

Sri Venkatachalapathy Rice And Sago ... vs Commissioner Of Food Safety on 3 January, 2024

Author: S.M.Subramaniam

Bench: S.M.Subramaniam

WP.No.6897/2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.6897 of 2020
& WMP.Nos.8229 & 8231 of 2020

Sri Venkatachalapathy Rice and Sago Factory,
rep. by its Proprietress Tmt.K.Susila,
Thandavarayapuram, Attur Taluk, Salem District. ...Petitioner

vs.

1.Commissioner of Food Safety,
No.359, Anna Salai, V Floor,
DMS Office Building,
DMS Campus, Teynampet,
Chennai – 600 006.

2.Designated Officer,
Food Safety and Drug Administration
Department,
Salem District, Salem-1.

3.Food Safety Officer,
Attur Town, Salem District.

4.S.Mariappan, Formerly Designated Officer,
Food Safety and Drug Administration Department,
Salem District, Salem-1. .. Respondents

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

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari mandamus, calling for the records relating to the Proceedings in D.Dis.No.9464/2018/S6/FSSA Dated 20-03-2019 and R.No.0085/2019/S9/FSSA Dated 11-06-2019 on the file of the 1st respondent herein and quash the same and consequently direct the 1st respondent herein to issue orders to withdraw the prosecution launched against the petitioner herein in S.T.C.No.623 of 2019 dated 03.05.2019 on the file of the Judicial Magistrate No.1, Attur pre-eminent the directions issued by this Hon'ble Court in W.P.No.11 of 2019 dt.11.02.2019.

For Petitioners	: Mr.V.R.Rajasekaran
For R1 to R3	: Mr.G.Krishna Raja, Additional Government Pleader
For R4	: No appearance

ORDER

The Designated Officer, Food Safety wing under the Food Safety and Standards Act inspected the premises of the petitioner/ Sri Venkatachalapathy Rice and Sago Factory, Thandavarayapuram, Attur Taluk, Salem District in the presence of one Mr.K.Venkatesan.

2.The license granted to the petitioner was valid from 24.03.2015 to 23.03.2020. The petitioner was found selling of Tapioca <https://www.mhc.tn.gov.in/judis> Starch Milk (loose) manufactured by Sri Venkatachalapathy Sago and Rice Factory, Thandavarayapuram, Attur, Salem District. The Designated Officer has ordered the Food Safety Officer, Attur to lift sample. On 21.08.2018, the FSO purchased Tapioca Starch Milk(loose) from Mr.K.Venkatesan for sampling. The sample lifted by way of purchase from Mr.K.Venkatesan was sent to Food Analyst, Food Analysis Laboratory, Chennai on 21.08.2018. The 2nd, 3rd and 4th parts of the samples were sent to the office of the Designated Officer on the same day. The NABL opportunity has been given to FSO and he has waived his right by writing. The Food Analyst, Food Analysis Laboratory, Chennai sent its report dated 27.09.2018 to the office of the Designated Officer on 03.10.2018, which revealed that the sample was declared as "Substandard and unsafe".

3.The Writ Petitioner filed W.P.No.11 of 2019 challenging the Analysis Report dated 27.09.2018 and the subsequent proceedings dated 08.10.2018 issued by the Designated Officer. The writ petition was disposed of on 11.02.2019 considering the objections filed by the petitioner as an appeal under Section 46(4) of the Food Safety and <https://www.mhc.tn.gov.in/judis> Standards Act, 2006. The appeal was directed to be disposed of within a period of four weeks. The petitioner was provided with an opportunity to raise further objections.

4.The learned counsel for the petitioner mainly contended that even before the receipt of the orders of this Court, the objections filed by the petitioner and the appeal was disposed of by the Authority, thereby, depriving the petitioner to submit further objections. Thus, the order is to be set aside and the Appellate Authority is to be directed to conduct a fresh enquiry.

5.The fact remains that on disposal of the appeal, a criminal prosecution was initiated under the provisions of the Act and the criminal prosecution initiated is now pending on the file of the Judicial Magistrate No.1, Attur, Salem District.

6.Section 46 provides functions of Food Analyst. Sub Section 4 to Section 46 stipulates that an appeal against the report of the Food Analyst shall lie before the Designated Officer who shall, if he so decides, <https://www.mhc.tn.gov.in/judis> refer the matter to the referral food laboratory as notified by the Food Authority for opinion. In the present case, it was not referred further and the report of the Food Analyst, Food Analysis Laboratory, Chennai was accepted by the competent authorities and accordingly, they found that the product manufactured by the petitioner company is declared as 'Substandard and Unsafe'.

7.It is not in dispute that the criminal proceedings has already been initiated in STC.No.623 of 2019, now pending on the file of Judicial Magistrate Court, Attur, Salem District. The petitioner submitted an application to withdraw the criminal complaint registered in STC.No.623 of 2019. The said application was also rejected by the Commissioner of Food Safety and Drug Administration in his proceedings dated 11.06.2019 on the ground that the criminal proceedings already initiated cannot be withdrawn and therefore, the petition to withdraw the criminal proceedings is not maintainable at all.

8.This Court is of the considered opinion that the sample collected by way of purchase from one Mr.K.Venkatesan cannot be found <https://www.mhc.tn.gov.in/judis> fault with. It is not collected directly as stated by the petitioner, nor the product can be construed as an intermediate product, since the product was purchased by the order of the Designated Officer from one Mr.Venkatesan for sampling.

9.The learned counsel for the petitioner states that it was not a purchase and it was collected from the son of the proprietor of the petitioner company Smt.K.Susila.

10.The report of the Designated Officer would reveal that the Designated Officer has ordered the FSO, Attur to lift sample. Accordingly, the sample was lifted by the FSO from Mr.K.Venkatesan for sampling. The product was Tapioca Starch Milk and thereafter, they have sent it for analysis. Once, the sample is collected and sent for laboratory test, the Court cannot find any fault with the actions initiated. The Government Food Analysis Laboratory, Chennai sent its report on 27.09.2018 declaring that the product is unsafe and substandard. That being so, there is no reason to interfere with the actions initiated by the Designated Officer in co-ordination with the Food Safety Officer by collecting the samples and <https://www.mhc.tn.gov.in/judis> sent the same for Food Analysis Laboratory as contemplated under the provisions of the Act. The appeal filed by the petitioner was rejected. The report of the laboratory became final and accordingly, the criminal prosecution was initiated. If at all any ground exists to the writ petitioner with reference to the analysis made, it is for the petitioner to defend its case before the criminal Court of law, wherein the case is pending. Once, the criminal court has ceased of the issues and the trial is to be conducted, this Court cannot entertain a writ proceedings for the purpose of canceling the actions which were already initiated under the provisions of the Act and by following the procedures. There is no irregularity on the part

of the respondents in complying with the provisions of the Act and the criminal case registered is pending. That being so, the petitioner is at liberty to defend his case before the competent criminal court of law.

11.This Court do not find any reason to interfere with the actions already initiated under the provisions of the Food Safety and Standards Act.

12.It is needless to state that the criminal trial is to be conducted <https://www.mhc.tn.gov.in/judis> independently and based on the evidence and documents available on record and uninfluenced by the observations, if any, made in this order.

13.With these observations, the writ petition stands dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

03.01.2024 Tsg Index : Yes/No Internet:Yes/No Speaking Order/Non-speaking Order To

1.Commissioner of Food Safety, No.359, Anna Salai, V Floor, DMS Office Building, DMS Campus, Teynampet, Chennai – 600 006.

2.Designated Officer, Food Safety and Drug Administration Department, Salem District, Salem-1.

3.Food Safety Officer, Attur Town, Salem District.

S.M.SUBRAMANIAM , J.

<https://www.mhc.tn.gov.in/judis> Tsg 03.01.2024 <https://www.mhc.tn.gov.in/judis>