



W.P.(MD)No.13810 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 08.07.2024

DELIVERED ON : 02.08.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.13810 of 2021

and

W.M.P.(MD)Nos.12380, 10774 and 11984 of 2021

M.Sheik Farid

... Petitioner

Vs.

The General Manager,
Dindigul District Co-operative Milk
Produceers Union Ltd., DD 160,
No.9, East Govindapuram,
Dindigul.

... Respondent

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari to call for the records pertaining to impugned communication in Na.Ka.No.3900/Pa.Yi/2013, dated 13.07.2021 issued by the respondent and quash the same.

For Petitioner : Mr.Anand Chandrasekar

For Respondent : Mr.A.K.Manikkam



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ORDER

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The Writ Petition is directed against the communication dated 13.07.2021, issued by the respondent directing the petitioner to vacate the Aavin Booth before 18.07.2021 as the license given to the petitioner came to be cancelled.

2. The case of the petitioner is that on the basis of his application, the respondent passed an order dated 29.05.2014 granting license to function as an agent of Aavin milk booth in a vacant site at the north western portion of the entrance of the bus stand at Vedasandur, that the license was given initially for a period from 01.06.2014 to 31.05.2014, that the petitioner has paid security deposit of Rs.25,000/- and license fee fixed Rs.2,000/- per month for one year period, that the petitioner has also paid Rs.5,760/- as ground rent to Vedasandur panchayat, that since the petitioner has made all the payments and on execution of the agreement, he was permitted to operate as a licensee for Aavin products, that though there was no express written order, the respondent has permitted the petitioner to continue as a licensee till date implying extension of license, that since there was lack of clarity on the office of



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the respondent with respect to the quantum of enhancement of yearly license fee, though the petitioner had attempted to make payment of license fee on several times, he was instructed to wait and pay only when a demand was made fixing the amount, that the petitioner has been regularly paying the ground fee to Vedasandur panchayat till date, that the respondent without any prior notice and without calling for any explanation, has sent the impugned communication dated 13.07.2021, received on 15.07.2024 informing the cancellation of the license granted to the petitioner and also directed to vacate the Aavin booth by 18.07.2021, that the petitioner after the receipt of the said communication, has sent a Demand Draft for Rs.1,48,000/- on 30.07.2021 towards license fee payable for 74 months and also indicating his willingness to pay the enhanced amount if any, that the respondent has not raised any specific allegations against the petitioner in the impugned communication and all the allegations are general in nature, that since the respondent was not willing to accept the explanation offered by the petitioner and was insisting him to vacate and hand over the possession of Aavin booth, the petitioner was constrained to file the present, writ petition invoking Article 226 of the Constitution of India.



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3. It is evident from the records that when the writ petition was taken up for admission, a learned Judge of this Court, by observing that general allegations have been levelled against the milk booth licensees and no specific allegations have been made against the petitioner, has granted an order of interim stay of all further action pursuant to the communication for a period of two weeks from the date of receipt of a copy of that order.

4. The petitioner has filed a petition in W.M.P.(MD)No.11984 of 2021 by alleging forcible dispossession from Aavin booth sought directions to the respondent to restore possession of the premises located at North Western entrance of bus stand, Vendasandur along with goods therein. The main contention of the petitioner is that on 11.08.2021 at about 12.00 hours, the subordinates of the respondent numbering five, Executive Officer, Vendasandur panchayat and his subordinates, Inspector of Police, two Sub-Inspectors of Police and five Constables attached to Vendasandur Police Station came to the place of the business occupied by the petitioner at bus stand, Vendasandur and compelled him to vacate the



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entire superstructure on the basis of the impugned communication dated 13.07.2021, that the petitioner informed the officials about the filing of the writ petition challenging the impugned communication of the respondent and grant of interim order by this Court and he has also given the numbers of writ petition and writ miscellaneous petitions, that when the officials demanded to see the order copy, the petitioner informed them, as the order copy was not made available till then, he will produce the same in a day or two, that the subordinates of the respondent, despite his request for a day or two for producing the order copy, by stating that the High Court cannot save him from being evicted, started forcing the petitioner to vacate the property and on account of resultant commotion, gathering of general public, fearing law and order problem, the Inspector of Police proposed a via media whereby he asked the petitioner to close the premises temporarily till the receipt of copy of the interim order and he also assured the petitioner that on production of interim order, he will provide necessary protection to run his business, that the petitioner accepting the said proposal, put down the shutters of the premises and locked the same around 14.00 hours on 11.08.2021, that about 16.00 hours, on the same day, the same team of officials who came in the



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forenoon, came to the spot and subordinates of the respondent started breaking open the locks of the premises, that the petitioner on hearing the same, rushed to the spot and protested about the illegal acts of the respondent's men and also reminded about the assurance given earlier, that the Inspector of Police contrary to the earlier stand supported the illegal acts of the subordinates of the respondent, physically restrained the petitioner from entering the premises and also threatened to register a criminal case against him, if he persist with his objection, that the respondent's subordinates, after breaking open the locks, had trespassed into the premises and took away all the goods and articles kept in the space allotted by Aavin and the space licensed to Mr.Nijardeen, that the petitioner's entire things in the premises namely deep freezer, refrigerator, gas stove, gas cylinders, utensils, racks were taken away in a TATA ACE mini truck and transported the same to the office of the respondent, that the Executive Officer, Vendasandur panchayat and his subordinates and police officials aided and abetted the subordinates of the respondent in the commission of the illegal acts, that the petitioner's Counsel has immediately sent a legal notice dated 13.08.2021 to the respondent and the Executive Officer, Vendasandur Panchayat



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highlighting the illegality of their acts and directing the respondent to place the goods back in the premises and restore its possession to the petitioner, that the petitioner has also sent a private notice about the writ petition as permitted by this Court along with the copy of the interim order, that the petitioner has also sent a complaint to the Superintendent of Police, Dindigul District on 13.08.2021 informing about the illegal acts committed by the officials, that the petitioner has suffered immense financial loss, mental agony and that since the respondent is now taking steps to hand over the possession of the entire premises to a third party, in order to safeguard his interest prayed to order restoration of possession of premises measuring 8x6 ft, 10x12ft located at North Western entrance of bus stand, Vedasandur.

5. Meanwhile, the respondent has filed a petition in W.M.P. (MD)No.12380 of 2021 on 19.08.2021 seeking orders to vacate the interim stay granted in W.M.P.(MD)No.10774 of 2021 in W.P.(MD)No. 13810 of 2021 along with counter affidavits to the main writ petition. Moreover, the respondent has also filed a counter affidavit to the petition



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in W.M.P.(MD)No.11984 of 2021, which came to be filed for restoration of possession.

6. The defence of the respondent is that the license for running of Aavin milk booth at Vedasandur bus stand has been granted in favour of the petitioner vide order dated 29.05.2014 for the period from 01.06.2014 to 31.05.2015 on certain terms and conditions, that though the said license got expired on 31.05.2015, the writ petitioner wilfully and wantonly failed to take any steps for renewal of the license, that the writ petitioner has been continuously running the said Aavin milk booth for the last more than 6 years without payment of fees whatsoever and causing severe revenue loss to the respondent, that though there is a specific stipulation that the licensee should not sell any other items other than the Aavin milk products, he was found selling cigarettes, beedies, cool drinks which are all not permitted to sell in the booth, that the Junior Assistant attached to the respondent conducted inspection on 18.07.2021 and after finding that the petitioner has been selling other products also, the respondent has issued the impugned order dated 13.07.2021 cancelling the licence and he was directed to hand over the possession of



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the said booth on 18.07.2021 and inspite of such notice, the petitioner did not turn up and has not complied with the notice, that the respondent was compelled to take possession of the said shop with the help of the police and thereby the said booth was allotted to another licensee namely Kaja Mohideen and that the said Kaja Mohideen has been running the said Aavin booth at Vendasandur bus stand entrance.

7. It is the further case of the respondent that the petitioner was involving in a case pertaining to illegal sale of liquor, for which a case came to be registered in Cr.No.196 of 2021 for the offence under Section 4(1)(a) of the Tamil Nadu Prohibition Act wherein 207 liquor bottles were recovered by the police, that there is no existence of any relationship of licensee and licensor between the petitioner and the respondent after 01.06.2015 itself and that therefore, the petition is liable to be dismissed.

8. At the outset, it is admitted by both parties that the petitioner was granted license to run Aavin booth at North Western entrance of bus stand, Vendasandur initially for a period of one year between 01.06.2014



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and 31.05.2015. It is also not in dispute that the petitioner has paid security deposit of Rs.25,000/-, license fee at Rs.2,000/- per month for one year period and the ground rent at Rs.5,760/- per year to Vedasandur Panchayat. As rightly contended by the learned Counsel for the petitioner and as rightly observed by this Court at the time of granting of interim orders, general allegations have been levelled against the milk booth licensees and no specific allegations were levelled against the petitioner.

9. At this juncture, it is necessary to refer the relevant portion of the impugned order hereunder for better appreciation:

“..... ுமலும் நியமனம் செய்யப்படும் பாலக முகவர்களுக்கு ஓராண்டு காலத்திற்கு பாலகம் செயல்படுத்திட அனுமதி வழங்கப்பட்டு வருடாவருடம் நீட்டிப்பு செய்யும் அடிப்படையில் ஆணை வழங்கப்பட்டு பாலகங்கள் செயல்படுத்தப்பட்டு வருகின்றன. பாலகங்களில் பால் மற்றும் பால் உபபொருட்கள் அல்லாத பிறபொருட்களான பீடி சிகரெட்டி வடை இ மீ! கட்இ வாழைப்பழம்இ தண்ணீர் பாட்டில் விற்பனை செய்வது ஆய்வில் அறியப்படுகிறது.

ுமற்படி பாலகத்திற்கு ஓராண்டு முடிவுற்றவுடன் ஒன்றியத்தின் அனுமதி பெறாமலும் நீட்டிப்பு செய்திடாமலும் மற்றும்



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உரிமைக்கட்டணம் செலுத்தாமலும் தொடர்ந்து எவ்வித அனுமதியின்றி
பாலகட்கள் செயல்படுத்தப்பட்டு வருகின்றன. தே ஒன்றிய
நிபந்தனைக்கு மீறிய செயலாகும்.

எனவ பாலக முகவரான திரு. M.சுப்பரீதிரி
த.பெ.முத்தலீபிரி 13 /ஐ. யூசுப் நகரி மாறம்பாடி ஁ராடுஇ
஁வடசந்துஸர் அவர்களின் முகவர் உரிமத்தை ரத்து
செய்யப்பட்டுள்ளது. எனவ பாலகத்தை 18.07.2021 – க்குள் காலி
செய்து தருமாறு ஁கட்டுக்கொள்ளப்படுகிறது.”

10. As already pointed out, the allegations against the Aavin milk booth licensees for selling the other products such as beedies, cigarettes, biscuits, water bootles etc., and for continuing to run milk booth without getting extension and without paying license fee for several months. Admittedly, the impugned communication is dated 13.07.2021, but the initial license was given for the period till 31.05.2015. It is not the case of the respondent that since the petitioner has not applied for any extension, they have passed any order not extending the license or cancelling the license already granted. No doubt, the petitioner has only paid license fee for one year and failed to pay for the subsequent period. But according to the petitioner, though he approached the respondent for payment of license amount, the respondent directed the petitioner to wait and pay only when a demand was made fixing the enhanced amount.

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11. As rightly contended by the learned Counsel for the petitioner, the respondent in their counter affidavits, has nowhere specifically disputed about the factum that the petitioner, after the receipt of the impugned communication, had taken a Demand Draft for Rs.1,48,000/- towards license fee payable for 74 months and send the same to the respondent indicating his willingness to pay the enhanced sum if any on 30.07.2021. It is not the case of the respondent that they have not received the Demand Draft for Rs.1,48,000/- nor returned the same refusing to receive the amount. As rightly contended by the learned Counsel for the petitioner, the respondent has not offered any reason or explanation for allowing the petitioner to continue to run the milk booth and that too without payment of license fee.

12. In the counter affidavit filed along with the petition to vacate the interim order, the respondent has stated that the Junior Assistant attached to the respondent office, conducted an inspection on 12.07.2021 and found that the petitioner has been selling cigarettes, beedies, cool drinks and submitted a report and on that basis, the respondent has issued

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the impugned communication dated 13.07.2021. It is pertinent to note that the inspection alleged to have been made on 12.07.2021 and the report submitted by the Junior Assistant of the respondent office were not at all referred in the impugned communication dated 13.07.2021.

13. No doubt, the petitioner in the affidavit filed in support of the petition in W.M.P.(MD)No.11984 of 2021 seeking restoration of possession has stated that the petitioner in addition to the space allotted by Aavin, he had also occupied the space allotted to his close relative Nijardeen, that the petitioner had put up superstructure over the said two sites during 2015 itself and that he has been selling only Aavin products in the site allotted by Aavin and in the site allotted to Nijardeen, he has been running eatery selling snacks and other products. The petitioner has also furnished the particulars of the space allotted ie., 8x6 feet allotted by Aavin and 10x12 feet allotted to Nijardeen. But in the counter affidavit, the respondent has taken a stand that the petitioner has encroached the excess area of 10x12 feet belonging to Town Panchayat. As already pointed out, the impugned communication does not contain any specific allegations against the petitioner and since the allegations are general in



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nature as against the Aavin booth licensees and in the absence of any other valid and acceptable reasons or grounds, the impugned communication cancelling the license and directing the petitioner to vacate by 18.07.2021 cannot be sustained.

14. As already pointed out, vide order dated 10.08.2021, this Court has granted interim stay of any further action, in pursuance of the impugned communication dated 13.07.2021. According to the petitioner, despite intimating the filing of the writ petition and granting of interim stay, the respondent and his subordinates, Vedasandur Panchayat and its officials and police officials came to Aavin booth at 12.00 hours on 11.08.2021. According to the petitioner, he was forcibly dispossessed from the premises on 11.08.2021. The respondent in their counter affidavit would specifically admit that since the petitioner was not in the milk booth premises and the milk booth was in a closed condition, the respondent officials removed the articles lying in the said Aavin booth.

15. As already pointed out, the petitioner, after the receipt of the impugned communication, sent a letter dated 30.07.2021 expressing his willingness to pay the enhanced amount if any, along with the Demand



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Draft for Rs.1,48,000/- being the license fee for 74 months. As already pointed out, it is not the case of the respondent that they have rejected the request dated 30.07.2021 and also refused to receive the Demand Draft. It is also not the case of the respondent that Aavin booth was in a closed condition since the issuance of the impugned communication or for some period prior to 11.08.2021. It is pertinent to note that the respondent would admit specifically that they have received the contempt notice as well as legal notice dated 13.08.2021 from the petitioner's Counsel on 16.08.2021. As already pointed out, the petitioner has filed the petition seeking restoration of the possession on 18.08.2021 and the respondent has filed the application to vacate the interim stay along with the counter affidavits on 19.08.2021

16. It is pertinent to note that even after the receipt of the legal notice as well as the contempt notice on 16.08.2021 and after coming to know about the interim stay order granted by this Court on 10.08.2021, they have not chosen to hand over the Aavin booth to the petitioner. But on the other hand, they have taken a stand that the said booth was allotted to another licensee namely Kaja Mohideen and the said Kaja



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Mohideen has been running the said Aavin booth at Vedasandur bus stand entrance as on date ie., on 18.08.2021.

17. As rightly contended by the learned Counsel for the petitioner, the respondent has not furnished any particulars as to when the application was received from Kaja Mohideen and when the payments were made and when the license was granted. Even according to the respondent, the possession was taken on 11.08.2021 and the subsequent licensee Kaja Mohideen has been running the Aavin booth as on 18.08.2021. In the counter affidavits, the respondent has also taken a stand that the petitioner was involved in a case pertaining to the illegal sale of liquor, for which F.I.R., came to be registered in Cr.No.196 of 2021 for the offences under Section 4(1)(a) of the Tamil Nadu Prohibition Act, on the file of the Inspector of Police, Vedasandur Police Station, wherein 207 liquor bottles were recovered from the accused. The learned Counsel for the petitioner has produced a copy of the F.I.R., and as rightly pointed out by the learned Counsel for the petitioner, 207 brandy bottles were recovered near Sarkarai Avulia Earth movers in Vedasandur to Vadamadurai road and not in the Aavin booth as alleged



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by the respondent.

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18. Even assuming for arguments sake that the interim stay granted on 10.08.2021 was not brought to their notice on 11.08.2021, even after the receipt of the legal notice as well as contempt notice on 16.08.2021, for the reasons best known to them, they have not taken any steps to restore the possession in order to comply with the orders of this Court. But in the counter affidavits, they have attempted to give an explanation that the petitioner was in illegal occupation of the Aavin booth premises as he failed to pay the license fee to the respondent for the last more than 6 years and was continuing unlawful occupation even after the expiry of the license period from 01.06.2015 onwards, that he has violated the material conditions imposed by the respondent not to sell other products in the Aavin booth and that the petitioner is not having any statutory protection under the law to occupy the said shop.

19. On considering the entire facts and circumstances and the stand taken by the respondent in their counter affidavits and also the admission of the respondent that they had taken possession of Aavin



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booth on 11.08.2021, this Court is constrained to say that all was not well with the respondent. As rightly contended by the learned Counsel for the petitioner, after fixing the new licensee, they have taken all necessary steps to put the said licensee in possession of the Aavin booth in dispute. No doubt, there is no material to show that granting of interim stay was brought to the notice of the respondents on 11.08.2021. But taking note of the entire circumstances, it can easily be inferred that even after coming to know about the granting of interim stay from the petitioner, taking advantage of the non-production of the stay order, they have chosen to take forcible possession from the petitioner. The respondent is not an ordinary person, but it is a statutory body and such types of commissions and omissions are not expected from a statutory body.

20. The Hon'ble Supreme Court in ***Zahira Habibulla H Sheikh And Anr vs State Of Gujarat And Ors*** reported in **2004(4) SCC 158** has held that Courts have always been considered to have an over-riding duty to maintain public confidence in the administration of justice - often referred to as the duty to vindicate and uphold the 'majesty of the law'.



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As rightly contended by the learned Counsel for the petitioner, the respondent cannot be allowed to act as per their whims and fancies.

21. In view of the above, this Court has no hesitation to hold that the respondent is to be directed to restore the possession of the Aavin milk booth to the petitioner within the time stipulated by this Court. As already pointed out, in the counter affidavits, the respondent has specifically admitted that their officials removed the articles lying in the said Aavin milk booth, but they have not elaborated further and they have not even furnished the particulars about the custody of the articles and the condition of the same. Since the articles were removed on 11.08.2021 and in the absence of the particulars of the articles which were removed, this Court is not inclined to go into that aspect and the petitioner is to be given liberty to approach the competent civil Court to get the damages for the goods.

22. In the result, the Writ Petition is allowed and the impugned communication in Na.Ka.No.3900/Pa.Yi/2013, dated 13.07.2021 issued by the respondent is hereby quashed. The respondent is directed to



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restore the possession of the Aavin milk booth to the petitioner within a period of fifteen days from the date of receipt of a copy of this order.

The petitioner is at liberty to apply for extension of license and the respondent is directed to consider the same uninfluenced by their stand taken in the present proceedings, as the same came to be rejected by this Court and pass orders on merits and in accordance with law within a period of 15 days from the date of receipt of the petitioner's extension application. It is clarified that in case of extension of license, the respondent is at liberty to fix the license fee in accordance with the prevailing rules and the Government orders in force. Consequently, the connected Miscellaneous Petitions are closed. There shall be no order as to costs.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No

SSL

To

The General Manager,
Dindigul District Co-operative Milk

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Produceers Union Ltd., DD 160,
No.9, East Govindapuram,
Dindigul.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY ORDER MADE IN

**W.P.(MD)No.13810 of 2021
and**

W.M.P.(MD)Nos.12380, 10774 and 11984 of 2021

02.08.2024