

Ram Gaua Raksha Dal vs Union Of India & Ors on 2 March, 2022

Author: Vipin Sanghi

Bench: Vipin Sanghi, Dinesh Kumar Sharma

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 12055/2021

RAM GAUA RAKSHA DAL

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Through: Mr.Rajat Aneja, Ms.Rajula and
Ms.Sagrika Wadhwa, Advocates

versus

UNION OF INDIA & ORS.

..... Respon

Through: Mr.Ajay Digpaul, CGSC with
Mr.Kamal Digpaul and Ms.Pinky
Yadav, Advocates for UOI/R-1
R-3.

Mr.Rakesh Chaudhary with Mr.
Sushaar Chaudhary, Advocates
FSSAI/R-2.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

% 02.03.2022

1. As a result of our order dated 09.12.2021, an order/communication has been issued by the Food Safety Standard Authority of India/respondent no.2 dated 22.12.2021 which reads as follows:

"F. No. RCD-15001/6/2021-Regulatory-FSSAI (E-1475) Food Safety and Standards Authority of India (A Statutory Authority established under the Food Safety & Standards Act, 2006) (Regulatory Compliance Division) FDA Bhawan, Kotla Road, New Delhi -110 0002 Dated, the 22nd December, 2021 Subject: Declaration with respect to Veg or Non-Veg logo for source of ingredient including additives on the food label-reg.

Reference is drawn to the clause (4) of sub-regulation 2.2.4 of the FSS (Packaging & Labelling) Regulations 2011 vide which it has been mandated that every package of "Non Vegetarian" food shall bear a symbol and colour code to indicate that the product is Non-Vegetarian Food as per the specification laid under the aforesaid regulations.

2. Further, clause 2(d) of sub-regulation 2.2.2 of FSS (Packaging & Labelling) Regulations 2011 specifies that the compound ingredient that itself is the product of two or more ingredients, shall be

declared in the list of ingredients, and shall be accompanied by a list, in brackets, of its ingredients in descending order of weight or volume, as the case may be, Provided where a compound ingredient, constitutes less than five percent of the food, the list of ingredients of the compound ingredient, other than additive, need not to be declared.

3. The term "Ingredient" is defined under Section 3 (y) of FSS Act 2006 which inter-alia includes food additives.

4. In view of the above regulatory provisions read with FSS (Labelling and Display) Regulations, 2020, every package of "Non Vegetarian" food having ingredients including additives, from animal sources but excluding milk or milk products, honey or bees wax or carnauba wax or shellac, shall bear a symbol and colour code to indicate that the product is Non-Vegetarian Food. It is clarified that the declaration regarding Non-Veg or Veg food is mandatory irrespective of the percentage of any ingredient in the food.

5. Hence, the Commissioner of Food Safety of All States/UTs and Central Licensing Authorities are requested to ensure that all Food Business Operators shall comply with the aforementioned regulatory provisions laid under the Act and Regulations therein.

(Inoshi Sharma) Executive Director (Regulatory Compliance) To

1. Commissioners of Food Safety of all States/UTs

2. Directors, all Regional Offices of FSSAI

3. All Central Licensing Authorities

4. CITO-for uploading on the website Copy for information to:

1. PS to CEO, FSSAI

2. PA to Advisor (S&S)

3. Head (RCD)

4. PA to Head (Regulations)"

(emphasis supplied)

2. The submission of Mr. Rajat Aneja, counsel for the petitioner is that the said communication does not address the aspects dealt with by this Court in the order dated 09.12.2021, in their entirety, and it lacks clarity. Mr. Aneja submits that a perusal of the order dated 09.12.2021 shows that this court had held that, even if there is no obligation to make a disclosure of the ingredients of a compound

ingredient, which constitutes less than 5% of the food, (other than food additives), in terms of the Regulation 2.2.2 (d), the said exemption does not preclude the Food Business Operators from disclosing whether any of the ingredients - in whatever measure used, are sourced from animal source, as use of even a minuscule amount of any ingredient, which is sourced from an animal source (other than milk or milk products, honey or bee wax or carnauba wax or shellac), would make the food product a non-vegetarian product, to the understanding of that class of persons, who practice vegetarianism. Mr.Aneja submits that the letter/order now issued still, leaves a lot of ambiguity, and does not require the Food Business Operators to make a complete disclosure as to whether, or not, the food articles is vegetarian or non-vegetarian on the basis that one of its ingredients (whether or not forming a part of a compound ingredient), even if its use is miniscule, would make the food article non-vegetarian. It is further submitted that the said communication dated 22.12.2021 is, purportedly, issued only to the authorities, namely, the Commissioner of Food Safety of All States/UTs, Directors of all Regional Offices of FSSAI, all Central Licensing Authorities etc. However, this communication has not been publicly advertised to make the consumers aware of the same.

3. We have considered the submissions made by Mr.Aneja as well as Mr. Chaudhary, who appears for respondent no.2 on the aforesaid aspect.

4. We have perused our order dated 22.12.2021. It is clear to us, and we have recorded so in order dated 09.12.2021 as well, that the obligation casts on the Food Business Operators under sub-Regulation (4) of Regulation 2.2.2 - which requires making of declaration regarding vegetarian or non-vegetarian food, stands independent of the labelling regulations i.e. 2.2.2 (2), which talks about the labelling of pre- packaged foods. The mere fact that under the labelling regulations, the Food Business Operators is not necessarily required to make a disclosure of the composition of compound ingredients, which constitute less than 5% of the food, that does not exempt the Food Business Operators from making a full and complete disclosure of all the ingredients/constituent in the compound ingredient to the concerned authorities. Under the garb of the said exemption, the Food Business Operators cannot hide from the authorities, any ingredient - in whatever measure it may be used, and the same disclosure is necessary, irrespective of the exemption granted from making a disclosure on the label of the pre-packaged food under Regulation 2.2.2(2)d. Thus, the authorities would be aware of each and every ingredient/constituent of a compound ingredient, and would therefore, be aware of the fact, whether any of the ingredient is sourced from animals (other than milk, milk products, honey or bee wax, carnauba wax and shellac). The communication now issued by the respondent No.2 on 22.12.2021, unfortunately, does not clearly bring about the aforesaid obligation casts on the Food Business Operators by virtue of sub-regulation (4) of Regulation 2.2.2, which obliges the Food Business Operators to disclose whether the food is vegetarian or non-vegetarian.

5. We, therefore, direct respondent no.2 to issue a fresh communication/order, addressed to all the authorities to whom the orders/communication 22.12.2021 is issued clearly stating that the obligation to make the disclosure with regard to the food article being vegetarian or non-vegetarian contained in clause 2.2.2 (4) of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011 is independent of, and not subject to clause 2.2.2. (2) (d) of the said Regulations.

6. Mr.Aneja has drawn our attention to Section 2 (9) of the Consumer Protection Act, 2019 which defines "consumer rights" which includes, inter alia, the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practices, and it also includes, inter alia, the right to consumer awareness. Since, the rights of the citizens, inter alia under Article 21 and 25 of the Constitution of India is impacted by non-disclosure of what is offered on a platter, in our view, it is fundamental that a complete disclosure with regard to food article being vegetarian, or non-vegetarian, is made as a part of consumer awareness.

7. We may also take note of the Statements of Objects and Reasons of the Food Safety and Standards Act, 2006. The main objective of the bill, which became the Act, was to bring out a single statute relating to food, and to provide for a systematic and scientific development of Food Processing Industries. Its objective was to establish the Food Safety and Standards Authority of India, which will fix food standards and regulate/monitor the manufacturing, import, processing, distribution and sale of food, so as to ensure safe and wholesome food for the people. The main feature was, inter alia, to create a single reference point for all matters relating to Food Safety and Standards, regulations and enforcement. The failure on the part of the respondents in ensuring the full and complete disclosure on all packaged food articles, as to whether the article is vegetarian or non-vegetarian, in our view, also defeats the object for which the Act was enacted.

8. We also agree with the submissions of Mr.Aneja that it is pointless to issue the said communication/order only to the concerned authorities, and not to the public at large, whose fundamental rights may be impacted. We are, therefore, of the view that the fresh communication/order that may be issued, should be given right publicity by respondent No.2 in National Dailies.

9. Mr.Aneja has further submitted that the Food Business Operators are using e-codes, in respect of the ingredients/compounds. However, he submits that in the statutory framework under the Food Safety and Standards Act, 2006, there is no provision for use of e-coding. Mr.Chaudhary seeks an adjournment to address the court on the said aspect.

10. Mr.Aneja also submits that the respondents have not filed the detailed counter affidavits dealing with all the averments made in the writ petition. He submits that

several other aspects are raised in the writ petition, particularly, in prayer (c) made in the writ petition, which have not been addressed by the Respondents.

11. We are of view that the respondents should file their detailed counter affidavits, which should be done within next four weeks. Rejoinders be filed within next two weeks thereafter.

12. Mr.Ajay Digpaul, counsel appearing for respondents no.1 and 3 has sought to place reliance on the judgment passed by the Supreme Court in Civil Appeal 5644/2003 Indian Soaps & Toiletries Makers Association vs. Ozair Husain and Others decided on 07.03.2013. He submits that in respect of cosmetics - which is covered by the Drugs and Cosmetics Act, 1940, the Respondents cannot make the declaration with regard to Animal or Plant source of the ingredients, in the light of the aforesaid judgment.

13. We may notice that the said decision related to drugs, and not cosmetics which are also covered the Drugs and Cosmetics Act, 1940. However, we are not concerned with drugs in the present case. So far as cosmetics are concerned, Mr.Aneja points out that the respondents themselves issued GSR no.137 dated 16.06.2014 under Rule 6 after sub-rule (7) of the Legal Metrology (Packaged Commodities) Rules, 2011, requiring packages containing soap, shampoo, toothpaste, toiletries and cosmetics to bear on the top of its label, a brown or green dot - as the case may be, for origin of the product being non-vegetarian or vegetarian.

14. Mr.Digpaul submits that he has filed a short affidavit on behalf of respondent no.1 which has unfortunately, has not come on record. He submits that the Bombay High court has passed an interim order in Writ petition (L) No.2370/2014 Indian Beauty and Hygiene vs. Union of India and Another on 09.09.2014, restraining the taking of any coercive action by the petitioner against the respondent, for non- declaration of the said products as of vegetarian or non-vegetarian origin, until further orders.

15. Mr.Digpaul has also relied on the aforesaid judgment of the Supreme Court in Indian Soaps & Toiletries Makers Association (supra) to submit that in exercise of its jurisdiction under Article 226 of the Constitution of India, the High court has no jurisdiction to direct the executives to exercise its power to make subordinate legislation delegated legislation, to enact the subordinate legislation in a particular manner.

16. We may only observe that we do not propose to direct the respondents to enact any law, including subordinate legislation, in a particular manner. However, the constitutional courts have the jurisdiction to interpret the law and to examine their validity on the touchstone of the constitution.

17. List on 26.05.2022.

VIPIN SANGHI, J.

DINESH KUMAR SHARMA, J.

MARCH 02, 2022 rb