
(2015) 02 MP CK 0118
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1179/2015

Kamtanath Oils Pvt. Ltd.

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 26-02-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Food Safety And Standards Act, 2006 — Section 3, 3(1)(n), 3(1)(o), 3(1)(q), 3(w)

Citation : (2015) 02 MP CK 0118

Hon'ble Judges : Rohit Arya, J.

Bench : Single Bench

Advocate : Sanjay Bahirani, for the Appellant; Bhagwan Raj Pandey, Government Advocate, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rohit Arya, J.—By this writ petition under Article 226 of the Constitution of India petitioner seeks to challenge Annexure P/1 dated 4/2/2015 and Annexure P/2 dated 31/12/2014, as according to the petitioner by issuance of the aforesaid communications petitioner's goodwill is lost, with further direction to respondents to provide documents which have been placed reliance while issuing show-cause notice.

2. Union legislature has enacted the Food Safety and Standards Act, 2006 (hereinafter referred to as "the Act of 2006") with the ascent of President of India dated 23/8/2006 and published in the Gazette of Union of India dated 24/8/2006. The aforesaid enactment incorporates salient provisions of the Prevention of Food Adulteration Act, 1954 and is based on international legislations, instrumentalities and Codex Alimentaries Commission (which related to food safety norms). Important features of the Bill inter alia are; single reference point for all matters relating to Food Safety and Standards, regulations and enforcement; shift from mere regulatory regime to self-compliance through Food Safety management Systems; responsibility on food business operators to

ensure that food processed, manufactured, imported or distributed is in compliance with the domestic food laws; and provision for graded penalties depending on the gravity of offence.

3. Therefore, the aforesaid Act of 2006 is contemporary, comprehensive and intends to ensure better consumer safety through Food Safety Management Systems and setting standards based on science and transparency as also to meet the dynamic requirements of Indian Food Trade and Industry and International trade.

4. Section 3 of the Act of 2006 contains dictionary clause and inter alia Section 3(1)(n) defines "Food Business", which reads as under:-

"(n) "Food business" means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution of food, import and includes food services, catering services, sale of food or food ingredients; "

5. Section 3(1)(o) defines "food business operator" as under:-

"(o) "food business operator" in relation to food business means a person by whom the business is carried on or owned and is responsible for ensuring the compliance of this Act, rules and regulations made thereunder; "

6. Section 3(1)(q) defines "food safety" as under:-

"(q) "food safety" means assurance that food is acceptable for human consumption according to its intended use; "

7. Section 3(w) defines "improvement notice" as under:-

"(w) "improvement notice" means a notice issued under section 32 of this Act;"

8. Section 32 provides that if the Designated Officer has reasonable ground for believing that any food business operator has failed to comply with any regulation to which this Section applies, he may, by a notice served on that food business operator known as improvement notice state the grounds for believing that the food business operator has failed to comply with the regulation. Section 32(1)(a), (b) (c) and (d) read as under:-

"32. Improvement notices.

(1) If the Designated Officer has reasonable ground for believing that any food business operator has failed to comply with any regulations to which this section applies, he may, by a notice served on that food business operator (in this Act referred to as an "improvement notice")-

(a) state the grounds for believing that the food business operator has failed to comply with the regulations;

(b) specify the matters which constitute the food business operator's failure so to comply;

(c) specify the measures which, in the opinion of the said Authority, the food

business operator must take, in order to secure compliance; and

(d) require the food business operator to take those measures, or measures which are at least equivalent to them, within a reasonable period (not being less than fourteen days) as may be specified in the notice. "

9. Sub-section (2) of Section 32 further provides for consequences of non-compliance of the aforesaid requirements resulting into suspension and sub-section (3) thereof provides for further notice, if the food business operator still fails to comply with the improvement notice, for cancellation of licence. Sub-section (4) provides for remedy for action taken under sub-section (3) and subsection (5) provides for limitation to file appeal therefrom.

10. Section 33 of the Act of 2006 provides for prohibition orders. Sub-section (1) thereof reads as under:-

"33. Prohibition orders.

(1) If -

(a) any food business operator is convicted of an offence under this Act; and

(b) the court by or before which he is so convicted is satisfied that the health risk exists with respect to that food business, the court, after giving the food business operator an opportunity of being heard, may by an order, impose the following prohibitions, namely:-

(i) a prohibition on the use of the process or treatment for the purposes of the food business;

(ii) a prohibition on the use of the premises or equipment for the purposes of the food business or any other food business of the same class or description;

(iii) a prohibition on the use of the premises or equipment for the purposes of any food business."

11. Sub-section (3) of Section 33 of the Act of 2006 provides for procedure for further proceedings to be followed in the event the Court is satisfied for imposition of prohibition and other machinery provisions.

12. With the advent of aforesaid new Act of 2006 and the provisions contained therein, respondent no.4- Judicial Adjudicating Officer, Morena, in order to achieve the objects contained therein and to ensure compliance of provisions contained thereunder has issued notice to various food business operators including the petitioner for the reason that there was rise in the complaints of mass scale food adulteration in food items in District Morena possessing serious threat for health and hygiene amongst the people and society at large, as in number of cases such food business operators have been found guilty of offence of food safety and, therefore, under such facts and circumstances, since it had become necessary for invoking the powers under Section 33 of the Act of 2006 to issue prohibition orders for strict adherence and compliance of the Act of 2006

and other safeguards provided thereunder, notice, Annexure P/2, dated 31/12/2014 under Section 33(1)(b) of the Act of 2006 was issued to the food business operators affording opportunity to show-cause as to why prohibition orders be not issued against them.

13. Petitioner instead of replying to aforesaid notice, it appears that filed an application seeking supply of documents. The same was dealt with by detailed order dated 4/2/2015, Annexure P/1. It appears that petitioner insisted for orders of conviction against him, if any, as, according to him, unless the petitioner is convicted for any offence under the Act of 2006, no prohibition order can be issued against him. By the order Annexure P/1, respondent no.4 has referred to the provisions contained under Section 33(1) (b) of the Act of 2006 and rejected the application on the terms that for issuance of prohibition orders, it is not necessary that there should be conviction order against a particular food business operator to whom the prohibition order is to be issued, instead if food business operators in the same class of food business have been convicted, the food business operators of same class or description of food business can always be issued prohibition orders, as such prohibition orders are issued primarily to ensure public health and food safety. With the aforesaid justification, application was rejected calling upon petitioner to comply with the requirements of notice, Annexure P/2.

14. Learned counsel for the petitioner submits that respondent no.4 has committed grave illegality while rejecting his application and insisted that unless the petitioner is either prosecuted or convicted for any offence under the Act of 2006, he could not have been issued notice, Annexure P/2, hence, the impugned communications Annexures P/1 and P/2 deserve to be quashed.

15. Having perused the impugned notice, Annexure P/2, it appears that in District Morena number of cases of food adulteration were registered and conviction orders were passed. The health and safety of general public were found to be in peril, as food adulteration, health hazard and in-hygiency were found to be of huge magnitude. In order to arrest recurrence of food adulteration by food business operators engaged in food business either of the same class of food business or otherwise, respondent no.4 has issued notice under Section 33 of the Act of 2006 in order to achieve the goals set out by the aforesaid Act of 2006 i.e. to ensure food safety and standards and public health in wider public interest. Upon reading of provisions contained in Section 33 of the Act of 2006, in the opinion of this Court, prohibition orders can be issued on the use of premises or equipment for the purpose of food business or any other food business of same class or description and sub-clause (3) of the Act of 2006 provides for prohibition in use of the premises or equipment for the purpose of any food business, therefore, there is wide powers conferred on respondent no.4 for issuing improvement notice under Section 32 of the Act of 2006 and under Section 33 thereof to ensure regulation of food business by issuing prohibition orders. Therefore, there is no jurisdictional error in issuance of impugned notice,

as complained of by the petitioner.

16. That apart, petitioner has been issued notice for providing him ample opportunity of showing cause and petitioner shall be at liberty to put forth his submissions on merits of the notice issued. This Court entertains no doubt that if by way of reply the submissions are advanced in response to the notice, the same shall be dealt with in accordance with law by respondent no.4.

17. Accordingly, the writ petition is misconceived and deserves to be dismissed. Dismissed.