
(2014) 02 KL CK 0214

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 17793 of 2012

Baisil Attipeddy

APPELLANT

Vs

Food Safety Commissioner

RESPONDENT

Date of Decision : 04-02-2014

Acts Referred:

Food Safety and Standards Act, 2006 — Section 68

Citation : (2014) FAJ 431

Hon'ble Judges : Dr. Manjula Chellur, C.J.;A.M. Shaffique, J

Bench : Division Bench

Advocate : A.G. Basil, Advocate for the Appellant; K.A. Jaleel, Addl. Advocate General by Joe Kalliyath, Govt. Pleader, Advocate for the Respondent

Judgement

Dr. Manjula Chellur, C.J.—This public interest litigation is filed by a practicing advocate as pro bono publico seeking the following reliefs:

"(a) Issue a writ of mandamus, or any other appropriate writ, order or direction, directing respondents 1, 3, 4, 5 & 9 to issue appropriate directions to respondent No. 2 and its members to sell foods only in compliance with the provisions of Food Safety and Standards Act 2006 and Rules 2011 and various circulars and orders issued by the Government of Kerala as well as Central Government in this regard;

(b) Issue a writ of mandamus, or any other appropriate writ, order or direction, directing respondents 1, 3, 4, 5 & 9 to issue appropriate directions to respondent No. 2 and its members to issue detailed bill for each item they supply to the consumers.

(c) Issue a writ of mandamus, or any other appropriate writ, order or direction, directing respondents 1, 3, 4, 5 & 9 to issue appropriate directions to respondent No. 2 and its members to display price list of every item of food items they are selling, in front of each hotel/restaurant.

(d) Direct the 1st respondent, Food Safety Commissioner, to file an action taken

report with regard to the safety of foodstuffs being sold in Kerala through hotels and restaurants in the entire State of Kerala expeditiously.

(e) Direct the 9th respondent to file an action taken report with regard to the implementation of Food Safety and Standards Act 2006 and Rules 2011 in the entire State of Kerala, within a time frame to be fixed by this Hon"ble Court.

(f) to grant such other appropriate reliefs to the petitioner as this Hon"ble Court may deem fit and proper in the interest of justice."

The grievance expressed in the writ petition is with regard to safety of the public at large on account of lack of proper regulating mechanism to control selling of food in hotels and restaurants. It is further contended that non-adhering to the Food Safety and Standards Act of 2006 and also Rules of 2011, the said situation is created in State of Kerala. Therefore in this public interest litigation petitioner contends that citizens have a right to get hygienic and proper food from the hotels and restaurants in the State of Kerala and this can be achieved only if authorities concerned have a proper and periodical check, regulating the entire system.

2. As early as in August 2012, an action taken report was filed on behalf of the 1st respondent in terms of the directions of the High Court. Subsequently, counter affidavit came to be filed on behalf of 2nd respondent and also 8th respondent. Counter filed by the 2nd respondent, General Secretary of Kerala Hotels and Restaurants Association indicates the provisions of Food Safety and Standards Act of 2006 and also the Rules and the consistent and persistent action taken by the 2nd respondent Association in addressing the problems indicated in the writ petition. They also brought to the notice of the Court that several other writ petitions are filed challenging various directions of Food Safety and Standards Act of 2006 and also the regulations which are pending consideration. According to the 2nd respondent, this writ petition is on behalf of some interested parties to create trouble to the hotels and restaurants. However, they contend that as per the existing law governing the food safety etc., is strictly complied with and whenever the hotels and restaurants concerned have violated, suitable action was taken by the authorities concerned. Therefore, in the light of full time Commissioner and Secretary to Government as Commissioner of Food safety Kerala, proper checks and measures are already taken. According to 8th respondent, Corporation of Cochin, "two special squads are constituted under the Health Department which conduct regular inspections at random in all hotels and restaurants within the jurisdiction of 8th respondent. This is to ensure compliance of the provisions of the Act. The search includes inspection of food items prepared and stored, quality of ingredients used and whether hygienic storage places are maintained or not. Whenever violations are found from the items seized, suitable action was taken. They also narrate all cases registered and action taken.

3. Then coming to the action taken report of the 1st respondent, they narrate the

details of all the cases already registered including the criminal case registered against the management of Hotel Salwa Cafe, Vazhuthacaud. The said case is pending for suitable action. Since 10.8.2012, the date of filing earlier action taken report, 4,753 cases were taken up for inspection. In 475 cases statutory samples were collected for analysis. Depending upon the analytical reports, proper course of action was taken including initiation of action for prosecution. Pursuant to analysis, 46 cases of unsafe food samples were revealed and 57 cases of substandard food samples were detected. In accordance with the procedure contemplated, adjudication was conducted. A notification dated 24.12.2013 is issued by the Government appointing Revenue Divisional Officer as the authority to take action and adjudicate the proceedings under Section 68 of the Act. Food safety officers are empowered to file respective complaints before the Magistrate after completing the investigation. A sum of Rs. 21,84,500 was collected as compounding fine from such violators. A special drive was taken up across the State so as to ensure quality of drinking water, juice shops, edible oil, vegetables, fruits, fish, ice etc., and 1,056 juice stalls were inspected and 487 improvement notices were issued and 3 stalls were closed and Rs. 48,500 were collected as compounding fine for not maintaining hygienic conditions. So far as samples of fish, especially brought from outside the State and ice used as preservative were collected and checked for deficits. Presence of "Formalin" was found in certain cases and necessary communication was issued to the Commissioner concerned to take proper action. 18 Ice Plants are closed. Special care was taken during Onam season.

4. So far as slaughter houses, having regard to the fact that Kerala is a major consumer of non-vegetarian, food department has conducted inspections and special care was taken up. Government is already ware of the problems so far as the slaughter houses and the matter is under serious consideration before the Government. The officers from the food department are given special training so also awareness programmes are conducted to the students who are pursuing education in Agricultural Universities to equip them with latest developments in food industry etc.

5. Learned counsel appearing for the petitioner places reliance on a recent unreported Supreme Court judgment in WP (C) No. 681 of 2004. Paragraphs 23 and 24 are relevant which read as under:

"23. Enjoyment of life and its attainment, including right to life and human dignity encompasses, within its ambit availability of articles of food, without insecticides or pesticides residues, veterinary drugs residues, antibiotic residues, solvent residues, etc: But the fact remains, many of the food articles like rice, vegetables, meat, fish, milk, fruits available in the market contain insecticides or pesticides residues, beyond the tolerable limits, causing serious health hazards. We notice, fruit based soft drinks available in various fruit stalls, contain such pesticides residues in alarming proportion, but no attention is made to examine its contents. Children and infants are uniquely susceptible to the effects of

pesticides because of their physiological immaturity and greater exposure to soft drinks, fruit based or otherwise.

24. We, therefore, direct the Food and Safety Standards Authority of India, to gear up their resources with their-counterparts in all the States and Union Territories and conduct periodical inspections and monitoring of major fruits and vegetable markets, so as to ascertain whether they conform to such standards set by the Act and the Rules."

Having regard to the steps taken by the Department concerned, including the checking regarding the licence, registration with reference to the nature and quality of business conducted, we are of the opinion, best possible steps have already taken and further steps are under consideration so far as scientific slaughter houses are concerned. In the light of such steps being taken, we are satisfied that apprehension of the petitioner to a considerable extent is substantially attended to by the authorities concerned. In the light of such compliance, we are of the opinion, the petition deserves to be disposed of with a direction to the respondent authorities to keep a vigil and the drive to inspect the hotels and restaurants at random should not be stopped with the closure of this writ petition. Similarly members of the 2nd respondent Association must also attend to the problems raised in the writ petition and they must conduct periodical seminars and meetings to have self introspection of the situation so as to do their best in order to give safe and hygienic food to the public who visit the hotels and restaurants.

With the above observations, the writ petition is disposed of.