

R.Shanmughasundaram vs The Food Safety Officer on 21 September, 2023

Author: G.R.Swaminathan

Bench: G.R.Swaminathan

W.P(MD)No.199

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.19954 of 2014
and
M.P(MD)No.1 of 2014

R.Shanmughasundaram

... Petition

Vs

- 1.The Food Safety Officer,
Vasudevanallur Block,
Tirunelveli District.
- 2.The Designated Authority,
Tamil Nadu Food Safety and
Drug Administration Department,
Medical College Campus,
Tirunelveli District.
- 3.The Adjudicating Authority,
The District Revenue Officer,
Tirunelveli District.

...Response

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating impugned order passed by the third respondent in Na.Ka.No.N4/8402/2014 dated 23.10.2014 and quash the same.

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

For Petitioner : Mr.M.Rajaraman
For Respondents : Mr.S.RA.Ramachandran
Additional Government Pleader

ORDER

Heard both sides.

2. The petitioner is engaged in oil business. The petitioner's case is that they are dealing with Groundnut Oil, Palm Oil and Lighting Oil. The petitioner's product was being sold by retailer by name Arunachalam. Sample was lifted from Arunachalam's shop on 29.10.2013. When the contents of the package were examined, even though it was sold under the label Groundnut Oil, the contents conformed to the specification of Palm Oil. The case of the Department is that the petitioner had misbranded and sold Palm Oil as if it was Groundnut Oil. Proceedings were initiated under the Food Safety and Standards Act, 2006. The petitioner was levied with fine of Rs.3,00,000/- (Rupees Three Lakhs only) by the District Revenue Officer, Tirunelveli, vide proceedings dated 23.10.2014. Challenging the same, the present writ petition came to be filed.

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

3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

4. The learned Additional Government Pleader submitted that the impugned order is well reasoned. He pointed out that the authorities have scrupulously adhere to all the procedural safeguards. The report of the analyst was served on the persons concerned. It is too late in the day for the petitioner to challenge the analyst report. He pointed out that the Groundnut Oil is valued higher, the Palm Oil is cheaper. Therefore, charge of misbranding laid against the petitioner cannot be lightly brushed aside. He point out imposing a fine of Rs.3,00,000/- (Rupees Three Lakhs only) on the manufacturer is quite justified. He called upon this Court to dismiss the writ petition.

5. I carefully considered the rival contentions and went through the materials on record.

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

6. I sustain the contentions of the learned Additional Government Pleader that the impugned order is to be sustained on merits. The only issue that calls for consideration is regarding the quantum of fine imposed on the petitioner. Section 49 of the Food Safety and Standards Act, 2006 read as

follows:

“49. General provisions relating to penalty.—While adjudging the quantum of penalty under this Chapter, the Adjudicating Officer or the Tribunal, as the case may be, shall have due regard to the following:—

(a) the amount of gain or unfair advantage, wherever quantifiable, made as a result of the contravention,

(b) the Amount of loss caused or likely to cause to any person as a result of the contravention,

(c) the repetitive nature of the contravention,

(d) whether the contravention is without his knowledge, and

(e) any other relevant factor.

Rupees Three Lakhs is the maximum sum leviable. It is seen that that the District Revenue Officer, Thirunelveli has not taken into account all the factors set out in the aforesaid provision before quantifying the amount payable by the petitioner. It is for this reason I am inclined to interfere.
<https://www.mhc.tn.gov.in/judis>

7. The petitioner had already paid a sum of Rs.75,000/- (Rupees Seventy Five Thousand only) while obtaining interim order from this Court. The petitioner through his counsel undertakes to pay a further sum of Rs.25,000/- (Rupees Twenty Five only) towards fine. The figure of Rs.3,00,000/- (Rupees Three Lakhs only) mentioned in the impugned order is modified to Rs. 1,00,000/- (Rupees One Lakh only). The petitioner through his counsel gives an undertaking that in future he will ensure that when the products are moved out of his godown to retailer, he will ensure personally that not even a single instance of misbranding takes place. The reason for reducing the fine amount from Rs.3,00,000/- (Rupees Three Lakhs only) to Rs.1,00,000/- (Rupees One Lakh only) is primarily the undertaking given by the writ petitioner.

8. This writ petition is partly allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index	: Yes / No
Internet	: Yes / No
NCC	: Yes / No
MGA	

21.0

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

To

- 1.The Food Safety Officer,
Vasudevanallur Block,
Tirunelveli District.
- 2.The Designated Authority,
Tamil Nadu Food Safety and
Drug Administration Department,
Medical College Campus,
Tirunelveli District.
- 3.The Adjudicating Authority,
The District Revenue Officer,
Tirunelveli District.

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

G.R.SWAMINATHAN, J.

MGA

and

21.09.2023

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