

(2004) 08 DEL CK 0102

In the Delhi High Court

Case No : Civil Writ Petition No. 10041 of 2004

M.J. International

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 31-08-2004

Acts Referred:

Prevention of Food Adulteration Act, 1954 — Section 11(3), 13(2)

Citation : (2006) 197 ELT 164

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : R.S. Juneja, for the Appellant; Siddharth Mridul and Ritesh Singh, for the Respondent

Judgement

Sanjay Kishan Kaul, J.—Learned Counsel for the respondent accepts notice of rule.

2. The matter is taken up for final disposal with the consent of learned Counsel for the parties.

3. The petitioner imported cloves in March 2004 and samples were drawn by the Food inspector on 30.3.2004. However, samples were sent to the Public Analyst on 30.4.2004. The sample failed on account of the fact that the Organic extraneous matter was found to the extent of 5.03% as against permissible maximum limit of 2%. The grievance of the petitioner is that firstly the samples have been drawn only from 24 bags out of 240 bags and that the extraneous material comes as a consequence of the cloves plucked from the trees. The second contention of learned Counsel for the petitioner is that the samples were sent only on 30.4.2004 after a lapse of one month to Central Food Laboratory (CFL) while requirement of Section 11(3) of the Prevention of Food Adulteration Act, 1954, is of sending the sample to the Public Analyst on the next day. There is sanctity to this provision in view of the fact that Section 13(2) gives a right to a person in case of an adverse report to make an application for re-analysis of the sample.

4. The procedure has thus not been followed and in view thereof the request of the petitioner for a fresh sample and re-testing by the CFL has force in law.

5. In view of the aforesaid, it is agreed that fresh sample be drawn according to the norms on 9th September, 2004 at 11.00 AM in the presence of the petitioner and will be sent to the CFL Ghaziabad forthwith for re-testing. It is further agreed that in case the petitioner wants simultaneously testing by another notified CFL the same can be done at the request and cost of the petitioner.

6. The result of the report shall be sent to the petitioner and if either of the CFL certifies the product of the petitioner to be in order, the petitioner can be permitted to clear the same. Needless to say that in case of an adverse report, the petitioner will be at liberty to impugn the decision in accordance with law.

7. The writ petition is disposed of with aforesaid directions leaving the parties to bear their own costs.

dusty to learned Counsel for the parties.