

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.06.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Crl.O.P.No.2583 of 2011 and
M.P.Nos.1 and 2 of 2011

R.Kumarapathi
Proprietor of
Sri Balaji Surgicals
No.28, C-1/8
Ammachiarpuram Street
Samusigapuram - 626 102.

... Petitioner

vs

The Tamil Nadu State
rep. By Drugs Inspector
Thiruvottiyur Range
Thiruvallur Range, I/c.
Office of the Assistant Director
of Drugs Control, Thiruvallur Zone
201, Jawaharlal Nehru Road
Thiruvallur.

... Respondent

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for records in C.C.No.56 of 2010 on the file of the learned Chief Judicial Magistrate, Thiruvallur and quash the same.

For Petitioner : Mr.S.Silambanan
Senior Counsel
for M/s.Profexs
Associates

For Respondent : Mr.B.Ramesh Babu
Government Advocate
(Criminal Side)

ORDER

This Criminal Original Petition has been filed by the petitioner to call for records in C.C.No.56 of 2010 on the file of the learned Chief Judicial Magistrate, Thiruvallur and quash

the same.

2. The facts in a nutshell are as under: The petitioner is involved in the manufacture of surgical gauze and bandage cloth for over the past 20 years. In the tender invited by the Tamil Nadu Medical Services Corporation Limited, the petitioner was declared as successful bidder. It is stated that the petitioner had promptly supplied the required materials to Tamil Nadu Medical Services Corporation Limited and after thorough scrutiny and test, Tamil Nadu Medical Services Corporation Limited had approved the batches of materials supplied under invoice dated 15.6.2009. The expiry period of the materials was three years from the date of manufacture. On being satisfied with the quality and other specifications and requirements, payments were released and earnest money deposit was also refunded to the petitioner and all payments have been settled.

3. When things stood thus, the respondent complainant had drawn samples on 24.9.2009 from Medical Stores, Government Hospital, Gummidipoondi, Thiruvottiyur Range under Form 17 and it was sent for analysis under Form 18 to the Government Analyst (Drugs), Drug Testing Laboratories, Chennai and the said sample was reported as not of standard quality for the reason "the sample does not conform to SCH F(II) specifications for bandage cloth with the respect of description (defects in fabrics) length, width and fluorescence" by report dated 26.2.2010 in Form 13.

4. On knowing from Tamil Nadu Medical Services Corporation Limited that the product was acquired from the petitioner, a show cause notice was issued to the petitioner vide letter dated 7.4.2010 calling for explanation for contravention of Section 18 (a)(i) of the Drugs and Cosmetics Act, 1940. The petitioner sent his reply on 22.4.2010. However, the respondent held that the petitioner had contravened the provisions of Section 18(a)(i) of the Drugs and Cosmetics Act, 1940. The respondent complainant sent necessary proposals to the Director of Drugs Control for sanction to prosecute the petitioner for contravention of Section 18(a)(i) of the Act. Such sanction was accorded on 13.8.2010 and a complaint was filed on 16.9.2010 before the Chief Judicial Magistrate, Thiruvallur in C.C.No.56 of 2010.

5. Seeking quashment of C.C.No.56 of 2010 on the file of the learned Chief Judicial Magistrate, Thiruvallur, the present criminal original petition is filed.

6. The learned Senior Counsel appearing on behalf of the petitioner vehemently contended that the petitioner was given special licence for manufacture of bandage cloth, SCH F (II) (°), which is of specialized nature and is not covered under the normal licence and in fact the tender was allotted to the petitioner for manufacture of "bleached bandage cloth" and the said vital facts have not been considered by the Court below. He added that once the specifications required is completely different from the standard specifications found in the schedule, the same cannot be found fault with.

7. He further contended that it was because of the special licence held by the petitioner for 40^s x 40^s that the petitioner participated in the tender and was allotted the tender and the tender was executed successfully and all payments have been settled to the fullest satisfaction of both parties. He fastened to add that Tamil Nadu Medical Services Corporation Limited had tested the products supplied in laboratories and were completely satisfied with the products supplied and once the Government of Tamil Nadu Undertaking had verified and tested the materials and given its approval, there is no necessity to file the present complaint.

8. He also contended that the tender conditions stipulated quoting "Tamil Nadu Government Supply Not for Sale" and when the product is not for sale, the Drugs Inspector cannot take sample of such product and it will not fall within the purview of Sections 17 and 27 of the Act and hence, the complaint is not maintainable.

9. Per contra, the learned Government Advocate (Criminal Side) appearing on behalf of the respondent complainant reiterated the reasons which necessitated the respondent to lodge the complaint and submitted that that the samples have to be sent to the Central Drugs Laboratory, Kolkata only through the trial Court and the respondent had already submitted samples and because of the stay granted by this Court, the trial Court is unable to proceed with the matter.

10. I heard Mr.S.Silambannan, learned senior counsel for M/s.Profexs Associates appearing for the petitioner and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) for the respondent and perused the documents available on record.

11. It is beyond any cavil that this Court had granted an order of interim stay and the same is in force even as on date and there is no progress in the criminal case till date.

12. Section 18 of the Drugs and Cosmetics Act reads as under:

"Section 18. Prohibition of manufacture and sale of certain drugs and cosmetics. - From such date as may be fixed by the State Government by notification in the Official Gazette in this behalf, no person shall himself or by any other person on this behalf -

(a) manufacture for sale (or for distribution), or sell, or stock or exhibit (or offer) for sale, or distribute -

(i) any drug which is not of a standard quality, or is misbranded, adulterated or spurious;

(ii) any cosmetic which is not of a standard quality, or is misbranded or spurious;

(iii) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof (the true formula or list of active ingredients contained in it together with the quantities thereof);

(iv) any drug which by means of any statement, design or device accompanying it or by any other means, purports or claims (to prevent, cure or mitigate) any such disease or ailment, or to have any such other effect as may be prescribed;

(v) any cosmetic containing any ingredient which may render it unsafe or harmful for use under the directions indicated or recommended;

(vi) any drug or cosmetic in contravention of any of the provisions of this Chapter or any rule made thereunder;

(b) sell, or stock or exhibit (or offer) for sale, or distribute any drug (or cosmetic) which has been imported or manufactured in contravention of any of the provisions of this Act or any rule made thereunder;

(c) manufacture for sale (or for distribution) or sell, or stock or exhibit (or offer) for sale, or distribute any drug (or cosmetic), except under and in accordance with the conditions of, a licence issued for such purpose under this Chapter :

Provided that nothing in this section shall apply to the manufacture, subject to prescribed conditions, of small quantities of any drug for the purpose of examination, test or analysis :

Provided further that the (Central Government) may, after consultation with the Board, by notification in the Official Gazette, permit, subject to any conditions specified in the notification, the manufacture for sale (or for distribution, sale, stocking or exhibiting or offering for) sale or distribution of any drug or class of drugs not being of standard quality."

(emphasis supplied)

13. It is seen from the documents available on record that the petitioner given a Special Licence (Licence No.403, dated 1.5.1997) by the Director of Drugs Control, Anna Salai for manufacture of bandage cloth as per the requirements of Tamil Nadu Medical Services Corporation Limited in specification of 40° x 40° count. Such requirement of Tamil Nadu Medical Services Corporation Limited was a special requirement and the same is relating to a special category which does not come under standard schedule F-II. Therefore, insistence on adhering to the standard specification is uncalled for, more particularly, when the supply was in conformity with the tender conditions stipulated.

14. It is not disputed by the respondent that the said products supplied by the petitioner were to the fullest satisfaction of Tamil Nadu Medical Services Corporation Limited and it is in response to such satisfaction that full payment had been settled to the petitioner. That apart, the products supplied by the petitioner are not for sale and are specifically labelled "Tamil Nadu Government Supply - Not for sale". It is therefore clear that the product has been stocked and is not for sale.

15. It is nowhere the case of Tamil Nadu Medical Services Corporation Limited that the products supplied by the petitioner were not according to the specifications required. When tender has been awarded for specific requirements and the petitioner based on special licence was awarded such licence and had successfully supplied, it is not for the respondent to state that the product is not in conformity with the standards prescribed, ignoring the fact that the petitioner has special licence.

16. For the foregoing reasons, this Court finds this a fit case warranting interference. Accordingly, this criminal original petition is allowed and the complaint in C.C.No.56 of 2010 on the file of the learned Chief Judicial Magistrate, Thiruvallur is quashed. Consequently, connected miscellaneous petitions are closed.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

vs
To

The Chief Judicial Magistrate,
Thiruvallur.

+1 CC to M/s.Profexs Associates, sr 42508.

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SRG(01/11/2018)

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