

Amrutam Food Products Through Partner ... vs Vadodara Municipal Corporation on 21 June, 2023

Author: Vaibhavi D. Nanavati

Bench: Vaibhavi D. Nanavati

C/SCA/10472/2023

ORDER DATED: 21/06/2023

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 10472 of 2023

=====

AMRUTAM FOOD PRODUCTS THROUGH PARTNER PREETHI SARATH
UNNITHAN
Versus
VADODARA MUNICIPAL CORPORATION

=====

Appearance:

MR. JAIMIN R DAVE(7022) for the Petitioner(s) No. 1
SHIVAM D PARIKH(9477) for the Petitioner(s) No. 1
MR MAULIK NANAVATI for the Respondent(s) No. 1,2

=====

CORAM:HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI

Date : 21/06/2023

ORAL ORDER

1. By way of present petition, the petitioner herein has prayed to quash and set aside the action of the respondent of suspending manufacturing license of the petitioner bearing license No.107210320000275 issued under Food Safety and Standard Act, 2006.

2. The brief facts germane for the adjudication of the present petition read thus:

2.1 The petitioner herein is a partnership firm incorporated under the provisions of Partnership Act, 1932. The petitioner came to be granted license under the Food Safety Act bearing License No.107210320000275 on 25.02.2021 and commenced business of manufacturing of paneer, ghee and cream, which came to be renewed from time to time and the same is valid up to 24.02.2025.

C/SCA/10472/2023 ORDER DATED: 21/06/2023 2.2 The Health Officials of Vadodara Municipal

Corporation visited the premises of the petitioner on 04.05.2023 and collected sample of 'loose paneer'. On 10.05.2023, the petitioner was intimated that the sample of 'loose paneer' bearing Code No. of Sample 127/12/2023, which was taken on 04.05.2023 for analysis purpose, was 'sub-standard' as per the report of food analyst and the moisture component in the said 'loose paneer' was 65.95% instead of the prescribed limit of 60%. Further, fat percentage was 32.43% as compared to minimum requirement of 50%. The said sample was forwarded by the petitioner herein to NABL approved laboratory i.e. Analytical and Environmental Services and in their test report, the moisture component in the 'loose paneer' was 47.80%.

2.3 On 08.06.2023, the respondent collected samples of 'loose paneer' and 'branded paneer' from the premises of the petitioner and on 14.06.2023, the petitioner was informed by the Food Safety Officer that the sample of 'loose paneer' was found to be of standard quality. However, on 15.06.2023, the petitioner was intimated that the sample of 'branded paneer' bearing Code No. of Sample 129/18/2023, which was taken on 08.06.2023 for the purpose of analysis, was 'sub-standard' as per the report of food analyst and the moisture component in 'branded paneer' was 61.63% instead of prescribed limit of 60%.

2.4 On 18.06.2023, it came to the knowledge of the petitioner through a newspaper report that the manufacturing license of the petitioner issued under the Food Safety Act, was C/SCA/10472/2023 ORDER DATED: 21/06/2023 suspended.

3. Mr. Jaimin R. Dave, learned advocate appearing for the petitioner, submitted that the aforesaid exercise undertaken by the respondent authority was violative of provisions of the Food Safety Act. It was submitted that the procedure embodied under Section 32 of the Act was not followed in the present case. It was argued that the said procedure is mandatory and therefore, it was incumbent for the respondent authority to follow same prior to cancelling the registration. It was further submitted that the aforesaid action on the part of the respondent authority is also violative of principles of natural justice in as much as no notice was issued to the petitioner and no hearing was afforded prior to passing the order for suspension of registration. It was argued that suspension of registration entails civil consequences and therefore, it was obligatory for the respondent authority to adhere to the principles of natural justice. In support of his submissions, learned for the petitioner has relied upon the following decisions:

- (i) (2011) 2 SCC 258
- (ii) (2005) 6 SCC 321
- (iii) 2015 SCC Online Bom 4713

3.2 It was lastly submitted that the petitioner collects

approximately 8000 to 9000 liters of milk per day from nearby farmers, maaldharis and cattle grazers and that because of suspension of registration, the petitioner will not be able to make any use of such milk thereby, causing monetary loss to him and the farmers as also, inconveniencing the general C/SCA/10472/2023 ORDER DATED: 21/06/2023 public. Without prejudice to the aforesaid arguments, Mr. Dave, learned advocate for the petitioner has fairly stated that the registration of the petitioner herein may be restored subject to the condition that the petitioner shall

not sell paneer without having the same tested by the officials of the corporation and such sample being found to be confirming with the prescribed standards.

4. Mr. Maulik Nanavati, learned advocate has instructions to appear for and on behalf of the respondent authority. Mr. Nanavati, learned advocate submitted that initially, surveillance team of the food department of the corporation had collected sample of milk products from the unit of the petitioner in April 2023. The said sample was found to be sub- standard. Thereafter, another sample was drawn from the unit of the petitioner on 04.05.2023. Again, this sample was found to be sub-standard. Lastly, a sample was collected on 08.06.2023. The sample of 'loose paneer' collected from the unit of the petitioner was found to be meeting the prescribed standard but, the sample of 'branded paneer' was found to be sub-standard. It was argued that in view of consistent non adherence to the prescribed standards by the petitioner, the food safety department of the corporation was required to stop the petitioner from selling sub-standard food products in the market. It was submitted that it is the duty of the respondent herein to ensure that sub-standardized food does not reach to the market and it is only for the said reason that the aforesaid exercise was undertaken by the respondent authority without issuance of notice. It was submitted that such exercise is in the C/SCA/10472/2023 ORDER DATED: 21/06/2023 interest of public at large. Mr. Nanavati, learned advocate for the corporation, however could not dispute the fact that the procedure prescribed in Section 32 of the Act was not followed in the present case, in as much as no notice for improvement was issued to the petitioner by the authority prior to taking the decision of suspending the registration. Mr. Nanavati, learned advocate, also could not controvert the submission of the petitioner that no notice affording any hearing was given to the petitioner prior to suspending the registration.

5. At this stage, it is apposite to refer to Section 32 of the Food Safety and Standard Act, 2006, which reads thus:

"32. Improvement notices.-

(1) If the Designated Officer has reasonable ground for believing that any food business operator has failed to comply with any regulations to which this section applies, he may, by a notice served on that food business operator (in this Act referred to as an "improvement notice")-

(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.

(2) If the food business operator fails to comply with an improvement notice, his licence may be suspended.

(3) If the food business operator 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 C/SCA/10472/2023 ORDER DATED: 21/06/2023 licence forthwith in the interest of public health for reasons to be recorded in writing.

(4) Any person who is aggrieved by-

(a) an improvement notice; or

(b) refusal to issue a certificate as to improvement; or

(c) cancellation or suspension or revocation of licence under this Act, may appeal to the Commissioner of Food Safety whose decision thereon, shall be final.

(5) The period within which such an appeal may be brought shall be-

(a) fifteen days from the date on which notice of the decision was served on the person desiring to appeal; or

(b) in the case of an appeal under sub-section (1), the said period or the period specified in the improvement notice, whichever expires earlier;

Explanation.-For the purpose of this sub-section, the making of the complaint shall be deemed to be the bringing of the appeal.

6. Heard the learned advocates appearing for the respective parties and considered the fact that the aforesaid exercise undertaken by the respondent authority is in violation of Section 32 of the Act and is also violative of principles of natural justice. The object behind intended action of any statutory authority, howsoever laudable, will not permit the statutory authority to bypass the procedure prescribed in law or even worse act contrary to law. In the facts of the present case, the statutory authority seems to have had a good intention of public safety behind the impugned action of suspending registration of the petitioner; however, such action of the authority is not in-compliance with the procedure laid down in the law. On the contrary, as can be seen from the record, and even otherwise, as fairly accepted by the learned advocate for the corporation, the action of the

respondent C/SCA/10472/2023 ORDER DATED: 21/06/2023 authority is in flagrant violation of the procedure prescribed in Section 32 of the Act as also in gross violation of principles of natural justice. The action of suspension of registration therefore, cannot be sustained in law.

7. In view of the aforesaid and considering the submissions advanced by learned advocates appearing for the respective parties, this Court is inclined to pass the following order:

7.1 The suspension of registration of the petitioner being violative of the provisions of food safety act and principles of natural justice is set aside, and consequently, ordered to be restored forthwith on the following conditions.

(a) The petitioner may manufacture 'branded paneer' and thereafter, inform the respondent authority to take samples from the manufactured batch. The sample may be drawn by the Officials of the Food Department of Municipal Corporation after following due procedure. The sample shall be tested at the Public Health Laboratory of the Corporation. If, the said sample is "found to be compliant" with the prescribed standards, the respondent authority shall permit the petitioner to sell the same in the market.

(b) The aforesaid exercise may be continued for a period of 10 days. Thereafter, it shall be open for the respondent authority to take samples randomly after following due process of law. The aforesaid direction is to ensure that sub-standard product does not reach to the C/SCA/10472/2023 ORDER DATED: 21/06/2023 market.

(c) Considering the fact that the paneer is perishable item, the exercise of drawing samples by the respondent authority be completed within a period of 24 hours from the receipt of communication from the petitioner having manufactured paneer and the exercise of testing samples be completed within 48 hours from the date of drawing of samples.

7.2 Learned advocates appearing for the respective parties undertake to follow the aforesaid direction.

8. In view of above, by exercising extra ordinary jurisdiction under Article 226 of the Constitution of India, the petition is required to be allowed to the aforesaid extent and the same is hereby allowed.

9. The aforesaid order is passed in the peculiar facts and circumstances of the present case.

(VAIBHAVI D. NANAVATI,J) NEHA