

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Special Original Jurisdiction)

Friday, the Eighteenth day of December Two Thousand and Twenty

PRESENT

The Hon`ble Mr.Justice N.KIRUBAKARAN

and

The Hon`ble Mr.Justice B.PUGALENDHI

WP (MD) No.18013 of 2020

and

WMP (MD) .No.15034 of 2020

S.ARUNNITHY

... PETITIONER/ PETITIONER

Vs

1 THE CHIEF EXECUTIVE OFFICER,
FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA,
FDA BHAVAN, KOTLA MARG,
MANDI HOUSE, NEW DELHI - 110021.

2 THE SECRETARY TO THE GOVERNMENT,
DEPARTMENT OF HEALTH & FAMILY WELFARE,
FORT ST. GEORGE, CHENNAI - 109.

3 THE COMMISSIONER,
TAMILNADU FOOD SAFETY AND
DRUG ADMINISTRATION DEPARTMENT,
5th FLOOR, DMS CAMPUS,
TEYNAMPET, CHENNAI- 600018.

4 FOOD ANALYSIS LABORATORY,
KING INSTITUTE CAMPUS,
GUINDY, CHENNAI- 600032.

5 THE DESIGNATED OFFICER,
FOOD SAFETY DEPARTMENT,
HEALTH AND FAMILY WELFARE TRAINING CAMPUS,
1st FLOOR, VISWANATHAPURAM,
MADURAI- 625 014.

... RESPONDENTS/ RESPONDENTS

Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to issue a writ order or direction or any other writ in the nature of a writ of mandamus directing the respondents to ensure that the edible oil sold in the market are in accordance with FSSAI standards and norms and to take appropriate action on those who are flouting these rules and to take severe penal action on the traders who are

involved in adulteration and misbranding or in anyway affecting the standard norms and conditions of FSSAI Act and regulations.

Prayer in WMP(MD). 15034/ 2020 :

To grant an order of interim injunction forbearing the respondents in anyway allowing the sale of Edible oil which are being adulterated adding adulterants such as CNSL (Cashew Nut Shell Oil) and other adulterant ingredients which are harmful to the human health published by FSSAI forthwith pending disposal of the above writ petition

ORDER : This petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.VEERA KATHIRAVAN, Senior Counsel for M/S.VEERA ASSOCIATES, Advocate for the petitioner and of MRS.J.PADMAVATHI DEVI, Special Government Pleader on behalf of the State Government Officials, the court made the following order:-

(Order of the Court was made by **B.PUGALENDHI, J.**)

This writ petition is filed as a public interest litigation by a practising Advocate of this Court for a Writ of Mandamus directing the respondents to ensure that the edible oils sold in the market are in accordance with FSSAI standards and norms and for appropriate action as against the adulterators.

2. Mr.Veera Kathiravan, learned Senior Counsel representing the petitioner submits that the edible oils available in the market are mostly adulterated and he also demonstrated as to how the adulterations are made. According to the learned Senior Counsel, by mixing a portion of Cashew Nut Shell Liquid (hereinafter referred to as "CNSL") in Palmolein, the Palmolein can be made equivalent to Gingelly Oil and the colour and odor will also match the same. CNSL, according to the learned Senior Counsel, is extracted from Cashew Nut Shells for the purpose of manufacturing resin, paint and varnish, however, it is used for adulterating the Palmolein to make it resemble as Gingelly Oil.

3. In support of his argument, the learned Senior Counsel has relied upon the data collected with regard to the production and export of CNSL. During the year 1997-98, when the units extracting CNSL were very minimal, 4446 metric ton of CNSL was exported, whereas, during 2001-02, when the units extracting CNSL have substantially increased, 1814 metric ton of CNSL was exported. When the number of units extracting CNSL is increased, the volume of CNSL exported drastically reduced, which shows that more than half the quantity is been used locally for adulteration purpose. He has also pointed out that in Virudunagar District alone, there are 50 units involved in extracting CNSL, but, they did not have any records to show as to whether they are selling CNSL and there is no monitoring mechanism to monitor the sale of CNSL.

4. The learned Senior Counsel has also relied upon certain study made by eminent Scientists on the topic "**Anacardic Acid Constituents from Cashew Nut Shell Liquor : NMR Characterization and the Effect of Unsaturation on Its Biological Activities**" and pointed out that consuming CNSL would immediately affect the anticholinesterase activities and acetylcholinesterase (AChE) inhibition, which, according to him, would affect the nerve system and concentration ability, i.e., would affect the Autonomic Nervous System (ANS) causing adverse effects, including, Blurring of vision, Nausea, Vomiting, Dizziness, Headache, Bradycardia (Decrease in Heart Rate) and Hypotension (Fall in Blood Pressure).

5. By relying upon another study conducted by Dr.N.Madanagopalan and Dr.M.Panchanadam, Professors of Madras Medical College, in the topic "**Contaminants in 'Edible' Oils and Liver Cancer**", the learned Senior Counsel would submit that the long term effect of consuming CNSL would lead to liver cell cancer. The observation made in the said study is extracted as under:

"It may not be necessary for one to ingest edible oil contaminated with CNSL daily to develop carcinoma. Even intermittent ingestion or short duration ingestion may suffice in those already predisposed to the disease."

6. The learned Senior Counsel further submits that in a similar manner, by mixing Peanut Essence, which is a chemical, Olein Oil, a colorless and odorless oil, can easily be made to look similar to that of Groundnut Oil. He pointed out that 0.25 mg of Peanut Essence is sufficient to convert 15 liters of Olein Oil to resemble as Groundnut Oil.

7. The learned Senior Counsel has also relied upon Regulation 2.1.2(xi) of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011, wherein, the re-use of Tin & Plastic containers for edible oils & fats is not allowed. As per Regulation 2.3.15.1(b) of the Food Safety and Standards (Prohibition and Restriction of Sales) Regulations, 2011, no oil, which is not packed in a container, marked and labelled, should be sold. For better appreciation, Regulation 2.3.15.1 is extracted as under:

"2.3.15. Special provisions relating to sale of vegetable oil and fat

(1) No person shall sell or expose for sale, or distribute, or offer for sale, or dispatch, or deliver to any person for the purpose of sale of any edible oil

(a) which does not conform to the standards of quality as provided in the Food Safety and Standards Act, 2006 (34 of 2006) and rules / regulations made thereunder and

(b) which is not packed in a container, marked and labeled in the manner as specified in FSSAI regulations.

Provided that the state government may, in the public interest, for reasons to be recorded in writing, in specific circumstances and for a specific period by a notification in the official gazette, exempt any edible oil from the provisions of this Act."

8. By taking advantage of the proviso, without assigning any reasons and any specific circumstances and without even notifying in the official gazette, the second respondent has permitted to sell the edible oil in loose packets, which is taken advantage by the adulterators to sell the adulterated edible oil. According to the learned Senior Counsel, in Madurai District alone, there are 5000 shops selling these adulterated edible oil and another 10000 shops are selling these adulterated oil in the rural area, as loose oils.

9. Mrs.J.Padmavathi Devi, learned Special Government Pleader takes notice for the respondents and admits the possibility of selling adulterated oils by selling the same as loose oils. According to her, the Officers of the Food Safety Department are monitoring these types of loose oils and are taking appropriate action as against the adulterators. She has also furnished the data that in Madurai District alone, 230 samples have been collected, over a period of three months, of which, the analysis reports have been received for 194 samples. Among the 194 samples, 51 samples proved to be unsafe and 88 samples are substandard / misbranded. It is only 55 samples, out of the 194 samples in which analysis report received, confirmed with the standard.

10. We have also verified with Dr.Somasundaram, Designated Officer, Food Safety Department, Health & Family Welfare Training Campus, 1st Floor, Viswanathapuram, Madurai / fifth respondent, who is assisting the learned Special Government Pleader in this writ petition. When we verified with regard to the data, which have been pointed out by the learned Special Government Pleader, the fifth respondent admitted the same that on inspection, he himself has noted down the presence of 60 to 200 cans of CNSL in various units of oil dealers / traders. He has also accepted the possibility of adulterating Palmolein by mixing CNSL and the possibility of mixing Peanut Essence with Olein Oil to resemble it as Groundnut Oil. He has also stated that he himself has recovered Peanut Essence from a manufacturing unit of Groundnut Oil and CNSL from loose oil traders.

11. The data placed before us is shocking that if an essential commodity like edible oil can be adulterated to this extent, we are afraid of the consequences on the health conditions of a common citizen. In fact, when a similar writ petition in W.P.(MD)No.6353 of 2020 was filed to prohibit the sale of edible oils in loose without packing, this Court, in which, one of us [Hon'ble Mr.Justice B.PUGALENDHI] was a party to the Bench, has negatived the prayer that it would affect the sale of country made Chekku Oil.

12. When we raised a similar query to the learned Senior Counsel, he has pointed out that when a Groundnut Cake, which costs about Rs.1/- can be packed and sold, why not the edible oils? When we verified with the fifth respondent, who is present before this Court, on the existing rules and the expenses for packaging and licensing, he submitted that Rs.3000/- is charged for FSSAI License, per year and the packaging may cost around Rs.2/- or Rs.3/-, per pack. He further submitted that the license can also be obtained for a block period of five years. The fifth respondent has also admitted that as on date, the traders, who are selling oils on loose, are selling the same in plastic packs / cans / covers and therefore, packaging cannot be a difficult process, insofar as selling the edible oils is concerned.

13. Right to life is a fundamental right, guaranteed under Article 21 of the Constitution of India and right to have a healthy food is also one of the fundamental rights. It is the duty of the Government to ensure that the people are getting healthy food without any adulteration. The very object behind the enactment of Prevention of Food Adulteration Act, 1954, now amended as Food Safety and Standards Act, 2006, is to enhance the quality standard and to ensure the availability of quality food for all citizens.

14. The Hon'ble Supreme Court in **Centre for Public Interest Litigation v. Union of India**, reported in **(2013) 16 SCC 279**, has emphasized that any food article, which is hazardous or injurious to public health, is a potential danger to the fundamental right to life guaranteed under Article 21 of the Constitution of India. The Hon'ble Supreme Court further held that a paramount duty is cast on the States and its authorities to achieve an appropriate level of protection to human life and health which is a fundamental right guaranteed to the citizens under Article 21 read with Article 47 of the Constitution of India.

15. The Kerala High Court in **Kandha Samy K. v. Director of Dairy Development** [Writ Appeal No.1543 of 2014, decided on 31.10.2014], has observed that the issue of food safety and right to have safe and unadulterated food is a matter of national concern. For better appreciation, the relevant portion is extracted as under:

"7. The issue of food safety and right to have safe and unadulterated food is a matter of national as well as international concern. We cannot ignore or overlook this reality. As right to life guaranteed under Article 21 of the Constitution would encompass a right to live with dignity, i.e., to have a healthy life, which is possible only if safe and unadulterated food is available for human consumption, any efforts made by the State and its authorities to achieve an appropriate level of protection to human life and health cannot be scuttled on the rigid technicalities as canvassed by the appellants. Therefore,

the learned Single Judge rightly declined interference under Article 226 of the Constitution of India. We find absolutely no grounds to interfere with the judgment of the learned Single Judge."

16. Since the learned Senior Counsel has made out a *prima facie* case that the edible oils sold on loose are mostly adulterated, it would have a serious consequences on the health of the consumers and there is a specific provision under the Food Safety Regulations prohibiting sale of edible oils on loose, this Court is satisfied to grant an interim order. Accordingly, there shall be an order of **interim injunction** directing the respondents not to allow, in any way, the sale of edible oil as loose oil.

17. Section 59 of the Food Safety and Standards Act, 2006, prescribes several punishments for the adulterators, be it the Manufacturers, the Distributors or the Sellers. The punishment varies from six months to seven years of imprisonment, depending upon the contravention and the consequences. For useful reference, Section 59 of the Act is extracted as under:

"59. Punishment for unsafe food - Any person who, whether by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any article of food for human consumption which is unsafe, shall be punishable, -

(i) where such failure or contravention does not result in injury, with imprisonment for a term which may extend to six months and also with fine which may extend to one lakh rupees;

(ii) where such failure or contravention results in a non-grievous injury, with imprisonment for a term which may extend to one year and also with fine which may extend to three lakh rupees;

(iii) where such failure or contravention results in a grievous injury, with imprisonment for a term which may extend to six years and also with fine which may extend to five lakh rupees;

(iv) where such failure or contravention results in death, with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and also with fine which shall not be less than ten lakh rupees."

18. Though there is a Regulation [2.3.15.1(b) of the Food Safety and Standards (Prohibition and Restriction of Sales), 2011] prohibiting the sale of edible oils in loose and there is a Section [59 of the Food Safety and Standards Act, 2006] providing punishment for the adulterators / offenders, it appears that the adulteration has not been prevented. The demonstration made before this Court

shows that such adulteration results in serious health hazards upto death. Unless very stringent measures are taken, it is very difficult to prevent such adulteration. Therefore, this Court is of the opinion that those who are involved in adulteration, i.e., the adulterators, be it the Manufactures / Distributors / Sellers, should be termed as 'Goonda' as per the definition in Section 2 of the Tamil Nadu Act 14 of 1982, by amending the provisions to include them and should be detained under the Act 14 of 1982.

19. Though the above suggestion may appear to be an extreme step, there are examples in the past as the State Government, in order to safeguard the interest of the cinema industry, included the "video pirate", who commits or attempts to commit or abets the commission of offences of infringement of copy right in relation to a cinematograph film or a record embodying any part of sound track associated with the film, punishable under the Copy Right Act, 1957, in the definition as 'Goonda' and amended the Tamil Nadu Act 14 of 1982, to punish 'video pirate' under the said Act. Similar steps have to be taken by the State Legislature at the earliest regarding the Food Adulterators in the State.

20. Considering the consequences of adulterated edible oils and the modes available for adulteration, this Court deems it fit to raise the following queries to be answered by the respondents 1 to 3 & 5:

i) When the Food Safety and Standards (Prohibition and Restriction of Sales) Regulation, 2011, prohibits sale of edible oils on loose, how the edible oils are allowed to be sold as loose oils?

ii) The possibility of adulteration of the edible oils, in addition to the below mentioned category as projected by the learned Senior Counsel, has to be explained with scientific results:

a) 0.25 % of CNSL with Palmolein may resemble like Gingelly Oil; and

b) 0.25 % of Peanut Essence with Olein Oil would resemble like Groundnut Oil.

iii) What are all the consequences of these adulterations on the health conditions of the consumers?

iv) How many labs are available for testing in Tamilnadu, both Government labs and Private labs and how many labs are available in other States (in tabulated version)?

v) How many tests have been carried out in edible oils, throughout the State [District wise, for the past five years] and the results thereof and how many test reports resulted positive for the presence of CNSL, Peanut Essence and / or any other mixtures, if any?

vi) What is the action taken as against the adulterators / offenders?

vii) How many cases have been registered under the Act for the past five years, in the State and what is the conviction rate?

viii) In how many cases, the Regulation 2.3.15.1(b) of the Food Safety and Standards (Prohibition and Restriction of Sales) Regulations, 2011, has been invoked?

ix) In how many cases, Section 59 of the Food Safety and Standards Act, 2006, more particularly, Sections 59(3) & 59(4) of the Act, has been invoked?

x) What is the stage of the cases, in which Section 59 of the Food Safety and Standards Act, 2006 has been invoked and what is the conviction rate?

xi) Why not the State Government amend the Act 14 of 1982 to include "Food Adulterator" in the definition of "Goonda" and detain them under the Act, when food adulteration causes serious health hazards to the common people?

21. For the response of the respondents as to the aforesaid queries, call on 18.01.2021.

sd/-
18/12/2020

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/ /2020

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

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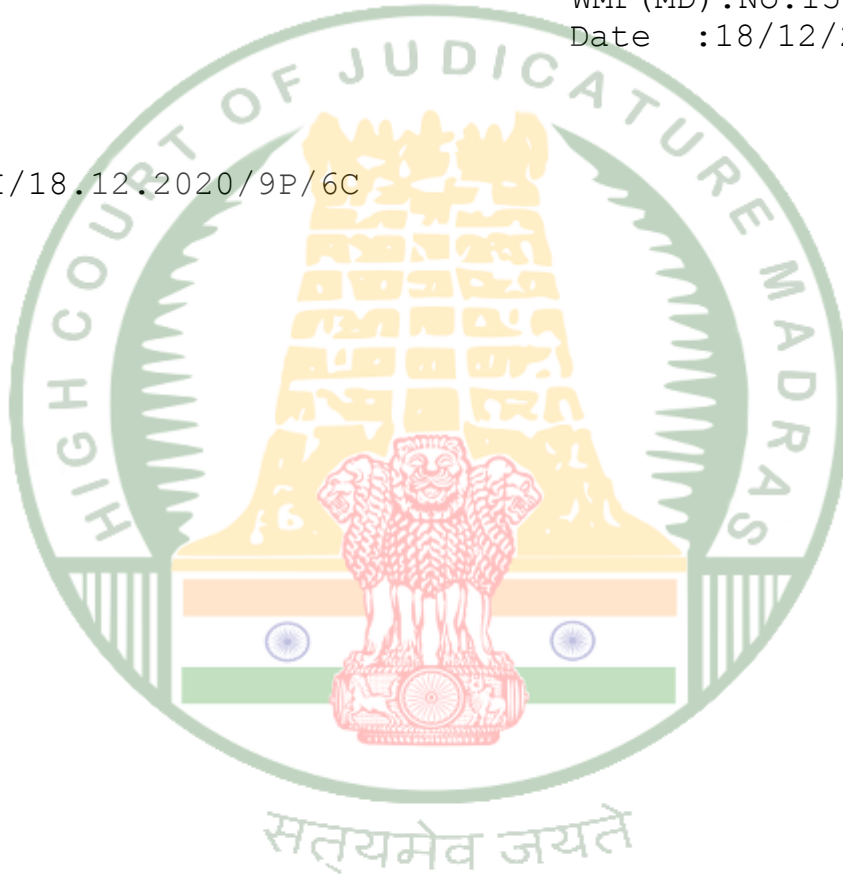
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ORDER
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Date :18/12/2020

GK
JM/PN/SAR III/18.12.2020/9P/6C



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