

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Present:

Ahmed Ali M. Shaikh, CJ
and Yousuf Ali Sayeed, J

C. P. No. D-418 of 2022

Rashid Khan.....Petitioner

Versus

Province of Sindh and others.....Respondents

C. P. No. D-3478 of 2022

Muhammad Akbar & 13 others.....Petitioners

Versus

Province of Sindh and others.....Respondents

Petitioner, in person, in C.P. No. D-418/22. Muhammad Yaseen Azad, Sarmad Khan Azad, Muhammad Qasim Iqbal and Mehreen Ibrahim, Advocates, for the Petitioners in C.P. No. D-3487/22.

Muhammad Zeeshan Adhi and Leela Kalpana Devi, Additional Advocates General, Sindh, for the Province of Sindh.

M. S. Bukhari and Rajesh Kumar Khageja, Advocates, for the Sindh Food Authority in C.P. No. D-418/22 and C.P. No. D-3487/22 respectively, along with Dr. S. M. Ghufraan Saeed, Assistant Professor, Department of Food Science & Technology.

Muhammad Qaiser Hassan Khan, Advocate, for the intervener in C.P. No. D-3487/22.

Date of hearing : 12.10.2022.

ORDER

YOUSUF ALI SAYEED, J. - The captioned Petitions essentially pertain to the sale of edible oil and ghee in a loose or unpackaged form, with the Petitioners in C. P. No. D-3478 of 2022, being purveyors of edible oil and ghee, having impugned Notification No. D.G/DIR(OPR)/ SFA/4440/2018 dated 05.09.2018 (the “**Impugned Notification**”) issued by the Sindh Food Authority (the “**Authority**”) so as to impose a ban/restriction on the sale of those products in such form, as well as the consequent action taken for enforcement of that ban in terms of sealing their premises, whereas the Petitioner in C.P. No. D-418/22, seeks the imposition and enforcement of such a ban in the self-professed capacity of a social activist, albeit without direct reference to the Notification.

2. The Authority stands constituted under the Sindh Food Authority Act 2016 (the “**Act**”), with a mandate in terms of Section 7(1) of regulating and monitoring the “food business” in order to ensure provision of “safe food”. Those terms and the underlying term “food” from which they derive colour, stand defined in terms of Section 2 (h), (j) and (y) of the Act as follows:

(h) “food” means anything used as food or drink for human consumption other than drugs, and includes –

(i) any substance which is intended for use in the preparation of food;

(ii) any flavouring agent or condiment;

(iii) any colouring matter intended for use in food;

(iv) chewing gum, confectionary and other products of like nature;

(v) water in any form including ice, intended for human consumption or for use in the composition or preparation of food; and

(vi) any other thing prescribed as food;

(vii) **canned food and soft drinks;**

Explanation-I.- A thing shall not cease to be food by reason that it is also capable of being used as drugs.

Explanation-II.- In this clause, the word “drugs” has the same meaning as is assigned to it in the Drugs Act 1976 (XXXI of 1976).

(j) “food business” means any undertaking, whether or not for profit, carrying out any of the activities related to any stage of manufacturing, processing, packaging, storage, transportation, distribution of food, import, export and includes food services, catering services, sale of food or food ingredients;

(y) “safe food” means an article of food which is safe for human consumption;

3. Additionally, the terms “adulterated food”, “misbranded food”, and “unsafe food” have also been defined through Clauses (a), (t) and (bb) of Section 2, so as to mean:

(a) “adulterated food” means the food –

(i) which is not of the nature, substance or quality which it purports or is represented to be; or

(ii) which contains any such extraneous substance as may adversely affect the nature, substance or quality of the food; or

(iii) which is processed, mixed, coloured, powdered or coated with any other substance in contravention of the rules or the regulations; or

(iv) any constituent of which has been wholly or in part abstracted so as to affect injuriously its nature, substance or quality; or

(v) which contains any poisonous or other ingredient that may render it injurious to human health; or

(vi) the quality or purity of which does not conform to the prescribed standards; or

(vii) which having been prepared, packed or kept under unhygienic and insanitary conditions; has been contaminated or has become injurious to health;

(t) "misbranded food" means the food –

(i) which is an imitation of or resembles another food, in a manner that it is likely to deceive the consumer; or

(ii) which is so coloured, flavoured, coated, powdered or polished as to conceal the true nature of the food; or

(iii) which is contained in any package which, or the label of which, bears any statement, design or device regarding the ingredients or the substances contained in the food, that is false or misleading;

(bb) "unsafe food" means the food whose nature, substance or quality is so affected by any means as to render it injurious to human health.

4. Section 7(2) of the Act goes on to provide *inter alia* that the Authority may “*formulate standards, procedures, processes and guidelines in relation to any aspect of food including food business, food labeling, food additive, and specify appropriate enforcement systems*” and “*do any other thing which is incidental to or necessary for the discharge of its functions*”, with Section 7(3) clarifying that the Authority shall exercise those functions “*as far as possible, in accordance with the well-established scientific principles and international best practices*”.

5. The Impugned Notification issued by the Authority reads as follows:

“Sindh Food Authority
Government of Sindh
No.D.G/DIR(OPR)/SFA/4440/2018
Karachi dated 05th Sep. 2018

NOTIFICATION

Consequent upon the recommendations of the 1st Scientific panel meeting of Sindh Food Authority was held on 04th September, 2018, the competent authority is pleased to Ban/restrict the following food items in province of Sindh with immediate effect.

1	Carbonated Soft Drinks, Energy Drinks, Papad and coloured flavour Snacks/Chips.	Banned School & College Canteens.
2	Monosodium Glutamate (MSG)	Banned
3	Slaughtering of Small Animals (calf)	Banned
4	Sale of Loose Spices	One-year Grace period granted (Till September 2019).
5	Calcium carbide as fruits ripening source	One-year Grace period granted (Till September 2019).
6	Mislabeling	Followed as per PSQCA standards e.g. it should be clearly mentioned on the tea whitener “YE DODH NAHI HAI”
7	Rangkat Bleaching agent (Sodium Hydro sulphite and Sodium Hydrochloride)	Banned only for manufacturing sweets items.
8	Open Oil & Ghee	Banned.

Director General
Sindh Food Authority”

6. Proceeding with their submissions, learned counsel appearing on behalf of the Petitioners in C. P. No. D-3478/22 submitted that they were vendors or wholesalers of edible oil, as the case may be, and had been carrying on their business accordingly since before the creation of the Authority, under license granted to them by the Karachi Metropolitan Corporation (the “**KMC**”). Attention was drawn to copies of certain licenses issued by the KMC as well as Bureau of Supply and Prices and various Market Committees, as filed along with the Petition. It was argued that the imposition of a blanket ban on the sale of edible oil in open form was bereft of a rational basis, as the central purpose of the Act was to ensure a proper standard of food in the public interest, which could be served through formulating and implementing standards that met the basic requirement of a “safe food”. It was contended that the edible oil sold by the Petitioners was free of adulteration and was fit for human consumption, hence satisfied that requirement. Reliance was placed on a laboratory test report dated 19.04.2022, indicating that the tested substance met the standard prescribed by the Pakistan Standards Quality Control Authority (“**PSQCA**”). It was submitted further that the premises of the Petitioners had nonetheless been sealed by the functionaries of the Authority in pursuance of the Impugned Notification, albeit that a grace period of 5 months had been Ordered by the Authority on 03.04.2019 and despite the purported power of sealing being *non est*, that too, without any formal sealing order being issued. Reliance was placed on the Judgment of the Honourable Supreme Court in the case reported as Messrs Lung Fung Chinese Restaurant, Lahore and others vs. Punjab Food Authority and others PLD 2021 Supreme Court 684 (“**Lung Fung**”).

7. It was pointed out that Lung Fung addressed Section 13(1)(c) of the Punjab Food Authority Act, 2011, which purported to confer power upon a Food Safety Officer to seal premises, with it having been declared by the Apex Court that in the absence of any legislative policy or guideline, the power to seal premises was unconstitutional and illegal. It was submitted that as Section 17(1) of the Act and the provision of the Punjab statute were *in pari materia*, the precedent was clearly applicable, where it had been held that:-

“No ground or any other legislative guideline has been given in section 13(1)(c) that permits or empowers the FSO to exercise his discretion and invoke the power of sealing. Section 13(1)(c) simply states that FSO can seal any premises where he believes any food is prepared, preserved, packaged, stored, conveyed, distributed or sold, examine any such food and examine anything that he believes is used, or capable of being used for such preparation, preservation, packaging, storing, conveying, distribution or sale. Nowhere does section 13(1)(c) provide when the sealing powers can be invoked. Further, the act of “sealing” is not supported by a remedial mechanism as in the case of seizure of food. Therefore, there is no legal remedy available to a food operator or food business after the premises have been sealed. There is also no provision for de-sealing under the Act. More importantly, a similar power has been actually vested in the FSO under section 18 of the Act for passing emergency prohibition orders whereby a food operator can be restrained from carrying on food business. The difference is that within twenty-four hours the aggrieved party can approach the Food Authority for its redressal against such order (Section 18(2)). The so-called sealing power under section 13(1)(c) amounts to frustrating section 18 and the scheme of the Act. In the absence of any legislative policy or guideline clearly spelling out when the sealing can take place and there being no remedial process provided against sealing, the power of sealing in the hands of the FSO can easily be applied arbitrarily which cannot be permitted under our constitutional scheme, as any such act would offend fundamental rights under Articles 18, 23 and 25 of the Constitution. The power of sealing of premises by the FSO, in its present form, is therefore *ex facie* discriminatory. We, therefore,

declare that the power of the FSO to “seal any premises” in section 13(1)(c) to be unconstitutional and illegal. Hence, the power to seal the premises of a food operator or a food business by the FSO is struck down. Reference to “sealing” in section 31(2) is also accordingly struck down. The rest of the provision [section 13(1)(c)] shall remain intact and continue to be enforceable. Any Rules, Regulations or SOPs promulgated under the Act dealing with “sealing of the premises” by the FSO in the absence of any sealing power under the Act are, therefore, *ultra vires* the Act and are also declared illegal and without any legal effect.”

8. As it happens, no sealing orders were enclosed with the comments submitted on behalf of the Authority; nor was any material placed on record at that juncture to demonstrate the quality standards devised by the Authority in respect of edible oil as a logical precursor to the Notification. Indeed, when queried on those aspects during the course of the proceedings, the learned AAG as well as counsel appearing on behalf of the Authority and its functionaries in attendance, including the Director General, were found wanting, with an Order having thus been made on 15.09.2022 in the following terms:

“At the very outset, learned Addl. A.G candidly states that by extension of the principle laid down in the Judgment of the Honourable Supreme Court in the case reported as Messrs Lung Fung Chinese Restaurant, Lahore and others vs. Punjab Food Authority and others PLD 2021 Supreme Court 684, the Sindh Food Authority had no power to seal any premises. Mr. Rajesh Kumar Khagaija, counsel for Respondents Nos.2 and 3 is not in a position to controvert this position so as to show that the power subsists. Furthermore, neither he nor the functionaries of the Authority in attendance today are able to show what quality standards, if any, have been devised in relation to edible oil. Under such circumstances the Authority is directed to de-seal the premises of the Petitioners, but may however exercise all other powers vested in it for purpose of the impugned notification subject to final outcome of the Petition...”

9. However, on 06.10.2022 certain additional documents were subsequently filed under cover of a Statement, reflecting that the recommendation for imposition of a ban on the sale of oil/ghee in open form had initially been made by the Scientific Panel of the Authority at its 1st Meeting held on 04.09.2018. The Impugned Notification was apparently issued the next day, but the Authority only went on to adopt the quality standards devised by the Government of Pakistan at a later stage through the PSQCA vide Notification bearing No. (G)/Food/ 7(71)/SF/SFA/2022 dated 18.01.2022. The relevant excerpt from the Minutes of the Meeting of the Scientific Panel and the aforementioned Notification read as follows:

Minutes of the Scientific Panel

“Agenda Item No. 5

Open Oil/Ghee

The Convener apprised the panel that various cooking Oil and Ghee brands are reported unfit for human consumption and loose openly sell in markets without certification absence of Vitamin-A, rancidity and addition of Artificial flavor in Oil and Ghee.

Decision:

After detail discussion, Panel decided that:

- a. Open Oil & Ghee should be banned.
- b. Director (Operation) Sindh Food Authority will have separate meeting with Pakistan Vanaspati Manufacturing Association (PVMA) to decide on time line to stop produce Ghee.
- c. Dr. Ghufraan Saeed will take up the issue of percentage of Trans Fatty Acid in Ghee with Pakistan Standard Quality Authority (PSQCA), so that the percentage of Trans Fatty Acid should not exceed the limit hazardous for human consumption.”

The Notification dated 18.01.2022

“No. SO (G)/Food/7(71)/SFA/2021
GOVERNMENT OF SINDH
FOOD DEPARTMENT
Karachi dated 18th January, 2022

NOTIFICATION

No: SO(G)/Food/7(71)/SFA/2021:- In pursuance of direction of the 44th meeting of the Council of Common Interest at Para-75 in Case No. CCI-4/1/2021(Viii) dated 07.04.2021, conveyed vide Government of Pakistan, Ministry of Interprovincial Coordination Memorandum No. 2(24/2020-CCI) dated 04.05.2021, the Sindh Food Authority is pleased to adopt the National Standard formulated by Pakistan standard and Quality Control Authority (PSQCA), with immediate effect.

As per the decision of CCI modification conveyed vide above referred memorandum, the registration of business sale of Food products, licensing of factory establishment for food products and Enforcement and monitoring of Food Products shall be carried out by the Sindh Food Authority within its area of jurisdiction.

**(RAJA KHURRAM SHEHZAD UMAR)
SECRETARY TO GOVERNMENT OF SINDH”**

10. As is discernible, the so-called recommendation of the Scientific Panel is bereft of any real scientific basis/analysis and a bare reading of the Impugned Notification reveals its wording to be questionable in certain respects, with Item 6 thereof visibly being incongruous with the concept of a food item. That, coupled with the imposition of the ban in the absence of defined standards, raises a question as to whether the step validly falls within the competence of the Authority, and the lack of basic knowledge demonstrated by the functionaries of the Authority during the course of proceedings, also raises doubt as to its efficiency.

11. Be that as it may, whilst Section 19(1) of the Act specifically mandates that “No person shall use any place for food business except under the prescribed registration and possessing of a valid licence”, it was pointed out that the Petitioners do not hold any such license or permission issued by the Authority under the Act, and it merely being claimed by learned counsel that applications had been made to the Authority by the Petitioners in that regard, which remained pending, but that claim being denied on behalf of the Authority and not even a copy of any such application being placed on record.

12. Under such circumstances, we are of the view that the Petitioners have no legal standing to carry on any food business within the Province and lack *locus standi* to maintain the Petition so as to challenge the Impugned Notification.

13. That being so, we dispose of the Petitions along with all Miscellaneous Applications while maintaining the desealing of premises in terms of the aforementioned Order dated 15.09.2022, while otherwise leaving the Authority at liberty to exercise its powers under the Act subject to such further aspects/questions being examined at a later date in an appropriate proceeding.

JUDGE

CHIEF JUSTICE

Dated 16.11.2022