

M/S ITC Limited vs Food Safety Inspector on 23 July, 2021

Author: Rajendra Badamkar

Bench: Rajendra Badamkar

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IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 23RD DAY OF JULY, 2021

BEFORE

THE HON'BLE MR.JUSTICE RAJENDRA BADAMIKAR

WRIT PETITION NO.207484/2015 (GM-RES)

BETWEEN:

M/s. ITC Limited
No.37, Jawaharlal Nehru Road
Kolkata - 700071
Through its authorized representative
Shri Murali Ganesan
Vice President - Finance, Foods Business
Division, ITC Limited, At No.18, Banaswadi
Main Road, Maruthiseva Nagar
Bengalore - 560005

... Petitioner

(By Sri Uday Holla, Senior Advocate for
Sri Shivashankar H. Manur, Advocate)

AND:

1. Food Safety Inspector
Department of the Food Safety
And Standards, Vijayapura
Vijayapura District-586101
2. Designated Officer
Department of the Food Safety
And Standards, Vijayapura

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Vijayapura District-586101

... Respondents

(By Sri Gururaj V. Hasilkar, HCGP)

This Writ Petition is filed under Article 226 of the Constitution of India read with Section 482 of Cr.P.C. praying to issue a writ of certiorari or any other appropriate writ or order or direction quashing the order dated 25.11.2015 passed in C.C.No.307/037/226/2015-16 on the file of Additional District Magistrate cum Adjudicating Authority, Vijayapura (Annexure-A) and issue any other appropriate writ, order or direction as this Court may deem fit.

This writ petition having been heard and reserved for Orders on 15.07.2021, coming on for 'Pronouncement of Orders' this day, the Court made the following:

ORDER

The petitioner has filed this petition under Article 226 of the Constitution of India read with Section 482 of Cr.P.C. for quashing the order dated 25.11.2015 passed in C.C.No.307/037/226/2015-16 on the file of Additional District Magistrate cum Adjudicating Authority, Vijayapura.

2. The factual matrix leading to the case are that the petitioner is a Company within the meaning of Companies Act, 2013 and is manufacturing and marketing several variants products including Sunfeast Yippee Noodles viz., Classic Masala, Magic Masala and Chinese Masala. It is alleged that accused No.1 was a distributor of the food packets manufactured by the present petitioner. It is also alleged that on 11.06.2015, the complainant has suspected that Sunfeast Yippee Noodles Magic Masala is adulterated and thereafter he has approached accused No.1 and purchased a packet by issuing Form No.V-A for Rs.376.01 paisa and obtained a receipt. It is alleged that thereafter a mahazar was also drawn at the spot. Subsequently, one sample was sent to Divisional Food Laboratory at Belgaum and on 23.06.2015, the report of the Chemical Expert was received, wherein, it is submitted that it is 'misbranded'. Thereafter, on 10.08.2015, the complainant has issued notice to accused No.1 seeking details of the owner and storer of the misbranded products and the said information was provided on 17.07.2015. It is alleged that on 10.08.2015, the complainant has reported to accused No.1 that he can get tested the second sample out of four samples to any other lab and get it tested by paying requisite necessary fees as per Rule 2.4.(6) of the Food Safety and Standards Rules, 2011. However, accused No.1 has reported that he is not interested in this regard and thereafter a prosecution was made before a Designated Officer i.e., Additional District Commissioner/Magistrate, Vijayapur. The present petitioner was accused No.3 and he has filed objections contending that the complaint copy was not furnished to him and no reasons were given by the Food Analyst as to what is the reason for holding sample as 'misbranded'. Further, it is also alleged that before taking sample, he was not given any notice and it was not collected in his

presence. The sanction was also challenged and further it is alleged that the Food Analyst Report itself discloses that it complied all the requirements and without verification, the prosecution was made. However, the Designated Officer has rejected the said grounds by holding that the product is misbranded as per the Regulation No.2.2.1(3) of Food Safety and Standards (Packaging and Labelling) Rules, 2011 and hence imposed fine of Rs.50,000/- on accused No.1 while imposed fine of Rs.3,00,000/- on accused Nos.2 to 4 by order dated 25.11.2015. This order is being challenged in this writ petition.

3. Heard the arguments advanced by the learned Senior counsel for the petitioner and the learned High Court Government Pleader for the respondents - State. Perused the records.

4. The learned Senior counsel for the petitioner would submit that there is no evidence to show that the product is misbranded as the report of the Food Analyst produced at Annexure-E discloses that it complied all the requirements and the Food Analyst has directed the Designated Officer to get tested the sample for MSG as there is no facility in the Divisional Food Laboratory and directed the Designated Officer to get it tested through NABL accredited or referral laboratory. He would further submit that without getting it tested, the prosecution itself is illegal and hence submits that the orders passed by the Food Safety and Standards Authority dated 31.03.2016 and dated 29.09.2018 were not followed to ascertain that in fact there were added MSG in the product. He would also invited the attention of the Court that even in normal ingredients, presence of MSG cannot be ruled out and hence directions were issued to physically inspect the premises to ascertain whether MSG was added or not, but, in the instant case, the same was not done and hence, prosecuting the present petitioner as the product is 'misbranded' itself is against the law. He would further contend that there is no proper sanction and though he had got a proper remedy to challenge the same before the Tribunal under Section 70 of the Food Safety and Standards Act, 2006 (hereinafter referred to as 'Act'), the Tribunal is not yet constituted and hence without any alternative, he is required to approach this Court. Hence, he has sought for quashing of the impugned order.

5. Per contra, the learned High Court Government Pleader has contended that the product is misbranded as on the product there is a reference that MSG was not added, which is evident from Annexure- B and the petitioner has not attempted to get the second sample to be analyzed through NABL accredited or referral laboratory and hence the prosecution is just and proper. Accordingly, he would seek for rejection of the petition.

6. Having heard the arguments and perusing the records, it is evident that the dispute is confined only to a small aspect regarding 'No MSG added' has been quoted on the packaging label. Admittedly, the sample is collected by the Food Analyst Officer from accused No.1 suspecting that it is adulterated. Further, the sample was sent to Divisional Food Laboratory, Belgaum Division, Belgaum and the report was submitted in Form-B. The report reads as under:

"FORM B Report of the Food Analyst (Refer Regulation (ii) of 2.3.1.) Report No.: DFL/BGM/FSSA/443/2015 Certified that I Shri.B.LINGAPPA duly appointed under the provisions of Food Safety and Standards Act, 2006 (34 of 2006), for Vijayapur-Dist received from F.S.O, Vijayapur Tq a sample of magic masala bearing

Code number and Serial Number:

307/037/226/2015, dtd : 11/06/2015 of Designated Officer of Vijayapur-Dist area* on 17/06/2015 for analysis.

The condition of seals on the container and the outer covering on receipt was as follows : Seals were intact and found correct.

I found the sample to be Noodles falling under Regulation No.2.12 of Food Safety and Standards (Food Products and Food additive) Regulations, 2011. The sample **was in a condition fit for analysis and has been analysed on 19/06/2015 to 23/06/2015 and the result of its analysis is given below/** was not in a condition fit for analysis for the reasons given below :-

Reasons :

Analysis report 1 Sample Description magic masala 2 Physical Appearance Satisfactory 3 Label Sunfeast YiPee magic Masala noodles

i) Pkd : 17 May 15, ii) B.No.BQ31, iii) B.B : 9 months from manufacture iv) No Added MSG v) Mfd by : ITC Limited, plot No.D-1, MIDC, Ranjangoan, Taluka Shirur, Dist Pune - 412220.

Sl. no.	Quality Characteristics	Name of the Method of the test used	Result	Results Prescribed Standards as per (a) Food Safety and Standards (Food Products and Food additive) Regulations, 2011 (b) AS per label declaration for proprietary food (c) As per provisions of the Act, rules and regulations for both the above.
1	Extraneous matter	DGHS	Not detected	Should not be present
2	Added colour	DGHS	Not detected	Should not be present
3	Presence of vegetable fat	DGHS	Not detected	Should not be present
4	Presence of animal fat	DGHS	Not detected	Should not be present
5	Total ash	DGHS	0.52%	Not more than

6	Ash insoluble in Dil.HCl	DGHS	0.041%	1.0% Not more than 0.1%
7	Nitrogen	DGHS	1.80%	Not less than 1.7%

Opinion:- The sample conforms to the standards as per above parameters, but it is branded as per rule 2.2.1(3) of rule 2.2 of FSSA (packaging & labeling) rules 2011.

*Note : Due to non availability of the facility test for lead and flavor enhancers (MSG) could not be performed. It is suggested to get the sample analysed for the same, from NABL accredited or referral laboratory.

Signed this 23rd day of June 2015.

Chief Food Analyst Divisional Food Laboratory, Belgaum Division, Belgaum"

7. Hence, it is evident that the opinion of the Chief Food Analyst discloses that the sample conforms to the standards as per the above parameters. However, the Food Analyst stated that it is misbranded as per Rule 2.2.1(3) of Rule 2.2 of FSSA (Packaging and Labelling) Rules, 2011. Very interestingly, he has also specifically directed that since there was no facility in the laboratory to test for lead and flavor enhancers (MSG), it could get the sample analyzed from NABL accredited or referral laboratory. It is important to note here that the Chief Food Analyst has analyzed the sample and due to non availability of the facility test for lead and flavor enhancers, he directed to get the sample analyzed for the same from NABL accredited or referral laboratory. But, admittedly, the Designated Officer has not get it tested from NABL accredited or referral laboratory and only on the basis of the report of the Food Analyst, he has prosecuted the petitioner on the ground of non addition of MSG. The entire prosecution is based upon the Food Analyst Report and issue is only regarding mentioning 'no MSG added' on the label. But, it is to be noted here that there is no evidence to show that in fact MSG was added.

8. Misbranding is defined under Section 3(zf) of the Act. Further, it is also important to note here that the notification issued by the Director (Enforcement), Food Safety and Standards Authority of India dated 31.03.2016. The paragraph Nos.2 and 3 of the said notification reads as under:

"2. It is widely known that Glutamate is naturally found in several common foods such as milk, spices, wheat, vegetables, etc. MSG is the sodium salt of Glutamic acid and one of the many forms of glutamate. Presently, there is no analytical method to determine whether MSG was added to the product during its manufacture or was naturally present in the product. This can however be checked through inspection of the manufacturing premises.

3. To prevent, both, avoidable harassment/prosecution of Food Business Operators

(FBOs) as well as to ensure that consumers are facilitated to exercise informed choices in respect of what they eat, proceedings may be launched against FBOs only when the labels state "No MSG"

or "No added MSG" and MSG is actually found in the impugned foodstuff.

Commissioners of Food Safety are advised that specific enforcement/prosecution may not be launched against the manufacturers of Noodles/Pasta on account of presence of MSG/Glutamic Acid unless it is ascertained by the department that Monosodium Glutamate flavour enhancer (INS E-621) was deliberately added during the course of manufacture without required declaration on the label as indicated in Para 1 above."

(Underlined by me)

9. Hence, it is evident that the glutamate is naturally found in several common foods such as milk, spices, wheat, vegetables, etc., and MSG is the sodium salt of glutamic acid and one of the many forms of glutamate. It is further observed that there is no analytical method to determine whether MSG was added to the product during its manufacture or was naturally present in the product. It is specifically observed that this can however be checked through inspection of the manufacturing premises. Further, it is also observed that no prosecution can be launched against the manufacturers of Noodles/Pasta on account of presence of MSG/Glutamic Acid unless it is ascertained by the department that Monosodium Glutamate flavor enhancer (INS E-621) was deliberately added during the course of manufacture without required declaration on the label as indicated above. Further, a clarification notification was also issued dated 29.09.2018, wherein, in paragraph Nos.3 and 4, it is observed as under:

"3. Thus adjudication proceedings launched against any FBO for the offence of 'mis-branding' due to a claim of "No MSG"/"No added MSG", on the label without determining whether MSG was added during the manufacturing process would be inconsistent with the orders issued by the FSSAI.

4. Commissioners of Food Safety, States/UTs are, therefore, advised that wherever adjudication proceedings have been initiated against FBOs for the presence of the claim "No MSG/No added MSG" without ascertaining the stage at which the MSG was added to the product need to be examined and action taken in terms of FSSAI's Orders dated 31st March, 2016."

(Underlined by me)

10. The clarification notification was issued by the Joint Director holding that adjudication proceedings launched against any FBO for the offence of 'misbranding' due to a claim of "No MSG/No added MSG" on the label without determining whether MSG was added during the manufacturing process would be inconsistent with the orders issued by the FSSAI. Hence, it is evident that without ascertaining the addition of MSG during manufacturing process, the

prosecution cannot be initiated. It is also evident that MSG is commonly available in several common foods such as milk, spices, wheat, vegetables, etc. and there is no analytical method to determine whether MSG was added to the product during its manufacture or it was naturally present in the product. Hence, the directions were issued that it can be done only by inspection of the manufacturing unit to ascertain that MSG was added during the course of manufacture. Admittedly, in the instant case, no visit to manufacturing unit is conducted and only on the test of the report of Food Analyst, the prosecution is made. The orders dated 31.03.2016 and 29.09.2018 specify that such prosecution is inconsistent with the order of FSSAI (Food Safety and Standards Authority of India). Hence, the prosecution itself is illegal.

11. In this context, the learned Senior counsel for the petitioner has placed reliance on a decision of the High Court of Madhya Pradesh reported in 2018 (1) Crimes 150 (M.P.) in the case of I.T.C. Limited vs. State of M.P. and Ors. The facts and circumstances in the said reported decision and in the present case are one and the same and there is also the prosecution was made on the ground that packaging material contains 'no MSG added'. This issue was dealt in detail and it is also held that the prosecution was improper. A similar view is also taken in the following decisions relied upon by the learned counsel for the petitioner and matter was clarified further:

x Nestle India Limited vs. The Food Safety and Standards Authority of India and Ors. [2015 (6) ABR 74] by the High Court of Bombay x C.L.Yadav and Anr. Vs. State of Madhya Pradesh and Anr. [2007 (2) MPHT 360] by the High Court of Madhya Pradesh.

x Municipal Corporation of Delhi vs. Kacheroo Mal [(1976) 1 SCC 412].

x State of Kerala and Others vs. Kurian Abraham (P) Ltd., and Another [(2008) 3 SCC 582]. x State of Tamil Nadu and Anr. Vs. India Cements Ltd. And Anr. [2011 (185) ECR (GST) 0106 (SC)].

x Karnataka Rare Earth and Another vs. Senior Geologist, Department of Mines & Geology and Another [(2004) 2 SCC 783].

12. Hence the prosecution in the present case itself is misconceived and unwarranted, without ascertaining whether MSG was added during the course of manufacture of the products, as no inspection was made in the manufacturing unit by the complainant.

13. Much arguments have been also advanced regarding sanction, but, the impugned judgment discloses that there was a sanction and it does not have any relevancy in this regard and even if there is a sanction, it was without application of mind. However, it is also evident that subsequently 'no added MSG' printed as per Annexure-B was removed and it is evident from Annexure-G. It was there in Annexure-B and it was subsequently removed as per Annexure-G. Further, media report at Annexure-F discloses that MSG information was dropped from the product. Under these circumstances, the entire prosecution was misconceived and the complainant could have directed petitioner to remove the printing of MSG, but, he proceeded to prosecute and imposed fine, which is unwarranted. The complainant has not ascertained regarding actual adding MSG at the time of

manufacture of products by inspection and without ascertaining as per the order of FSSAI that MSG was added at the time of manufacture by physical inspection of the manufacturing premises, prosecution is bad under law. Hence, the petition needs to be allowed and accordingly, I proceed to pass the following:

ORDER The petition is allowed. The impugned order passed by the Additional District Magistrate cum Adjudicating Authority in C.C.No.307/037/226/2015- 16 dated 25.11.2015 stands quashed.

Sd/-

JUDGE Srt