

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19286 of 2014

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M/s Prabhat Zarda Factory India Pvt. Ltd.	Petitioner/s
	Versus	
The State of Bihar & Ors	Respondent/s

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with
Civil Writ Jurisdiction Case No.19232 of 2014

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Rajat Industries Pvt. Ltd.	Petitioner/s
	Versus	
The State of Bihar & Ors	Respondent/s

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with
Civil Writ Jurisdiction Case No.19960 of 2014

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M/s R.k. Enterprises	Petitioner/s
	Versus	
The Union of India & Ors	Respondent/s

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with
Civil Writ Jurisdiction Case No.20129 of 2014

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M/s Khan Brothers	Petitioner/s
	Versus	
The Union of India & Ors	Respondent/s

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Appearance :

(In CWJC No.19286 of 2014)

For the Petitioner/s : Mr. Prabhat Ranjan

For the Respondent/s : Mr. Sc2- Nawal Kishore Singh

(In CWJC No.19232 of 2014)

For the Petitioner/s : Mr. Prabhat Ranjan

For the Respondent/s : Mr. Sc17-Arbind Kumar No. ii

(In CWJC No.19960 of 2014)

For the Petitioner/s : Mr. Prabhat Ranjan

For the Respondent/s : Mr. Paag- Lalit Kishore

(In CWJC No.20129 of 2014)

For the Petitioner/s : Mr. Sanjay Kumar Singh

For the Respondent/s : Mr. Paag- Lalit Kishore

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE SAMARENDRA PRATAP
SINGH

ORAL ORDER

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

6 23-12-2014

Apart from challenge posed to the *vires* of the provisions of the Regulation 2.3.4 of Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011, in CWJC No. 20129 of 2014, all the writ petitions have impugned Order No. 1, dated 07.11.2014, issued by the Commissioner of Food Safety, Government of Bihar, whereby the Commissioner of Food Safety, Government of Bihar has prohibited, for a period of one year, with effect from 07th November, 2014, *the manufacture, storage, distribution or sale of that type of tobacco and areca nut (beetelnut/supari) which is either flavoured, scented or mixed with any of the said additives, and flavoured/scented supari or otherwise by whatsoever name called, whether packaged or unpackaged and/or sold as one product, or though packaged as separate products sold or distributed in such a manner so as to easily facilitate mixing by the consumer.*

It has been submitted, on behalf of the State-respondents, that till now, the applications, seeking transfer of all these writ petitions by the State of Bihar to the Hon'ble Supreme Court, has not yet been placed before the Court and, consequently, no order of transfer, as sought for by the State Government, has yet been made.

It is in the backdrop of the above fact situation

that this Court is required to take a decision on the question of interim relief(s), which the writ petitioners have sought for.

Having perused the pleadings of the parties and materials on record including the impugned order, dated 07.11.2014, aforementioned, this Court finds and it is not disputed by the respondents that manufacture, storage, distribution or sale of *Pan Masala* is not prohibited under the Food Safety and Standards Act, 2006, and that Regulation 2.11.5 of the *Food Safety And Standards (Food Products Standards And Food additives) Regulations, 2011*, lays down the standards of *food additives*, which may be used in, or added to, *Pan Masala* and unless *Pan Masala* is manufactured, stored, distributed or sold in breach of the standards laid down by Regulation 2.11.5 of *Food Safety And Standards (Food Products Standards And Food additives) Regulations, 2011*, the manufacture, storage, distribution or sale of *Pan Masala* is not legally prohibited by the impugned order, dated 07.11.2014, aforementioned.

In short, manufacture, storage, distribution or sale of *Pan Masala* having not been prohibited by the Food Safety and Standards Act, 2006, or by the impugned order, dated 07.11.2014, aforementioned, it becomes abundantly clear that unless the writ petitioners manufacture, store, distribute or sell in breach of Regulation 2.11.5 of *Food*

Safety And Standards (Food Products Standards And Food additives) Regulations, 2011, they cannot be restrained from manufacturing, storing, distributing or selling of *Pan Masala*. It has been the consistent case of the petitioners that as far as *Pan Masala*, which are manufactured, stored, distributed or sold by the writ petitioners, the same are not mixed with the prohibited materials/food additives nor is there any breach of the standards embodied in the Regulation 2.11.5 of *Food Safety And Standards (Food Products Standards And Food additives) Regulations, 2011*. In this regard, it needs to be pointed out that there is nothing on record showing that what the writ petitioners have contended is incorrect or untrue.

We, therefore, until directed otherwise, allow, in the interest of justice, writ petitioners to manufacture, store, distribute or sell *Pan Masala* in accordance with the standards laid down by the Regulations 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011, and direct the respondents not to stop or harass the writ petitioners unless a case of breach of the said standards is found to have been committed by the writ petitioners.

As regards *Zarda*, which also is a substance prohibited by the impugned order, dated 07.11.2014, it needs to be pointed out that we are *prima facie* of the view

that *Zarda* does not fall within the definition of food or *food additives*, as defined by Section 3 (j) and (k) respectively of Food Safety and Standards Act, 2006, inasmuch as *Zarda* is a flavoured *tobacco* and merely because *tobacco* is flavoured, it cannot be treated as food and/or *food additives*. The flavoured *tobacco* would not, therefore, fall, unless shown otherwise, within the purview of food or *food additives*.

Taking, therefore, all aspects into account, we, in the interest of justice, allow *Zarda* to be manufactured, stored, distributed or sold by the writ petitioners provided that manufacture, storage, distribution or sale is not in breach of any law.

To the extent as indicated hereinbefore, the impugned order, dated 07.11.2014, shall, as against the writ petitioners, remain, until further order, inoperative so far as manufacturing, storing, distributing or selling of *Zarda* by the writ petitioners are concerned.

Interim directions passed hereinabove shall remain in force until directed, otherwise, by the Court. The respondents are left at liberty to apply for modification and/or cancellation of the interim directions which we have passed hereinbefore.

Let these cases be listed on 15th January, 2015, retaining its position, provided that this Bench is made

available.

IN THE COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 10396 of 2014

Sd/- (I.A. Ansari, ACJ)

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Sd/- (Samarendra Pratap Singh, J)

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Civil Writ Jurisdiction Case No. 10396 of 2014

For the Petitioner

For the Respondent

Civil Writ Jurisdiction Case No. 10396 of 2014

For the Petitioner

For the Respondent

- Appearance
- For the Petitioner (In C.W.J. No. 10396 of 2014) - Mr. Pradyumn Ranjan
 - For the Respondent (In C.W.J. No. 10396 of 2014) - Mr. Sd/- Nand Lal Khosla
 - For the Petitioner (In C.W.J. No. 10396 of 2014) - Mr. Pradyumn Ranjan
 - For the Respondent (In C.W.J. No. 10396 of 2014) - Mr. Sd/- Nand Lal Khosla
 - For the Petitioner (In C.W.J. No. 10396 of 2014) - Mr. Pradyumn Ranjan
 - For the Respondent (In C.W.J. No. 10396 of 2014) - Mr. Sd/- Nand Lal Khosla

COURT HONOURABLE THE ACTING CHIEF JUSTICE and HONOURABLE MR. JUSTICE SAMARENDR Pratap Singh