

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.06.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR. JUSTICE M.SUNDAR

W.P.No.15678/2017 and WMP.No.16969/2017

Basheer Ahamad

... Petitioner

Vs

1. The State rep by
The General Manager,
District Co-operative Milk Production union Ltd,
Vasavi College,
Erode 638 316.

2. The Assistant Divisional Engineer,
National Highways,
Sathyamangalam,
Erode District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for records pertaining to the order dated 22.05.2017 passed by the 2nd respondent and to quash the same, consequently, direct the respondents to allow the petitioner me to carry the Aavin Milk Booth in front of Puliampatti Primary Health Hospital, Sathyamangalam, Erode.

For Petitioner : Mr.R.Thirumoorthy
For R1 : Mr.T.K.Ashok kumar
For R2 : Mr.W.Richardson Wilson

ORDER

[Order of the Court was made by M.SUNDAR, J.,]

The writ petitioner is running a Aavin Milk Booth in front of a Primary Health Hospital at Puliampatti, Sathyamangalam, Erode District. It is case of the writ petitioner that he is running the Aavin Milk Booth from the year 2015 and he has got due recognition from the Aavin Company which is the 1st respondent before us.

2 It is the further case of the writ petitioner that after granting of approval by Aavin Company for running the Aavin Milk Booth, he has been running the same without any compliant from the public.

3 The permission is granted is dated 20.07.2015 and bears Ref.No.Ka.En. Aavin/2015/Va.A. It is also noticed that such permission has been granted on the basis of recommendation made by the Highways Department and the recommendation granted by the Highways Department has been cited as Reference No.2 in the said permission. Thereafter, the license for running the Aavin Milk Booth came to an end on 31.03.2017. It has also been renewed for a further period of one year from 01.04.2017 to 31.03.2018. This is vide proceedings of the 1st respondent before us dated 14.02.2017 bearing Na.Ka.No.4879/Sales/Agent Extension/2017.

4 Under such circumstances, the writ petitioner would submit that he was shocked and surprised to be slapped with a notice captioned and styled as "Notice for Removal of Unauthorized Occupation", dated 22.05.2017, issued by 2nd respondent before us.

5 The writ petitioner has filed the instant writ petition calling and questioning the above said notice, issued by the 2nd respondent on 22.05.2017 [hereinafter referred to as "the impugned order" for the sake of convenience and clarity].

6 A perusal of the impugned order reveals that same has been passed purportedly under Section 26[2] and Section 29[4] of the Control of National Highways (Land and Traffic) Act, 2002, [which shall be hereinafter referred to as "the said Act" for the sake of convenience and clarity].

7 We have heard Mr.T.K.Ashok Kumar, learned counsel accepting notice on behalf of 1st respondent and Mr.W.Richardson Wilson, learned Standing counsel, accepting notice on behalf of the 2nd respondent.

8 Mr.W.Richardson wilson, learned standing counsel appearing for the 2nd respondent would submit that the notice is in the nature of a show cause notice and that the writ petitioner has been given an opportunity to make a representation.

9 However, we noticed that the impugned order, as alluded to supra, has not only been issued merely under 26[2] of the said Act, but also under Section 29[4] of the said Act. Furthermore, we see from the impugned order that the writ petitioner has been asked to make representation within 3 days from the date of service of the Notice.

10 We searched in vain, the Provision of the said Act to find out whether three days period has been prescribed. At the risk of repetition, we searched in vain. Mr.W.Richardson Wilson, learned Standing counsel fairly admits that the Act merely says that no time period has been prescribed for such notices in the said Act.

11 However, the Principle that an opportunity and reasonable time has to be given to the Noticee in the matter of such nature, is not in dispute before us.

12 We have also noticed one or more attendant circumstances and facts in the instant case:-

- It is an Aavin Milk Booth and it is not a parlour.
- It is situated in near the Public Health Hospital (the writ petitioner has referred to the same as Primary Health Hospital).
- It is pursuant to an authorization given by the Aavin Company[Quasi Government Entity] which in turn, based on the recommendation made by the Highways Department.
- License has also been renewed for a period upto 31.03.2018.

13 Owing to all this aspects in the matter, we pass orders on the following terms.

14 The impugned order referred to supra, shall be treated as a show cause notice under the said Act.

15 The writ petitioner/noticee shall be given eight weeks time to respond to the said show cause notice by way of further fresh representation.

16 The writ petitioner shall respond with all supporting documents in his favour.

17 Thereafter, the 2nd respondent shall considered the writ petitioner's response to the show cause notice together with the documents and take a reasonable stand.

18 If the stand taken by the 2nd respondent is not in favour of the writ petitioner, we make it clear that it is open to the writ petitioner to avail any appellate remedy that may be available to him under the said Act.

19 As we have held that the impugned notice/order shall be treated as show cause notice, it follows that it cannot be under section 29[4] of the said Act. Though this is obvious, we reiterate the same and make it clear that the impugned notice shall not be treated as one under Section 29[4] of the said Act.

20 The writ petition stands disposed of on the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

SK

To

1. The General Manager,
District Co-operative Milk Production union Ltd,
Vasavi College,
Erode 638 316.
2. The Assistant Divisional Engineer,
National Highways,
Sathyamangalam,
Erode District.

+1cc to Mr.T.K.Ashok Kumar, Advocate Sr. 44459
+1cc to Mr.R.Thirumoorthy, Advocate Sr. 44467

WP.No.15678/2017

AR(V)
VR(21/07/2017)

सत्यमेव जयते

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