

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

WRIT PETITION No.41 OF 2023

Between:

Kantilal

... Petitioner

And

The State of Telangana and others

... Respondents

JUDGMENT PRONOUNCED ON: 09.03.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

- 1. Whether Reporters of Local newspapers
may be allowed to see the Judgment? : yes**
- 2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes**
- 3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes**

SUREPALLI NANDA, J

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION No.41 OF 2023

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..... **Petitioner**

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.....**Respondents**

< Gist:

> Head Note:

! Counsel for the Petitioners : Ms Himangini Sanghi

^ Counsel for the Respondents: G.P. for Medical & Health

? Cases Referred:

HON'BLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION No.41 OF 2023

ORDER:

Heard learned counsel for the petitioners and learned Government Pleader for Medical and Health.

2. The petitioner approached the Court seeking the prayer which is as follows:

“To issue a writ, order or direction, more particularly in the nature of Writ of mandamus by declaring the action of the respondent Nos.1 to 3 in alleging misbranding the product as absolutely illegal, arbitrary, unconstitutional and violative of article 14, 19(1)g, 21 of the Constitution of India read with statutory provisions of Food Safety and Standards act and consequently direct the Respondent No.1 to Respondent No.3 to set aside the report of Food analysis in report number 627/2021-22, dated 06-11-2021 from a sample of Kamco Kaju Malai bearing code No 011/14/01660/GHMC/2021 in relation to the Petitioner herein”.

3. The case of the petitioners, in brief, is as follows:

- a) The petitioner is having license under the Food Safety and Standard Act, 2006 and renewed the same from time to time.
- b) M/s Superness Food Private Limited is one of the manufacturer whose products are also sold by the petitioner on retail basis. The 2nd respondent visited the shop and lifted four sealed boxes of Kamco Kaju Malai Milk and cashew chocolate bar from the shop of the petitioner and demanded to show food license, GST certificate, Aadhar Card and took signs of the petitioner on few papers. The sample collected on 10.11.2021 was sent to food analysis and food Analyst report dated 06.11.2021.
- c) The Food Analysis report analyzed by the 3rd respondent reflects that the 2nd respondent sent the sample on 13.10.2021 whereas the analysis has commenced analyzing on 21.10.2021 and has completed the analysis on 26.10.2021 whereas the report is signed on 06.11.2021.
- d) The petitioner purchased the goods as per license. The inaction of respondents 1 to 3 is illegal and arbitrary. Hence, this writ petition.

PERUSED THE RECORD

4. The impugned report of Food analysis in report number 627/2021-22, dated 06-11-2021 in relation to the petitioner from a sample of Kamco Kaju Malai Malik and cashew chocolate bar bearing code No.011/14/01660/GHMC/2021 reads as under:

"Certified that I, G.Laxminarayana Reddy, duly appointed as Food Safety and Standards Act 2006 (34 of 2006) for the State of Telangana received from the Food Safety Officer, Circle No.14, GHMC, Hyderabad a sample of Kamco Kaju Malai bearing Code No.011/14/01660/GHMC/2021 of Designated Officer, Central Zone, GHMC, Hyderabad, T.S. area on 13.10.2021 for Analysis.

The condition of seals on the container and the outer covering on receipt was as follows:

The seals on the sample are intact and identical with the specimen impression of seal sent separately.

I found the sample to be Sweets & Confectionery (Category of the sample) falling under Regulation No.2.7.4 of Food Safety & Standards (Food Products Standards and Food additives) Regulations, 2011. The sample was in a condition fit for analysis and has been analysed on 20.10.2021/26.10.2021(date of starting and completion of analysis) and the result of its analysis is given below.

Analysis Report:-

1. *Sample Description:- Sample received in a sealed & labelled packet kept in a plastic container.*
2. *Physical Appearance:- Cream coloured bar.*
3. *Label:- Kamco Kaju Malai Milk & Cashew Chocolate Bar, Net wt:6.5gm, B.No.A-07, Pkd: July 2021. Best before 9 months. FSSAI License number: 11416850000107 with Logo.*

Ingredients: Sugar, partially hydrogenated vegetable fat, Milk solids, Cashew, permitted emulsifiers & Stabilizing agents (E 322, E476) and salt. Mfd by: Superness Food Pvt.Ltd., SKJ Compound, Losadiya mori Dewas Naka, Indore, M.P., India.

Sl. No	Quality Characteristics	Name of Method of Test	Result	Prescribed Standards as per 2.7.4 a) Food Safety and Standards (Food Products Standards & Food additives) Regulations 2011 b) As per label declaration for proprietary food © As per provisions of the Act, rules and regulations for both the above
1.	Test for Sugar	Methods complied by FSSAI	Positive	
2.	Suphates Ash (on sale free basis)		0.80%	
3.	Total Ash		0.62%	
4.	Acid insoluble ash (in dilute hydrochloric acid)		0.06%	Not more than 0.2% by wt
5.	Synthetic Food Colour		Absent	Not more than 100ppm
6.	Fat content		22.9%	Not less than 25%

Opinion:- I am of the opinion that as per the definition of Chocolate the sample should contain Coco material. But the label of the sample does not contain Coco butter in its ingredients list. It is a violation of 2.7.4 of Food Safety & Standards (Food Products Standards & Food Additives) Regulations, 2011. Hence, it is misbranded."

5. Section 42 of Food Safety and Standards Act, 2006 reads as under:

"42. Procedure for launching prosecution.

(1) The Food Safety Officer shall be responsible for inspection of food business, drawing samples and sending them to Food Analyst for analysis.

(2) The Food Analyst after receiving the sample from the Food Safety Officer shall analyse the sample and send the analysis report mentioning method of sampling and analysis within fourteen days to Designated Officer with a copy to Commissioner of Food Safety.

(3) The Designated Officer after scrutiny of the report of Food Analyst shall decide as to whether the contravention is punishable with imprisonment or fine only and in the case of contravention punishable with imprisonment, he shall send his recommendations within fourteen days to the Commissioner of Food Safety for sanctioning prosecution.

(4) The Commissioner of Food Safety shall, if he so deems fit, decide, within the period prescribed by the Central Government, as per the gravity of offence, whether the matter be referred to, -

(a) a court of ordinary jurisdiction in case of offences punishable with imprisonment for a term up to three years; or

(b) a Special Court in case of offences punishable with imprisonment for a term exceeding three years where such Special Court is established and in case no Special Court is established, such cases shall be tried by a court of ordinary jurisdiction.

(5) The Commissioner of Food Safety shall communicate his decision to the Designated Officer and the concerned Food Safety Officer who shall launch prosecution before courts of ordinary jurisdiction or Special Court, as the case may be; and such communication shall also be sent to the purchaser if the sample was taken under section 40."

6. The counter affidavit has been filed by the Respondent No.2 and the relevant portion in para No.6 reads as under:

It is further submitted that section 26 of the Food Safety and Standards Act, 2006 imposes the following responsibility on the Food Business Operators.

Sec:26(2)(ii) No food business operator shall himself or by any person on his behalf

*manufacture, store, sell or distribute any article of food which is misbranded or sub-standard or contains extraneous matter. Further Section 27 of the Food Safety and Standards Act, 2006 details about the Liability of the manufacturers, packers, wholesalers, distributors and sellers wherein U/s. 27 (2) (c) **"The seller shall be liable under this Act for any article of food which is misbranded"***

Thus it is evident that the provisions of Food Safety and Standards Act, i.e., (2) (ii) r/w. section 27(2)(c) imposes responsibility and also liability on the petitioner No.1 herein for engaging in sale of products which are declared as misbranded."

DISCUSSION AND CONCLUSION

7. A bare perusal of the contents of the report of the Food analysis in report number 627/2021-22, dated 06.11.2021 analyzed by the 3rd respondent, clearly indicates that the respondent No.2 have sent a sample on 13.10.2021 whereas the analyst has commenced analyzing on 21.10.2021 and has completed the analysis on 26.10.2021 whereas the report is signed on 06.11.2021.

8. The averments made in the para No.6 of the counter affidavit filed by respondent No.2 (extracted above) clearly indicates that the time taken by the respondent No.3 from the date of receiving the sample to the date of sending the report is 17 days and as a result, Section 42(2) of the Food Safety and Standards Act, 2006, admittedly is violated in the present case.

9. An identical issue came for consideration before the Madurai Bench of Madras High Court vide CrI.O.P.(MD)No.5994 of 2019 and CrI.M.P.(MD)Nos.3871 and 3872 of 2019, dated 23.03.2022 and para 10 of the said judgment reads as under:

"10. Considering the above, as rightly pointed out by the learned counsel for the petitioners, the respondent has violated the mandatory requirements contemplated under Section 42 of the said Act. Considering the above and also the legal decision above referred, this Court has no other option, but to hold that the very launching of the complaint itself is not proper. Considering the above violations, no purpose would be served in directing the petitioners to

face the trial, as the respondent authorities have miserably failed to follow the mandatory requirement contemplated in the said Act. Hence, this Court has no hesitation to hold that the case in S.T.C.No.915 of 2018, pending on the file of the Court of Judicial Magistrate, Musiri, Trichy District as against the petitioners is liable to be quashed.”

10. In view of the fact that in the present case also admittedly as borne on record respondent No.3, violated the mandatory requirements contemplated under Section 42 of the Food Safety and Standards Act, 2006 this Court has no other option but to hold that the very issuance of the letter dated 11.11.2021 under Rule 2.4.2(6) and 2.5.6 of FSS Rules, 2011 Read with Section 46 (4) of FSS Act, 2006 to the petitioners herein is totally in violation of Section 42 (2) of Food Safety and Standards Act since the time gap taken by the 3rd respondent from the date of receiving the sample to the date of signing the report, is seventeen days and not fourteen days as mandated under law.

11. Taking into consideration the above referred facts and circumstances and also the principle of law laid down by the Madurai Bench of Madras High Court in CrI.O.P.(MD) No.5994 of 2019 and CrI.M.P.(MD) Nos.3871 and 3872 of 2019 in S.Sakthivel and another v The State, Rep.by Food Safety Officer, Tamil Nadu Food Safety and Drug Administration (extracted above), the writ petition is allowed as prayed for and the report of the Food analysis report number 627/2021-22, dated 06-11-2021, for growth of Kamco Kaju Malai bearing code No 011/14/01660/GHMC/2021 in relation to the Petitioner herein is set aside. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.

MRS JUSTICE SUREPALLI NANDA

Date:09.03.2023

Note : L.R. copy to be marked

b/o

Chs