
(2009) 12 MP CK 0046

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5638 of 2008

Hind Dairy and Food Proaducts

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 01-12-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144
Madhya Pradesh Prevention of Food Adulteration Rules, 1962 — Rule 1, 2, 3, 4
Prevention of Food Adulteration Act, 1954 — Section 10, 10(4), 10(4A), 24, 24(2)

Citation : (2010) ILR (MP) 583

Hon'ble Judges : S.K. Gangele, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.K. Gangele, J.—Petitioner has filed this petition challenging the order, Annexure P-I, dated 01.12.2008 passed by Food (Health) Authority, and. Controller, Food and Drugs Administration, Bhopal and also for a direction with regard to payment of compensation of Rupees Eight lacs. The Petitioner also challenged the proceedings initiated against him in respect of order passed by Collector u/s 144of the Code of Criminal Procedure.

2. The Petitioner has been in the business of manufacturing and sale of Ghee in the name of Gwala Shri Agmark Ghee and Shri Anmol Pure Deshi Ghee. He obtained permission from the General Manager, District Trade and Industries, Gwalior on 18.08.08 to this effect. He also obtained a certificate of Authorisation for the purpose of manufacture of Agmark Ghee by the Competent Authority, Assistant Agricultural Marketing Advisor, Directorate of Marketing & Inspection, Regional Office, Bhopal on 17.07.08 and a Certificate of Quality Control issued by Chairman/Director, Care Certification Pvt. Ltd., New Delhi, issued on 15.11.08.

3. As per the Petitioner, on 07.10.08 at around 9.30 P.M. A team consisting of Swati Meena, Assistant Collector, Mr. Raghav, Naib Tehsildar and police personnels came to the factory of the Petitioner and put a seal and lock on the

factory. Thereafter, on 08.10.08 another team consisting of Assistant Collector and Naib Tehsildar along with Dharmendra Soni and Rajesh Rai, Food Inspectors, came at the factory premises and Food Inspectors had taken samples of Gwala Shri Agmark Ghee and Shri Anmol Pure Deshi Ghee. The team also seized 250 cartoons containing 4500 liters Ghee, however, seizure receipt was not supplied to the Petitioner. On 15.11.08 some quantity of Ghee about 190 cartoons and 1000 Kg loose Ghee was destroyed by the team. As per the Petitioner, the samples taken by the Food Inspectors were sent to the Public Analyst, however, the reports have not been supplied to the Petitioner. The Petitioner submitted representation before the Authorities along with other persons, but, no action has been taken.

4. The Respondents in the return submitted that the Collector, Gwalior had received information from the informant and other persons that at the time of festival, Dhanteras and Deepawali the Petitioner and other manufacturers of Ghee had been indulging in processing of adulterated Ghee and looking to the gravity of the situation and the danger to the health of the citizens the District Magistrate, Gwalior vide order dated 15.10.2008 directed the District Administration to take appropriate measures to prevent persons from making adulterated and synthetic Ghee, Khawa and other milk products. The Collector also directed the Authorities to take samples of products and take necessary action, if it be found that the products were adulterated or they were synthetic. Thereafter, Authorised Food Inspectors along with Police force, Naib Tehsildar, Assistant Collector and officers of District Administration visited the factory of the Petitioner and it was found that the Petitioner was in process of making of adulterated synthetic Ghee, and process was being used by the Petitioner for the purpose of extraction of Ghee from milk or milk products. Consequently, the factory premises of the Petitioner was immediately sealed and the adulterated articles had been taken into possession looking to serious health hazards to the citizens. Food Inspectors had also taken samples in accordance with the provisions of the Prevention of Food Adulteration Act, 1954 and after receiving the reports from Public Analyst the products of the Petitioner were found adulterated and misbranded. The Respondents have taken similar action against other manufacturers and looking to the gravity of the situation the Appropriate Authority, Food (Health) Authority, and, Controller, Food and Drugs Administration, Bhopal vide order, Annexure P-I dated 01.12.08 suspended the sale and manufacturing of the aforesaid Ghee. By way of additional return, the Respondents further stated that the Petitioner, in spite of sealing of the premises, was in the process of manufacturing Ghee, hence the premises was again inspected on 03.10.2009 and again samples were collected by the Food Inspectors. The aforesaid samples were sent to Public Analyst, State Food Laboratory, Bhopal for analysis and in the report it was found that the Ghee was adulterated. Looking to the gravity of the situation a proceeding under the provisions of National Security Act was also initiated against the Petitioner and a detention order against Mr. Gyanesh Sharma, the Proprietor of the Petitioner -

Firm was passed under the provisions of National Security Act on 13.10.2009. The aforesaid order has also been confirmed by the State Government and Advisory Board. However, the proprietor of the Petitioner -Firm has been absconding. It is further stated that the Government of India, Ministry of Agriculture, vide order dated 09.09.2009 also canceled the licence of the Petitioner of Agmark Packing and directed the Petitioner to deposit the aforesaid licence along with other persons.

5. Learned Senior Counsel appearing on behalf of the Petitioner has submitted that the State Authorities have no power and authority to ban the business of the Petitioner. The State authorities have no power to seal the factory premises of the Petitioner and destroy the seized property. It has further been contended by the learned Senior Counsel that as per the report of the Public Analyst in one case the product of the Petitioner has been found misbranded and in another case it has been found adulterated. He further submitted that the Petitioner also sent the seized articles through Court for analysis to the Laboratory of Central Government and in this report the product has been found only misbranded. Hence, the impugned order is illegal without jurisdiction and power and further proceedings conducted by the State Authorities including destruction of product of the Petitioner is also arbitrary and illegal. In support of his contentions learned Counsel relied on the following judgments:

- (1) Calcutta Municipal Corporation Vs. Pawan Kumar Saraf and Another, ;
- (2) Godawat Pan Masala Products I.P. Ltd. and Another Vs. Union of India (UOI) and Others, ,
- (3) K.P. Sugandh Limited and Etc. Vs. State of Chhattisgarh and Others,
- (4) S. Narendra Kumar & Co. v. State of Sikkim and Anr. 2006(1) EFR 73;
- (5) Jiwan Kumar Vs. State of Punjab and Others, .

6. Contrary to this, the learned Deputy Advocate General contended that looking to the gravity of the situation and the facts that the Petitioner was manufacturing a synthetic Ghee without using any product of milk or milk, hence the district administration has taken a temporary measure and for time being the production of the product of the Petitioner has been stopped because on inspection, it was found that the Petitioner was manufacturing synthetic Ghee by using vegetable oils and other chemicals which is injuries to the health of the citizens. Learned Deputy Advocate General further submitted that only for temporary period the product of the Petitioner has been suspended and for that purpose the State Authorities have power to pass the orders. It has further been contended by the learned Deputy Advocate General that the Authority has not baned the Ghee as contended by the Petitioner, however, the authority has taken only an action to stop manufacture of synthetic Ghee, which was being manufactured by the Petitioner. Learned Counsel also submitted that looking to the nature of the gravity the State Government has canceled the licence of the Petitioner and the

Central Government has also canceled the licence of Agmark of the Petitioner and the order of detention of the Proprietor, Mr. Gyanesh Sharma under the National Security Act has been passed. In such circumstances, petition of the Petitioner is not maintainable.

7. With regard to power of the State Government to take action against the Petitioner, it is an admitted fact that the Petitioner is in the business of manufacturing of Ghee and as per the Respondents the factory of the Petitioner was inspected by the State Authorities including Food Inspectors who were authorised to do so under the provisions of the Prevention of Food Adulteration Act, 1954 and it was found that the Petitioner was manufacturing adulterated, synthetic. Ghee. The Petitioner was manufacturing the synthetic/adulterated Ghee by mixing some ingredients of different vegetable oils and chemicals. This fact is clear from para 9 of the additional return filed by the State and report of Public Analyst, State Laboratory, Bhopal. In the report the value of R.M. Of Ghee was found 14.45 while minimum required R.M. Value of Ghee is 26. It means that sample contained vegetable oils. Because, there was eminent danger to the health and hygiene of the citizens, hence the Authorities sealed the factory and also seized the product. Even looking to the eminent danger to health of the citizens a proceeding under the provisions of the National Security Act has been taken against the proprietor of the Petitioner - Firm, Mr. Gyanesh Sharma and order of detention under the National Security Act has been passed, which is also affirmed by the State Government and State Advisory Board. The State Government and also the Central Government canceled the licences of the Petitioner - Firm.

8. Hon'ble the Supreme Court in Godawat Pan Masala Products I.P. Ltd. and Another Vs. Union of India (UOI) and Others, , has considered the provisions of the Prevention of Food Adulteration Act, 1954, as under,:

14. In order to appreciate the contentions of the learned Counsel, it will be necessary to briefly notice the relevant provisions of the Act. As the preamble of the Act indicates, "it is an Act to make provision for the prevention of adulteration of food". Section 2(i-a) defines what is "adulterated food". Broadly speaking, the definition covers situations where a food article is substandard, or contains injurious ingredients or has become injurious to health by reason of packing or keeping under unsanitary conditions or having become contaminated or is otherwise not fit for consumption. The definition also extends to cases of articles which fall below the prescribed standards of purity or quality. The Act also deals with misbranding of food articles, which is not of concern to us for the present. For the purpose of administration of the Act, any urban or rural area may be declared by the Central Government or the State Government by a notification to be ;a local area" for the purpose of the Act. In relation to such local area, an officer is appointed by the Central Government or the State Government by notification in the Official Gazette to be in charge of the Health Administration in such area with such designation as specified therein and such

officer is defined to be ;a "Local (Health) Authority" by Section 2(Viii-a). Section 2(vi) defines "Food (Health) Authority" as the Director of Medical and Health services or the Chief Officer in charge of Health Administration in a State, by whatever designation he is known, and includes any officer empowered by the Central Government or the State Government, by notification in the Official Gazette, to exercise the powers and perform the duties of the Food (Health) Authority under the Act with respect to such local area as may be specified in the notification. Section 7, upon which most of the arguments turn, needs to be noticed. Section 7 reads as under:

7. Prohibition of manufacture, sale, etc. of certain articles of food .-No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute -

- (i) any adulterated food;
- (ii) any misbranded food;
- (iii) any article of food for the sale of which a licence is prescribed, except in accordance with the conditions of the licence;
- (iv) any article of food the sale of which is for the time being prohibited by the food (Health) Authority in the interest of public health;
- (v) any article of food in contravention of any other provision of this Act or of any rule made thereunder; or
- (vi) any adulterant.

Explanation .- For the purposes of this section, a; person shall be deemed to store any adulterated food or misbranded food or any article of food referred to in Clause (iii) or Clause (iv) or Clause (v) if he stores such food for the manufacture therefrom of any article of food for sale.

Section 22-A empowers the Central Government to give such directions as it may deem necessary to a State Government regarding the implementation of the Act. Section 23 empowers the Central Government to make rules to carry out the provisions of the Act. In particular, and without prejudice to the generality of the rule-making power, the power of the Central Government includes the one in Clause (f). Section 24 of the Act is the section which grants rule-making power to the State Government. The State Government may, after consultation with the Committee, and subject to the condition of previous publication, thereunder make rules for the purpose of giving effect to the provisions of the Act in matters not falling within the purview of Section 23. Sub-section (2) of Section 24 grants power to the State Government to make rules with regard to the powers and duties of the different authorities under the Act. Prescription of forms of licences for the manufacture for sale, storage, sale and distribution of articles of food, the conditions subject to which such licences may be issued and the fees payable therefor, analysis of any article of food or matter and provision for further

delegation of power by the State Government to the Food (Health) Authority or the subordinate authorities are the matters covered within this delegated power.

9. The State Government in exercise of powers conferred by Section 24 of the Act of 1954 after consultation with the Central Government has framed rules, named as the "Madhya Pradesh Prevention of Food Adulteration Rules, 1962", hereinafter referred to as the "Rules of 1962". Rule 3 and 4 of the aforesaid Rules of 1962, which is as under, prescribes the power and duties of the Health Authority:

Rule 3. Food (Health) Authority and its powers and duties .- (1) the Director of Health Services, Madhya Pradesh (being the Chief Officer in charge of health administration in the State of Madhya Pradesh) shall be the Food (Health) Authority (hereinafter referred to as the "authority")

(2) The authority shall be responsible- for the general superintendence of the administration and enforcement of the Act.

(3) The authority shall for giving effect to the provisions of the Act, have control over the Public Health Laboratories maintained by the State Government and local authorities and the public analysts and Food Inspectors appointed under the Act.

(4) The authority may give to a local authority all such directions as it may consider necessary in regard to any matter connected with the enforcement of the Act and the rules made thereunder and the local authority shall comply with such directions.

(5) The authority, whenever called upon to do so, shall advise the State Government or the local authority, as the case may be, in matters relating to the administration and enforcement of the Act.

Rule 4. Powers and duties of local authority .- (1) Subject to the provisions of Rule 3, the local authority shall be responsible for the proper day-to-day administration and enforcement of the Act within its jurisdiction.

(2) The local authority shall appoint a health officer, or health officers for the purpose of the Act, having jurisdiction over the whole or part of its area as it may specify.

(3) The local authority may appoint persons in such number as it thinks fit, having qualifications prescribed under the central Rules, to be Food Inspectors for the purposes of the Act, they shall exercise powers within such local area as it may assign to them with the approval of the authority.

(4) The local authority shall appoint such officers, as it thinks fit to be licensing authorities within jurisdiction for the purposes of Clause (b) of Sub-section (2) of Section 24 of the Act.

10. Rule 4 of the Rules of 1962 prescribes powers and duties of local authorities

and Rule 5 prescribes procedure of issuance of licence. From the aforesaid provisions of the Rules 1, 2 and 4, it is clear that no person can sale any adulterated food, misbranded food and any article of food which for time being prohibited by the Food Authority in the interest of public. In the present case, the State Authority has not banned manufacture of Ghee, it has only prohibited production of Ghee of the Petitioner - Firm which was found misbranded and adulterated by the Public Analyst in his report. Actually, the Petitioner was in the process of manufacturing adulterated synthetic Ghee which is highly injurious to health. The State Government and State Authorities have been given power to issue licences for the purpose of manufacture of food items, in the present case-Ghee, and admittedly, the Petitioner was manufacturing the aforesaid Ghee under the licence of the Authority prescribed under the Rules. Section 10 of the Act of 1954 gives power to the Food Inspectors to take samples of any article of food and for that purpose the Food Inspector has also been given power to enter any place where the article is being manufactured. The Local Health Authority u/s 10(4-A) has also power to destroy the seized article if it is perishable in nature and if it is satisfied that the food article is unfit for human consumption.

11. From the facts of the case, it is clear that the State Authority i.e. Food (Health) Authority, and. Controller, Food and Drugs Administration, Bhopal has not banned any food article from production. However, in the present case, it has suspended production of Ghee from factory of the Petitioner, which was found to be adulterated/misbranded one and in the report of the Public Analyst with regard to Shri Anmol Pure Deshi Ghee it was found adulterated and misbranded and in the case of Gwala Shri Agmark Ghee it was found misbranded. It is also a fact that in spite of seizure the Petitioner's factory again it had been manufacturing adulterated Ghee. Hence, the premises of the Petitioner's factory was again inspected and again samples were taken on 03.10.2009 and they were sent to the Laboratory and both the samples were found adulterated. Copy of the report of Public Analyst has been filed along with the additional return as Annexure P-2.

12. Hon'ble the Supreme Court in the *Godawat Pan Masala Products I.P. Ltd. and Anr. v. Union of India and Ors.* (supra) has held as under with regard to interpretation of the provisions of Act of 1954 as under:

29. It is an accepted canon of construction of statutes that a statute must be read as a whole and one provision of the Act should be construed with reference to other provisions of the same Act so as to make a consistent, harmonious enactment of the whole statute. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed, but to the scheme of the entire statute. The attempt must be to eliminate conflict and to harmonise the different parts of the statute for it cannot be assumed that Parliament had given by one hand what it took away by the other. (See in this connection *Commissioner of Income Tax Vs. Hindustan Bulk Carriers*, at paras 18.20, and *CIT v. National Taj Traders* (1980) 1 SCC 370.) This Court in *O.P. Singla and Another Vs. Union of India (UOI) and Others*, (vide SCC p. 461, para

17) said:

However, it is well recognised that, when a rule or a section is a part of an integral scheme, it should not be considered or construed in isolation. One must have regard to the scheme of the fasciculus of the relevant rules or sections in order to determine the true meaning of any one or more of them. An isolated consideration of a provision leads to the risk of some other interrelated provision becoming otiose or devoid of meaning.

13. The Hon''ble Supreme Court further in *Dineshchandra Jamnadas Gandhi Vs. State of Gujarat and Another*, , has held as under, with regard to object and purpose of the Prevention of Food Adulteration Act, 1954:

16. The object and the purpose of the Act are to eliminate the danger to human life from the sale of unwholesome articles of food." The legislation is on the topic "Adulteration of Food Stuffs and Other Goods" (Entry 18 List III Seventh Schedule). It is enacted to curb the widespread evil of "food adulteration and is a legislative measure for social defence. It is intended to suppress a social and economic mischief- an evil which attempts to poison, for monetary gains, the very sources of sustenance of life and the well-being of the community. The evil of adulteration of food and its effects on the health of the community are assuming alarming proportions. The offence of adulteration is a socio-economic offence. In *Municipal Corporation of Delhi v. Kacheroo Mal* (1976) I SCC 412, Sarkaria, J. said:

The Act has been enacted to curb and remedy the widespread evil of food adulteration, and to ensure the sale of wholesome" food to the people. It is well settled that wherever possible, without unreasonable stretching or straining, the language of such a statute should be construed in a manner which would suppress the mischief, advance the remedy, promote its object, prevent its subtle evasion and foil its artful circumnuon.

14. From the aforesaid principle of law laid down by Hon''ble the Supreme Court and the provisions of the Act of 1954 and the Rules of 1962 framed by the State Government, in my opinion, the State Authority i.e. Food (Health) Authority, and, Controller, Food and Drugs Administration, Bhopal, has power to suspend the production and manufacture of articles of food if on inspection after a report of Public Analyst, it has been found that the aforesaid article of food is adulterated or misbranded. In the present case, after inspection by the District Authorities, it was found that the Petitioner was making synthetic/adulterated Ghee, which is contrary to natural Ghee or no pure Ghee and also it was found as per report of the Public Analyst that the food articles (Ghee) seized from the Petitioner's factory was adulterated, consequently the Authorities of the State Government and Central Government have canceled the licence of the Petitioner including Agmark authorisation and also issued order of detention of the proprietor of the Petitioner - firm under the National Security Act. In such circumstances, the action of the authorities could not be said to be without any power or authority.

15. The learned Senior Counsel strongly placed reliance on Godawat Pan Masala Products I.P. Ltd. and Anr. v. Union of India and Ors. (supra). However, in this case Hon"ble the Supreme Court considered power of State Authority to impose complete ban on manufacture or sale of Pan Masala which is not the present case.

16. The next point raised by the learned Senior Counsel appearing for the Petitioner that the Authorities of the District Administration have no power to seize and destroy the Ghee of the Petitioner. As mentioned earlier in this order, as per Section 10(4) and (4-A) of the Act of 1954, if any article seized is found adulterated and local Authorities have satisfied that it is unfit for human consumption, the Authorities could destroy the adulterated food article. The section is as under:

10. Powers of Food Inspectors.-

(4) If any article intended for food appears to any Food Inspector to be adulterated or misbranded, he may seize and carry away or keep in the safe custody of the vendor such article in order that it may be dealt with as hereinafter provided, and he shall, in either case, take a sample of such article and submit the same for analysis to a public analyst:

Provided that where the Food Inspector keeps such article in the safe custody of the vendor he may require the vendor to execute a bond for a sum of money equal to the value of such article with one or more securities as the Food Inspector deems fit and the vendor shall execute the bond accordingly.

(4A) Where any article of food seized under Sub-section (4) is of a perishable nature and the local (Health) Authority is satisfied that such article of food is so deteriorated that it is unfit for human consumption, the said Authority may, after giving notice in writing to the vendor, cause the same to be destroyed.

17. In the present case, as per the return, seized Ghee was adulterated, hence, in my opinion, the State Authorities had power to seize and destroy the Ghee, if it is found adulterated and unfit for consumption looking to the danger to public health.

18. After going through the various contentions of the counsel, and terms and conditions of the licence and the facts of the case, this Court has gathered an impression that at large scale process of manufacturing of adulterated Ghee was being carried out by the Petitioner and other persons. In such circumstances, the State Authorities have taken an extra-ordinary measure looking danger to the public health. The adulterated food is a slow poison and process of manufacture of adulterated food is a serious offence against the humanity and it has to be dealt with effectively. It affects the subsistence of health of well being of the community and it has reached now a days at alarming situation. It is a crime against humanity. It has come to the notice-of the Court that the State Government has not appointed the required number of Food Inspectors to check adulteration for long time. Even in some areas only one Food Inspector has been

posted for two or three districts. This situation is quite alarming and it is necessary for the State Government to take effective measures in this regard.

19. Consequently, I do not find any merit in this petition. It is hereby dismissed. No order as to cost.