

M/S.Pepsico India Holding Pvt. Ltd vs Tamilnadu Government Rep. By on 11 August, 2022

Author: G.Ilangovan

Bench: G.Ilangovan

Crl.O.P.(MD)Nos.592

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26/04/2022

Pronounced on : 11/08/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP(MD)Nos.5924 of 2018 and 695 of 2019

and

Crl.MP(MD)Nos.2841 of 2018, 323 of 2019, 331 and 332 of 2020

(1)Crl.OP(MD)No.5924 of 2018:-

M/s.Pepsico India Holding Pvt. Ltd.,
G.S.T Road,
Mamandur,
Madurantagam Taluk,
Kancheepuram District-603 111. : Petitioner/A3

Vs.

Tamilnadu Government rep. By
S.Rajkumar,
Code No.461,
Food Safety Officer,
Thanjavur Town-1,
Thanjavur District.

: Respondent/Compla

Prayer: Criminal Original Petition
Section 482 Cr.P.C., to call for the records in connection
with case in STC No.867 of 2016 on th
Judicial Magistrate No.1, Thanjavur and quash the same in
so far as the petitioner is concerned.

For Petitioner

: Mr.Rajesh Batra
for Mr.M.Kandasamy

For Respondent

: Mr.B.Nambi Selvan
Additional Public Prosec

1/8

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

Crl.O.P.(MD)Nos

(2)Crl.OP(MD)No.695 of 2019:-

M.Nandakumar
Hotel Pandiar Residency,
No.14, Katchery Road,
Thanjavur-613 001.

: Petitioner/

Vs.

State of Tamil Nadu
through S.Rajkumar,
Food Safety Officer,
Thanjavur Town-1,
Thanjavur District.

: Respondent/Com

Prayer: Criminal Original Petition
Section 482 Cr.P.C., to call for the records in connection
with case in STC No.867 of 2016 on
Judicial Magistrate No.1, Thanjavur and quash the same in
respect of the petitioner.

For Petitioner

: Mr.T.A.Ebenezer

For Respondent

: Mr.B.Nambi Selvan
Additional Public Prosec

COMMON ORDER

These criminal original petitions are filed seeking quashment of the case in STC No.867 of 2016 on the file of the Judicial Magistrate No.1, Thanjavur.

2.The case of the prosecution is that the Food Safety Officer, Thanjavur, on 04/08/2018 at about 11.30 am, inspected the premises of Hotel Pandiar Residency. At that <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)Nos.5924 of 2018 and 695 of 2019.

time, he found Lehar 7-UP 200 ML containing a solid article was floating. Thereafter, as per the procedure and rules sampling was undertaken. On 04/08/2016, the sample was delivered to the Food Analyst, Thanjavur for examination. The sample was analysed on 05/08/2016 and on 07/08/2016 as per the norms. The report was sent on 17/08/2016 stating that it is unsafe and in

violation of the standard 3(1)(zz)

(iii) of the Food Safety and Standards Act, 2006, it contains suspended laminated aluminium foil. Thereafter, notice was sent by the Food Safety Officer through the petitioner's company on 19/08/2016 stating that only sample was available and it was also taken now and opportunity is available to him to send the sample for reanalysis to the referral food laboratory, for which the petitioner sent a reply stating that procedure undertaken by the respondent is against the prescribed process. Since the label did not contain the batch number, the petitioner is not in a position as to verify whether the sample belongs to his company.

3. Similarly a reply was also sent stating that the Food Analysis Laboratory, Thanjavur, is not a notified laboratory as per Section 43 of the Food Safety and Standards Act, 2006. So analysis was undertaken by the <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)Nos.5924 of 2018 and 695 of 2019.

above said laboratory is not valid in law.

4. After completing the official formalities, the complaint was filed and it was taken on file in STC No.867 of 2016 by the Judicial Magistrate No.1, Thanjavur.

5. Seeking quashment of the same, these petitions have been filed by M/s.Pepsico India Holdings Private Limited, who is the manufacturer of the cool drinks and the owner of Hotel Pandiar Residency.

6. Heard both sides.

7. An elaborate argument was advanced by the learned counsel appearing for the petitioners and the main point of attack is that this is not a specific as prescribed under the provisions of Food Safety and Standards Act, 2006 and because of the non-availability of the second sample, the valuable right that is available to the petitioners has been lost. More-over, since the label of the sample did not contain with regard to the batch number, there is a doubt with regard to the manufacturing company itself. According to the petitioners, no material has been placed before the court concerned to say that the product was purchased by the petitioners.

<https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)Nos.5924 of 2018 and 695 of 2019.

8. But when this argument was advanced by the learned counsel appearing for the petitioners, I made a specific query whether he is standing on this point. He would submit that he is not pressing this point. So the only material is available on record to say that the the product was purchased and manufactured by the petitioners company.

9. The next preliminary argument is that the referral laboratory, which analysed the sample was neither notified nor accredited by the NABL. To answer this argument, now let us to go the analysis report. The opening para of the report says that Mr.L.Baskaran has been duly appointed under the

provisions of Food Safety and Standards Act. But whether it has been notified by the food laboratory or accredited to NABL is a matter for trial. It has been clarified by the respondent to the effect that all the six Government Food Labs functioning in the State of Tamil Nadu was notified by the FSSAI and the notification period is also valid. According to the respondent, the validity can be raised only in respect of the private testing food laboratory. According to the respondent, as mentioned above, it is a matter for trial. During the trial, petitioners are at liberty to challenge the power of the food analyst.

<https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)Nos.5924 of 2018 and 695 of 2019.

10. Similarly, the respondent is also at liberty to produce the notification regarding the establishment and recognitions of the food lab, Thanjavur. But as things stand today, there is no substance in the argument of the learned counsel for the petitioner that it was not recognized. So I find no merit in these petitions.

11. In the result, both criminal original petitions are dismissed. Consequently connected Miscellaneous Petitions are closed.

11.08.2022 Internet:Yes/No Index:Yes/No er Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

<https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)Nos.5924 of 2018 and 695 of 2019.

To,

1. The Judicial Magistrate No.1, Thanjavur,
2. The Food Safety Officer, Thanjavur Town-1, Thanjavur District.
3. The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

<https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)Nos.5924 of 2018 and 695 of 2019.

G.ILANGO VAN, J., er CrI.O.P.(MD)Nos.5924 of 2018 and 695 of 2019 11/08/2022
<https://www.mhc.tn.gov.in/judis>