

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.25228 of 2017

and

WMP.No.26672 of 2017

M.P.Sengottaiyan

... Petitioner

Vs.

- 1.The Commissioner of Food Safety
Tamil Nadu Food Safety and Drug Administration Department
5th Floor, DMS Office Building
259, Anna Salai (DMS Compound)
Teynampet, Chennai-600 006.
- 2.The Designated Officer, (Namakkal)
Tamil Nadu Food Safety and Drug Administration Department
Collectorate Complex,
Thiruchengode Road,
Namakkal - 637 003.
- 3.The Food Safety Officer
Tamil Nadu Food Safety and Drug Administration Department
Vennadhur Block
Namakkal District.
- 4.The District Collector
Namakkal District
Namakkal.

... Respondents

PRAYER:

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records comprised in Na.Ka.No.1384/A2/2017 dated 11.09.2017 on the file of the 2nd respondent, quash the same.

For Petitioner : Mr.R.Karthikeyan

For Respondents : Mr.A.Kumar
Special Government Pleader

O R D E R

The petitioner, a proprietor of Sago factory, is aggrieved by the order of the second respondent dated 11.09.2017, suspending licence of the petitioner's Sago Factory temporarily, on the reason that the petitioner has violated the conditions of the licence.

2. Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents.

3. The second respondent issued the impugned proceedings consequent upon the inspection conducted by the third respondent at the petitioner's premises on 06.09.2017 followed by his show cause notice dated 06.09.2017 and further communication dated 09.09.2017. It is seen that the petitioner has also given a reply on 09.09.2017 before the second respondent in pursuant to another proceedings dated 07.09.2017 termed as improvement notice issued by the 2nd respondent himself. The above objection/explanation made by the petitioner has also been referred to in the impugned proceedings.

4. The main contention raised by the learned counsel for the petitioner against the impugned order is that the second respondent has not followed due procedure before suspending the licence temporarily. It is the contention of the learned counsel that the second respondent alone has to issue the show cause notice before suspending the licence, even if it is for a limited period, and not the third respondent, as has been done in this case. In support of his contention, the learned counsel after drawing the relevant provisions viz., Section 30 of the Food Safety and Standards Act, 2006, which empowers the Food Safety Officer to make the inspection / seize etc., also invited this Court's attention to the Licensing and Registering of Food Business Regulations 2011, more particularly, Clause 2.1.8 of the same dealing with suspension and cancellation of Registering Certificate or Licence. Thus, he submitted that the Registering / Licensing Authority, in accordance with the provisions of Section 38 of the Act, can suspend the licence only after providing a reasonable opportunity of being heard and not otherwise. Therefore, he submitted that in this case, the second respondent viz., the Licensing Authority has not given any opportunity of being heard and consequently, the impugned proceedings cannot be sustained.

5. The learned Special Government Pleader appearing for the respondents submitted that even though the third respondent has issued the show cause notice, the second respondent, before passing the impugned proceedings, through his proceedings dated 07.09.2017, has called upon the petitioner to submit his

objection/compliance report on or before 23.09.2017, also by indicating that failure to do so would lead to suspension of licence or cancellation of the same permanently as per Section 32 of the above said Act. Therefore, he submitted that the petitioner was issued with a notice before passing the impugned proceedings. He also invited this Court's attention to the reply given by the petitioner dated 09.09.2017 and submitted that the petitioner has admitted the storage of Maize in larger quantity in his reply and therefore, he cannot be permitted to say that such storage was only for the purpose of making some experiment to find out whether the Sago can be produced from Maize as well.

6. Heard both sides.

7. There is no dispute to the fact that the petitioner was issued with the licence for the manufacture of Sago from Tapioco and not otherwise. Such licence was issued to the petitioner only under the relevant Regulation dealing with grant of such permission to manufacture Sago. There is no dispute to the fact that the petitioner is all along the manufacturer of Sago only from Tapioco. It is also admitted by the petitioner that he has stored Maize in their godown in larger quantity. However, it is sought to be explained as though such storage was for the purpose of doing some experiment to find out as to whether the Sago can be produced from Maize also. Therefore, it is contended before this Court, that the respondents are not justified in making such allegation, as though the petitioner has admitted the manufacturing of Sago by adulterating the product with Maize. I do not think that the above contention raised by the petitioner herein can be considered and decided by this Court, at this stage, as admittedly the analytical report is awaited from the competent authority. Therefore, this Court is only to see as to whether any violation of Rules or the principles of natural justice is there in this case or not. No doubt the original show cause notice was issued by the third respondent on 06.09.2017. However, another notice was issued by the second respondent, who is admittedly the competent authority, before passing the impugned order. Though such notice was termed as improvement notice, I am of the considered view that the same could be treated as show cause notice. Admittedly, the petitioner has given a reply to such notice on 09.09.2017, wherein it is admitted by them that they stored Maize in large quantity in the premises. When such being the case, I do not find any violation of the Statutory Rules or the principles of natural justice, as no purpose is going to be served in giving a personal hearing to the petitioner, in view of such admitted position. In any event, as the impugned proceedings is only a temporary suspension of the licence, it is for the respondents to complete the proceedings and pass final

order, without loss of further time. Therefore, this writ petition is disposed of, by directing the respondents, more particularly, the second respondent to complete the proceedings and pass final orders within a period of three weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mk

To

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- 4.The District Collector
Namakkal District
Namakkal.

+1cc to Mr.R.Karthikeyan, Advocate, S.R.No.78407

+1cc to the Government Pleader, S.R.No.78975

W.P.No.25228 of 2017

MN(CO)
CA(14/11/2017)