

Suo Motu vs State Of Kerala on 6 May, 2022

Author: Devan Ramachandran

Bench: Devan Ramachandran, Sophy Thomas

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT
THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN
&
THE HONOURABLE MRS. JUSTICE SOPHY THOMAS
Friday, the 6th day of May 2022 / 16th Vaisakha, 1944
WP(C) NO. 15360 OF 2022(S)

"IN RE: SUO MOTU PROCEEDINGS INITIATED PURSUANT TO
NEWSPAPER REPORTS DATED 02.05.2022 ON FOOD POISONING"

RESPONDENTS:

1. GOVERNMENT OF KERALA, REPRESENTED BY THE SECRETARY, HEALTH AND FAMILY WELFARE DEPARTMENT, THIRUVANANTHAPURAM-695 001.
2. THE COMMISSIONER OF FOOD SAFETY, THYCAUD P.O., THIRUVANANTHAPURAM-695 014.

This Suo motu Writ petition coming on for admission upon perusing the petition and upon hearing the arguments of SRI.S. KANNAN, SENIOR GOVERNMENT PLEADER for the respondents, the court passed the following:

P.T.O.

DEVAN RAMACHANDRAN & SOPHY THOMAS, JJ.

WP(C)No.15360 OF 2022

Dated this the 6th day of May, 2022

O R D E R

Devan Ramachandran,J.

We initiated this writ petition suo motu being shocked by the news of the death of a young child by name Devananda due to food poisoning. The fact that more than 57 other persons were also so infected - but fortunately, without any fatal complications - also spurred us into this motion.

2. On 04.05.2022, we began this case with the following order:

"Suo Motu proceedings initiated pursuant to Newspaper Reports dated 02.05.2022 Dated this the 4th day of May, 2022 A day ago, the Press in Kerala have reported the shocking death of a sprightly young girl Devanandha; and of the hospitalization of 57

or so others, due to food poison. WP(C)No.15360 OF 2022 A particular food item is ascribed to be the probable cause. We are, like every other citizen, appalled- not only of the terribly unfortunate turn of events, but pondering how it could happen at all when strict enforcement and analytical regimes and systems are already in place under the Food Safety and Standards Act, 2006 (hereinafter referred to as "the Act" for brevity).

We are fully cognizant, as we are also told by Sri.S.Kannan, Senior Government Pleader, that necessary investigations are going on; and therefore, that it is now too early to draw conclusions.

But we are firm that this shall never recur, especially because the food preparation in question appears to have obtained great popularity in our State.

Therefore, though we propose not to speak specifically about the incident in focus; or to, in any manner, reflect on the ongoing investigation into it, we deem it pressing in the interests of the health and life of our citizens, to seek explication from the Authorities concerned on the measures taken, or to be taken, to warrant to them in future the safety of the food they are served and offered.

This is all the more acme, since the Commissionerate of Food Safety in Kerala is invested with the duty to implement and ensure the efficient implementation of food safety, its standards and other unexpendable requirements under the Act, as also under the Rules and Regulations under it.

Apodictically, it is solely when the twin legal duties of enforcement and analytics with special emphasis on "watch, guard and accountability"- is discharged by the officers WP(C)No.15360 OF 2022 diligently, can the well publicized motto of the Commissionerate of Food Safety - "Safe food for Healthy Life", obtain real meaning..

For the afore, we order the Registry to register and number this case as a suo motu Public Interest Litigation, arraying the Government of Kerala, represented by the Secretary, Health & Family Welfare Department, Thiruvananthapuram and the Commissioner of Food Safety, Thycud P.O., Thiruvananthapuram, as the initial respondents.

The various news paper reports that have been made available to us across the bar, shall be appended as documents in this matter.

3. Today, Sri.S.Kannan - learned Senior Government Pleader, has placed on record - along with the reports of the Inspector of Police, Chandra, Kasaragod and that the District Medical Officer - an interim report by the Commissioner of Food Safety, who has been arrayed as the 2nd respondent. The learned Senior Government Pleader conceded that the institution which is suspected of having caused the food poisoning did not have a valid food safety licence and that they had been, in fact,

directed not to continue with their operations. WP(C)No.15360 OF 2022 He then added that the Commissionerate of Food Safety is very serious about ensuring the highest standards of food served to our citizens and that more than 32 squads have been set up all over the State to conduct surprise inspections, raids and such other.

4. Sri.S.Kannan then pointed out that, in the last two financial years, 12,683 samples were taken, 538 prosecutions launched, along with 832 adjudication cases. He submitted that this would clearly demonstrate the effort taken by the Commissionerate to make sure that the citizens are not faced with the situation as has been now reported, explaining that the horrific incident is unfortunate and isolated.

5. Sri.S.Kannan thereafter submitted that the Directorate of Food Safety has issued licences to various eateries and other outlets, following the imperative requirements under the Food Safety Act,2013 and that a total of 58,948 WP(C)No.15360 OF 2022 licences and 2,25,317 registrations have been issued. He added that in the last two years, more than 3,146 cases were compounded entailing a total penalty of 1,08,77,250 and impressed upon us that the officers concerned have been doing their duties diligently.

6. As regards the follow up action consequent to the horrific incident, Sri.S.Kannan submitted that additional Special Food Safety Squads have now been constituted by the Commissioner of Food Safety and that its efficiency bears testament to the fact that, in the last four days, 500 inspections have been conducted leading to 43 food business establishments being closed down. He further showed us that paragraph 11 of the report of the Commissioner of Food Safety avers that 47 notices have been issued for compounding and 115 kgs of stale meat had been destroyed, with 40 other samples being collected for lab WP(C)No.15360 OF 2022 analysis. He closed his submissions assuring this Court that inspection and enforcement activities are being done by the Commissionerate and will be continued to be done on a regular basis; and that it is only on account of such strenuous efforts taken by the department that our State won the 2nd position in National level for State Food safety index, as part of the World Food Safety Day, namely June 7, 2021.

7. We have examined the various reports available on record very carefully and have also deeply contemplated upon the submissions made at the Bar as afore.

8. As we have said in the afore extracted interim order, it is only when the Commissionerate of Food Safety discharges its imperative statutory obligation of enforcement and analytics leading to an effective "watch, guard and accountability" regime, can Kerala WP(C)No.15360 OF 2022 achieve a healthy life through safe food. No doubt, the Commissionerate appears to be impelled into action on account of the death of Devananda but we are certain that reactions cannot be merely in consequence to such horrific incidents or in the manner of a "pavlovian response", but must be a continuous process around the year since prevention is certainly better than prosecution.

9. At this time, we must certainly take into account another submission of Sri.S.Kannan

- learned Senior Government Pleader, that if the health officers of the Local Self Government Institutions also work in tandem with the Commissionerate of Food Safety, the effectiveness and efficiency of monitoring would be much higher. Certainly, this is an issue that will have to be considered by the appropriate levels of the Government, by issuing necessary directives and orders, which WP(C)No.15360 OF 2022 we are certain are unexpandable in the present times.

10. Since we have registered this Public Interest Litigation suo motu only to make sure that the various Authorities vested with the powers under the "Act", as also the other jurisdictional Authorities, conduct themselves statutorily on a regular basis, without having to await an incident of a nature in focus, we certainly deem it appropriate to record that the steps that have been taken subsequent to the death of Devananda inspires some confidence. However, this cannot be one of a kind and has to be the routine.

11. To paraphrase, a constant monitoring and enforcement cannot be the exemption, but the Rule.

12. Though the essential and constitutive facts involved in the particular incident does not engage our minds specifically, as we have WP(C)No.15360 OF 2022 already said in the afore extracted order, prima facie, we believe that had the enforcement being more effective, the incident itself could have been averted, particularly because the Commissioner of Food Safety avers in his report that the license of the food outlet had been refused to be renewed and they were asked not to operate. It is precisely this that this Court is intending to overview, since, as we have found earlier, a continuous monitoring process with strict emphasis on enforcement is imperative and this should be continuously ensured.

13. With the afore in mind, we adjourn this matter to be considered for further orders, if so required, for a period of two weeks; within which time, the State will also respond on the suggestion made at the Bar as to how there can be an effective synergy between the Directorate of Food Safety and the Health Officers of the WP(C)No.15360 OF 2022 Local Self Government Institutions.

14. As we part, we surely must say that the action now taken by the Commissionerate will have to be continued on a year round basis and cannot be merely as a reaction to the incident in question. We are sure that the continuation of this PIL on the files of this Court would be of some guarantee to the citizens that this will be done in future, for which purpose, we deem it appropriate to keep it pending for some more time.

Post on 25.05.2022.

Sd/-

DEVAN RAMACHANDRAN JUDGE Sd/-

SOPHY THOMAS JUDGE H/O SAS 06-05-2022 /True Copy/ Assistant Registrar