
(2014) 07 RAJ CK 0037
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4790 of 2014

Banshi Lal

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 08-07-2014

Acts Referred:

Constitution of India, 1950 — Article 19(1)(g), 47

Citation : (2014) 4 RLW 3066 : (2015) 4 WLN 387

Hon'ble Judges : Pratap Krishna Lohra, J

Bench : Single Bench

Advocate : S.P. Sharma, Advocate for the Appellant

Judgement

Pratap Krishna Lohra, J.—Epitomizing a very gloomy picture of the functioning of the Medical & Health Department of the State, more particularly with reference to Barmer District, attributing total apathy and callousness on part of Food Inspectors for observance of Food Safety and Standards Act, 2006 (for short, "Act of 2006") and the Rules made thereunder, the petitioner has laid this writ petition with the under-mentioned prayers:

a) By an appropriate; writs, orders or directions of this Hon"ble Court, the respondent No. 1 to 4, may kindly be directed, to immediately post a suitable Food Safety Officer alongwith allied staff, in Barmer, in place of respondent No. 5, and to accordingly issue direction for carrying out necessary checking of food articles of all the sweet shops and other food business operators, without any discrimination and it may also kindly be directed that, whenever any food checking of food articles from petitioner"s sweet shop is carried, transparency and fairness may kindly be maintained and result of the checking may kindly be supplied to petitioner.

b) By an appropriate; writs, orders or directions of this Hon"ble Court, the respondent No. 1 and 2, may kindly be directed to make suitable arrangements for augmentation of sufficient staff of Food Safety, in Barmer, so as to ensure

proper implementation of Provisions of Food Safety and Standards Act, 2006 and Rules of 2011.

c) By an appropriate writs, orders or directions of this Hon"ble Court, the respondent No. 1 to 4, may very kindly be directed to uniformly take action to implement the provisions of the Act of 2006 and Rules of 2011, in the matter of food checking of all the food institutions, without causing any discrimination, in Barmer district, as well in whole of Rajasthan, so as to ensure that, no health hazards is occasioned, to public.

d) By an appropriate writ, order or directions, in the nature thereof, the respondent No. 1 to 4, may very kindly be directed to constitute a committee, for carrying out suitable enquiry/assessments of the food checking of food centers, in Barmer, for last 5 years, so as to know, whether the provisions of the Act of 2006 and Rules of 2011, are being meticulously adhered to, in true letter and spirits, by the food safety officers, deputed by the Government. The said result of the enquiry/assessment, may kindly be directed to be placed on record, before this Hon"ble High Court, for passing further necessary orders.

e) Any other appropriate order or direction, which this Hon"ble Court considers just and proper in the facts and circumstances of this, may kindly be passed in favour of the petitioner.

For carving the omnibus reliefs mentioned to supra, petitioner has averred in the writ petition that he is running a shop of sweets at Barmer in the name of Jeevan Mishthan Bhandar while faithfully adhering to the provisions of the Act of 2006. Projecting a very embellished version about the quality of sweets and other eatables prepared in his shop, the petitioner has submitted that in the entire Barmer area only one Food Safety Officer i.e. Food Inspector, respondent No. 5, has been deputed by the Government for requisite checking and collecting of samples of eatables in terms of the Act of 2006 and Rules framed thereunder. The petitioner has also made an attempt to question the very appointment of the fifth respondent by alleging that he is not qualified for the said post Concern of the petitioner is that non-observance of the regulatory provisions contained under the Act of 2006 is likely to create many problems for the residents of Barmer District including serious health problems. It is asserted by the petitioner that one Food Inspector cannot carry out regular checking and collect samples for the entire area to verify quality of food products and eatables. Attributing oblique motives to the fifth respondent, the petitioner has submitted that he is harassing him by repeatedly checking his shop and taking samples of food articles and eatables while ignoring his just obligation to check other shops of food articles and eatables. The petitioner has very specifically averred that the fifth respondent has not made any endeavor to take samples of more than fifty sweet shops and when he made endeavor to solicit requisite information from the office of Chief Medical & Health Officer, Barmer by resorting to RTI, information was not divulged to him. With all these allegations, the petitioner has submitted that even his genuine grievances have not been appreciated by the

appellate authority under the RTI Act and his crusade against the problem of health hazards in Barmer District is not yielding the desired results. For redressal of grievances, according to the petitioner, he has served a notice for demand of justice attributing many insinuations against the respondents including arbitrary and illegal action on their part but the same has not been responded.

2. Learned counsel Mr. Sharma has submitted that the Act of 2006 imposes responsibility on the food business operators to ensure that food processed, manufactured, imported, or distributed is in conformity with the domestic food laws and therefore its implementation is to be carried out by the respondents with utmost expediency to prevent health hazards and many other problems of malnutrition. Learned counsel Mr. Sharma would contend that non-adherence of the regulatory provisions contained in the Act of 2006 within Barmer District is a glaring example of failure of statutory duties by the respondents and therefore requisite directions be issued to the respondents. Mr. Sharma has also submitted that for effective implementation of the Act of 2006, directions are required to be issued to the respondents to depute adequate number of Food Inspectors for Barmer District.

3. I have heard learned counsel for the petitioner and perused the materials available on record.

4. Before advertng to examine the afflictions of the petitioner, Court feels that as a trader running sweets shop he is not an aggrieved person to maintain this writ petition. In the considered opinion of this Court, the locus standi of the petitioner is seriously questionable. Moreover, the entire petition is conspicuously silent as to how and in what manner non-observance/soft paddling in regulatory measures provided under the Act of 2006 has resulted in health hazards within Barmer District. There is nothing on record to show that food products or other eatables, which are processed, manufactured, imported or distributed within Barmer District are not satisfying the requirements of domestic food laws, or that the sale is adulterated, or contaminated. Entire petition is based on omnibus allegations, which has really tempted this Court to believe that this petition has not been filed with bona fide or pious object. In a subtle way, the petitioner has designed this writ petition to target his other business rivals, who are carrying on their business in exercise of their fundamental right to trade and business enshrined under Article 19(1)(g) of the Constitution.

5. Promulgation of the Act of 2006 pre-supposes that Government is seriously concerned about well-being of the citizens and there cannot be two opinions that Government is seriously concerned to raise level of nutrition. Enactment of the Act of 2006 is to achieve certain objects and there are reasons to believe that regulatory measures envisaged under the Act of 2006 shall be adhered to by the Government by deputing officials to carry out the said obligation. How the regulatory measures are to be implemented and enforced is concern of the Government and no mandamus in this behalf can be issued by this Court unless and until it is pointed out that the State has failed to observe its statutory

obligations. On a close scrutiny of the averments, contained in the writ petition, which are absolutely vague, cryptic and unspecific, I am not persuaded to believe that the State has shown its total apathy for implementation/enforcement of the regulatory provisions contained under the Act of 2006.

6. Article 47 of the Constitution ordains duty of the State to raise the level of nutrition and standard of living and to improve public health, which reads as under:

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health, - The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

7. The enactment of the Act of 2006 clearly goes to show that State is very much concerned about the level of nutrition and to improve public health. There remains no quarrel that directive principles of State Policy enshrined under Chapter IV of the Constitution of India are to be observed by the State for the welfare of people, and for enforcement of these directive principles no mandamus can be issued by this Court.

8. Upon evaluation of factual matrix of the case, in my considered opinion, the petitioner has unnecessarily projected a very embellished version about the state of affairs prevailing in Barmer District vis-a-vis the problem of food adulteration and contamination and the whole thrust of the petitioner in the petition is to castigate and target respondent No. 5 without any ground whatsoever. Court is not concerned as to how the respondent Food Inspector is posted at Barmer and staying at Barmer for last more than ten years because posting of a Government employee or his transfer is the sole prerogative of the State authorities and for getting rid of an employee/officer of the Government, such proceedings at the behest of a busy body like petitioner is not at all tenable. Resultantly, I find no merit in this writ petition, the same is accordingly dismissed.