kancheepuram Campus, 42-A, Railway Road, Kancheepuram-631 501.

3.The Food Safety Officer, Thiruporur Block, Government Primary Health Centre, Vandalur-Kelambakkam Road, Kelambakkam, Kancheepuram District-603 103.

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