

# K.Manohar vs The Designating Officer on 10 December, 2021

**Author: S.M. Subramaniam**

**Bench: S.M. Subramaniam**

W.P.No. 40341

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.12.2021

CORAM :

THE HONOURABLE MR. JUSTICE S.M. SUBRAMANIAM

W.P.No. 40341 of 2015

And

M.P.No. 1 of 2015

K.Manohar

... Petition

Vs.

1.The Designating Officer  
Tamil Nadu Food Safety and  
Drug Administration Department  
No.33, Jones Road,  
Saidapet, Chennai – 600 015.

2.Food Analyst Laboratory  
Kind Institute Campus  
Guindy, Chennai – 600 032.

3.The Commissioner, Food Safety,  
DMS Complex,  
Teynampet, Chennai –600 018.  
(R3 - Suo Moto impleaded as 3rd respondent  
in W.P.No.40341 of 2015 on 10.12.2021)

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records in Report No. Act-309/2015-16 dated 09.09.2015 on the file of

Page 1 of

<https://www.mhc.tn.gov.in/judis> 14

W.P.N

second respondent and consequential intimation

4580/D.0/CH/FSSA/2015 dated 16.10.2015 on the file of the first respondent and quash the same as illegal and not applicable to the petitioner and proceeds for the and thereby direct the respondent to consider the representation of the petitioner.

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For Petitioner : Mr. N.Baaskaran

For Respondents : Mr. M.Rajendiran  
Additional Government Pleader

#### ORDER

The lis on hand has been instituted questioning the order passed by the first respondent in Proceeding dated 16.10.2015, which is an intimation to the Food Business Operator/petitioner, informing that the sample 'Dhaniya Whole' taken from the petitioner on 20.08.2015 was tested in the Laboratory and recalled as unsafe food.

2. The petitioner, challenging the said order, contended that they are using permissible chemical for processing raw Dhania and they have not committed any irregularity. However, the report of the respondent authorities reveal that the petitioner has used chemicals over and above the prescribed limit, more specifically, colour content sulphur-di-oxide and Page 2 of <https://www.mhc.tn.gov.in/judis> 14 moisture. Based on the report, actions were initiated and the petitioner paid the fine and accordingly, the case was closed.

3. In view of the fact that large scale allegations of adulterations in public domain, this Court directed the authorities of the Food Safety Directorate to be present. Dr.Sathish Kumar, Designated Officer, Chennai and Mrs. Radhika, Analyst, Guindy Food Lab, Chennai -32 and Mr.R.Kannan, Food Safety Officer, Chennai -15 are present.

4. The learned Additional Government Pleader on instructions, made a submission that all prescriptions are contemplated under the provisions of the regulations and the authorities are conducting frequent inspections, collecting samples, testing the same and initiate actions. As far as the petitioner is concerned, actions were taken and the petitioner paid the fine amount and the case was closed.

5. Food Adulterations are commonly found in the public domain. Taking some samples and testing the same in the Laboratory alone would not resolve the serious issues relating to Food Adulterations. Pursuant to Page 3 of <https://www.mhc.tn.gov.in/judis> 14 the Enactment namely Food Safety and Standards Act, 2006, the Food Safety Department has been constituted and Commissioner of Food Safety is the Head of the Department. When a separate Department has been constituted in result of an Enactment, then such Departments specially constituted are expected to function in an efficient manner, so as to ensure that the purpose and object of the Act are complied with. However, it is not happening as day-by-day Food Adulterations are increasing and many health issues on account of Food Adulterations are in the public domain. When a separate Department is functioning for Food Safety and Laboratories are functioning and many number of officials are appointed, then there is no reason whatsoever to allow such large scale Food

Adulterations in commercial establishments, Restaurants, etc.,

6. This Food Safety Department and its functioning are to be improved, so as to ensure that adequate awareness and sensitiveness are created and prosecutions are launched against the traders, who have involved in such Food Adulterations and such prosecutions must be made effectively and by following the procedures, so as to see that the offenders are convicted.

Page 4 of <https://www.mhc.tn.gov.in/judis> 14

7. The Officials, who are present before this Court, informed that the Food Safety Officers are collecting samples and those samples are tested in the Laboratory and actions are initiated. However, Chennai City is concerned, prosecution has been initiated in 21 cases and the adjudication process are in progress in 580 cases.

8. The Commissioner, Food Safety, necessarily has to initiate all appropriate actions for the purpose of creating awareness amongst the people and the ill effects of Food Adulterations, punishments contemplated for the offenders and the other informations, so as to understand the consequences of Food Adulterations and the health issues involved. Advertisements are to be made through visual and press media regarding the offences, punishments and the health issues involved in the event of consuming adulterated food and food products. Merely releasing some publications are insufficient and it must be made in such a manner that the result would be the public awareness to the maximum. Only if sufficient awareness is created amongst the public, citizen will be in a position to complaint about the Food Adulterations by the traders and in commercial Page 5 of <https://www.mhc.tn.gov.in/judis> 14 establishments. It may not be possible for the officials to collect sample from each and every establishments. Further, the manner in which the samples are collected by the Food Safety officers itself cannot be trusted upon by the Department. In the event of such free hand to the Field level officers, no doubt, there is a possibility of active or passive collusion with the traders and the commercial establishments as we commonly know there are large scale corrupt activities amongst the Field level officers and one cannot brush aside that they are always yielding for the freebies provided by the traders and commercial establishments.

9. Controlling the menace of corruption is one part, but creation of maximum awareness amongst the public is of paramount importance, which would yield better results. Thus, awareness, creating programs must be not only through visual and press media, but also the Whatsapp number or telephone number of the office of the Food Safety Commissioner must be displayed in large scale manner, so as to ensure that on identifying any Food Adulterations, any citizen on the spot will be in a position to register a complaint through phone and immediate actions are to be taken by the jurisdictional officials of the Food Safety Department. Page 6 of <https://www.mhc.tn.gov.in/judis> 14

10. The learned Additional Government Pleader appearing on behalf of the respondents state that the Department is creating awareness and the traders are disobeying the instructions of the Food Safety Department for displaying the Whatsapp phone number in front of their establishments. Such excuse cannot be condoned. The authorities of the Food Safety Department must ensure that the Whatsapp complaint number or telephone number or E-mail address or otherwise are

sufficiently displayed in front of the commercial establishments, Restaurants, traders etc., and in the event of not displaying the same, actions are to be initiated.

11. The Act and Rules provides specifications, standards to be maintained, prescriptions etc., and the qualified officials are engaged in the Laboratory to conduct test. Though all such facilities are available, the question arises, why Food Adulterations are not controlled in the public domain. There are many complaints by the public that food products in Restaurants and eatable establishments are not up to the standard and there are innumerable adulterations, violations, irregularities and illegalities etc., In the absence of controlling the menace of adulterations, it is to be construed that the Department of Food Safety is not effectually functioning Page 7 of <https://www.mhc.tn.gov.in/judis> 14 in consonance with the provisions of the Act and the Government has to look into these aspects and made the Department to function effectively, failing which, the authorities are responsible and accountable and liability must be fixed on the Department.

12. "Health" is an integral part of Article 21 of the Constitution of India. "Health" being right to life, adulterated food products affects the health of the consumers. "Health" being fundamental right of every citizen under Article 21, the offence of selling adulterated food must be seriously viewed as it infringes the fundamental right of the citizen of our great Nation. Our country is facing various health issues and such issues are growing fastly. People are suffering from chronic diseases on account of Environmental issues, Air Pollution, Noise Pollution, Adulterated Food, Unhygienic atmosphere in living area etc., All these aspects are to be addressed and food being 'Life', more concentration and serious actions are highly warranted. Thus, the Food Safety Department and its duties and responsibilities are constitutionally important and more specifically, with reference to the fundamental right of the citizen ensured under the Constitution.

Page 8 of <https://www.mhc.tn.gov.in/judis> 14

13. Even in the present case, though adulterations were established by merely imposing fine, the petitioner was exonerated in spite of the fact that prosecutions would have been initiated. These kind of lapses can never occur in the Department of Food Safety as the Department has got constitutional duty to ensure that the public health is protected. In the event of failure, negligence, lapses, dereliction of duty, the situation would arise, where the Food Safety Department officials are also prosecuted for their inactions, lapses, negligence etc.,

14. The usage of Dhania is an inevitable Spice in South Indian Kitchen. In every house, Dhania is being used daily. Under these circumstances, the writ petitioner in the present case was imposed with the fine amount and allowed to escape from the clutches of prosecution. This Court would like to draw an inference that there is a possibility of large scale adulterations even in Spices including Dhania. Shockingly, such adulterated Dhania are being sold in large scale in markets and people are using the adulterated Dhania in their Kitchen on day-to-day basis. This being the shocking information, stringent actions to control the Page 9 of <https://www.mhc.tn.gov.in/judis> 14 adulteration in Spices and food products are to be done without any lapse of time.

15. Food Safety Department states that they are collecting samples and testing the same in the Laboratory. Mere collection of samples and testing are insufficient. It must be collected by frequently conducting surprise inspections. It is unfortunate that the Department is not able to provide any data regarding the conviction of offenders in this field. Thus, this Court is bound to ensure that the spirit of the Act and Rules are implemented to protect the health of the citizen of our great Nation.

16. The Commissioner of Food Safety, DMS Complex, Teynampet, Chennai – 600 018 is Suo Moto impleaded as Respondent R3 in the present writ petition for the purpose of implementing the perspectives and directions issued by this Court in the present writ petition.

17. In view of the facts and circumstances, the following orders are passed.

(1) The relief sought for in the present writ petition Page 10 <https://www.mhc.tn.gov.in/judis> of 14 stands rejected.

(2) The third respondent / Commissioner of Food Safety is directed to issue appropriate orders, so as to ensure Whatsapp complaint numbers / telephone numbers / E-mail address etc., are boldly displayed in all commercial places, Restaurants etc., in front of the establishment in a visible manner, facilitating the general public / consumers to register their complaints.

3) The Commissioner of Food Safety is directed to sensitize the sub ordinate officials, issue directions, fixing outer time limits for initiation of action in respect of the complaint registered and initiate prosecution wherever prosecution is contemplated under the provisions of the Act and Rules and all further consequential actions by following the procedures as contemplated.

4) In the event of failure, lapses, dereliction of duty, negligence on the part of the officials of the Food Safety Department, prosecutions are to be initiated including the disciplinary proceedings under the Service Rules.

Page 11 <https://www.mhc.tn.gov.in/judis> of 14

5) The Commissioner of Food Safety is directed to create awareness through visual and press media, so as to solicit the public attention and explain the ill consequences in the event of consuming the adulterated food products. The rights of the consumers to register complaints are also to be published.

18. With the above directions, this Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

vsg/kak

Internet : Yes  
Index : Yes  
Speaking order:Yes

To

1.The Designating Officer  
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Page 12

<https://www.mhc.tn.gov.in/judis> of 14

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Page 13

<https://www.mhc.tn.gov.in/judis> of 14

S.M. SUBRAMANIAM, J.

vsg/kak

And

10.12.2021

Page 14

<https://www.mhc.tn.gov.in/judis> of 14