

S.Kathirvel vs The Food Safety Officer on 14 August, 2023

Author: G.R.Swaminathan

Bench: G.R.Swaminathan

W.P(MD)No.1776

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.17766 of 2015

and

M.P.(MD)No.1 of 2015

S.Kathirvel

... Petitioner

Vs.

1.The Food Safety Officer,
Aruppukottai Region,
Virudunagar.

2.The Designated Authority,
Tamil Nadu Food Safety and
Drug Administration Department,
Virudunagar District.

3.The Adjudicating Authority,
The District Revenue Officer,
Virudunagar District.

... Respondents

(R1 to R3 are amended vide order dated
13.07.2023 in W.P.(MD)No.2 of 2015 in
W.P.(MD)No.17766 of 2015 by GRSJ)

Prayer : Writ Petition filed under Article 226 of the Constitution
India, praying this Court to issue a Writ of Certiorari, calling for

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<https://www.mhc.tn.gov.in/judis>

W.P(MD)

records relating to the impugned order passed by the 3rd respondent Na.Ka.No.01/514/32/2014-15 dated 03.09.2015 and quash the same.

For Petitioner : Mr.M.Rajaraman

For Respondents : Mr.S.Shanmugavel,
Addl. Government Pleader.

ORDER

Heard the learned counsel for the writ petitioner and the learned Additional Government Pleader for the respondents. Mr.Mohamed Isamil Kasim, Food Safety Officer, Aruppukottai is also present in person to assist the Court.

2.On 20.06.2014, the Food Safety Officer, Aruppukottai inspected a retail shop carrying on business in the name and style of Sri Saravanabava Store in Rice Market, Aruppukottai and lifted sample of gingelly oil. It was sent for analysis to Food Analysis Laboratory, Palayamkottai. An analysis report bearing No.0038/2014-15, dated <https://www.mhc.tn.gov.in/judis> 01.07.2014 was received from the laboratory stating that the sample lifted from Sri Saravanabava Store was sub-standard. Based on the same, adjudication proceedings were initiated against the manufacturer as well as the retailer. The Adjudicating Officer, Virudhunagar under the Food Safety and Standards Act, 2006 passed the impugned order dated 03.09.2015 holding that the manufacturer as well as the retailer have breached the statutory provisions and levied fine of Rs.50,000/- on them. Challenging the same, the manufacturer filed this writ petition.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition. His primary contention is that the analysis report was not served on the manufacturer as well as the retailer and that this has deprived them of their statutory right of appeal before the Designated Officer (As contemplated under Section 46(4) of the Food Safety and Standards Act, 2006). His other contention is that the Adjudicating Officer has not assigned any reason for levying a sum of Rs.50,000/- as fine. <https://www.mhc.tn.gov.in/judis>

4.The learned Additional Government Pleader submitted that the analysis report was served on the retailer as well as the manufacturer and that therefore, the impugned order including the levy of fine of Rs.50,000/- does not warrant interference. He pressed for dismissal of the writ petition.

5.I carefully considered the rival contentions and went through the materials on record. Section 46 of the Food Safety and Standards Act, 2006 is as follows:-

“46.Functions of Food Analyst.-(1) On receipt of a package containing a sample for analysis from a Food Safety Officer or any other person, the Food Analyst shall compare the seal on the container and the outer cover with specimen impression

received separately and shall note the conditions of the seal thereon: Provided that in case a sample container received by the Food Analyst is found to be in broken condition or unfit for analysis, he shall within a period of seven days from the date of receipt of such sample inform the Designated Officer about the same and send requisition to him for sending second part of the sample.

<https://www.mhc.tn.gov.in/judis> (2) The Food Analyst shall cause to be analysed such samples of article of food as may be sent to him by Food Safety Officer or by any other person authorised under this Act.

(3) The Food Analyst shall, within a period of fourteen days from the date of receipt of any sample for analysis, send—

(i) where such sample is received under section 38 or section 47, to the Designated Officer, four copies of the report indicating the method of sampling and analysis; and

(ii) where such sample is received under section 40, a copy of the report indicating the method of sampling and analysis to the person who had purchased such article of food with a copy to the Designated Officer:

Provided that in case the sample cannot be analysed within fourteen days of its receipt, the Food Analyst shall inform the Designated Officer and the Commissioner of Food Safety giving reasons and specifying the time to be taken for analysis.

(4) An appeal against the report of Food Analyst shall lie before the Designated Officer who shall, if he so decides, <https://www.mhc.tn.gov.in/judis> refer the matter to the referral food laboratory as notified by the Food Authority for opinion.

6.Rule 2(4)(2)(6) of the Food Safety and Standards Rules, 2011 is as follows:-

“2(4)(2)(6).The Designated Officer shall keep two copies of analysis report for further action, one copy shall be sent to Food Safety Officer for record andn one copy to Food business Operator from whom the sample was taken.”

7.The provisions were considered by me in Crl.O.P.(MD)Nos.13576 and 19449 of 2015. Vide order dated 04.12.2019, I had held that if the authority intends to prosecute the manufacturer then certainly, the authority was obliged to put the manufacturer on notice by serving a copy of the analysis report in time so that the appeal remedy can be suitably availed. The question that arises for consideration is whether the analysis report dated 01.07.2014 was served on the manufacturer / petitioner herein.

<https://www.mhc.tn.gov.in/judis>

8.The pleading in affidavit filed in support of the writ petition is that this report was not served. The respondents have however made available a letter dated 23.07.2014 submitted by the petitioner herein. In the said letter addressed to the Food Safety Officer, Aruppukottai, the petitioner makes a reference to the analysis report. The learned counsel for the petitioner would however submit that what was served on the petitioner was only Form VA notice. I am not persuaded by the submission of the learned counsel for the petitioner. When the petitioner's letter dated 23.07.2014 makes a reference to analysis report, if it was really not served on the petitioner, the petitioner would have certainly made an issue out of it. Secondly, in response to the summon issued by the Adjudicating Officer, the petitioner in his letter had only pleaded that the deviation found in the sample was only minor and he requested for dropping proceedings. Even before the Adjudicating Officer, the petitioner had not taken the stand that the analysis report was not served. Whether the analysis report was served on the manufacturer is a pure question of fact. This has to be raised before the originally authority in the first instance. Having failed to raise the said plea before <https://www.mhc.tn.gov.in/judis> the originally authority, the petitioner cannot be permitted to raise the contention in the writ proceedings. I, therefore, reject the first contention advanced by the learned counsel for the petitioner.

9.The second contention however has some merit. The Adjudicating Officer has imposed a fine of Rs.50,000/- on the petitioner. Section 49 of the Food Safety and Standards Act, 2006 is as under:-

“49.General provisions relating to penalty.—While adjudging the quantum of penalty under this Chapter, the Adjudicating Officer or the Tribunal, as the case may be, shall have due regard to the following:—

- (a) the amount of gain or unfair advantage, wherever quantifiable, made as a result of the contravention,
- (b) the Amount of loss caused or likely to cause to any person as a result of the contravention,
- (c) the repetitive nature of the contravention,
- (d) whether the contravention is without his knowledge, and
- (e) any other relevant factor.” <https://www.mhc.tn.gov.in/judis>

10.When fine is imposed on the person who has committed the breach, the authority will have to indicate the factors that have entered his thought process. He must say as to why he is levying a particular amount as fine. Section 49 of the Act set outs the parameters which should be taken into account while quantifying the fine amount. The Adjudicating Officer has to indicate the same. Such indication is totally absent in this case. What is absent in the original order cannot be supplied by way of argument.

11.The deficiency found in the sample are as follows:-

“(i) The iodine value is 123.6 instead of being in the range of 103 to 120.

(ii) Tributary temperature shall not more than 22°C.

However, in the sample it was 22°C.” The learned counsel for the petitioner states that the petitioner was not found to have breached the Food Safety and Standards Act provisions earlier. The deviation also does not appear to be drastic. No complaint <https://www.mhc.tn.gov.in/judis> appears to have been received from the members of the general public. There is also nothing on record to indicate the amount of gain made by the petitioner as result of the contravention. Taking into account all these aspects, the fine of amount of Rs.50,000/- imposed by the Adjudicating Officer is reduced to Rs.20,000/-.

12.This writ petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To: -

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G.R.SWAMINATHAN, J.

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