

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2017

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.2354 of 2017
and W.M.P.No.2341 of 2017

M/s. Sahana Aqua Minerals
Partnership Firm
Rep. by its Managing Partner
Mr.N.Ganesh
No.30, Bharathi Nagar Main Road,
Nesapakkam,
Chennai - 600 078 ... Petitioner

Vs.

1. The Commissioner Food Safety
and Drug Administration,
5th Floor, DMS Building,
No.359, Anna Salai,
Teynampet,
Chennai - 600 006.
2. Designated Officer,
Tamil Nadu Food Safety and Drug
Administration (Food Safety wing),
No.33, West Jones Road,
Saidapet West,
Chennai - 600 015. .. Respondents

Prayer:

Writ petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorari to call for the records of the respondent concluding in the impugned order dated 08.11.2016 made in R.No.5076/FSSA/CHE/A1/2016 to quash the same and direct the respondents and permit the petitioner to run the business.

For Petitioner: Mr.M.Balasubramanian

For Respondents: Mr.R.Govindasamy,

Special Government Pleader for R1 and R2

O R D E R

The petitioner is aggrieved against the proceedings dated 08.11.2016 issued by the 2nd respondent, which is, though styled as a show cause notice, in effect an order directing the petitioner to close the manufacturing and selling the Packaged Drinking Water Manufacturing Unit at No.30, S.F.No.389/10 & 11, Radhakrishnan Street, Ponnammal Nagar, Nesapakkam, Chennai, with immediate effect.

2. The petitioner claims to be the partnership firm manufacturing Purified-Drinking Mineral Water fit for human consumption, after obtaining necessary permission from the concerned authorities. It is stated that one Sri Murugan Store, Ashok Nagar, Chennai, has filled up some local water in the cans belonging to the petitioner and the same was taken for analysis and thereafter, based on the report obtained from the Food Analysis Laboratory, Guindy, the present impugned communication is issued to the petitioner.

3. Mr.M.Balasubramaniam, learned counsel for the petitioner in support of the above contention submitted that the Designated Officer, Tamil Nadu Food Safety and Drugs Administrative Department, through intimation dated 19.09.2016, clearly stated that the sample of the petitioner's product taken on 14.07.2016 from the petitioner premises is conformed to the specification by the Food Analysis, Guindy. Therefore, he submitted that when such being the position, the impugned communication, based on the samples taken from some other person, who misused the cans of the petitioner, cannot be the basis for passing the impugned communication.

4. On the other hand, the learned Special Government Pleader, after filing a counter by the second respondent, submitted that the impugned communication was passed only after getting a report from the Food Analysis in pursuant to the samples taken from the petitioner's product.

5. Heard both sides.

6. It is seen that the petitioner is disputing that the samples were taken from the petitioner's premises and on the other hand, he stated that such samples, which is the basis for passing the impugned order, were taken from one Sri Murugan Store who is alleged to have be used the petitioner's water cans illegally.

7.Learned counsel for the petitioner also brought to the notice of this Court that in similar circumstances, in a batch of cases, this Court has passed an order on 01.12.2016 in W.P.No.40092 of 2016 etc. by imposing certain conditions and the same order may be passed in this writ petition as well.

8. A perusal of the said order indicates that interest of both parties will be protected by passing the same order with the same terms and conditions as stipulated therein. Accordingly, the writ petition is disposed of as follows:

- i) The respondents are directed to forthwith remove the seal put up by them in the manufacturing facility of the petitioners to enable the petitioners to have their routing maintenance work and to manufacture water only for the purpose of maintenance work and to manufacture water only for the purpose of testing or taking samples thereof. It is made clear that the petitioners shall not resort to manufacture

water for commercial sale or to sell the existing stock for commercial purpose.

ii) The affidavits of undertaking filed by the petitioners in these writ petitions are recorded. As per the affidavit of undertaking, the petitioners shall subject their products for testing with the accredited or certified laboratories of the central government and to produce the report thereof to the respondents.

iii) The respondents are directed to cause inspection of the manufacturing facility of the petitioners. While doing so, the respondents are directed to cause inspection of the manufacturing facility of the petitioners which were sealed on the ground that the product manufactured by them is "misbranded" or "sub-standard" first. Such exercise shall be done within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the respondents shall cause inspection of the manufacturing facility of the petitioners which were sealed on the ground that the products manufactured by them is "unsafe" for human consumption.

iv) During such inspection, the respondents shall ensure compliance of the various requisite parameters, including compliance of the defects pointed out by them during the courses of their earlier inspection and the fulfillment of the conditions laid down under the Act. Thus, by issuing direction to the respondents to remove the seal, it will not preclude the respondents from proceeding further in accordance with Law, Rules and regulations and the directives issued by the Green Tribunal in similar matters for violation of any other rules.

vi) The respondents shall also consider the representation/ explanation given by the petitioner on 10.11.2016 and 12.11.2016 while passing the final order. The whole exercise shall be done by the respondents within a period of six weeks from the date of receipt of a copy of this order.

9. It is made clear that by way of re-entry the petitioner shall not manufacture water for either commercial purpose or domestic purpose, except for taking the samples for the purpose of testing the same by the authorities alone. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

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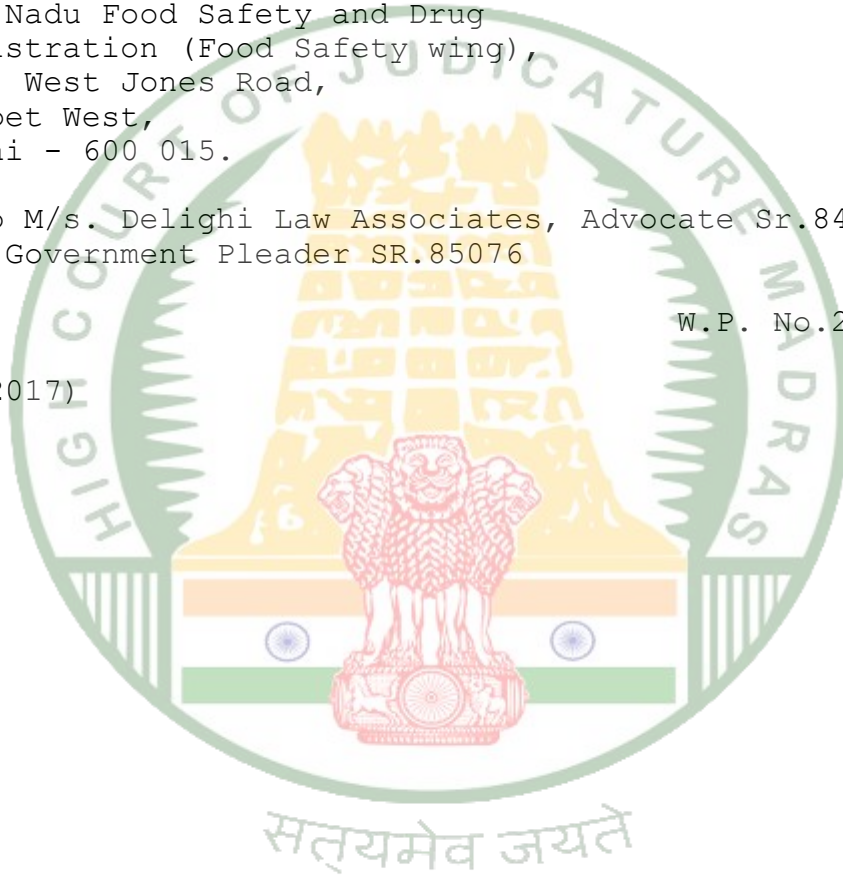
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+ 2 ccs to M/s. Delighi Law Associates, Advocate Sr.84445
+ 1 cc to Government Pleader SR.85076

W.P. No.2354 of 2017

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EU(12/12/2017)



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