

Mohamed Ismail vs The District Revenue Officer And on 18 January, 2021

W.P(MD)No.236

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.04.2024

Delivered on : 11.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.2364 of 2021

and

W.M.P(MD)Nos.1964 and 1965 of 2021

Mohamed Ismail

: Petitioner

Vs.

1.The District Revenue Officer and
Additional District Magistrate,
Pudukottai District, Pudukottai.

2.The designated Officer/
The District Supply Officer,
Pudukottai District, Pudukottai.

3.The Food Safety Officer,
Tamil Nadu Food Safety and
Drug Administration Department,
Avudaiyar Kovil Circle, Pudukottai District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari Mandamus, to quash the records pertaining to the impugned order passed by the first respondent in his proceedings Na.Ka.No.757/Ma.Va.A/2019, dated 18.01.2021 and quash the same as illegal.

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

W.P(MD)

For Petitioner : Mr.T.Lenin Kumar
For Respondents : Mr.V.Om Prakash,

ORDER

The Writ Petition is directed against the order dated 18.01.2021 passed by the first respondent.

2. The case of the respondents is that on 14.02.2019, while inspecting the retail shops at Avudaiyarkovil, the third respondent has suspected and stopped the vehicle bearing Registration No.TN-49- AT-7890, which was driven by one Sarbudeen and while checking the vehicle, he found the bottle of oil with labeled 'Apoorva Gingelly Oil' which was owned by the petitioner; that the third respondent had taken a sample of oil by invoking Section 38(1)(2) of Food Safety and Standards Act and the same was sent to the Food Analyst Laboratory, Coimbatore.

3. The second respondent has sent a report, dated 10.07.2019, stating that the oil sample was tested and found that it is Misleading, Misbranded and Substandard and hence, the sample was gingelly oil <https://www.mhc.tn.gov.in/judis> adulterated with Palmolein oil; that the third respondent has sent a letter to the petitioner, dated 18.07.2019 informing the report of the Food Analyst and giving an opportunity under Section 46(4) and 46(1) of Food Safety and Standards Act and under Rule 2.10.1(1) of Food Safety and Standards Rules and the same was acknowledged by the petitioner on 20.07.2019; that the petitioner even thereafter has not come forward to pursue for analyze of referral lab; that the third respondent has then sent a letter, dated 27.11.2019 to the second respondent to pursue the prosecution against the petitioner; that enquiry notice was served on the petitioner and one Sarbudeen, vide proceedings dated 26.11.2020 and after giving sufficient opportunity, the impugned order, dated 11.01.2021 came to be passed by imposing a cost of Rs.25,000/- to the petitioner and Sarbudeen by invoking Sections 51, 52 and 53 of Food Safety and Standards Act.

4. The case of the petitioner is that on 08.01.2021, the respondents 2 and 3 orally informed him that he has to appear before the first respondent since an enquiry was contemplated in respect of an allegation that on 14.02.2019, the third respondent conducted an inspection in the shop of said Sarbudeen, where a misbranded and substandard gingelly oil <https://www.mhc.tn.gov.in/judis> was kept for sale; that the respondents 2 and 3 without serving notice as contemplated under Section 68 of the Food Safety and Standards Act orally informed and insisted the petitioner for enquiry; that the petitioner appeared before the first respondent on 08.01.2021 and at that time, the second respondent asked the petitioner to put his signature in a blank paper as if they want to impose a cost of Rs.4,000/-; that when the petitioner questioned that they issued notice only to Sarbudeen and not to him, they replied that if he approached an Advocate, he has to pay advocate fee of Rs.4,000/- and instead of that he can pay the fine before the first respondent; that subsequently, the first respondent has imposed a fine of Rs.25,000/- that though the petitioner has narrated the entire history before him and requested him to conduct enquiry after issuing proper notice, he did not turn accept the same; that the respondents 1 and 2 had threatened the petitioner that unless he pay the fine amount, he cannot run the business; that the petitioner was denied the opportunity of being heard; that the petitioner has sent a representation, dated 11.01.2021 to the respondents 1 and 2, but having received the same, the first respondent did not come forward to act upon it and that the order of the first respondent is illegal, arbitrary, without jurisdiction and in violation of principles of

natural justice.

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5. It is their further contention that even assuming that the petitioner had pleaded guilty, the first respondent ought to have explained the consequence, but the order of the first respondent did not reflect anything about the explanation given by the first respondent.

6. As already pointed out, it is the defence of the respondents that the third respondent has informed about the report of the Food analyst on 18.07.2019 and the same was acknowledged by the petitioner; that enquiry notice was also served on the petitioner, dated 26.11.2020 from the Office of the first respondent and that after giving sufficient opportunity to the petitioner, the impugned order came to be passed.

7. The main contention of the petitioner is that no notice was served on him at any stage of proceedings and that without conducting any proper enquiry, has passed the impugned order imposing the fine. Though the respondents have taken a stand that the petitioner was informed by the third respondent about the report of Food Analyst and the same was acknowledged by the petitioner on 20.07.2019, they have not produced any iota of evidence to substantiate the same. Though they <https://www.mhc.tn.gov.in/judis> have also taken a stand that enquiry notice was served on the petitioner from the Office of the first respondent and after giving sufficient opportunity, the impugned order came to be passed, they have not produced any material or evidence to show that enquiry notice was served on the petitioner and enquiry was conducted in the manner known to law.

8. In the absence of any evidence to show that notice was served on the petitioner and proper enquiry was conducted before ever passing the impugned order of imposing fine, this Court has no hesitation to hold that the impugned order came to be passed in violation of the principle of nature justice.

9. The petitioner in the rejoinder affidavit filed in response to the counter affidavit has also taken a technical stand that as per Section 42(2) of the said Act, the Food Analyst, should analyze the sample within 14 days and sent a report to the second respondent; that the sample was drawn on 14.02.2019 and the same was analyzed by the analyst on 10.07.2019 and there is a delay of five months; that as per Section 42(3) of the said Act, the second respondent after scrutiny of the report of the <https://www.mhc.tn.gov.in/judis> Food Analyst should send his recommendation within 14 days to the Commissioner of Food Safety for sanctioning prosecution, but in the case on hand, the second respondent received the analyst report, dated 10.07.2019 and sent his recommendation to the Commissioner on 26.11.2019 with a delay of 4 ½ months and that since the adjudicating authority has violated the mandatory requirements under Sections 42(2) and 42(3) of the Food Safety and Standards Act, the same is liable to be set aside.

10. Before entering into further discussion, it is necessary to refer Section 42(2)(3) of Food Safety Standards Act, 2006.

“42. Procedure for launching prosecution:

(2) The Food Analyst after receiving the sample from the Food Safety Officer shall analyze the sample and send the analysis report mentioning method of sampling and analysis within with fourteen days to Designated Officer with a copy to Commissioner of Food Safety.

(3) The Designated Officer after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of <https://www.mhc.tn.gov.in/judis> contravention punishable with imprisonment, he shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution.”

11. Considering the above, it is very much clear that as per Section 42(2) of the said Act, the Food Analyst has to send his report within 14 days. But in the case on hand, as already pointed out, the sample was taken on 14.02.2019 and the same was analyzed and the report was sent on 10.07.2019 and as such, there is a delay of five months. As per Section 42(3) of the said Act, the second respondent, after receiving the food analyst report has to make his recommendation within 14 days to the Commissioner of Food Safety for sanctioning prosecution. In the present case, though the second respondent has received the report on 10.07.2019, sent his recommendation to the Commissioner of Food Safety on 26.11.2019 and as such, there is a delay of 4 ½ months.

12. As already pointed by the learned counsel for the petitioner, the respondents have not offered any reason or explanation for the said delay. No doubt, the learned counsel for the respondents have taken a stand that the petitioner ought to have preferred an appeal as per Section 7 of Food <https://www.mhc.tn.gov.in/judis> Safety and Standards Act and as such, the Writ Petition is not maintainable. Since the petitioner has attacked the impugned order also on the ground of violation of principle of natural justice, the availability of appeal remedy is not a bar to invoke Article 226 of the Constitution. Considering the above, this Court has no hesitation to hold that the impugned order cannot be legally sustained.

13. In the result, the Writ Petition is allowed and the impugned proceedings, dated 18.01.2021 in Na.Ka.No.757/Ma.Va.A/2019 on the file of the first respondent is quashed. Consequently, connected Miscellaneous Petitions are closed. No costs.

11.06.2024 NCC :Yes/No Index :Yes/No Internet : Yes/ No das <https://www.mhc.tn.gov.in/judis> To

1.The District Revenue Officer and Additional District Magistrate, Pudukottai District, Pudukottai.

2.The designated Officer/ The District Supply Officer, Pudukottai District, Pudukottai.

3.The Food Safety Officer, Tamil Nadu Food Safety and Drug Administration Department, Avudaiyar Kovil Circle, Pudukottai District. <https://www.mhc.tn.gov.in/judis> K.MURALI SHANKAR, J DAS Pre-delivery order made in and W.M.P(MD)Nos.1964 and 1965 of 2021 Dated :

11.06.2024 <https://www.mhc.tn.gov.in/judis>