
(2014) 08 JH CK 0073

In the Jharkhand High Court

Case No : Writ Petition (Civil) No. 2988 of 2014

Jaideo Ray

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 29-08-2014

Acts Referred:

Food Safety and Standards Act, 2006 — Section 23, 3(1)(zf), 3(1)(zg), 36, 37

Citation : (2014) 08 JH CK 0073

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : S.L. Agarwal, Advocate for the Appellant; Rajesh Kumar, G.P.V, Advocate for the Respondent

Judgement

S. Chandrashekhar, J.—Aggrieved by issuance of notice dated 12.02.2014 in Food Safety and Standards Act Case No. 61/2013-14 and seeking quashing of the report No. 1567/FSSA/2013 dated 26.11.2013 of the Food Analyst in Form-B on the ground of its being without jurisdiction and void ab initio, the petitioner has approached this Court by filing the writ petition. The challenge to the report dated 26.11.2013 is on the ground that the appointment of the Food Analyst is in teeth of mandatory provisions of the Food Safety and Standards Act, 2006. A prayer for quashing the appointment of Food Safety Officers vide notification dated 25.01.2012 has also been made in the writ petition.

2. The brief facts of the case are that, on 21.11.2013 samples of Everest Chat Masala and Vegetable Fresh Sweet Corn Kernel were taken by the Food Safety Officer, Ranchi after giving notice to the petitioner, for the purpose of analysis. The samples were analysed by the Public Analyst, Ranchi and a report dated 26.11.2013 was given holding that the sample of Vegetable Fresh Sweet Corn Kernel is misbranded in view of Section 3(1)(zf) read with Section 23 of the Food Safety and Standards Act, 2006 and for non-compliance of Regulation 2.2.2.10 of the FS & S (Packaging and Labelling) Regulation, 2011. The result of the analysis of the samples taken from the petitioner was communicated to the

petitioner by BSF-cum-DO-cum-ACMO-1, Ranchi vide memo dated 21.12.2013. Consequently, a complaint under the Food Safety and Standards Act, 2006 was filed in the Court of Adjudicating Officer-cum-Deputy Commissioner, Ranchi and thereafter, the proceeding being Food Safety and Standards Act Case No. 61/2013-14 was initiated and a show-cause notice dated 12.02.2014 was issued directing the petitioner to appear on 27.03.2014. The notice dated 12.02.2014 has been challenged as illegal, arbitrary, void ab initio and without jurisdiction on the ground that neither the Food Safety Officer nor the Public Analyst nor the Designated Officer was duly appointed as required under Sections 36, 37 and 45 of the Food Safety and Standards Act, 2006.

3. A counter-affidavit on behalf of the DO-cum-ACMO, Ranchi, the respondent No. 5 has been filed stating that vide notification dated 25.01.2012 published in the official gazette, the respondent No. 5 was appointed as Food Safety officer, Jharkhand. By the same notification, the Principal Secretary, Department of Health, Medical Education and Family Welfare, Government of Jharkhand has been designated as Commissioner of Food Safety and thus, there is no illegality in appointment of respondent No. 5 as Food Safety Officer by the respondent No. 2. Similarly, the appointment of Food Analyst, Jharkhand has also been notified in the official gazette under Section 45 of the Food Safety and Standards Act, 2006. It is stated that vide order dated 12.02.2014, the petitioner was directed to appear before the Adjudicating Officer, Ranchi however, he did not appear before the Adjudicating officer and filed the writ petition which is not maintainable.

4. Heard the learned counsel appearing for the parties.

5. Challenging the appointment of the Food Analyst, the learned counsel for the petitioner has submitted that the Food Safety and Standards Act, 2006 provides a particular mode for appointment of Public Analyst and since such prescribed mode has not been followed, the appointment so made would be vitiated. The learned counsel refers to provision under Section 3(1)(zg) and Section 45 of the Food Safety and Standards Act, 2006. The learned counsel for the petitioner has submitted that the notification with respect to appointment of the Food Analyst has to be published in official gazette and in this case admittedly it was published only on 18.07.2014 therefore, the Food Analyst who has examined the samples taken from the shop of petitioner was not competent to give a report. The learned counsel for the petitioner has relied on a decision of the Hon'ble Supreme Court in I.T.C. Bhadrachalam Paperboards and Another Vs. Mandal Revenue Officer, A.P. and Others, . The learned counsel for the petitioner has further submitted that this writ petition was filed on 25.06.2014 whereas, the Food Analyst has been appointed vide gazette notification dated 18.07.2014 and therefore, the appointment so made would not validate his report as at the time when the alleged offence was committed his appointment was non-est.

6. A challenge to the appointment of Food Safety Officer has been made with reference to Section 37 of the Food Safety and Standards Act, 2006. It is

contended that the appointment in the present case has been made by the State Government vide notification dated 25.01.2012 whereas, in terms of Section 37 of the Food Safety and Standards Act, 2006 only the Commissioner of Food Safety can make appointment of Food Safety Officer and thus, the Complainant was not validly appointed and he was not authorised to lodge prosecution against the petitioner. The learned counsel for the petitioner has relied on a decision of the Hon'ble Supreme Court in A.K. Roy and Another Vs. State of Punjab and Others, .

7. Mr. Rajesh Kumar, the learned counsel appearing for the respondent-State of Jharkhand has referred to Section 37 of the Food Safety and Standards Act, 2006 and submitted that Sub-Section 2 to Section 37 authorises the State Government to make appointment of Food Safety Officer. Drawing attention of the Court to gazette notification dated 25.01.2012, it is submitted that by the said notification the Principal Secretary, Health, Medical Education and Family Welfare, Government of Jharkhand has been made Commissioner of Food Safety also and in the said notification itself it is provided that the Public Analyst would continue to work as Food Analyst. The Act of 2006 has replaced the earlier Act namely, Prevention of Food Adulteration Act, 1954, and as an ad hoc arrangement, for functioning as the officers under the new Act, the officers who were already posted as Public Analyst or Food Inspector were directed to continue.

8. I have carefully considered the submissions of the learned counsel appearing for the parties and perused the documents on record.

9. The relevant provisions of the Food Safety and Standards Act, 2006 are extracted below:

Section 3(1)(zg) "notification" means a notification published in the Official Gazette;

36. Designated Officer.--(1) The Commissioner of Food Safety shall, by order, appoint the Designated Officer, who shall not be below the rank of a Sub-Divisional Officer, to be in-charge of food safety administration in such area as may be specified by regulations.

(2) There shall be a Designated Officer for each district.

(3) The functions to be performed by the Designated Officer shall be as follows, namely:--

(a) to issue or cancel licence of food business operators;

(b) to prohibit the sale of any article of food which is in contravention of the provisions of this Act and rules and regulations made thereunder;

(c) to receive report and samples of article of foods from Food Safety Officer under his jurisdiction and get them analysed;

(d) to make recommendations to the Commissioner of Food Safety for sanction

to launch prosecutions in case of contraventions punishable with imprisonment;

(e) to sanction or launch prosecutions in cases of contraventions punishable with fine;

(f) to maintain record of all inspections made by Food Safety Officers and action taken by them in performance of their duties;

(g) to get investigated any complaint which may be made in writing in respect of any contravention of the provisions of this Act and the rules and regulations made thereunder;

(h) to investigate any complaint which may be made in writing against the Food Safety Officer; and

(i) to perform such other duties as may be entrusted by the Commissioner of Food Safety.

37. Food Safety Officer.--(1) The Commissioner of Food Safety shall, by notification, appoint such persons as he thinks fit, having the qualifications prescribed by the Central Government, as Food Safety Officers for such local areas as he may assign to them for the purpose of performing functions under this Act and the rules and regulations made thereunder.

(2) The State Government may authorise any officer of the State Government having the qualifications prescribed under sub-section (1) to perform the functions of a Food Safety Officer within a specified jurisdiction.

45. Food Analysts.--The Commissioner of Food Safety may, by notification, appoint such persons as he thinks fit, having the qualifications prescribed by the Central Government, to be Food Analysts for such local areas as may be assigned to them by the Commissioner of Food Safety;

Provided that no person, who has any financial interest in the manufacture or sale of any article of food shall be appointed to be a Food Analyst under this section:

Provided further that different Food Analysts may be appointed for different articles of food.

10. The petitioner has challenged notice dated 12.02.2014 mainly on the ground that the appointment of Food Safety Officer as well as the Food Analyst are not in accordance with the provisions of the Food Safety and Standards Act, 2006. The learned counsel for the petitioner submitted that the appointment of Food Analyst was published vide gazette notification published on 18.07.2014 and since earlier notification dated 28.09.2012 was not published in official gazette, the appointment of Food Analyst was not valid. It is well settled that even in absence of notification in the official gazette an appointment can validly be made. The only requirement in law is to ascertain whether there was a clear intention on the part of the authorities to enact the law or not. In Vimal Kumari

Vs. The State of Haryana and Others, , the Hon''ble Supreme Court has held that if the Draft Rules are intended to be notified in the near future, it can be followed in the interregnum to meet emergent situations.

11. Before commencement of the Food Safety and Standards Act, 2006, the food analysis report was prepared by the Public Analyst. On 25.01.2012 Government of Jharkhand issued notification notifying that the Public Analyst shall be the Food Analyst from the date of notification. Vide notification dated 28.09.2012 one Jitendra Kumar Singh was appointed Food Analyst. The said appointment has been published in official gazette on 18.07.2014. The subsequent gazette notification is in continuation to the earlier notifications dated 25.01.2012 and 28.09.2012. The appointment of Food Analyst and the report prepared by him cannot be said to be invalid because the notification was published subsequently in the official gazette.

12. In High Court of Gujarat and Another Vs. Gujarat Kishan Mazdoor Panchayat and Others, , the eligibility for appointment to the post of "President of Industrial Court" was in issue. It was held by the Hon''ble Supreme Court that a Joint District Judge completing ten years" service in judiciary including the period of practice at Bar was eligible for the said post under Rules 2 and 3 of the Draft Recruitment Rules framed by the High Court though, it was pending approval by the Government. It was held that, "rules even in their draft stage can be acted upon provided there is a clear intention on the part of the Government to enforce those rules in the near future.

13. In Chandigarh Administration through the Director Public Instructions (Colleges), Chandigarh Vs. Usha Kheterpal Waie and Others, , the post of Principal was advertised in terms of Draft Rules prescribing eligibility conditions. It was held that the Draft Rules framed by the UT Administration though was pending notification by the Central Government, service conditions of employees can be regulated in terms of Draft Rules provided there is clear intention to enforce those rules in near future.

14. In support of his contention that when the Act provides publication in official gazette, such requirement is mandatory, the learned counsel for the petitioner has relied in I.T.C. Bhadrachalam Paperboards and Another Vs. Mandal Revenue Officer, A.P. and Others, . I find that in the said case Section 11(A) of the A.P. Non-Agricultural Lands Assessment Act, 1963 was considered by the Hon''ble Supreme Court and it was held that when the other requirements of Section 11(A) has been held to be mandatory, the requirement with respect to mode of publication also cannot be said to be directory. The other judgments relied upon by the counsel for the petitioner are also not relevant.

15. The learned counsel for the petitioner contended that the State Government is not authorised to make appointment on the post of Food Safety Officer and Designated Officer because, the Act specifically provides the authority who can make appointment of Designated Officer and Food Safety Officer. A perusal of

notification dated 25.01.2012 clearly indicates that by the said notification the persons earlier working as Food Inspectors were designated as Food Safety Officer. The notification dated 25.01.2012 has been issued by the Principal Secretary, Health, Medical Education and Family Welfare Department, Government of Jharkhand and by the same notification the Principal Secretary, Health, Medical Education and Family Welfare Department has been designated as Commissioner of Food Safety. The contention of the counsel appearing for the petitioner that the appointment made vide notification dated 25.01.2012 cannot be sanctioned in law because the said notification has been issued by the order of the Governor and thus the appointment has been made by the State Government, does not merit acceptance. Section 37(2) of the Act specifically provides that the State Government can make appointment of Food Safety Officers. The Commissioner of the Food Safety works under the State Government and he is not a superior authority to the State Government. The qualification for appointment on the post of Food Safety Officer and Designated Officer has to be provided by the Central Government. It is well settled that if a power has been delegated to an authority, the power exercised by the delegatee can also be exercised by the authority which has delegated the power. In *Godawari S. Parulekar and Others Vs. State of Maharashtra*, , the appellant was detained by the order passed by the State Government under Rule 30 of the Defence of India Rules. It was contended by the appellant that the State Government had earlier issued a notification delegating its power under Rule 30 to the District Magistrate and therefore, the State Government was not competent to make the order of detention in question. The Hon"ble Supreme Court held that by issuing the notification in question, the State Government had not denuded itself by the power to act under Rule 30.

16. In the present case, it is seen that vide notice dated 12.02.2014, the petitioner was directed to appear in the case pending in the court of Deputy Commissioner-cum-Adjudicating Officer, Ranchi. A notice to appear in the court in a pending proceeding cannot be said to infringe the statutory or constitutional right of the petitioner. The objection which the petitioner has taken in the present proceeding can very well be urged in the pending proceeding in the Court of Deputy Commissioner-cum-Adjudicating Officer, Ranchi.

17. In *Union of India (UOI) and Another Vs. Kunisetty Satyanarayana*, , the Hon"ble Supreme Court has observed that, "a mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by the person having no jurisdiction to do so. It is well settled that a writ petition lies when some right of any person is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone."

18. In the result, the writ petition is dismissed.