

Leonard John vs the Union of India

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Court : Kerala

Decided On : Feb-28-2023

Judge : Honourable the Chief Justice Mr.S.Manikumar,Honourable Mr.Justice Murali Purushothaman

Appeal No. : WP(C)/39100/2022

Appellant : Leonard John

Respondent : The Union of India

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT THE HONOURABLE THE CHIEF JUSTICE MR.S.MANIKUMAR & THE HONOURABLE MR.JUSTICE MURALI PURUSHOTHAMAN TUESDAY, THE 28TH DAY OF FEBRUARY 2023 / 9TH PHALGUNA, 1944 WP(C) NO. 39100 OF 2022 PETITIONER: LEONARD JOHN, AGED 55 YEARS S/O JOSE MATHEW, JOHNSONS VILLA, NEAR SANGEETHA TALKIES PAYYAMBALAM, KANNUR, PIN - 670001 BY ADV K.R.AVINASH (KUNNATH) BY ADV SRI.MOHAMMED SHAFI RESPONDENTS:

1 THE UNION OF INDIA REPRESENTED BY PRINCIPAL SECRETARY
MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC
DISTRIBUTION. KRISHI BHAVAN NEW DELHI, PIN - 110011 2
PRINCIPAL SECRETARY MINISTRY OF HEALTH & FAMILY
WELFARE A WING NIRMAN BHAVAN, MOULANA AZAD ROAD, NEW
DELHI, PIN - 110011 3 THE STATE OF KERALA REPRESENTED BY
ITS SECRETARY HEALTH DEPARTMENT SECRETARIAT,
TRIVANDRUM, PIN - 695001 4 THE FOOD SAFETY
COMMISSIONER, KERALA OFFICE OF THE FOOD SAFETY
COMMISSIONER, THYCAUD, P.O, TRIVANDRUM, PIN - 695014 BY
ADVS. C.S.MANU R1-2 BY ADV.JAISHANKAR V.NAIR R3-4 BY
ADV.GRACIOUS KURIAKOSE, ADDL.DIRECTOR GENERAL OF
PROSECUTION(AG-11) THIS WRIT PETITION (CIVIL) HAVING COME
UP FOR ADMISSION

ON 28.02.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING: W.P.(C)No.39100 of 2022 ..2..

JUDGMENT

Dated this the 28th day of February, 2023

Murali Purushothaman,J.

The petitioner, a planter and a public spirited person, has filed this writ petition alleging inaction on the part of the respondents in taking adequate measures against the companies which are selling adulterated curry powders and for prohibiting advertisement of such food products, which are already found to be adulterated and hazardous to the health of public.

2. The petitioner had earlier filed a public interest

writ petition as W.P. (c) No.32075 of 2018, praying for prohibition of manufacture and sale of curry powders containing 'Ethion' pesticides in various brand names which are found to be adulterated by the Regional Analytical Laboratory in

Kakkanad, as well as to cancel the licence to those companies found to be violating the W.P.(C)No.39100 of 2022 ..3.. safety standards and also to maintain system of control against contamination of food products etc. In the said writ petition, this Court passed Ext.P1 judgment, recording the submission of the learned Senior Government Pleader that, pursuant to the inspection of units in the year 2018, seven manufacturers of curry powders, found to have used 'Ethion' pesticides more than the permissible limit, prosecution was recommended by the designated officer, and that, it was decided to prosecute on issuance of sanction from the Food Safety Commissioner. Paragraph 13 of the said

judgment is extracted below:

13. Though, writ petition has been filed for the said reasons, which we have extracted supra, from the submission of learned Senior Government Pleader, it could be deduced that, prosecution was directed to be taken against 7 manufacturers. Recording the above statement, and also taking note of the provisions relating to cancellation of licence, suspension etc., we observe that the provisions

W.P.(C)No.39100 of 2022 ..4.. of the Food Safety and Standards Act, 2006 and the Regulations thereto, mandating a duty cast upon the authorities for suspension/cancellation of licence, have to be followed strictly, so that there is no recurrence.

3. According to the petitioner, in spite of the

directions in the said judgment that the provisions of the Food Safety and Standards Act, 2006 (for short, FSS Act, 2006) and the Regulations thereto, shall be strictly followed, the manufacturers sell curry powders which are found to be adulterated and not up to the standards prescribed by the authorities and it is contended that, they market those products by advertisement through film stars and celebrities. The petitioner has also given certain illustrations of advertisements of those products through film stars and celebrities. According to the petitioner, people are using unsafe and adulterated food products because of wide publicity

given to the products by the companies through film stars and celebrities.
W.P.(C)No.39100 of 2022 ..5..

4. The petitioner then filed W.P.(C) No. 16232 of

2020 for direction to the State Government to take appropriate action against those Food Safety Officers who are found to be delinquent in their duties in a state wide raid conducted by the Vigilance and Anti Corruption Bureau. The said writ petition was disposed of by this Court by Ext.P5 judgment, directing the Secretary, Health Department to consider the reports submitted by the Vigilance and Anti Corruption Bureau, Thiruvananthapuram and take further action in accordance with law. Paragraph 7 of the said judgment is extracted hereunder:

7. In such view of the matter, at this juncture mandamus cannot be issued to respondent No.1 to initiate prosecution against them. Reports seem to have been sent before March, 2020 and it is for the Health and Family Welfare Department, Government of Kerala to take appropriate decision. In normal circumstances, this Court would not entertain a public interest writ petition in service

W.P.(C)No.39100 of 2022 ..6..

matters. However, in cases where serious irregularities/corrupt practices committed by the Government servants are brought to the notice of this Court for appropriate reliefs, court cannot be dormant. In the case on hand, it is apparent from Exts.P3, and P4, that in 2019 state wide raids have been conducted by the Vigilance and Anti Corruption Bureau and reports have been sent for further action. Though the petitioner has not furnished details of any action taken by the Health and Family Welfare Department after March, 2020, on the basis of the materials, we deem it fit to direct the 1st respondent - Secretary Health Department to consider the reports submitted by the Vigilance and Anti Corruption Bureau, Thiruvananthapuram as expeditiously as possible and take further action in accordance with law.

5. The petitioner contends that in spite of the

directions in Exts.P1 and P5 judgments, no action is forthcoming from the Government and thereby the food products, which are unsafe are still available in the W.P.(C)No.39100 of 2022 ..7.. market.

6. The petitioner has produced Exts.P6 and P7

information received under the Right to Information Act, 2005 whereby, the Food Safety Commissioner, Kerala had furnished the names of brands of curry powders which are adulterated and also the details of chemicals contained in various brands. The petitioner states that no information is forthcoming as to the actions taken against those companies. According to the petitioner, though the Food Safety Commissioner furnished information stating that they have given sanction for prosecution against some manufacturers, distributors and sellers and launched prosecution in various Judicial First Class Magistrate Courts, the details as to which court and what action have been taken are not forthcoming. The petitioner states that there is total inaction on the part of the respondents in taking adequate measures against the companies which are W.P.(C)No.39100 of 2022 ..8.. selling adulterated curry powders. Accordingly, the petitioner has filed this writ petition for the following reliefs:

(i) Issue writ of mandamus or any other

order or writ directing the respondents to take

stringent action to cancel the license and to initiate criminal prosecution against the companies which are proven to be selling adulterated food products as per the list attached to Exhibit P2.

(ii) Issue writ of mandamus or any other

order or writ directing the respondents to ban

advertisement of food products of those brands which are proven to be selling adulterated food products as per the list attached to Exhibit P2.

(iii) Issue writ of mandamus or any other

order or writ directing the respondents to

constitute a special team to monitor the advertisement of food products which are adulterated and unsafe for human consumption and to prosecute those persons who are participating in those advertisement.

7. A counter affidavit has been filed on behalf of the

State and the Food Safety Commissioner/ respondents 3 W.P.(C)No.39100 of 2022 ..9.. and 4. It is stated therein that, the Food Safety Department frequently conducts inspections and take samples of food articles including spices and condiments as per the FSS Act, 2006 and if any manufacturers/distributors/sellers are found to be violating the provisions of the Act, they will be punished as per the said Act. It is further stated that in recent inspection and sampling of spices, the maximum residual limit of pesticides in the food articles was found high and prosecution steps have been taken and cases are pending in various courts. Referring to Sections 18 and 29 of the FSS Act, 2006, it is stated that, as per the said provisions, it is the duty of the Food Safety Department to ensure safe and wholesome food products to the general public.

8. With regard to the steps taken pursuant to Ext.P5 judgment, respondents 3 and 4 have stated as follows: xxxx W.P.(C)No.39100 of 2022 ..10.. 7. On an earlier occasion, as per

judgment dated 07.08.2020 in WP(C)

No.16232/2020, this Hon'ble Court was pleased to direct the 3rd respondent herein to consider the reports submitted by the Vigilance and Anti Corruption Bureau as against the officers of the Food Safety Department as expeditiously as possible and to take further action in accordance with law.

8. It is submitted that the Vigilance and

Anti Corruption Bureau conducted surprise check in all the Food Safety Offices in Kerala and about 63 surprise check vigilance reports of the Director, Vigilance and Anti Corruption Bureau were received in the Health Department through the Vigilance Department Pursuant to the above, necessary action as recommended by the Director, Vigilance and Anti Corruption Bureau are being taken in all the cases. It may be kindly noted that the Vigilance and Anti Corruption Bureau has not recommended prosecution against any of the officers in the vigilance report that were furnished. The Vigilance and Anti Corruption Bureau recommended actions at the level of the Commissioner in some reports. Accordingly disciplinary actions were taken on

W.P.(C)No.39100 of 2022 ..11..

28 reports at the Government level. Memo of charges were issued to 68 officials in this case. A tabular form of the action taken report on the basis of inspection of the Vigilance and Anti Corruption Bureau in various offices under the Commissionerate of Food Safety Department is produced herewith and marked as Exhibit R3(a). Further, in may of the reports, findings are with regard to the improper maintenance of various registers in the Food Safety Offices. Taking into account the above finding, the Government have issued Circular dated 10.05.2020 for proper functioning of the Food Safety Offices in Kerala. True copy of the aforementioned Circular dated 10.5.2020 and its English Translation is produced herewith and marked as Exhibit R3(b).

9. During our inspections we got many samples of Spices of various companies and various manufactures in which pesticide residue exceeds the maximum residue limit

(MRL) and all these cases are under the

prosecution process as per Food Safety and Standard Act, 2006. Department considers this pesticide cases as a grievous threat to public health and department

is taking timely action W.P.(C)No.39100 of 2022 ..12.. against the offenders. More over such samples will be recalled from the market and the department ensures that such products are not available in the retail outlets. So the contention of the petitioner regarding the unsafe food articles available in the market is baseless.

10. Food Safety Department ensure all

food articles including spices and condiments safe and wholesome. Kerala is a highly spice consuming state in India and the part of strengthening the enforcement activity the food safety department is taking statutory samples of food articles including spices (turmeric, chilly & Coriander) and file cases against the manufacturers, distributors, sellers for unsafe food product. A detailed list of all prosecutions and adjudication proceedings initiated against the erring practice is produced herewith and marked as Exhibit R3(c).

11. From the above provisions of the FSS

Act 2006 Food Safety Department is authorised and empowered to take actions against the manufacturers, distributors and sellers and department is taking stringent action against the offenders who violate the provisions of Food Safety Act, Rules and Regulations made there W.P.(C)No.39100 of 2022 ..13.. under.

9. Heard Sri. Mohammed Shafi, the learned counsel

for the petitioner, Sri. Jaishankar V. Nair, the learned Central Government counsel for respondents 1 and 2 and Sri. Gracious Kuriakose, the learned Additional Director General of Prosecution for respondents 3 and 4. The learned Additional Director General of Prosecution would contend that stringent steps have been taken by respondents 3 and 4 under the FSS Act, 2006 against the companies which are found to be selling adulterated food products. With regard to the 2nd prayer of the petitioner, the learned Additional Director General of Prosecution would submit that the same is not within the realm of respondents 3 and 4 and the petitioner has not arrayed proper parties to seek the said prayer.

10. The counter affidavit of respondents 3 and 4 is

indicative of the steps taken by respondents 3 and 4 W.P.(C)No.39100 of 2022 ..14.. under the FSS Act, 2006 against the companies which are found to be selling adulterated food products and against the Food Safety Officers who were found to be delinquent in their duties. From Ext.R3(c), it is seen that proceedings for adjudication and prosecution have been initiated against the manufacturers, distributors and sellers for unsafe food products in various districts in the State and in most cases, trial is pending. In the light of the counter affidavit filed by respondents 3 and 4, we are satisfied that steps have been taken under the FSS Act, 2006 by respondents 3 and 4 against the companies selling adulterated food products and proceedings for adjudication and prosecution have been initiated against the manufacturers, distributors, sellers for unsafe food product. Recording the said statement of respondents 3 and 4 in the counter affidavit, we dispose of this writ petition observing that respondents 3 and 4 will ensure W.P.(C)No.39100 of 2022 ..15.. that the provisions of the FSS Act, 2006 and the Rules and Regulations framed thereunder will be strictly followed by respondents 3 and 4 and stringent action be taken against the offenders who violate the provisions of the FSS Act, 2006 and the Rules and Regulations framed thereunder. Sd/- S.MANIKUMAR CHIEF JUSTICE Sd/- MURALI PURUSHOTHAMAN JUDGE SB W.P.(C)No.39100 of 2022 ..16.. PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE JUDGMENT IN WP(C) NO. ExhibitP2 TRUE COPY OF THE REPLY OF THE REGIONAL ANALYTICAL LABORATORY, ERNAKULAM DATED 23.08.2022 ALONG WITH ENGLISH TRANSLATION Exhibit P3 TRUE COPY OF THE ADVERTISEMENT OF KITCHEN TREASURES ALONG WITH ENGLISH TRANSLATION Exhibit P4 TRUE COPY OF THE ADVERTISEMENT OF KITCHEN TREASURES ALONG WITH ENGLISH TRANSLATION Exhibit P5 TRUE COPY OF THE JUDGMENT DATED 7.8.2020 IN WRIT PETITION NO. 16232/2022 Exhibit P6 TRUE COPY OF REPLY DATED 21.06.2022 OF THE 4TH RESPONDENT, ALONG WITH ENGLISH TRANSLATION Exhibit P7 TRUE COPY OF THE REPLY OF THE 4TH RESPONDENT, DATED 11.07.2022 ALONG WITH ENGLISH TRANSLATION Exhibit P8 TRUE COPY OF THE REPLY OF THE 4TH RESPONDENT, DATED 20.09.2022 ALONG WITH ENGLISH TRANSLATION Exhibit P9 TRUE COPY OF THE REPLY OF THE 4TH

RESPONDENT DATED 25.10.2022 RESPONDENT EXHIBITS EXHIBIT TRUE
COPY OF THE TABULAR FORM OF ACTION TAKEN R3(A) REPORT ON THE
BASIS OF INSPECTION OF THE VACB IN VARIOUS OFFICES UNDER THE
COMMISSIONERATE OF FOOD SAFETY DEPARTMENT

EXHIBIT TRUE COPY OF THE CIRCULAR DATED 10.05.2020 ANDR3(B)
PARTIES

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