

(1998) 11 PAT CK 0064
In the Patna High Court
Case No : C.W.J.C. No. 6732 of 1998

J.L. Morison (India) Ltd. and Another	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 25-11-1998

Acts Referred:

Constitution of India, 1950 — Article 226
Infant Milk Substitutes, Feeding Bottles and Infant foods (Regulation of Production, Supply and Distribution) Act, 1992 — Section 11, 12, 14, 15, 16
Prevention of Food Adulteration Act, 1954 — Section 2, 6, 9

Citation : (1999) 1 BLJR 345

Hon'ble Judges : N. Pandey, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N. Pandey, J.—In this petition under Article 226 of the Constitution of India, the petitioners have questioned the validity of seizure conducted by the Food Inspector, Patna (respondent No. 2) in exercise of his power conferred u/s 12 of the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 (hereinafter referred to as the Infant Act). A prayer has also been made for release of the feeding bottles along with other components seized by the Food Inspector on 10.9.1997 vide Annexures 2, 3 and 4.

2. The petitioner No. 1 is a registered company engaged in manufacture, distribution and marketing of baby feeding plastic bottles in the name and style of "Morrison Plastic Feeding Bottle, which is a container with nipple for feeding newly born babies. As would appear from the facts on record, on 10.9.1997, the Food Inspector (respondent No. 4) visited the premises of the petitioners and found that the company was marketing/distributing feeding bottles without having standard mark on the bottles specified by the Bureau of Indian Standards, as required under Sub-section (1) of Section 11 of the Infant Act. He accordingly seized the bottles and nipples and sent samples to the Food and

Drug Laboratory, Government of Bihar, for testing and also instituted Criminal Prosecution.

3. Mr. Verma, contended that the Food Inspector had no jurisdiction to conduct the raid and seizure of the premises since the produce in question has not yet been defined as "food" u/s 2(v) of the Prevention of Food Adulteration Act, 1954. He next contended that even otherwise also unless and until any standard mark is prescribed by the Bureau of Indian Standard as required under Sub-section (1) of Section 11 of the Act, no violation of Sub-section (2) can be alleged. But in spite of all such requirements, the Food Inspector in a quite arbitrary and mala fide manner, seized the properties and initiated the Criminal Proceeding.

4. Mr. Choudhary, appearing for the State on the other hand, contended that petitioners having suppressed material facts before this Court regarding initiation of the Criminal Proceeding etc. are not entitled to any relief in this case. He next contended even coming to the merit of the case, a bare reference to Section 12 of the Infant Act would indicate that the Food Inspector appointed under the provisions of Prevention of Food Adulteration Act has got full competence to conduct raid and seizure in case of any contravention of the provisions of Sections 6 and 11 of the Infant Act. He further urged that yet there is another fallacy in the submission of Mr. Verma that unless and until feeding bottles with nipples are declared as "food" u/s 2(v) of the Prevention of Food Adulteration Act. the Food Inspector will have no jurisdiction to conduct seizure of such commodities. Because, Feeding Bottles" or "Infant Food" or "Infant Substitute" have already been defined u/s 2 (e), (f) and (g) of the Infant Act.

5. In my view, submission of Mr. Choudhary appears sound and well founded. Because admittedly, petitioners are engaged in manufacture/distribution and marketing of feeding bottles with nipples. It has to be noticed that the Parliament keeping in mind the past experience regarding improper use and supply of infant milk substitute, feeding accessories and infant foods, thought it necessary to regulate the marketing of such products by providing a regulation for production, supply and distribution. Hence, by Act No. 41 of 1992, it introduced Infant Act" in question. Sub-section (c) of Section 2 of this Act defines "feeding bottle" whereas Sub-section (f) defines "infant food" and (g) infant milk substitute". Section 6 provides that without prejudice to the provisions of the Prevention of Food Adulteration Act, 1954, and the rules, no person shall produce, supply, or distribute infant milk substitute or infant food unless every container thereof or labels affixed thereto indicate in clear, conspicuous and in an easily readable and understandable language the "important notice" as to the warnings and other requirements, as required under the said provision.

6. It has to be noticed that Section 11 prescribes that no person shall sell, or otherwise distribute any infant "milk substitute" or infant food¹ unless it conforms to the standard specified for such substitute or food under the Prevention of Food Adulteration Act and the container thereof has the relevant standard mark specified by the Bureau of Indian Standards. Section 12 of the Act

confers jurisdiction on the Food Inspector to conduct raid or seize a business premises or factory in case he has reason to believe that any provision of Sections 6 or 11 has been or is being contravened. Likewise, the provisions of confiscation, adjudication of the dispute and imposition of penalty etc. have also been prescribed under Sections 14 to 20 of the Act whereas Section 21 is a provision to take cognizance of the offence punishable under this Act.

7. The brief analysis of the facts noticed above would indicate that in case a Food Inspector appointed u/s 9 of the Prevention of Food Adulteration Act has reason to believe that any provision of Sections 6 or 11 has been or is being contravened, he shall search the premises of any factory, building or business premises and after observing necessary formalities of seizure, etc. can also lodge a Criminal Prosecution.

8. In the instant case as would appear from the seizure and facts averred in the counter affidavit, that at the time of search and seizure of the premises none of the bottles with nipples contained any standard mark as required under Sub-section (1) of Section 11 of the Act. Therefore, in my view, the Food Inspector having found that petitioners had contravened the mandatory requirement of Section 11 of the Infant Act, had no option but to seize such commodity as required u/s 12 of the Act.

9. Therefore, keeping in mind the facts stated above, I find no merit in this case, hence both these writ petition as well as I.A. are dismissed.