IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2017

CORAM

THE HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

WP.No.8570 of 2017
&
W.M.P. No. 9400 of 2017

R. Valarmathi ..Petitioner

Vs.

1. Deputy Commercial Tax Officer (Enf), Check Point - 1, Hosur.

2. The Managing Director, Sagoserve, Jagirammapalayam, Salem - 600 032.

3. K. Selvaraj ..Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issue of a Writ of Certiorari to call for the records relating to the impugned order passed by the 2nd respondent bearing RC. No. 0147/Lab/2015 dated 24.03.2017 and quash the same.

For Petitioner :: Mr.G. Murugendran

For Respondents:: Mr.K. Venkatesh, Govt. Advocate for R1
Mr.U. Karunakaran for R2

R3 No. appearance

O R D E R

Heard Mr.G.Murugendran, learned Counsel appearing for the petitioner, Mr.K.Venkatesh, learned Government Advocate appearing for the 1st respondent and Mr.U.Karunakaran, learned Counsel appearing for the 2nd respondent.

2. In the light of the order which this Court proposes to pass, notice to the 3rd respondent is dispensed with.

3. The petitioner is a dealer in sago and sago products having purchased the same from the second respondent, which is an industrial cooperative society, established for the purpose of regulating the Sago Market in the State. The petitioner appears to have come to adverse notice of the first respondent Department, who had detained the consignment, which was transported by the petitioner at Hosur check-post. This Goods Detention Notice issued by the check-post officer at Hosur was challenged by the petitioner in WP.No.3711 of 2017.

4. The second respondent has passed the impugned order on the ground that the petitioner has filed WP.No.3711/2017 and has misrepresented and acted prejudicial in the interest of the second respondent by giving false information thereby spoiling reputation and name of the second respondent and therefore, the petitioner is debarred from participating in the daily tender sales for four years.

5. It is not clear as to in what manner the petitioner had brought disrepute to the second respondent society and the order dated 24.03.2017 passed by the second respondent, impugned in this writ petition, has been passed without issuing any show cause notice. Therefore, it is not understandable as to what is the basis for the impugned order. Be that as it may. This Court tested the correctness of the Goods Detention Notice issued by the Check-post Officer, Hosur, dated 07.01.2017. Ultimately, it turned out to be a case where there was no violation of the provisions of Value Added Tax Act, 2002 or Central Sales Tax Act 1956. Nevertheless, the Commercial Tax Department was of the primafacie opinion that there is likelihood that the sago which was being transported by the petitioner could be adulterated. Therefore, a direction was issued to the petitioner to take the sample for testing and accordingly, the sample was tested and the test report confirmed that there was no adulteration. Based on this report, the said writ petition, namely, WP.No.3711/2017 was disposed of by order dated 14.07.2017 and the operative portion of the order reads as follows:

> " 5. In terms of the above test report, it is evident that the sago conforms to the standards for the test carried out under Regulation 2.4.14(2) of the Food Safety and Standards (Food Products Standards and Food Additives), Regulations, 2011 r/w 4(31) 2016/Tamilnadu/Enf/FSSAI, New Delhi, dated 28.03.2017.

6.In the light of the above, the Writ Petition is allowed and the impugned proceedings are set aside and the first respondent is directed to release the goods forthwith on production of copy of this order."

6. Thus, in the light of the above development, mere filing of writ petition before this Court in WP.No.3711/2017 could not have been a reason to debar the petitioner from participating the daily tender sales for a period of four years. Debarring a contractor or tenderer or blacklisting a tenderer has severe civil consequences and therefore, the Courts have held that before such orders are passed, the parties are entitled for a reasonable opportunity to show cause against proposed action. In the instant case, the second respondent has not taken any such steps to comply with the principles of natural justice by putting the petitioner on notice. However, taking note of the fact that samples which were intercepted and tested were found to be in order, without any adulteration, this Court is inclined to interfere with the impugned order.

7. Accordingly, the impugned order is set aside and the writ petition is allowed. However, it is open to the second respondent to take appropriate action against the petitioner in the event of the petitioner contravening any of the conditions stipulated by the second respondent for registration of a merchant on their files. No costs. Connected W.M.P. is closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

sai/nv
To
1. Deputy Commercial Tax Officer (Enf),
Check Point - 1, Hosur.
2. The Managing Director,
Sagoserve,Jagirammapalayam,
Salem - 600 032.

+ 1 cc to Mr. G. Murugendran, Advocate SR.54835
+ 1 cc to Special Government Pleader Sr.54981
+ 1 cc to Mr.U. Karunakaran, Advocate Sr.55184

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GJ(CO)
EU 28.08.17