

# **A.Aboobacker vs The Chief Executive Officer on 13 August, 2021**

**Author: P.B.Suresh Kumar**

**Bench: P.B.Suresh Kumar**

IN THE HIGH COURT OF KERALA AT ERNAKULAM  
PRESENT

THE HONOURABLE MR. JUSTICE P.B.SURESH KUMAR  
FRIDAY, THE 13TH DAY OF AUGUST 2021 / 22ND SRAVANA, 1943  
WP(C) NO. 16068 OF 2021

PETITIONER:

SRI.A.ABOOBACKER,  
PROPRIETOR, M/S MAPLE TRADING EXPORT & IMPORT,  
ROOM NO.5/277, PALLIPADI, TRIPRANGODE,  
MALAPPURAM DISTRICT, KERALA,PIN-676 108  
BY ADVS.  
M.BALAGOPAL  
R.SREEJITH  
R.DEVIKA (ALAPPUZHA)

RESPONDENTS:

- 1 THE CHIEF EXECUTIVE OFFICER,  
FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA,  
FDA BHAWAN, NEAR BALBHAVAN, KOTLA ROAD,  
NEW DELHI-110 002.
- 2 THE DIRECTOR (IMPORTS -HQ)  
FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA,  
FDA BHAWAN, NEAR BALBHAVAN, KOTLA ROAD,  
NEW DELHI-110 002.
- 3 THE AUTHORISED OFFICER,  
FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA,  
FIRST FLOOR, MARINE BUILDING, NORTH END P.O.,  
WILLIGTON ISLAND, COCHIN KERALA-682 009
- 4 THE COMMISSIONER OF CUSTOMS,  
CUSTOMS HOUSE, WILLINGDON ISLAND,  
COCHIN -682 009  
SHRI.P.VIJAYAKUMAR, ASG OF INDIA  
CHITHRA P.GEORGE SC

W.P.(C) No.16068 of 2021 2

RAJESH KUMAR SC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR

ADMISSION ON 13.08.2021, THE COURT ON THE SAME DAY  
DELIVERED THE FOLLOWING:  
W.P.(C) No.16068 of 2021

3

W.P.(C) No.16068 of 2021

JUDGMENT

The petitioner has imported a consignment of orange from Egypt. The third respondent conducted a random inspection of the consignment and found fungal growth in 8% of the product. It was also noticed by the third respondent that the physical condition of the product was substandard. Consequently, No Objection Certificate was not issued by the third respondent for clearance, taking the view that the product is not one conforming to Section 25 of Food Safety and Standards Act, 2006 (the Act). Ext.P5 is the rejection report issued by the third respondent in this regard. Though the petitioner challenged Ext.P5 rejection report before the second respondent, the same was confirmed. Ext.P6 is the communication issued to the petitioner by the second respondent in this regard. The petitioner took up the matter thereafter before the first respondent. The first respondent has also affirmed the view taken by respondents 2 and 3. Ext.P7 is the communication issued by the first respondent in this regard. Exts.P5 to P7 are under challenge in the writ petition.

2. Heard the learned counsel for the petitioner as also the respective Standing Counsel for the respondents.

3. It was submitted by the learned counsel for the petitioner that out of 3328 cartons, only 10 cartons were checked and as such, the finding that 8% of the product was affected by fungal growth may not be correct. It was argued that if the respondents had taken a larger sample size, there would have been a more precise result as to percentage of the product affected by fungal growth, if at all there is fungal growth in the product. It was also argued by the learned counsel that the impugned decisions have been taken without affording the petitioner even an opportunity of hearing.

4. Per contra, the learned Standing Counsel for respondents 1 to 3 pointed out that if there had been a larger sample size, the percentage of the product affected by fungal growth would have been more. It was however clarified by the learned Standing Counsel that the first respondent is prepared to take a fresh decision in the matter if required, after affording the petitioner an opportunity of hearing.

5. It is seen that Exts.P6 and P7 orders are passed without affording the petitioner an opportunity of hearing.

6. Having regard to the large volume of the consignment and the financial implications involved if the goods cannot be cleared, I am of the view that the matter needs to be reconsidered afresh, after

affording the petitioner an opportunity of hearing.

In the result, the writ petition is allowed. Exts.P6 and P7 orders are set aside and the second respondent is directed to pass fresh orders on the appeal preferred by the petitioner against Ext.P5 rejection report, after affording the petitioner an opportunity hearing. The second respondent shall certainly make an earnest effort to mitigate the loss of the petitioner in the event of an adverse decision, of course in accordance with the provisions of the Act. This shall be done as expeditiously as possible. It is made clear that the hearing ordered in terms of this judgment can be held through video conferencing.

Sd/-

P.B.SURESH KUMAR, JUDGE.

YKB APPENDIX OF WP(C) 16068/2021 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE FSSAI LICENSE NO.10021041000049 DATED 22.01.2021 ISSUED TO THE PETITIONER Exhibit P2 TRUE COPY OF THE IMPORTER-EXPORTER CODE NO.BKEPA2281E DATED 21.02.2018 ISSUED TO THE PETITIONER Exhibit P3 TRUE COPY OF THE GST REGISTRATION CERTIFICATE WITH REGISTRATION NO.32BKEPA2281EIZV DATED 07.02.2018 OF THE PETITIONER Exhibit P4 TRUE COPY OF THE BILL OF ENTRY NO.3982996 DATED 18.05.2021 FILED BY THE PETITIONER Exhibit P4A TRUE COPY OF THE COMMERCIAL INVOICE NO.5A DATED 12.04.2021 PERTAINING TO EXHIBIT P4 BILL OF ENTRY Exhibit P4B TRUE COPY OF THE PHYTOSANITARY CERTIFICATE NO.1061531 DATED 26.04.2021 PERTAINING TO EXHIBIT-P4 BILL OF ENTRY Exhibit P4C TRUE COPY OF THE COUNTRY OF ORIGIN CERTIFICATE NO.A0827794 DATED 26.04.2021 PERTAINING TO EXHIBIT-P4 BILL OF ENTRY Exhibit P5 TRUE COPY OF THE REJECTION REPORT NCC 202100032797 DATED 29.05.2021 ISSUED BY THE 3RD RESPONDENT Exhibit P6 TRUE COPY OF THE E-MAIL DATED 22.06.2021 ISSUED BY THE OFFICE OF THE 2ND RESPONDENT TO THE PETITIONER, COMMUNICATING THE DECISION Exhibit P7 TRUE COPY OF THE E-MAIL DATED 19.07.2021 ISSUED BY THE OFFICE OF THE 1ST RESPONDENT TO THE PETITIONER, COMMUNICATING THE DECISION