

Ayyappa Spices vs The Travancore Devaswom Board on 11 January, 2023

Author: Anil K. Narendran

Bench: Anil K.Narendran

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRAN

&

THE HONOURABLE MR.JUSTICE P.G. AJITHKUMAR

WEDNESDAY, THE 11TH DAY OF JANUARY 2023 / 21ST POUSHA, 1944

WP(C) NO. 41743 OF 2022

PETITIONER:

AYYAPPA SPICES
REPRESENTED BY ITS SOLE PROPRIETOR, PRAKASH.S, AGED
52 YEARS, S/O SIVARAJAN, MANIMANDIRAM HOUSE, KA-
JANAPARA, RAJAKUMARI VILLAGE, UDUMBACHOLA TALUK,
IDUKKI DISTRICT PIN :685619
BY ADVS.
V.SETHUNATH
V.R.MANORANJAN (MUVATTUPUZHA)
SREEGANESH U.
OBEID ABDUL MAJEED

RESPONDENTS:

- 1 THE TRAVANCORE DEVASWOM BOARD
REPRESENTED BY ITS SECRETARY, DEVASWOM HEAD QUAR-
TERS, NANTHANCOD, THIRUVANATHAPURAM. PIN : 695 003
- 2 THE COMMISSIONER,
TRAVANCORE DEVASWOM BOARD, DEVASWOM HEAD QUARTERS,
NANTHANCOD, THIRUVANATHAPURAM. PIN: 695 003
- 3 THE EXECUTIVE OFFICER,
SABARIMALA, SABARIMALA. P.O, RANNIPERUNAD VILLAGE,
RANNI TALUK, PATHANAMTHITTA DISTRICT, PIN : 689662
- 4 THE DEPUTY DEVASWOM COMMISSIONER,
TRAVANCORE DEVASWOM BOARD, PATHANAMTHITTA. P.O,

PIN: 689645
5 SUNIL,
GALAXY BHAVAN, KARUNAGAPPALLY, KOLLAM DISTRICT.
PIN: 690518

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W.P.(C)No.41743 of 2022

6 ADDL.R6. STATE OF KERALA
REPRESENTED BY THE SECRETARY TO GOVERNMENT REVENUE
(DEVASWOM) DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695001.
7 ADDL.R7. THE COMMISSIONER OF FOOD SAFETY,
COMMISSIONERATE OF FOOD SAFETY, DEPARTMENT OF
HEALTH SERVICES, THIRUVANANTHAPURAM.
8 ADDL.R8. THE CHIEF ANALYST,
GOVERNMENT ANALYSTS' LABORATORY, THIRUVANANTHAPU-
RAM.
(ARE SUO MOTU IMPEADED AS PER THE ORDER DATED 04-
01-2023 IN THE WP(C).
9 ADDL. R9.MINISTRY OF HEALTH AND FAMILY WELFARE,
GOVERNMENT OF INDIA, ROOM NO.348, 'A' WING, NIRMAN
BHAWAN, NEW DELHI- 110 011, REPRESENTED BY SECRE-
TRAY.
10 ADDL. R10.FOOD SAFETY AND STANDARDS AUTHORITY OF
INDIA,
FDA BHAWAN, KOTLA ROAD, NEW DELHI- 110 002, REPRE-
SENTED BY ITS EXECUTIVE DIRECTOR
ARE SUO MOTU IMPEADED ADDITIONAL R9 AND R10 AS PER
THE ORDER DATED
05.01.2023 IN WP(C).
BY ADVS.
Biju
C.S.MANILAL
S. BIJU
C.D.ANIL(K/379/1994)
S.NIDHEESH(K/1061/2007)
KUNJAPPEASOW RAINGE(K/1346/2018)

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
11.01.2023, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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W.P.(C)No.41743 of 2022

ANIL K. NARENDRAN & P.G. AJITHKUMAR, JJ.

W.P. (C) No. 41743 of 2022

Dated this the 11th day of January, 2023

ORDER

Anil K. Narendran, J.

The petitioner, who was the supplier for cardamom to Travancore Devaswom Board, during the Mandala-Makaravilakku festival season of 1197 ME (2021-22), has filed this writ petition under Article 226 of the Constitution of India, seeking a writ of mandamus commanding the 1st respondent Travancore Devaswom Board to conduct an analysis of the cardamom, which was purchased after cancellation of the tender conducted pursuant to Ext.P9 e- tender notification dated 12.10.2022, during Mandala-Makaravilakku festival season of 1198 ME (2022-23), at Government Analytical Laboratory, Thiruvananthapuram, under the supervision of this Court. The petitioner has also sought for a writ of certiorari to quash the proceedings of the 1st respondent Travancore Devaswom Board for local purchase of cardamom, at Sabarimala Devaswom, during Mandala-Makaravilakku festival season of 1198 ME (2022-23), as it was done without competition and news paper advertisement.

2. The 5th respondent is supplying cardamom at Sabarimala, during Mandala-Makaravilakku festival season of 1198 ME (2022-

23), pursuant to Ext.R1(A) notification dated 04.11.2022 issued by the 3rd respondent Executive Officer, inviting quotations along with samples for supply of 15,000 k.g. of cardamom at Sabarimala during Mandala-Makaravilakku festival season of 1198 ME (2022-23). The said notification was one issued after three successive e-tender notifications, i.e., Exts.P3, P6 and P9 notification for supply of cardamom at Sabarimala, for the period from 01.11.2022 to 30.09.2023.

3. On 21.12.2022, when this writ petition came up for admission, the learned Standing Counsel for Travancore Devaswom Board took notice on admission for respondents 1 to 4. Urgent notice by special messenger was ordered to the 5th respondent returnable by 23.12.2022.

4. In this writ petition, we have passed various orders, whereby the sample of cardamom supplied by the 5th respondent Contractor was sent for testing to the Government Analyst's Laboratory, Thiruvananthapuram. The certificate of the examination dated 28.12.2022 issued by the Food Analyst in the Government Analyst's Laboratory, Thiruvananthapuram, contains the opinion of the Food Analyst, which reads thus;

"Opinion: The said sample contains the insecticide residues Fipronil, Tebuconazole and Imidacloprid to an extent of not less than 0.061 mg/kg, 0.792 mg/kg and 0.795 mg/kg respectively which exceeds the MRL (Maximum Residue Limit) as per Regulation 2.3.1 of Food Safety and Standards (Contaminants Toxins and Residues) Regulations 2011, read with Note:-[Tolerance limit of 0.01 mg/kg shall apply in cases

of Pesticides for which MRL have not been fixed & File No. Std/SP-02/Technical Matter/2021-22[E-4311] of FSSAI dated 21st April 2022] and is therefore unsafe as per Section 3(1)(zz)(iii)&(xii) of Food Safety and Standards Act 2006."

5. Thereafter, another sample was sent for testing to the accredited laboratory of the Food Safety and Standards Authority of India. Since facilities are not available in the primary accredited laboratory at Kochi, the sample was sent to a referral laboratory, i.e., Quality Evaluation Laboratory of the Spices Board at Kochi. In terms of the orders of this Court, the test report was forwarded to the Executive Director, Food Safety and Standards Authority of India.

6. Today, when this matter is taken up for consideration, the learned Central Government Counsel has placed on record, along with a memo dated 11.01.2023, the test report dated 10.01.2023 issued by the Quality Evaluation Laboratory of the Spices Board at Kochi and also the report dated 11.01.2023 of the Executive Director, Food Safety and Standards Authority of India. The report of the Executive Director of the additional 10th respondent Food Safety and Standards Authority of India is reproduced hereunder:

"In pursuance to the order dated 06.01.2023 of the Honb'le High Court of Kerala, the opinion by Advisor (QA), is as given as below:

The report of Quality Evaluation Laboratory (QEL), Spices Board, Kochi has been scrutinized and the following is observed: Total 95 pesticides, were tested in which 14 pesticides are found to be exceeding the MRL (Minimum Residual Limit) as specified under Food Safety and Standards (Contaminants, Toxins and Residues) Regulation, 2011.

In addition, it may be noted that as per FSS (Contaminants, Toxins and Residues) Regulation, 2011, MRL/limit of six pesticides (Copper sulphate, copper oxychloride, Diafenthion, FosetylAl, Monocrotophos and Quinalphos) specially for cardamom is defined. Out of above, two (Monocrotophos and Quinalphos) were tested by QEL, Kochi in which the sample is exceeding the limit for Quinalphos. Tolerance limit of 0.01 mg/kg shall apply in cases of pesticides for which MRL have not been fixed.

The details of 14 pesticides which are exceeding the MRL as follows:

Sl.No.	Pesticide	Test result (mg/kg)	Maximum Residue Limit (MRL) in mg/kg as per FSSR
1	Carbendazim	0.17	0.01
2	Chlorpyrifos	0.41	0.01
3	Cyfluthrin (isomers)	0.73	0.01
4	Cyhalothrin lambda	0.14	0.01
5	Cyhalothrin gamma	0.16	0.01
6	Cypermethrin (isomers)	1.10	0.01
7	Diothiocarbamates (Total)	14.04	0.01

8	Hexaconazole	0.09	0.01
9	Imidacloprid	1.09	0.01
10	Metalaxyl	0.04	0.01
11	Quinalphos	0.75	0.01
12	Tebuconazole	0.18	0.01
13	Fipronil	0.06	0.01
14	Thiamethoxam	0.30	0.01

In view of the above, the sample is not conforming to the regulation 2.3.1 of FSS (Contaminants, Toxins and Residues) Regulation, 2011 and amendments thereon. Therefore the sample is unsafe as per section 3(1)(zz)(xii) of Food Safety and Standards Act, 2006. (underline supplied)

7. Heard the learned counsel for the petitioner, the learned Standing Counsel for Travancore Devaswom Board for respondents 1 to 4, the learned counsel for the 5th respondent, the learned Senior Government Pleader for additional respondents 6 to 8 and also the learned counsel for respondents 9 and 10.

8. In the order dated 05.01.2023, this Court noticed that the opinion of the Food Analyst in Ext.R1(g) certificate of examination is with reference to Std/SP-02/Technical Matter/2021-22 [E-4311] of FSSAI dated 21.04.2022 of the Advisor (Science and Standards), Food Safety and Standards Authority of India, which deals with maximum residue limits for Spices and Culinary Herbs. The Executive Director (Compliance Strategy) of Food Safety and Standards Authority of India has issued a clarification dated 11.01.2021, regarding tolerance limit in cases of insecticides for which Maximum Residue Limits (MRLs) have not been fixed. In the said clarification, which is one issued with the approval of the Competent Authority, it is clarified that MRLs of 213 insecticides given in the Table and Tolerance Limit of 0.01 mg/kg mentioned in the Note pertain to agricultural commodities and the resultant physically processed foods only. The said MRLs and tolerance limit do not apply to the thermally and chemically processed foods. On 05.01.2023, the learned Central Government Counsel for additional respondents 9 and 10 sought time to get instructions from the 10th respondent on Ext.R1(f) certificate of examination dated 28.12.2022, with specific reference to the clarification dated 11.01.2021.

9. By the order dated 06.01.2023, this Court directed the Food Safety Officer at Sannidhanam, under the additional 7th respondent Commissioner of Food Safety, Kerala to collect samples of cardamom supplied by the 5th respondent contractor, on 07.01.2023, in the presence of the Executive Magistrate, the Executive Officer, Sabarimala, and also the 5th respondent contractor or his authorised representative, after complying with the statutory requirements. The sample so taken were directed to be sent to the accredited laboratory of the Food Safety and Standards Authority of India at Kochi, through an officer authorised by the 7th respondent Commissioner of Food Safety, which shall be subjected to analysis on 07.01.2023 itself, with reference to the provisions under the Food Safety and Standards (Contaminants, Toxins and Residues) Regulations, 2011 and also the Food Safety and Standards (Food Product Standards and Food Additives) Regulations, 2011, and the test result shall be forwarded to the additional 10th respondent Food Safety and Standards

Authority of India, from the accredited laboratory at Kochi. On receipt of the test result, the Executive Director, Food Safety and Standards Authority of India, shall place the same before the Advisor (Quality Assurance) and the report/opinion of the said Authority shall be made available for the perusal of this Court on 09.01.2023.

10. The report dated 11.01.2023 of the Executive Director, which we have extracted hereinbefore in paragraph 6 of this order, make it explicitly clear that the sample of cardamom taken from the cardamom supplied by the 5th respondent contractor is not conforming to Regulation 2.3.1. of the Food Safety Standards (Contaminants, Toxins and Residues) Regulations, 2011 and the amendments thereon, which is unsafe as per Section 3(1)(zz)(xii) of the Food Safety and Standards Act, 2006.

11. The learned Standing Counsel for Travancore Devaswom Board would submit that, in one 'kootu' for Aravana Prasadam, which consists of ingredients like rice, jaggery, etc. of approximately 350 kg, the quantity of cardamom is only 720 gms. Moreover, Aravana Prasadam is prepared in the plant by heating the ingredients at a temperature above 200 degree. The learned Standing Counsel would submit that since the end product, i.e., Aravana Prasadam, contains only a negligible quantity of cardamom, the fact that the cardamom supplied by the 5th respondent contained pesticides exceeding the Maximum Residue Limit, will not make it unsafe for consumption, especially when it is prepared by heating the ingredients at a temperature above 200 degree. The learned Standing Counsel would submit that the Aravana Prasadam made with the cardamom supplied by the 5th respondent may be ordered to be tested at the Government Analyst's Laboratory, Thiruvananthapuram.

12. As already noticed hereinbefore, in the report dated 11.01.2023 of the Executive Director, Food Safety and Standards Authority of India, it has been categorically stated that the sample of cardamom taken from the cardamom supplied by the 5th respondent contractor is not conforming to Regulation 2.3.1. of the Food Safety Standards (Contaminants, Toxins and Residues) Regulations, 2011 and the amendments thereon, which is unsafe as per Section 3(1)(zz)(xii) of the Food Safety and Standards Act, 2006. When the contract between the Travancore Devaswom Board and the 5th respondent is for supply of 15,000 kg cardamom, in terms of the tender conditions and also the statutory mandate of the Regulations made under the Food Safety and Standards Act, 2006, the cardamom supplied by the 5th respondent has to meet the requirements of the relevant Regulations. If the cardamom supplied by the 5th respondent do not meet the Maximum Residue Limit prescribed under the Regulations, it is unsafe as per Section 3(1)(zz)(xii) of the Food Safety and Standards Act, 2006, as found in the report dated 10.01.2023 of the Executive Director, Food Safety and Standards Authority of India.

13. In *Centre for Public Interest Litigation v. Union of India and others* [(2013) 16 SCC 279], the Apex Court held that any food article which is hazardous or injurious to public health is a potential danger to the fundamental right to life guaranteed under Article 21 of the Constitution of India. A paramount duty is cast on the States and its authorities to achieve an appropriate level of protection to human life and health which is a fundamental right guaranteed to the citizens under Article 21 read with Article 47 of the Constitution of India.

14. Once the sample taken from the cardamom supplied by the 5th respondent is found not conforming to Regulation 2.3.1. of the Food Safety Standards (Contaminants, Toxins and Residues) Regulations, 2011 and the amendments thereon, which is unsafe as per Section 3(1)(zz)(xii) of the Food Safety and Standards Act, 2006, the Travancore Devaswom Board cannot be permitted to sell Aravana Prasadam made using that cardamom to the devotees, even if in one 'kootu' for Aravana Prasadam, which consists of ingredients like rice, jaggery, etc. of approximately 350 kg, the quantity of cardamom is only 720 gms, and Aravana Prasadam is prepared in the plant by heating the ingredients at a temperature above 200 degree.

15. In such circumstances, there will be an interim order restraining the Travancore Devaswom Board from selling Aravana Prasadam made using the cardamom supplied by the 5th respondent, to pilgrims. The additional 7th respondent Commissioner of Food Safety, through the Food Safety Officer at Sannidhanam shall take necessary steps to ensure that Aravana Prasadam made using the cardamom supplied by the 5th respondent are not sold to pilgrims. Necessary steps in this regard shall be taken forthwith, without awaiting receipt of a copy of this order. The learned Senior Government Pleader and the learned Standing Counsel for Travancore Devaswom Board shall telephonically communicate the directions contained in this order to the officers concerned forthwith.

16. It is made clear that, this order will not stand in the way of the Travancore Devaswom Board making Aravana Prasadam without cardamom or after procuring cardamom, which meets the standards prescribed in the Regulations framed under the Food Safety and Standards Act, 2006, after obtaining test report from the Government Analyst's Laboratory, Thiruvananthapuram.

17. List this matter for further consideration on 13.01.2023 for reporting compliance.

The counter affidavits of the additional 7th respondent Commissioner of Food Safety and also that on behalf of the additional 10th respondent Food Safety and Standards Authority of India shall be placed on record within two weeks.

Sd/-

ANIL K. NARENDRAN, JUDGE Sd/-

P.G. AJITHKUMAR, JUDGE AV/11/1