

WP(C)/698/2024 on 22 February, 2024

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Bench: Manish Choudhury

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GAHC010013822024

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WRIT PETITION (C) No. 698/2024

Prabin Phukan, aged about 52 years, son of Jibaneswar
Phukan, Resident of - Purbanchal Path, Chandmari,
Ward No. 10, Golaghat, Assam, District - Golaghat,
Assam. Pin - 785621.

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-Versus-

1. The State of Assam [To be represented by the Secretary to the Government of Assam, Department of Health and Family Welfare, Janata Bhawan (Assam Secretariat Complex), Dispur, Guwahati - 781006].
2. Director of Health and Family Welfare, Assam, GS Road, Jaya Nagar, Six Mile, Guwahati - 781036.
3. Joint Director of Health Services, Golaghat, Assam, - 785702.
4. Commissioner of Food Safety, Department of Health and Family Welfare, Assam.
5. Designated Officer, Food Safety, Golaghat in the office of the Joint Director of Health Services, Golaghat, Assam.
6. Food Safety Officer, Golaghat.
7. Deputy Commissioner, Golaghat [Development Branch]

8. Sub-Divisional Officer [Sadar], Golaghat.

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Advocates :

Petitioner : Mr. A.R. Bhuyan, Advocate

Respondent nos. 1 to 6 : Mr. B. Gogoi, Standing Counsel
Health and Family Welfare Department, Assam

Respondent no. 7 : Mr. S. Baruah, Junior Government Advocate, Assam

Date of Hearing, Judgment & Order : 22.02.2024

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER

The instant writ petition under Article 226 of the Constitution of India is preferred assailing the legality and validity of an Improvement Notice dated 02.01.2024 issued to the petitioner by the Food Safety Officer, Golaghat [the respondent no. 6].

2. The projected case of the petitioner is that the petitioner started a business at Chandmari, Golaghat for manufacture and distribution of packaged drinking water in 20 litres bottles in the year 2021. For the purpose of carrying out the business, the petitioner has got himself registered with the Commissionerate of Food Safety, Health & Family Welfare Department, Food Safety and Standards Authority of India [FSSAI] vide Registration Certificate no.

Page No.# 3/8 20321120000138 under the Food Safety and Standards [FSS] Act, 2006. The Registration Certificate was issued on 18.09.2021 and the same has a validity period up-to 17.09.2026. Accordingly, the petitioner has started manufacturing and distributing packaged drinking water in 20 litres bottles with the brand name of 'Leeya'. Apart from obtaining a trade licence from the jurisdictional Municipal Authority, that is, the Municipal Board, Golaghat, the petitioner has stated that the petitioner has got the sample of his packaged drinking water analysed by the Food Analyst as required under the Food Safety and Standards [Food Products Standards and Food Additives] Regulations, 2011 and the Food Analyst after analyzing the sample, had submitted a report that the petitioner's sample was found chemically satisfactory with respect to the test carried out. The petitioner is also registered with the Ministry of Micro Small, and Medium Enterprises, Government of India as a micro enterprise under the Micro, Small and Medium Enterprises Development [MSMED] Act, 2006.

3. When the petitioner is carrying out the manufacturing and distribution of packaged drinking

water in 20 litres bottles under the brand name of 'Leeya', the petitioner has been served with the impugned Improvement Notice dated 02.01.2024 whereby the petitioner has inter alia been asked to produce the Bureau of Indian Standards [BIS] Certificate and to apply for FSSAI License. By serving the said Improvement Notice, the petitioner has been asked to comply with the conditions mentioned therein within a period of 7 [seven] days. Aggrieved thereby, the petitioner has preferred the instant writ petition.

4. Heard Mr. A.R. Bhuyan, learned counsel for the petitioner; Mr. B. Gogoi, learned Standing Counsel, Health and Family Welfare Department, Assam for respondent nos. 1 to 6; and Mr. S. Baruah, learned Junior Government Page No.# 4/8 Advocate, Assam for the respondent no. 7.

5. Mr. Bhuyan, learned counsel for the petitioner has submitted that the impugned Improvement Notice is being assailed on the ground that the said Improvement Notice has been issued by the Food Safety Officer, Golaghat, O/o the Designated Officer, Food Safety, Golaghat under the provisions of the Food Safety and Standards Act, 2006 ['the FSS Act, 2006', for short], who does not have the authority and jurisdiction to issue such an Improvement Notice. It is the contention that only a Designated Officer, appointed under the FSS Act, 2006 has the authority and jurisdiction to issue such an Improvement Notice.

6. Mr. Gogoi, learned Standing Counsel, Health and Family Welfare Department has submitted that as the petitioner is manufacturing and distributing packaged drinking water without compliance of the BIS Certificate, etc, the Improvement Notice has been served upon him. Mr. Gogoi after obtaining instructions received from the Commissioner of Food Safety, Health & Family Welfare Department, has fairly submitted that the Food Safety Officer is not the Designated Officer under the FSS Act, 2006.

7. I have considered the submissions of the learned counsel for the parties and have also perused the materials on record.

8. Chapter VII of the FSS Act, 2006 has mentioned about authorities responsible for enforcement of the provisions of the FSS Act, 2006. Section 32 of the FSS Act, 2006 has provided for issuance of Improvement Notice. As per sub-section [1] of Section 32, if a Designated Officer has reasonable ground for believing that any Food Business Operator [FBO] has failed to comply with any regulations to which Section 32 applies, he may, by a notice served on that Page No.# 5/8 FBO :-

[a] state the grounds for believing that the food business operator has failed to comply with the regulations;

[b] specify the matters which constitute the food business operator's failure so to comply;

[c] specify the measures which, in the opinion of the said Authority, the food business operator must take, in order to secure compliance; and [d] require the food business operator to take those measures, or measures which are at least equivalent to them,

within a reasonable period [not being less than fourteen days] as may be specified in the notice.

9. As per sub-section [2] of Section 32, if the FBO fails to comply with the Improvement Notice, his licence may be suspended. The Designated Officer and the Food Safety Officer are the authorities who are responsible for enforcement of the provisions of the FSS Act, 2006. Section 36 of the FSS Act, 2006 has provided for the Designated Officer and as per sub-section [1] of Section 36, the Commissioner of Food Safety shall, by order, appoint the Designated Officer, who shall not be below the rank of a Sub-Divisional Officer, to be in-charge of food safety administration in such area as may be specified by regulations. As per Section 36[2] of the FSS Act, 2006, there shall be a Designated Officer for each district. The functions to be performed by the Designated Officer have been outlined in sub-section [3] of Section 36 of the FSS Act, 2006. Section 37 has provided that the Commissioner of Food Safety shall, by notification, appoint such persons as he thinks fit, having the qualifications prescribed by the Central Government, as Food Safety Officers for such local areas as he may Page No.# 6/8 assign to them for the purpose of performing functions under the FSS Act, 2006 and the rules and regulations made thereunder. As per sub-section [2] thereof, the State Government may authorise any officer of the State Government having the qualifications prescribed under sub-section [1] to perform the functions of a Food Safety Officer within a specified jurisdiction. Section 38 of the FSS Act, 2006 has outlined the powers of a Food Safety Officer.

10. On a combined reading of the afore-mentioned provisions along with the other provisions of Chapter VII of the FSS Act, 2006, it does not emerge that the power, authority and jurisdiction vested in the Designated Officer under Section 32[1] of the FSS Act, 2006 to issue an Improvement Notice can be delegated to a Food Safety Officer, although a Food Safety Officer is also an authority responsible for enforcement of the provisions of the FSS Act, 2006. It is true that by issuance of an Improvement Notice under Section 32 of the FSS Act, 2006, a noticee is simply asked to respond to the proposed action.

11. In the case in hand, the issue involved is the legality and validity of the Improvement Notice on the ground that a Food Safety Officer does not have the power, authority and jurisdiction to issue an Improvement Notice under the FSS Act, 2006 and it is the contention that only the Designated Officer has the power, authority and jurisdiction to issue an Improvement Notice.

12. As per sub-section [2] of Section 32, if the FBO fails to comply with an Improvement Notice, his licence may be suspended. It is provided in sub-section [3] of Section 32 of the FSS Act, 2006 that if the FBO still fails to comply with the Improvement Notice, the Designated Officer may, after giving the licensee an opportunity to show cause, cancel the licence granted to him, provided that the Designated Officer may suspend any licence forthwith in the interest of Page No.# 7/8 public health for reasons to be recorded in writing.

13. It is otherwise settled that ordinarily, no writ lies against a charge sheet or show-cause notice. It is evident from the provisions of Section 32 that an Improvement Notice is issued at a stage anterior to a show cause notice, which can be issued under sub-section [3] of Section 32. It is also settled that a mere charge sheet or a show cause notice does not give rise to any cause of action, because it does

not amount to an adverse order which affects the rights of any party, unless the same has been issued by a person having no power, authority and jurisdiction to do so. It is also settled that in an appropriate case, a writ court may still exercise its extra-ordinary and discretionary jurisdiction of judicial review in at least four contingencies, namely, [i] where the writ petitioner seeks enforcement of any of the fundamental rights; or [ii] where there is failure of principles of natural justice; or [iii] where the orders or proceedings are wholly without jurisdiction; or [iv] where the vires of an Act is challenged. [Ref :-

Whirpool Corporation vs. Registrar of Trade Marks, [1998] 8 SCC 1; Harbanslal Sahnia & another vs. Indian Oil Corporation Ltd. & others, [2003] 2 SCC 107; State of Himachal Pradesh vs. Gujarat Ambuja Cement Ltd., [2005] 6 SCC 499; Sanjana M. Wig Vs. Hindustan Petroleum Corporation Ltd., [2005] 8 SCC 242; M.P. State Agro Industries Development Corporation Ltd. vs. Jahan Khan, [2007] 10 SCC 88; and Uttar Pradesh Power Transmission Corporation vs. C.G. Power and Industrial Solutions Limited, AIR 2021 SC 2411.

14. In the case in hand, it is found that the issuance of the impugned Improvement Notice dated 02.01.2024 is not by a competent authority, that is, the Designated Officer, appointed under Section 32 of the FSS Act, 2006, and it is only by a Food Safety Officer, appointed under Section 37 of the FSS Act, 2006, who has no power, authority and jurisdiction to issue such an Page No.# 8/8 Improvement Notice and who cannot also be delegated with such power, authority and jurisdiction to issue such an Improvement Notice. Law does not permit any authority to assume a jurisdiction which has not been conferred with such jurisdiction. It is a settled proposition of law that if the manner of doing a particular act is prescribed under a statute, the act must be done in that manner and in no other manner. Thus, considering the settled propositions of law, as discussed hereinabove, and finding that the Improvement Notice dated 02.01.2024 issued by the Food Safety Officer to the petitioner on 02.01.2024 is without power, authority and jurisdiction, the Improvement Notice is found not sustainable in law and the same is liable to be set aside. The Improvement Notice dated 02.01.2024 issued by the Food Safety Officer is accordingly set aside. It is, however, made clear that setting aside of the Improvement Notice issued to the petitioner by the Food Safety Officer shall not preclude the competent authority the FSS Act, 2006 to initiate appropriate action under the provisions of the FSS Act, 2006.

15. With the findings arrived at and the observations made above, the writ petition is allowed to the extent indicated above. There shall be no order as to cost.

JUDGE Comparing Assistant