

Cochin Devaswom Board vs Union Of India on 13 November, 2024

Author: Anil K. Narendran

Bench: Anil K.Narendran

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE ANIL K.NARENDRA
&

THE HONOURABLE MR.JUSTICE MURALEE KRISHNA S.

Wednesday, the 13th day of November 2024 / 22nd Karthika, 1946
WP(C) NO. 32852 OF 2024(F)

PETITIONERS:

1. COCHIN DEVASWOM BOARD REPRESENTED BY ITS SECRETARY, COCHIN DEVSAWOM BOARD OFFICE, SWARAJ ROUND NORTH, THRISSUR-, PIN - 680001
2. MANAGER CHOTTANIKKARA DEVASWOM, CHOTTANIKKARA P.O., ERNAKULAM DISTRICT, PIN - 682312

RESPONDENTS:

1. UNION OF INDIA REPRESENTED BY ITS SECRETARY, MINISTRY OF HEALTH & FAMILY WELFARE, ROOM NO. 348, 'A' WING, NIRMAN BHAVAN, NEW DELHI, PIN - 110011
2. FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA, FDA BHAWAN, KOTLA ROAD, NEW DELHI - REPRESENTED BY ITS EXECUTIVE DIRECTOR, PIN - 110002
3. STATE OF KERALA REPRESENTED BY ITS CHIEF SECRETARY, SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
4. SECRETARY TO GOVERNMENT REVENUE (DEVASWOM) DEPARTMENT, GOVERNMENT OF KERALA, SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
5. THE COMMISSIONER OF FOOD SAFETY COMMISSIONERATE OF FOOD SAFETY, DEPARTMENT OF HEALTH SERVICES, THIRUVANANTHAPURAM, PIN - 695504
6. ASSISTANT COMMISSIONER OF FOOD SAFETY OFFICE OF THE ASSISTANT COMMISSIONER OF FOOD SAFETY, EROOR SOUTH P.O., THIRIPUNITHURA, ERNAKULAM DISTRICT, PIN - 682306
7. FOOD SAFETY OFFICER OFFICE OF THE FOOD SAFETY OFFICER, PIRAVOM CIRCLE, ROOM NO. 18, MINI CIVIL STATION, PIRAVOM, ERNAKULAM DISTRICT, PIN - 686664
8. INSPECTOR OF LEGAL METROLOGY OFFICE OF THE INSPECTOR OF LEGAL METROLOGY, CIRCLE II, KAKKANAD, ERNAKULAM DISTRICT, PIN - 682030

Writ petition (civil) praying inter alia that in the circumstances stated in the affidavit filed along with the WP(C) the High Court be pleased to stay all further proceedings pursuant to Exhibits P1, P3, P4 and P6 pending disposal of the above Writ Petition(Civil).

This petition again coming on for orders upon perusing the petition and the affidavit filed in support of WP(C) and this court's order dated 14.10.2024 and upon hearing the arguments of SRI.K.P.SUDHEER, STANDING COUNSEL for respondent 1, DEPUTY SOLICITOR GENERAL OF INDIA for respondent 1, SMT.CHITRA P.GEORGE, STANDING COUNSEL for respondent 2 and of SENIOR GOVERNMENT PLEADER for respondents 3 to 8, the court passed the following:

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W.P.(C)No.32852 of 2024

ANIL K. NARENDRAN & MURALEE KRISHNA S., JJ.

W.P.(C)No.32852 of 2024

Dated this the 13th day of November, 2024

ORDER

Anil K. Narendran, J.

The legal issue raised in this writ petition was considered by this Court in the order dated 27.03.2023 in I.A.No.3 of 2023 in W.P.(C)No.41743 of 2022 and the judgment dated 11.04.2023 in that writ petition, in respect of the proceedings of the Travancore Devaswom Board for local purchase of cardamom at Sabarimala Devaswom during Mandala-Makaravilakku festival season of 1198ME (2022-23).

1.1. By the order dated 11.01.2023 in W.P.(C)No.41743 of 2022, this Court restrained the Travancore Devaswom Board from selling Aravana Prasadam made using the cardamom supplied by the contractor to the pilgrims, since the sample of cardamom tested at the Government Analyst's Laboratory, Thiruvananthapuram contained insecticide residues exceeding the MRL (Maximum Residue Limit) as per Regulation 2.3.1 of Food Safety and Standards (Contaminants Toxins and Residues) Regulations, 2011 as per the certificate of examination dated 28.12.2022 of the Food Analyst, Government Analyst's Laboratory, Thiruvananthapuram, and unsafe as per Section 3(1)(zz)(iii)&(xii) of Food Safety and Standards Act, 2006; and another sample of cardamom tested at the accredited laboratory of the Food Safety and Standards Authority of India, i.e., the Quality Evaluation Laboratory of the Spices Board at Kochi, contained 14 pesticides exceeding the MRL as specified under Food Safety and Standards (Contaminants, Toxins and Residues) Regulation, 2011 and Quinalphos exceeding the MRL specially defined for cardamom, as per the report dated 11.01.2023 of the Executive Director, Food Safety and Standards Authority of India, extracting therewith the opinion by Advisor (QA). The cardamom sample was thus found unsafe as per Section 3(1)(zz)(xii) of the Food Safety and Standards Act, 2006.

1.2. In the order dated 27.03.2023 in I.A.No.3 of 2023 in W.P.(C)No.41743 of 2022 - Travancore Devaswom Board v. Ayyappa Spices [2022:IO:KER:55713 : 2023 (4) KHC SN 9] - this Court held that in view of the provisions contained in Section 26 of the Food Safety and Standards Act, 2006 the Travancore Devaswom Board, which falls within the sweep of 'food business operator' as defined in clause (o) of Section 3(1) of the Act, in relation to the manufacture, processing, packing, etc., of

Aravana, and also falls within the sweep of 'food business' as defined in clause

(n) of Section 3(1) of the Act, has to ensure that Aravana satisfy the requirements of the Act and the Rules and Regulations made thereunder at all stages of production, processing, import, distribution and sale, etc. Therefore, once it is found that the sample of cardamom does not conform to Regulation 2.3.1. of the Food Safety Standards (Contaminants, Toxins and Residues) Regulation, 2011 and amendments thereon and as such it is unsafe for human consumption as per the provisions in sub-clause (xii) of clause (zz) of Section 3(1) of the Act, the Board cannot store, sell or distribute Aravana made using that cardamom, since the said article of food falls within the sweep of 'unsafe food', as defined in the said sub-clause. Therefore, in the order dated 27.03.2023, this Court declined the request made by the Travancore Devaswom Board for sending the Aravana made using that cardamom for analysis, at any laboratory accredited by the Food Safety and Standards Authority of India.

1.3. In paragraph 20 of the order dated 27.03.2023 in I.A.No.3 of 2023 in W.P.(C)No.41743 of 2022 - Travancore Devaswom Board v. Ayyappa Spices [2023 (4) KHC SN 9] - and also in the judgment dated 11.04.2023 in W.P.(C)No.41743 of 2022 - Ayyappa Spices v. Travancore Devaswom Board [2023:KER:24739 : 2023 KHC OnLine 9678] this Court noted the report dated 17.01.2023 of the Commissioner of Food Safety as to the testing facilities available at the laboratory at Pamba under the Food Safety Commissionerate, Kerala. In the order dated 19.01.2023, referred to in paragraph 21 of the order dated 27.03.2023 in I.A.No.3 of 2023 in W.P.(C)No.41743 of 2022 and in paragraph 21 of the judgment dated 11.04.2023 in W.P.(C)No.41743 of 2022, this Court noticed that the facilities for testing cardamom and other items with reference to the requirements of the Food Safety and Standards (Contaminants, Toxins and Residues) Regulation, 2011, are not available at the Laboratory at Pamba, under the Food Safety Commissionerate, Kerala, where the testing parameters are with reference to the provisions under the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011.

1.4. In the Special Leave Petitions filed by the Travancore Devaswom Board challenging the order dated 27.03.2023 in I.A.No.3 of 2023 in W.P.(C)No.41743 of 2022 and the judgment dated 11.04.2023 in W.P.(C)No.41743 of 2022, the Apex Court passed an order dated 15.05.2023 staying the operation of the order dated 27.03.2023 and the judgment dated 11.04.2023. By that order, the Apex Court directed the Food Safety and Standards Authority of India to take random samples from the stock of Aravana Prasadam and get an analysis done with regard to the quality and whether the same is fit for human consumption. Pursuant to that order, the Food Safety and Standards Authority of India got the samples analysed and filed a report of its opinion on 12.06.2023, stating that the pesticides mentioned in the analytical report are below the limit of quantification and are satisfactory. Microbiological parameters conform to ready to eat grain products and are not substandard. Based on the above analytical report it was found fit for human consumption.

1.5. By the judgment dated 06.03.2024 in Civil Appeal Nos.3866 and 3867 of 2024, the Apex Court allowed the appeals and set aside the order dated 27.03.2023 and the judgment dated 11.04.2023, holding that the High Court should have dismissed the writ petition on the question of maintainability itself since the writ petition was filed on behalf of an interested person, who sought

to convert a judicial review proceeding for personal gain. In the said judgment, the Apex Court noticed that the cardamom samples submitted by the bidders were tested in a nearby lab (at Pamba), which was also established by the Commissioner of Food Safety as per an order of the High Court. The Apex Court held that the decision of the Travancore Devaswom Board is legal, fair and transparent. In that view of the matter, issue No.2 relating to the applicability of the Food Safety and Standards Act, 2006 to the appellant Travancore Devaswom Board does not arise for consideration in this case.

2. The 7th respondent has filed a counter affidavit dated 21.10.2024, in which reference has been made to BHOG-Blissful Hygienic Offering to God, which is an initiative of Food Safety and Standards Authority of India (FSSAI). The learned Standing Counsel for Cochin Devaswom Board seeks time to file a reply affidavit.

3. The learned Standing Counsel for FSSAI seeks two weeks' time to file a counter affidavit.

List on 12.12.2024 for further consideration.

Sd/-

ANIL K. NARENDRAN, JUDGE Sd/-

RPR

MURALEE KRISHNA S., JUDGE

13-11-2024

/True Copy/

Assistant Registrar