

Suresh Ramtriya vs The State Of Madhya Pradesh on 6 May, 2024

Author: Roopesh Chandra Varshney

Bench: Roopesh Chandra Varshney

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IN THE HIGH COURT OF MADHYA PRADESH
AT GWALIOR
BEFORE
HON'BLE SHRI JUSTICE ROOPESH CHANDRA VARSHNEY
ON THE 6th OF MAY, 2024
MISCELLANEOUS APPEAL No. 4772 of 2023

BETWEEN: -

1. SURESH RAMTRIYA S/O SHRI HEERANAND
RAMTRIYA, AGE 52 YEARS, R/O 297 ANAND
NAGAR BHODAPUR GWALIOR (MADHYA
PRADESH)
2. PRAKASH JAISINGHANI S/O CHANDUMAL, AGED
ABOUT 52 YEARS, R/O HOUSE NO.3 SINDHU
ADARSH COLONY, HEM SINGH KI PARED,
LASHKAR GWALIOR THROUGH PROPRIETOR OM
SAI GRAH UDHYOG SHYAM VIHAR COLONY,
HARKOTA SEER GIRWAI GWALIOR (MADHYA
PRADESH)

(BY SHRI SANJAY KUMAR BAHIRANI- ADVOCATE)

AND

1. STATE OF MADHYA PRADESH THROUGH
ADJUDICATING OFFICER CUM ADDITIONAL
DISTRICT MAGISTRATE GWALIOR (MADHYA
PRADESH)
2. FOOD SAFETY OFFICER, FOOD ADMINISTRATION
DEPARTMENT COLLECTOR PREMISES GWALIOR
(MADHYA PRADESH)

(BY SHRI P.S.RAGHUWANSHI- DY. GOVERNMENT ADVOCATE FOR
STATE.)

This appeal coming on for hearing this day, the court
following:

ORDER

This miscellaneous appeal has been preferred under Section 71 (6) of the Food Safety and Standards Act, 2006 (in brief, the Act) against the order dated 12/07/2023 passed by the Food Safety Appellate Tribunal in RCA No.163/2022 whereby the appeal filed by the appellants against the order passed by the adjudicating Officer on 07/09/2022 has been rejected. By the said order dated 07/09/2022 passed in case No.80/2021/food safety the adjudicating Officer has imposed a penalty of Rs.40,000/- on each appellants under Section 52 of the Act.

The backdrop of the case is that on 02/12/2020 at around 03:55 pm Food Safety Officer reached the firm owned by the appellant No.2 wherein the appellant No.1 was found present. During inspection besides other food articles, 59 bags of wheel fryums were found bearing no batch number and manufacturing date. On apprehension, the Food Safety Officer drawn the sample and sent it to the State Food Laboratory, Bhopal where this sample was found mis-branded. Thereafter, on completing formalities, a complaint was filed against the appellants for violating the provisions of Section 26(2)(ii) of the Act. The Adjudicating Officer after issuing the show cause notice to the appellants and after taking evidence passed the order and imposed the penalty to the tune of Rs.40,000/- each. Being aggrieved by the aforesaid order the appellants filed the appeal before the Appellate Tribunal, which was dismissed by the impugned order. Hence, this appeal is filed.

It is submitted by the learned counsel for the appellants that the report of the State Food Laboratory has been sent after four months from the date of collection while it should be sent within 14 days as per Rule 2.4.2(5) of the Food Safety and Standards Rules, 2011 (in short, the Rules). Appellant No.1 has no relation with the firm on Sai Grah Udhyog and because of the friendship with appellant No.2, he went to his shop for meeting him. In this regard, a preliminary objection was raised by the appellants before the adjudicating authority. But his objection was not considered by the authority or the tribunal. The order passed by the appellate authority is contrary to the law. Hence, prayer has been made to set aside both the orders.

Per contra, the learned counsel for the respondents has supported the impugned orders and prayed for dismissal of the appeal being devoid of merits.

Heard the arguments advanced by the counsel for the rival parties and perused the record.

It is an admitted fact that appellant No.2 is the owner of the firm Om Sai Grah Udhyog which manufactured food article wheel fryums. It is also not in dispute that the sample drawn by the Food Safety Officer from the shop of the firm for analysis has been found mis-branded as by the State Food Laboratory, Bhopal. It was not having any batch number and date of manufacturing mentioned on the packet. This fact has been admitted by the appellants. Thus, it is not the defence of the appellants that the batch number and date of manufacturing was mentioned or not on the packet of the concerned food article. Besides it, one empty pack of sample is enclosed in the record of the adjudicating authority. On perusal of the contents printed on it, it reveals that it does not contain any batch number or date of manufacturing. Hence, in the instant case, it is an open fact that the sample was mis-branded. In these circumstances, the sending of the report by the food analyst after prescribed period of 14 days in violation of Rule 2.4.2(5) of the Rules does not have much importance.

In the case of mis-branding, the provisions of Rule 2.4.2(5) of the Rules are only directory and not mandatory in nature. A reference in this regard be made to 2003(2) MPWN-103 (Deshraj Vs. State of M.P.). The arguments advanced by the learned counsel for the respondents on the basis of judicial pronouncement in the case of 2023(1) FAC 872 (B. Srinivasan and others Vs. State of Tamil Nadu), 2023(1) FAC 836 (H.P.Gupta and others Vs. S. Selveraj) are not acceptable for the simple reason that these cases are not in relation to mis-branding but are in respect of unsafe and adulteration of food article. The above judicial pronouncements are also distinguishable in the light of the peculiar facts of the case.

The Food Safety Officer in his statement recorded before the adjudicating officer has specifically mentioned that at the time of inspection of firm premises, the appellant No.1 was found present as a seller and on being required, he also declared himself to be so. The documents prepared by the Food Safety Officer on the spot have also mention in this regard and bear his signature. No evidence has been adduced by the appellants in this regard. On the contrary, his presence on the firm shop at the time of inspection has also been admitted by the appellants. Hence, there is no legal basis to hold that the appellant No.1 was not the seller of the mis-branded food articles.

In view of the aforesaid discussion, the impugned order passed by the Appellate Tribunal does not warrant any interference by this Court. Hence, this appeal is dismissed bereft of any substance and merits.

(ROOPESH CHANDRA VARSHNEY) JUDGE Pj'S/-