

Rajesh Kumar vs State Of U.P. And 2 Others on 6 July, 2022

Bench: Manoj Kumar Gupta, Yogendra Kumar Srivastava

HIGH COURT OF JUDICATURE AT ALLAHABAD

?Court No. - 21

Case :- WRIT - C No. - 18083 of 2022

Petitioner :- Rajesh Kumar

Respondent :- State Of U.P. And 2 Others

Counsel for Petitioner :- Dharmendra Kumar Srivastava

Counsel for Respondent :- C.S.C.

Hon'ble Manoj Kumar Gupta,J.

Hon'ble Dr. Yogendra Kumar Srivastava,J.

Heard learned counsel for the petitioner and Sri Shashi Dhar Pandey for respondent nos. 1 to 4.

The instant petition is directed against an order dated 4.5.2022, passed by ADM (Administration), in Case No. 842 of 2021, under Section 51 of the Food Safety and Standards Act, 2006, imposing penalty of Rs. 25,000/- on the ground that the petitioner was found in possession of paneer in his sweetmeat shop which was sub-standard, as the moisture content exceeded the prescribed limit of 60%. The petitioner had filed an objection in which it was inter alia stated that the paneer seized by the inspecting team, was used for making fritters, after washing paneer in running water, as a consequence whereof, there was a very slight variation in moisture content.

Admittedly, the moisture content found was 64%, i.e. 4% more than the prescribed limit. The concerned respondent while passing the impugned order has merely noted the explanation submitted by the petitioner, but without giving any reason, rejected the same as untenable.

Learned counsel for the petitioner submitted that the impugned order is virtually a non-speaking order, as it does not deal with the objection filed by the petitioner. It is submitted that a slight variation in the moisture content was of no significance in light of the explanation submitted by the petitioner.

Learned Standing Counsel is not in a position to dispute that except for observing that the explanation is not found to be legally sustainable, the concerned respondent has not adverted to the same, nor has given any reasoning in the impugned order for not accepting the explanation.

The purpose of seeking explanation is to give an opportunity to the affected party to explain its point of view. It is therefore imperative for the authority to have considered the same and while doing so, reasons ought to have been given in case the explanation was being discarded. That having not been done, we are of considered opinion that the impugned order is not legally sustainable and is liable to be quashed. It is quashed accordingly.

Let a fresh order be passed after considering the explanation, in accordance with law.

The petition stand disposed of accordingly.

(Dr. Y. K. Srivastava, J.) (Manoj Kumar Gupta, J.) Order Date :- 6.7.2022 Jaideep/-