

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

TUESDAY, THE 8TH DAY OF DECEMBER 2015/17TH AGRAHAYANA, 1937

WP(C).No. 34804 of 2015 (A)

PETITIONER:

DR.M.L.AJITH KUMAR,
PLAVILAMELE PUTHEN BUNGALOW, KAZHIVOOOR P.O.,
KANJIRAMKULAM, THIRUVANANTHAPURAM DISTRICT,
PIN-695 526.

BY ADVS.SRI.S.P.ARAVINDAKSHAN PILLAY
SRI.K.A.BALAN
SRI.PETER JOSE CHRISTO
SRI.S.A.ANAND
SMT.L. ANNAPOORNA
SRI.SAJU JOHN
SRI.V.VARGHESE

RESPONDENTS:

1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM,
PIN-695 001.
2. EXCISE COMMISSIONER,
EXCISE HEADQUARTERS, NANDAVANAM, VIKAS BHAVAN P.O.,
THIRUVANANTHAPURAM, PIN-695 033.
3. THE DEPUTY COMMISSIONER OF EXCISE,
EXCISE DIVISION OFFICE, FORT P.O.,
THIRUVANANTHAPURAM-695 023.
4. THE CIRCLE INSPECTOR OF EXCISE,
EXCISE CIRCLE OFFICE, NEYYATTINKARA,
THIRUVANANTHAPURAM-695 121.

R3,R4 BY ADV. SRI. K.C. VINCENT, GOVERNMENT PLEADER

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
08-12-2015, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1.TRUE COPY OF THE DEGREE CERTIFICATE OF BACHELOR OF AYURVEDIC MEDICINE & SURGERY (B.A.M.S), OBTAINED BY THE PETITIONER.

EXT.P2.TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED BY THE TRAVANCORE-COCHIN COUNCIL OF INDIGENOUS MEDICINE.

EXT.P3.TRUE COPY OF THE LICENCE BEARING NO.58/25D/2009 DATED 30/11/2009.

EXT.P4.TRUE COPY OF THE VALIDITY CERTIFICATE NO.ML4-323/213/DC DATED 5/3/2013 ISSUED BY THE DEPUTY DRUGS CONTROLLER (AYURVEDA) & LICENSING AUTHORITY.

EXT.P5.TRUE COPY OF THE LICENCE NUMBER 20/2001-2002 DATED 4/7/2001.

EXT.P6.TRUE COPY OF THE LICENCE IN FORM S.P.VI UNDER THE ABKARI ACT 1 OF 1077 AND THE KERALA SPIRITUOUS PREPARATIONS (CONTROL) RULES 1969.

EXT.P7.TRUE COPY OF THE SP VII LICENCE NO.75/2002-03/TVPM.

EXT.P8.TRUE COPY OF THE SP VII LICENCE NO.76/2012-13/TVPM 45-48.

EXT.P9.TRUE COPY OF THE SP VII LICENCE NO.82/2012-13/TVPM.

EXT.P10.TRUE COPY OF THE SP VII LICENCE NO.83/2005-2006/TVPM.

EXT.P11.TRUE COPY OF THE SP VII LICENCE NO.85/2011-12/TVPM.

EXT.P12.TRUE COPY OF THE SP VII LICENCE NO.86/2012-13/TVPM.

EXT.P13.TRUE COPY OF THE SP VII LICENCE NO.87/2011-2012/TVPM.

EXT.P14.TRUE COPY OF THE SP VII LICENCE NO.88/2012-2013/TVPM.

EXT.P15.TRUE COPY OF THE SP VII LICENCE NO.105/2009-10/TVPM.

EXT.P16.TRUE COPY OF THE COMPLAINT DATED 17/10/2015 SUBMITTED BY THE PETITIONER BEFORE THE EXCISE COMMISSIONER.

EXT.P16(a).TRUE COPY OF THE FREE ENGLISH TRANSLATION OF EXT.P17.

EXT.P17.TRUE COPY OF THE ACKNOWLEDGEMENT CARD.

EXT.P18.TRUE COPY OF THE PHOTOGRAPHS SHOWING THE STORE ROOM OF THE PHARMACEUTICALS SEEN CLOSED AND SEALED.

EXT.P19.TRUE COPY OF THE PHOTOGRAPHS SHOWING THE DESTRUCTION MADE

BY THE CIRCLE INSPECTOR TO THE COVERING OF THE CARD KEPT IN THE PREMISES.

EXT.P20.TRUE COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE JFCM-III, NEYYATTINKARA.

EXT.P21.TRUE COPY OF THE CIRCULAR NO.XC5-14753/2000 DATED 16/6/2000.

EXT.P22.TRUE COPY OF THE INTERIM ORDER DATED 13/5/2014 IN WPC NO.11615/2014-B OF THIS COURT.

RESPONDENTS' EXHIBITS :

/True Copy/

P.A to Judge.

DAMA SESHADRI NAIDU, J.

W.P.(C). No. 34804 of 2015

Dated this the 8th day of December, 2015.

JUDGMENT

Heard the learned counsel for the petitioner and the learned Government Pleader, apart from perusing the record.

2. The 4th respondent inspected the petitioner's manufacturing unit and allegedly found certain irregularities. One of the principal allegations seems to be that the petitioner manufactured more than the permitted quantity of ayurvedic drugs without proper label and stored in his factory. It is also alleged that at the time of inspection, in the absence of the licensee, the person in charge of the unit did not produce any proper records for verification. On the very next day, whatever the records that had been seized were said to have been produced before the jurisdictional Magistrate.

3. The fact, nevertheless, remains that on the very same day of inspection, that is almost two months to this day, the 4th respondent sealed the petitioner's factory.

4. Today, both the learned counsel for the petitioner and the

learned Government Pleader have substantially argued the matter. When a specific query was put to the learned Government Pleader as regards the steps that have been taken subsequent to the sealing off the petitioner's factory, having got the matter passed over, the learned Government Pleader informed that within a week's time, the respondent authorities will ensure placing the report along with the necessary material before the Excise Commissioner, who, in turn, will issue notice to the petitioner and further enquire into the matter.

5. However, in these two months, the respondent authorities have done precious little. Further, when questioned about any specific statutory provision under which the 4th respondent could shut the petitioner's factory down, the learned Government Pleader, to his credit, has submitted that there is no specific provision to the said effect. He has, nevertheless, defended the action of the officials by contending that unless the factory was closed, there was every possibility of the petitioner's tampering with the evidence or the stock the Excise Officials' found in the factory. He has further submitted that it is not practicable for the respondents to transport and store the material found in the factory.

6. I am of the opinion that there can be a better way out than summary closure of a factory, thereby denying the livelihood of the petitioner as well as the various other workmen dependent on it. It is not the case of the respondent that a person without licence has unauthorisedly been producing anything in the nature of contraband. It is, at best, a case of violation of the licence conditions, for which the summary closure of the factory before there could be any proper enquiry, more particularly without any statutory backing, is, prima facie, unconscionable. If at all the respondent officials apprehend that the petitioner may tamper with the records or with the stock found in the factory, the authorities can in the presence of independent witnesses take an inventory of the stock and later let the petitioner operate his factory.

7. In the facts and circumstances, this Court directs the respondent officials to allow the petitioner to run his factory. If at all the respondent officials desire to take inventory of the stock, they are at liberty to do so within two days from the date of receipt of a copy of this judgment. Thereafterwards, the petitioner shall be permitted to carry on with his business. Of course, at any point of time if the

respondent officials entertain any doubt as regards the petitioner's violating any conditions, they are at liberty to take appropriate steps strictly in accordance with law.

8. In the course of time, if any adjudication of the issue taken place, it is open for the petitioner to take appropriate remedial measures in that regard.

9. The authorities shall not prevent the petitioner from re-opening the factory beyond two days from the date of receipt of a copy of this judgment. If they perceive or face any difficulty in implementing the judgment, instead of preventing the petitioner from opening the factory, they should seek clarification from this Court.

With the above observation, this writ petition is disposed of.

sd/- DAMA SESHADRI NAIDU, JUDGE.

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