

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.12.2014

Delivered on : 27-02-2015

CORAM:

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN

Writ Petition No.18921 of 2014

and

M.P.Nos. 1 to 6 of 2014

The Nilgiri Bought Leaf Tea Manufacturers'
Association, rep. by Secretary,
No.9, Mount Road, Coonoor- 643 102,
The Nilgiris, Tamil Nadu.

.... Petitioner

Vs.

1. Union of India, rep. by Secretary to
Government, Ministry of Commerce,
Central Secretariat, New Delhi.
2. Tea Board of India, rep. by
its Chairman, No.14, B.T.M.
Sarani, Kolkatta.
3. The Executive Director,
Tea Board of India, Shellwood,
Club Road, Post Box No.6,
Coonoor - 643 101,
Nilgiris, Tamil Nadu
4. The Deputy Director of Tea Development,
Tea Board of India, Shellwood,
Club Road, Post Box No.6,
Coonoor - 643 101,
Nilgiris, Tamil Nadu
5. The Assistant Director of Tea Development,
Tea Board of India, Shellwood,
Club Road, Post Box No.6,
Coonoor - 643 101,
Nilgiris, Tamil Nadu

6. Mr.R.Ambalavanan, Executive Director,
Tea Board of India, Shellwood,
Club Road, Post Box No.6,
Coonoor - 643 101,
Nilgiris, Tamil Nadu

... Respondents 1 to 6

7. Nilgiri Nelikolu Micro & Small Tea
Growers and Farmers Development Society
No.41, Lakshmi Devi Building,
Rose Garden Road,
Udhagamandalam, The Nilgiris.

(Amended as per order dated 27/2/15 of
VRSJ in MP. 6/14 in WP.18921/14)

... Proposed 7th Respondent

Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Mandamus directing the first and second respondents in exercise of their power under Tea Act, 1953 to redress the grievances raised by the petitioner in relation to arbitrary action of the 6th respondent, non-adherence to procedure prescribed for inspection and sampling and for arriving at a systematic time schedule/scheme to have samples analysed without curtailing the right of the manufacturer to forward the Tea Stocks for immediate auction.

For Petitioner : Mr.R.Muthukumarasamy, Sr.Counsel
for Mr.A.Jenasenan.

For Respondent -1 : Mr.G.Rajagopalan, Addl.Solicitor Gen.
assisted by Mr.V.Parivallal, SCGSC.

For Respondents 2 to 6 : Mr.V.Parthiban

For Respondent-7 : Mr.R.Sivakumar.

O R D E R

The petitioner is an association of small factory owners, who buy green tea leaf from small tea growers. They manufacture what is known as "Made Tea". They have come up with the above writ petition seeking the issue of a writ of mandamus to direct the respondents 1 and 2, while exercising the powers conferred under the Tea Act, 1953 to redress the grievances of the petitioner in relation to the alleged arbitrary action on the part of the 6th respondent with reference to the non-adherence to the procedure prescribed for inspection and sampling etc.

2. I have heard Mr.R.Muthukumarasamy, learned Senior Counsel for the petitioner, Mr.G.Rajagopalan, learned Additional Solicitor General, for the first respondent, Mr.V.Parthiban, learned counsel appearing for the respondents 2 to 6 and Mr.R.Sivakumar, learned counsel appearing for the petitioner in M.P.No.6 of 2014, on behalf of the society representing the Small Tea Growers, seeking to implead themselves as parties to the writ petition.

3. The petitioner is an association of the owners of Private Small Scale Factories. They buy green tea leaf from small tea growers. From the green tea leaves that they buy, they manufacture what is known as "Made Tea", which is also referred as Black Tea, that are sold in auctions conducted in Coonoor and in Coimbatore and Cochin. The tea industry is regulated by the provisions of the Tea Act, 1953 and various Control Orders issued under the Act such as Tea (Marketing) Control Order and Tea (Distribution and Export) Control Order, 2005 etc. Those Control Orders are issued under Section 30 of the Tea Act, 1953.

4. With a view to enforce the provisions of the Tea Act, 1953 and the various Control Orders and also to promote the tea industry, the Central Government constituted a Tea Board, which is a Body Corporate. The Executive Director of the Tea Board, is the person responsible for performing the functions stipulated under the Act and the Control Orders.

5. It appears that the 6th respondent herein was appointed as the Executive Director of the Tea Board in the year 2010. According to the petitioner, the 6th respondent took a series of actions, which was perceived by the members of the association, as detrimental to their interest. For instance, the 6th respondent introduced a new cataloguing-grading system for tea, directing that the tea belonging to those factories whose average selling price was below Rs.70/-, ought to be analysed before selling in the auction. The 6th respondent also introduced a E-Return process, which require the members of the petitioner association to furnish information under Form 'E' on a monthly basis. According to the petitioner the 6th respondent took severe action even if there was a small delay in the filing of returns. Additionally, the 6th respondent appears to have taken up the issue of tea waste being mixed with the tea. He also introduced a new system of payment for raw materials.

6. He conducted surprise inspections at the godowns and seized the tea belonging to the members of the petitioner association. The tea seized by the 6th respondent was always sent to only one laboratory for analysis, which caused substantial delay in the follow

up action. Similarly, the fixation of the crude fibre content by the 6th respondent became a subject matter of controversy.

7. Therefore, the petitioner has come up with the above writ petition, praying for a unique relief. The prayer of the petitioner in the writ petition reads as follows:-

"directing the first and second respondents in exercise of their power under Tea Act, 1953 to redress the grievances raised by the petitioner in relation to arbitrary action of the 6th respondent, non-adherence to procedure prescribed for inspection and sampling and for arriving at a systematic time schedule/scheme to have samples analysed without curtailing the right of the manufacturer to forward the Tea Stocks for immediate auction".

8. Mr.R.Muthukumarasamy, learned Senior Counsel for the petitioner submitted that though the petitioner has a lot of grievances against the respondents 2 to 6, the substantial grievances could be summarised as follows:-

(i) that action was being initiated in pursuance of surprise inspections conducted at the warehouses behind the back of the members of the petitioner association;

(ii) that when there are number of laboratories available for testing the tea, the insistence by the respondents to go only to the laboratory of UPASI, results in delay, causing hardship;

(iii) that the fixation of the percentage of crude fibre content at 16.5% on the basis of the stipulations contained in Food Safety and Security Act, is contrary to the provisions of the Tea Act, 1953 and the Control Orders;

(iv) that even if the laboratory finds that the tea has become a waste, there are provisions for improving the standard without recourse to which, an action cannot be taken; and

(v) that even if the tea becomes a waste, there are four methods of disposal.

Therefore, it is contended by the learned Senior Counsel for the petitioner that the arbitrary action on the part of the respondents 2 to 6 should be stopped.

9. In response to the above contentions, it is submitted by Mr.G.Rajagopalan, learned Additional Solicitor General, that the writ petition is not maintainable, in view of the fact that the petitioner seeks a very vague and a generalised prayer. It is submitted by him that if the reliefs sought in the writ petition are not specific, the petitioner is not entitled to any relief. Drawing my attention to the very composition of the Tea Board under Section 4(3) of the Act and

the provisions of Section 10 as well as some of the provisions of the Orders, it is contended by the learned Additional Solicitor General that the petitioner is not entitled to any relief.

10. Mr.V.Parthiban, learned counsel for the respondents 2 to 6 submitted that all the actions initiated by the respondents, are only in accordance with the provisions of the Act and the Control Orders. According to the learned counsel, the petitioner is not able to specifically point out any violation. It is the contention that though the "Made Tea" is stored in warehouses, they are identifiable to the owners and that therefore the drawing of samples from the godown, cannot be objected to. In so far as the crude fibre content is concerned, the learned counsel for the respondents submits that by virtue of the provisions of Section 89 of the Food Safety and Security Act, the standards prescribed therein would override the standards prescribed under the Tea Control Orders. In any case, the Tea Board has suggested amendment to the prescription relating to crude fibre content so that the same is brought in tune with the percentage specified in Food Safety and Security Act.

11. Mr. R.Sivakumar, learned counsel appearing for the proposed 7th respondent contended that due to the exploitation of the small tea growers by the writ petitioner, many of them have migrated to town for getting employed in odd jobs. The learned counsel stated that the factory owners do not even pay the appropriate price for the tea bought from his client. Therefore, he contended that anything done under the Tea Act, 1953, is for the benefit of the small tea growers and that the same cannot be interfered with.

12. I have carefully considered the rival submissions.

13. At the outset it should be pointed out that the relief sought for by the petitioner in the writ petition is very generic. As a matter of fact if I put it in simple terms, the prayer of the petitioner is to direct the respondents to act in accordance with law. There can be no presumption that a statutory authority is not acting or will not act in accordance with law.

14. Though Mr.R.Muthukumarasamy, learned Senior Counsel for the petitioner articulated and projected only five grievances from out of such a generalised prayer, the fact remains that the prayer of the petitioner is very vague and highly generalised. If individual members of the petitioner association has any grievance against any particular action of the Tea Board, they can always take up such individual grievance.

15. In Tamil Nadu Fire Works and Amerces Manufacturers Association vs. Secretary to Government (W.A.(M.D) No.1167/2012) decided on 28.04.2014, a Division Bench of this Court, to which I was a party, pointed out that such generalisations cannot be permitted. As in the present case, the Tamil Nadu Fire Works Manufacturers Association came up with the said writ petition seeking the issue of a writ of mandamus to forbear the respondents from violating the provisions of Section 40 of the Factories Act, 1948. It was the grievance of the association that the respondents were taking action against some industries under Section 40(2) of the Factories Act, 1948 and under Section 87-A of the Act against some others. While dismissing the writ appeal, it was pointed out by the Division Bench as follows:-

"Moreover, in a writ petition under Article 226 of the Constitution, generalisations against statutory authorities cannot be made."

The same principle would apply to the case on hand.

16. Despite the fact that the writ petition is liable to be disposed of on the ground of over generalisation, I wish to deal with the contentions of the learned Senior Counsel for the petitioners one by one, to test whether the petitioner can have a grievance, though not being in a position to articulate it successfully.

17. But before doing that, it is necessary to have a look at the statutory provisions.

18. The Tea Act, 1953 was enacted with a view to provide for the control of the Tea Industry. Such control was intended to include the control of the extension of the cultivation of Tea in India and of the export of tea from India. Before independence, the country had an enactment known as Indian Tea Control Act, 1938. Immediately after independence, yet another Act known as Central Tea Board Act, 1949 was passed. However, both the Acts were repealed by the Tea Act, 1953. Section 4 of the Act provides for the establishment and constitution of a Tea Board. Under sub-section (3) of Section 4, the Tea Board is to consist of a Chairman and such number of other members not exceeding forty. The Board shall include (1) owners of Tea Estates and Gardens and Growers of Tea; (2) persons employed in Tea Estates and Gardens; (3) manufacturers of Tea; (4) dealers including exporters and internal traders of tea; (5) consumers; (6) Members of Parliament and (7) representatives of the Governments of the Principal Tea Growing States.

19. Therefore, it is clear that the Tea Board comprised of the representatives of owners including the growers, manufacturers, dealers as well as consumers. Hence, whatever grievances a manufacturer may have, the same can be redressed by the Tea Board, some of whose members are manufacturers themselves.

20. Section 10 of the Act lists out the functions of the Tea Board. Regulating the production and improving the quality of tea are some of the functions of the Board under Section 10(2).

21. Section 33 of the Act provides for licensing of tea manufacturers and brokers. Section 34 empowers any person authorised by the Central Government or by the Tea Board to enter any tea estate or any place where tea or tea waste is stored and inspect the books etc. Section 34 reads as follows:-

"34. Power of inspection--Any person authorised in his behalf by the Central Government or by the Board or any member so authorised by the Chairman in writing or any officer of the Board may enter at all reasonable times any tea estate or any place or premises where tea or tea waste is stored, kept or exposed for sale and may require the production for his inspection of any book, register, record or other paper kept therein and ask for any information relating to the production, storage or keeping for sale of tea or tea waste".

22. Section 38 makes it a punishable offence if an officer or member of the Board is obstructed in the discharge of his duties. Section 49 empowers the Central Government to make Rules and Section 50 empowers the Board to make bye-laws.

23. In exercise of the power conferred by Section 30(3) and (5) of the Act, the Central Government issued the Tea Waste (Control) Order 1959. Similarly, the Central Government also issued the Tea (Marketing) Control Order, 2003 in supersession of the 1984 Order. Yet another order known as Tea (Distribution & Export) Control Order, was issued in 2005. All these control orders are now in vogue. Paragraph 4 of the Tea Waste (Control) Order 1959 prescribes that tea waste cannot be disposed of except in the following manner namely: (a) by sale to any person holding a licence; (b) by exports; (c) by utilising it in the manufacture of caffeine or instant Tea and or Bio-nutrient and Bio-fertilizer; and (d) by destruction. Paragraph 13 of the said Order imposes restriction on possession of stocks. Paragraph 14 prescribes the procedure for taking samples. Since taking of samples has become

one of the contentious issues in the case on hand, paragraph 14 of the 1959 Order is reproduced as follows:-

"14. Taking of samples:- (1) Any officer of the Board duly authorized by the licensing authority may at all reasonable times take samples of tea waste held in stock by a licensee or by any other person in such manner as may be prescribed by the licensing authority and have them analysed by an analyst approved by the licensing authority for the purpose of ascertaining in the tea waste has been denatured in accordance with the second proviso to clause 3.

24. A careful look at paragraph 14 would show that an officer of the Board can take samples of tea waste held not only by a licensee but also by any other person. Paragraph 14 also authorised the samples to be sent to any analyst approved by the Licensing Authority. In so far as the power to entry, search and seize are concerned, the same is covered by paragraph 16 of the 1959 Order which reads as follows:-

"16. Power to enter, search and seize:- (1) The licensing authority or any officer of the Board specially authorised in writing by that authority in this behalf or an officer of the Central Excise Department not below the rank of Inspector may enter and search at all reasonable times any land, building enclosed place, premises, vehicle, vessel, aircraft, conveyance, plant or machinery upon or in which tea waste is processed, sorted, stored, manufactured, carried or sold; and such authority or officer, having reason to believe that tea waste is being processed, sorted, stored, carried or sold in contravention of this Order may seize such tea waste.

(2) The provisions of sections 102 and 103 of the Code of Criminal Procedure, 1898, relating to search and seizure shall so far as may be, apply to searches and seizures under this clause.

(3) Where the Licensing Authority or any officer of the Board seizes any tea waste under sub-clause (1) and decides to keep the same in the safe custody of the owner of such tea waste, such authority or officer shall, after sealing the stock, make and order to that effect in Form D and serve the same on the owner and the owner shall comply with such order".

25. Therefore, it is clear that for every action taken by the Tea Board, there is a sanction of law. Unless the petitioners are able to point out which provision of the Act or the Control Order was

violated, it is not possible to issue general directions.

26. Coming to the Tea (Marketing) Control Order, 2003, it is seen that the expression "Made Tea" is defined under para 2(y) therein as follows:-

"(y) "Made Tea" means tea which conforms to specifications for the tea as laid down under the Prevention of Food Adulteration Act, 1954".

This 2003 order also provides for power of entry and search under paragraph 27. Paragraph 29 provides for drawing of samples. Paragraph 28 of the 2003 Order imposes an obligation upon the manufacturers to conform to the specifications laid down in the Prevention of Food Adulteration Act, 1954.

27. The parameters regarding different types of Tea are stipulated in the Tea (Distribution and Exports) Control Order, 2005. The very expression "tea" is defined in paragraph 2 (v) of the 2005 Order to mean any product manufactured from the leaves that conform to certain specifications indicated under the table below para 2(v). Out of the different parameters stipulated therein, the controversy raised by the petitioner relates to Crude Fibre Content. The table below paragraph 2(v) of the 2005 Order prescribes that crude fibre content per cent by mass cannot exceed 17% in respect of Green tea, 17% in respect of Black tea and 18.5% in respect of Kangra tea. Therefore, one of the contentions of the petitioner is that so long as this prescription is satisfied, the respondents cannot take any objection.

28. However, the parameter fixed under the Food Safety and Standards Rules appears to be 16.5% and the petitioner is aggrieved by the same. Therefore, keeping this statutory provisions in mind, let me now take up the contentions of the petitioner one by one.

CONTENTION NO: 1:-

29. The first contention of the petitioner is that surprise inspections are conducted behind the back of the members of the petitioner association and that it is contrary to law. But the said contention is liable to be rejected, in view of the express provisions of Section 34 of the Act. Section 34 empowers any person authorised by the Tea Board to enter (1) any tea estate and (2) any place or premises where tea or tea waste is stored, kept or exposed for sale. Similarly, paragraph 14 of the Tea Waste (Control) Order, 1959 empowers an officer of the Board to take samples of tea waste held in stock by a licensee or by any other person. Paragraph 16 empowers an officer of the Board to enter any land or premises where tea waste is processed, sorted, stored, manufactured, carried or sold. Therefore,

the first contention cannot be accepted. Warehouses where tea is stored, are like customs bonded Warehouses. Therefore, there is nothing wrong in conducting surprise inspections at the Warehouses. Hence the first contention is rejected.

CONTENTION NO: 2:

30. In so far as the testing of samples is concerned, I do not think that the members of the petitioner association can really dictate. In paragraph 21 of the additional counter affidavit filed by the respondents, they have indicated that the UPASI-TRF Laboratory is the only accredited Laboratory in Nilgiris District. Sometimes when the number of samples to be tested are more, the same are sent to the other accredited Laboratories in Coimbatore and Cochin. Since the sampling time coincides with the cataloguing period, the respondents claim that there is no delay. In the light of such a statement, the second contention also deserves to be rejected.

CONTENTION NO:3:

31. The third contention relates to the percentage of crude fibre content. I have already pointed out elsewhere that the respondents have taken steps to have the percentage amended. The Food Safety and Standards Act, 2006 is the latest enactment and what is prescribed therein may prevail over the prescription contained in the Tea (Distribution and Export) Control Order, 2005. Under Section 89 of the Act, the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Moreover, the prescription of 17% was actually as per the Prevention of Food Adulteration Act, 1954. Therefore, the Tea Order also contained a similar prescription. But the Food Safety and Standards Act, 2006 repealed the Prevention of Food Adulteration Act, 1954. A new Regulation of the year 2011 has been issued. Therefore, it will prevail over what is contained in the Control Order. Hence the third contention is also liable to be rejected.

CONTENTION NOS.4 AND 5:- सत्यमेव जयते

32. In so far as the 4th and 5th contentions are concerned, the members of the petitioner association have not brought out specific instances as to how and when the respondents failed to comply with the statutory prescription regarding improvement of standards and disposal of tea waste. In para 14 of the additional counter affidavit the Tea Board has stated that the members of the petitioner association are obliged to denature the failed teas, in order to avoid their consumption by gullible public. Moreover, the process of

reconditioning of tea is not legally approved. Therefore, the use of tea waste as raw material under the garb of reconditioning is not permitted. In such circumstances, the 4th and 5th contentions are also liable to be rejected.

33. In paragraph 28 of the additional counter affidavit, the respondents have made certain serious allegations against the office bearers of the petitioner association. Paragraph 28 is extracted as follows:-

"28. It is brought to the kind notice of the Honourable High Court, that a few individuals with vested interests have taken over the important positions (President, Secretary and treasurer) of all the stakeholder's association (Nilgiri Bought Leaf Tea Manufacturers Association (NBTMA)I, Small Tea Growers Association, Coonoor Tea Traders Association and Tea Traders Association of Coimbatore) continuously without giving any opportunity to the other genuine stakeholder. This has created serious conflict of interests and the credibility of such entities has been eroded very badly in the recent past. For instance, the President of the Bought Leaf Factories in 2013-14 has taken over as the Chairman of Coonoor Tea Traders Association (CTTA), Coonoor in 2014-15. The same person was functioning in different capacities in these organisations continuously for 3-4 years. His own brother is the Chairman of Tea Trade Association of Coimbatore (TTAC) continuously for 2 years. This takes place because these persons own multiple tea factories and try to control the entire trade without following ethical standards and legal provisions. The Tea Board has invested crores of rupees in setting up of the tea auction center (CTTA and TTAC) and supported them financially only to provide a transparent and accountable e-auction system for better price discovery for the teas offered for sale. Unfortunately, the vested interests took decisions to violate laws of land to suit their self-interest which seriously affected the original objective of the Board and faith of the genuine stakeholders of the Industry."

34. Though I do not wish to take the aforesaid averments for their face value, I cannot lose sight of the fact that a very vague and generic prayer made by an association of this nature cannot be sustained. Hence the writ petition is dismissed. There will be no

order as to costs. M.P.No.6 of 2014 seeking to implead the proposed 7th respondent is ordered. M.P.Nos. 1 to 5 are closed.

Sd/-
Asst. Registrar

/true copy/

gr.

Sub Asst. Registrar.

To

1. The Secretary to Government,
Ministry of Commerce,
Central Secretariat, New Delhi.
2. The Chairman,
Tea Board of India,
No.14, B.T.M.Sarani, Kolkatta.
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5. The Assistant Director of Tea Development,
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+1cc to Mr.A.Jenasenan, Advocate, S.R.No.11097
+1cc to Mr.R.SivaKumar, Advocate, S.R.No.10958
+2cc's to Mr.V.Parivallal, Advocate, S.R.No.10917

JP(CO)
CA(09/03/2015)

W.P.No.18921 of 2014