

(2014) 10 KL CK 0037

In the High Court Of Kerala

Case No : Writ Petition (Civil) Nos. 11763, 11788, 11790, 26214, 26217, 26785, 27265, 27499, 27500, 28090 of 2013, 7553, 12957, 15183, 15203, 17307, 18993, 19166, 19167, 19566, 19877, 19903, 19904, 20478, 20705, 20909, 20910, 20920, 25645 and 25661 of 2014

Haripriya Traders

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 15-10-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 19(1)(g), 21, 47
Food Safety and Standards Act, 2006 — Section 2(b), 3, 3(1), 3(j), 3(zk)

Citation : (2015) 324 ELT 83 : (2014) 4 KHC 576 : (2014) 4 KLJ 593

Hon'ble Judges : A. Muhamed Mustaque, J

Bench : Single Bench

Advocate : P. Radhakrishnan (1), Madhu Radhakrishnan, C.K. Karunakaran and P.R. Sreejith, Advocate for the Appellant; P. Parameswaran Nair, N. Nagaresh, Assistant Solicitor Generals of India, John Varghese, Standing Counsel, Customs, Tojan J. Vathikulam, Standing Counsel, Jasmeen Ahamed, Thomas Mathew Nellimoottil and Mehmood Pracha, Advocate for the Respondent

Judgement

A. Muhamed Mustaque, J.—These batch of writ petitions are filed by importers of raw betel nuts (arecanuts), aggrieved by detention of imported betel nuts at Cochin Port by Authorised Officer for Cochin Seaport and Airport by the Food Safety and Standards Authority of India. The Authorised Officer, after taking the samples, rejected the samples on the ground that samples do not conform to the standards specified under the Food Safety and Standards Act, 2006 (for short, the "FSS Act"). Petitioners challenge the said action on two grounds; firstly, with respect to the definition accorded to "food" under Section 3(1) of the FSS Act and; secondly, on the ground that there is no prescription for analysing the standard of betel nuts under the FSS Act. By interim orders of this Court in all these matters, goods were directed to be released to the respective petitioners. Food Safety and Standards Authority filed counter-affidavits in some of the matters and also filed memos for adopting counter in other matters. It is

contended by the Food Safety and Standards Authority that betel nuts are "food" and they have the power to retain such goods which are imported and found unfit for human consumption. The learned counsel for the Food Safety and Standards Authority also adverted to the decision of the Hon"ble Supreme Court in Centre for Public Interest Litigation Vs. Union of India (UOI) and Others, wherein paras. 21 and 22 reads as follows:

"21. We may emphasise that any food article which is hazardous or injurious to public health is a potential danger to the fundamental right to life guaranteed under Article 21 of the Constitution of India. A paramount duty is cast on the States and its authorities to achieve an appropriate level of protection to human life and health which is a fundamental right guaranteed to the citizens under Article 21 read with Article 47 of the Constitution of India.

22. We are, therefore, of the view that the provisions of the FSS Act and PFA Act and the rules and Regulations framed thereunder have to be interpreted and applied in the light of the Constitutional Principles, discussed above and endeavour has to be made to achieve an appropriate level of protection of human life and health. Considerable responsibility is cast on the Authorities as well as the other officers functioning under the above mentioned Acts to achieve the desired results. Authorities are also obliged to maintain a system of control and other activities as appropriate to the circumstances, including public communication on food safety and risk, food safety surveillance and other monitoring activities covering all stages of food business."

2. The Food Safety and Standards Act defines food under Section 3(j) as follows:

"(j) "Food" means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food, to the extent defined in Clause (zk), genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants, prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances:

Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, nature, substance or quality."

The above definition of food includes primary food. Section 3(zk) of the FSS Act also defines primary food as follows:

"(zk) "primary food" means an article of food, being a produce of agriculture or horticulture or animal husbandry and dairying or aquaculture in its natural form, resulting from the growing, raising, cultivation, picking, harvesting, collection or catching in the hands of a person other than a farmer or fisherman."

3. The learned counsel for the petitioners relying on the judgment of the Hon'ble Calcutta High Court in Gokul Refoils Solvents Pvt. Ltd. Vs. Union of India (UOI) and Others, submits that betel nut is not "food" as defined under Section 3(j) of the FSS Act. The above case is referred to importing crude palm oil. It is held in the above case as follows:

"Thus, unless the item is intended to be used for human consumption the same at any rate cannot come within the definition of food. No material has been placed before us indicating that the intention of the Appellant to use the imported item in that very form for human consumption."

Therefore, the petitioners submit that unless the imported items are intended for immediate human consumption without involvement of any intermediary process, it cannot be treated as a "food".

4. I am unable to accept the arguments advanced by the petitioners that betel nuts cannot be considered as "food". The definition of "food" is expansive in Section 3(j) which includes any type of substance whether processed or unprocessed, which ultimately is intended for human consumption would attract the meaning of food within Clause (j) of Section 3. The meaning of food do not depend upon immediate or proximate use of the substance for human consumption. The only criteria to determine a substance is food or not is whether the substance is intended for human consumption or not. The ultimate purpose must be for human consumption. Therefore, any substance which is intended for human consumption would fall within the definition of food as defined under the FSS Act.

5. Next question is whether FSS Act provides standard for betel nuts. There is no specific standards prescribed for betel nuts under the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 (hereinafter referred to as the "FSS Regulations"). According to the Food Safety and Standards Authority, betel nuts fall within the category of "nuts and raisins" as prescribed under Regulation 2.3.47, particularly, in the class of dry fruits and nuts mentioned in sub-clause 5. The reference of sub-clause (5) in Regulation 2.3.47 clearly points out what are the types of food that fall into the above category. Those are categories of food articles immediately used for human consumption. Merely because nuts are mentioned in sub-regulation (5) that will not bring betel nut within that meaning. The intention is very clear. The intention is to classify certain types of nuts used for immediate human consumption. This is obvious from classification of dry fruits and nuts. That means the nuts must be in the nature of dry fruits.

6. It was held in Housing Board of Haryana Vs. Haryana Housing Board Employees Union and others, , thus:

"When particular words pertaining to a class of genus are followed by general words, the latter, namely, the general words are construed as limited to things of the same kind as those specified. This is known as the rule of ejusdem generis

reflecting an attempt to reconcile incompatibility between the specific and general words. It is essential for application of the ejusdem generis rule that enumerated things before the general words must constitute a category or a genus."

7. It was held in *Siddeshwari Cotton Mills (P) Ltd. Vs. Union of India (UOI) and Another*, thus:

"The expression ejusdem generis-"of the same kind or nature"-signifies a principle of construction whereby words in a Statute which are otherwise wide but are associated in the text with more limited words are, by implication, given a restricted operation and are limited to matters of the same class or genus as preceding them. If a list or string or family of genus-describing terms are followed by wider or residuary or sweeping-up words, then the verbal context and the linguistic implications of the preceding words limit the scope of such words."

8. In *Commissioners of Customs and Excise v. Savoy Hotel, Ltd.* 1966 (2) All ER 299 the issue was whether a hotel guest who ordered orange juice was served with the juice of a single orange, unsweetened, freshly pressed out to his order is liable to Purchase Tax within the description "manufactured beverages", including fruit juices. It was held that a portion of orange juice, so prepared and served, was not a "manufactured beverage" and the description "including fruit juices" was to be construed in the context of the words which preceded it.

9. In *M/s. Rohit Pulp and Paper Mills Ltd. Vs. Collector of Central Excise, Baroda*, it was held as follows:

"The principle of statutory interpretation by which a generic word receives a limited interpretation by reason of its context is well established. In the context with which we are concerned, we can legitimately draw upon the "noscitur a sociis" principle. This, expression simply means that "the meaning of a word is to be judged by the company it keeps."

10. Thus, in the light of the above, betel nuts are of heterogeneous class from dry fruits and nuts. This Court is of the view that the standards prescribed in sub-clause (5) of Regulation 2.3.47 of the FSS Regulations for fruits and nuts have no application for betel nuts which by very nature, form a different class.

11. Learned counsel for the petitioners also relied on the decision of this Court in *Al Marwa Traders Vs. Asst. Commissioner of Imports*, . Therein, this Court, while considering betel nuts under the Prevention of Food Adulteration Act, 1954 (for short, the "PFA Act") held that betel nut cannot be a dry fruit coming under the standards prescribed under PFA Act and further held that betel nuts imported cannot be subjected to the tests for the standards prescribed for dry fruits and nuts. I am also of the view that though *Al Marwa's* case (supra) was under the Prevention of Food Adulteration Act (for short, the "PFA Act") there is no difference in prescription of standards in respect of dry fruits and nuts under the

PFA Act or FSS Act. Therefore, for non-conformity of the standards prescribed for dry fruits and nuts, betel nuts imported by the petitioners cannot be detained.

12. However, question that arises is whether goods imported for which no prescription of standards are prescribed under the FSS Act can be directed to be released if it is found that goods are contaminated or unfit for human consumption or injurious to human life. In the Centre for Public Interest Litigation case (supra), the Hon''ble Supreme Court reminded authorities of the constitutional principles to safe guard the interest of citizen and protect human life. Therefore, the authorities have a duty to protect interest of citizen from the potential danger of contaminated or adulterated food articles or substances. In Smt. Nilabati Behera alias Lalita Behera Vs. State of Orissa and others, , the Hon''ble Supreme Court after referring to the International Covenant on Civil and Political Rights, 1966 held that while considering fundamental right expressly granted in the Constitution, international covenants and norms can be relied on. In Vishaka and others Vs. State of Rajasthan and Others, , the Hon''ble Supreme Court held that in the absence of domestic law occupying the field, to formulate effective measures to check the evil of sexual harassment of working women at all workplaces, the contents of international conventions and norms are significant for the purpose of interpretation of the guarantee of gender equality, right to work with human dignity and in Articles 14, 15, 19(1)(g) and 21 of the Constitution of India and further held that any international convention, not inconsistent in the fundamental rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee. The World Trade Organisation (WTO) agreement on the application of sanitary and phytosanitary measures (SPS Agreement) provides that in cases where relevant scientific evidence is insufficient, a Member State may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information. The above agreement is for providing measures to protect human animal/plant life or health. SPS Agreement provides different types of precautionary measures and clearly permits the Government to take a final decision when sufficient scientific evidence does not exist on the safety of a product. Therefore, absence of standard does not prevent Government or Food Authority from exercising their power for bona fide reasons in terms of SPS Agreement, which in the light of the judgments in Nilabati and Vishaka's cases has to be considered as a part of domestic law. The Codex Alimentarius Commission is established by the Food and Agriculture Organisation (FAO) of the United Nations and WHO, wherein India is a Member State. The Codex Alimentarius provides international food standards, guidelines and Codes of practice contribute to the safety, quality and fairness of this international food trade. The Codex Alimentarius provides standards for various food products. India, being a Member State, these standards are to be followed if there are no specific standards in FSS Act of India. Therefore, in the absence of any specific standards in FSS Act, the Food Safety and Standards Authority of India are bound to follow the standards of the

Codex Alimentarius, if any, for determining the standards. In the absence of those standards as noted above, it is open for the Government and the authority to take precautionary measures, if any of the food articles that are being imported are dangerous to human or animal or plant life or health in India in terms of the SPS Agreement.

13. The learned Standing Counsel for the Customs Shri John Varghese pointed out to para. 17 of *Al Marwa Trader's* case wherein it is held by this Court as follows:

"However, in public interest, we make it clear that although betel nuts imported by the appellants cannot be subjected to test for the standards prescribed under Item A. 29.04, certainly, the respondents can ensure that the same is not adulterated in the sense mentioned in Section 2(b), (e) and (f) so as to see that the appellants are not importing betel nuts which are not injurious to the health of the ultimate consumer, who may consume the product made of betel nuts imported by the appellants. We are told by the counsel for the appellants that the inspection under the provisions of the Plant, Fruits and Seeds (Regulation of Import into India) Order, 1989 and the Plant Quarantine (Regulation of Import into India) Order, 2003, would ensure the same. However, we leave it to the Customs Authorities to ensure, but without causing any delay in clearance of the goods on account of that, taking into account the perishable nature of the goods."

14. There is constitutional duty cast upon the Food Safety and Standards Authority as rightly pointed out by the learned counsel for the Food Safety and Standards Authority relying on the decision of the Hon^{ble} Supreme Court in the *Centre for Public Interest Litigation* case (*supra*). The State has the duty to protect human life as well, which may put to threat on account of contamination or adulteration in food substance. Therefore, in appropriate circumstances, the authorities can refuse to release goods which are imported by taking a view that these goods for reasons to be assigned will result in potential danger to human life. The authorities must form an opinion in such situation to the effect that imported goods can even, after undergoing some other processes cannot be made fit for human consumption. It is only in circumstances where the authorities are certain that even after undergoing any processes these goods cannot be made fit for human consumption, the goods can be detained or can be directed to be re-exported to the country of origin or such other country. Considering the facts and circumstances, I am of the view that since the goods have been allowed to be released by interim orders of this Court, no further reliefs are required in these writ petitions. Accordingly, all these writ petitions are disposed in the light of the above discussions. No costs.