



W.P.No.26652 of 2022

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WEB CO **R.SURESH KUMAR, J.**

Heard Mr.P.S.Raman, learned Senior Counsel appearing for the petitioner and Mr.U.M.Ravichandran, learned Special Government Pleader appearing for the respondents 1 and 2.

2. It is submitted by the learned Senior Counsel appearing for the petitioner that under Section 36 of The Food Safety and Standards Act, 2006 (in short, the said Act), the designated officer is empowered to do the following functions:

"36. Designated Officer:-

1.The Commissioner of Food Safety shall, by order, appoint the Designated Officer, who shall not be below the rank of a Sub-Divisional Officer, to be in-charge of food safety administration in such area as may be specified by regulations.

2.There shall be a Designated Officer for each district.

3.The functions to be performed by the Designated Officer shall be as follows, namely:-

(a)to issue or cancel licence of food business operators;



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(b)to prohibit the sale of any article of food which is in contravention of the provisions of this Act and rules and regulations made thereunder;

(c)to receive report and samples of article of foods from Food Safety Officer under his jurisdiction and get them analysed;

(d)to make recommendations to the Commissioner of Food Safety for sanction to launch prosecutions in case of contraventions punishable with imprisonment;

(e)to sanction or launch prosecutions in cases of contraventions punishable with fine;

(f)to maintain record of all inspections made by Food Safety Officers and action taken by them in the performance of their duties;

(g)to get investigated any complaint which may be made in writing in respect of any contravention of the provisions of this Act and the rules and regulations made thereunder;

(h)to investigate any complaint which may be made in writing against the Food Safety Officer; and

(i)to perform such other duties as may be entrusted by the Commissioner of Food Safety."

3. Since such functions are entrusted to the designated officer, the third respondent being a designated officer in-charge of Chennai area, on regular basis making inspection to various hotels and restaurants, who are



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the members of the petitioner's association and insofar as such inspections are concerned, the petitioner cannot have any grievance provided if it is conducted strictly in accordance with the provisions of the said Act.

4. The only grievance espoused by the petitioner as stated by the learned Senior Counsel is that, whenever, the Officer goes for such inspection to collect samples, he take a TV crew of various television channels along with him and go inside the hotels upto kitchen, where if they collect any sample that is being recorded by video cameramen of private press and the moment after such inspection, the officer, most of the time used to give interview to the private TV channels and print media as if that the hotel, where he has taken sample, is running with sub-standard food and that kind of negative messages being spread, at the moment through the electronic media throughout the world, thereby the very functioning of the hotels/restaurants concerned is virtually getting affected.

5. Only in this context, learned Senior Counsel would contend that, the very prayer sought for in this writ petition itself is to give a direction by way of mandamus to the respondents to act in accordance with the



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provisions of the Act by conducting inspection, but such inspection shall be conducted by the Officer like the third respondent only within the parameters of the provisions of the Act.

6. He also in this context pointed out that, this has been specifically mentioned by the petitioner in paragraph 16 of the affidavit filed in support of this writ petition, which reads thus:

"16. It is submitted that recently the third respondent along with food safety officials carried out various surprise inspections at veg and non-veg restaurants including the members hotel of the petitioner association. It is submitted that the food safety authorities have the absolute right to inspect any restaurants at any point of time and there is no restrictions for them to do so. At the same time the said inspection and collection of samples has to be done in accordance with law and as per Food Safety and Standards Act, 2006."



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7. On the other hand, Mr.U.M.Ravichandran, learned Special

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Government Pleader appearing for the respondents would submit that, under the provisions of the Act, the designated officer is empowered to enter upon any restaurant or any food retail shop or food products shop, where they can collect samples and once the sample is collected that would be tested in the Laboratory, based on such test report, the respondents can decide as to whether any action can be taken against the restaurants or hotels or shops, who sell any sub-standard food products to the extent of either to close the shop and / or launch a prosecution against such management which is also since provided under the provisions of the Act.

8. When that being so, suppose the officer finds that some sub-standard food is still kept in the restaurant or being prepared or kept it for preparation for the next meal or next day, then *prima facie*, the officer if he feels that it is a sub-standard food, that will be revealed to the public in the interest of the public or larger interest of the society. Therefore, it cannot be stated that the officer has violated the provisions of the Act and for such kind of action in public interest, the officer is not entitled to under the provisions of the Act.

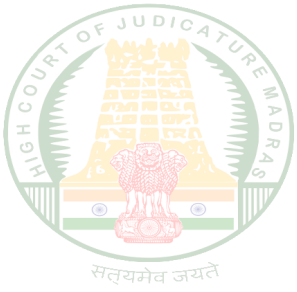


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WEB COPY 9. I have considered the said submissions made by the learned counsel appearing for both sides and have perused the materials placed before this Court.

10. Insofar as the power of the designated officer is concerned, it is vested in him as per the provisions i.e., Section 36 of the Act, under which, the designated officers can receive report and samples of articles of food from Food Safety Officer under his jurisdiction and get them analyzed.

11. Assuming that the designated officer himself wants to go and collect samples, for which, he wants to inspect the food shops, restaurants, hotels etc., he can do so, provided, after collecting samples he has to send the sample for analysis. After getting it analyzed, report has to be prepared and sent to the further higher authority, who is the Commissioner of Food Safety for launching prosecution in case of any contraventions punishable with imprisonment.



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12. In this context, if the third respondent being a designated officer wants to strictly implement the provisions of the Act, that steps taken by him can be welcomed, but at the same time, when he wants to collect samples from any hotels, restaurants or shops especially the members of the petitioner, he can do so, and if he wants to record evidence at the time of collecting samples, he can even take private photographer or cameraman to record and register such process of collecting samples and after recording the same, it can be kept intact either by the designated officer or any other authority under the Act and that can be utilized only at the time of prosecution, if any launched against the hotel owner or shop owner concerned. Otherwise, that kind of evidence recorded either by way of photographs or by video camera at the time of collecting samples should not be divulged as it would not be anyway helpful for the Officers or authorities concerned to proceed further to test the sample and to come to a conclusion about the controversies noticed, which requires prosecution subsequently.

13. Therefore, this Court feels that, while permitting the designated officer, not necessarily the third respondent, any other designated officer in-charge of the District concerned, whenever he visits shops or hotels or



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restaurants for collecting samples, he can do so with his assistants of the Department and if he wants to record the same, photographs and videographs can be taken, but that should not be published or divulged unless and until that is required to be published or divulged for establishing the case at the time of prosecution.

14. Also the designated officer like the third respondent is restrained from giving any public interview either at the time of or after completion of inspection for taking of samples in any hotels, restaurants or shops, who are the members of the petitioner's association without the leave of this Court.

15. In that view of the matter the aforesaid interim orders are passed.

16. Post this writ petition on 17.10.2022 for filing counter.



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17. Notice to the third respondent returnable by then. Private notice is

also permitted.

30.09.2022

mp/drm

Note: Issue order copy today (30.09.2022)



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