

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE B.RAJENDRAN

WRIT PETITION No.44675 of 2016

M/s.Deepam Beverages,
rep. by Managing Partner,
Mr.W.Rajesh,
S.No.8/1B1,8/1B2, Melakkal Main Road,
Kodimangalam,
Thirupparankundram,
Madurai - 625 016.

... Petitioner

vs.

1. The Commissioner of Food Safety,
5th Floor of DMS Office Building,
No.359, Anna Salai,
DMS Campus, Teynampet,
Chennai 600 006.
2. The Designated Officer,
Tamil Nadu Food Safety and Drug Administration
Department,
Office of DDHS Campus,
Vishwanathapuram,
Madurai 625 014.
3. The Food Analyst,
Food Analysis Laboratory,
Madurai.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the entire records relating to the proceedings of the 1st respondent in R.No.7598/2016/S6/FSSA, dated 02.11.2016 and the 2nd respondent in his proceedings in Na.Ka.No.161/A1/2013, dated 09.11.2016 and that of the subsequent notice of seal of the petitioner's premises and quash the same.

For Petitioner : Mr.Venkatachalapathy,
Senior Counsel
for M/s.Om Sai Ram

For Respondents :Mr.S.Rajeswaran,
Special Government Pleader

O R D E R

This Writ Petition is filed seeking to quash the order dated 02.11.2016 passed by the 1st respondent and the order dated 09.11.2016 passed by the 2nd respondent and the notice of seal of the petitioner's premises.

2. According to the petitioner, he is in the business of manufacturing packaged drinking water for more than two years. The petitioner Company started its business after obtaining requisite permission from BIS and FSSAI and it has been renewed from time to time. The 1st respondent vide his proceedings dated 02.11.2016, directed the 2nd respondent to cause inspection of various packaged drinking water units in their jurisdiction and take samples and report the same as to the category of unsafe, sub-standard and misbranded and to take action to close the packaged drinking water units.

3. While so, the 4th respondent took twenty litres of polythene packet filled with water from one M/s.GSP Thangam Agency, situated at No.37, Parthasarathi Street, S.S.Colony, Madurai-16, claiming to have been the agency of the petitioner, on 14.07.2016. Sample was sent to the 3rd respondent for analysis on 15.07.2016 and the 3rd respondent analysed the petitioner's packet water from 15.07.2016 to 20.07.2016 and after analysing the same, the 3rd respondent opined that the 'Sample Packaged Drinking Water is within norms to its quality characteristics as prescribed under Reg.2.10.8 of FSS (Food Products Standards & Food Additives) Reg.2011'. But, however, he had stated that the petitioner's product contravenes labelling regulation Reg. 2.2.1.(8), Reg. 2.2.2.(8) and Reg.2.2.2(9) of FSS (Packaging & Labelling) Regulation 2011, as the date of manufacture is not mentioned on the label and the Best before declaration is not as per the Regulations and the petitioner's product is 'Unsafe' as per Section 3(1)(zz)(iii) (x)(xi) of FSS Act, 2006, because the Aerobic Microbial count of product is 40 cfu which is higher than the requirement of 20cfu.

4. It is the petitioner's grievance that without giving any opportunity to the petitioner to cure the defects, the 3rd respondent, by an order dated 21.07.2016, had declared the petitioner's product as "Unsafe and Misbranded" and based on the same, the 2nd respondent had issued an order dated 09.11.2016 to close the petitioner's unit. It is the case of the petitioner that he uses stamp seal to illustrate the date of packaging and that the 4th respondent conducted a surprise

inspection and took the samples, before his men could stamp the seal on the water packets. It is his contention that had the 2nd respondent sent an improvement notice or show cause notice, he would have cured all the minute defects and no necessity would have arose to the respondents to issue closure notice.

5. Learned Senior Counsel appearing for the petitioner submitted that the petitioner undertakes that he will not effect sales of the product without clearance from the authorities concerned and abide by any conditions imposed by this Court, as closure of the petitioner's unit will affect his business.

6. Learned Special Government Pleader appearing for the respondents contended that the respondents have strictly followed the procedures contemplated under the Act and that sealing of the premises has become inevitable inasmuch as the product manufactured by the petitioner is unsafe for human consumption. He also pointed out that the Green Tribunal has directed the authorities concerned to resort to closure of the facility, if there is any violation of the procedure contemplated under the Act.

7. Heard the learned counsel on either side and perused the material documents available on record.

8. On consideration of the submissions made by the learned counsel on either side, it is clear that under the Act, the respondents are empowered to resort to closure of the manufacturing facility, if there is any violation or non-compliance of any defects pointed out during the course of inspection of such facility. However, such action has to be resorted only after compliance of principles of natural justice by either issuing a notice pointing out the defects and giving time for compliance or affording an opportunity of hearing.

9. In the case on hand, the respondents have ordered closure of the petitioner's manufacturing unit, without issuing any notice or an opportunity of hearing. Hence, the action resorted to by the respondents for closure of the manufacturing unit of the petitioner, without following the principles of natural justice, is liable to be interfered with.

10. In a similar circumstance, this Court, by an order dated 01.12.2016 in W.P.Nos.40092 of 2016, batch of cases, held as follows:

''9. Having regard to the above submissions, without expressing any opinion on merits as to whether the products manufactured

by the petitioners or sub-standard, mis-branded or unsafe for human consumption, or the petitioners possess adequate facility to manufacture their product and taking note of the fact that the petitioners are willing to have their manufacturing facility inspected by the respondents to subjectively satisfy themselves about the compliances of the various defects pointed out by the respondents during the course of their inspection, these writ petitions are disposed of with the following directions:

(i) The orders, which are impugned in these writ petitions, in so far as it relates to sealing of the manufacturing facility of the respective petitioners alone, are set aside as it violates principles of natural justice.

(ii) 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 routine 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.

(iii) The affidavits of undertaking filed by the petitioners in these writ petitions are recorded. As per the affidavits 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.

(iv) 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 products manufactured by them is "mis-branded" 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.

(v) During such inspection, the respondents shall ensure compliance of the various requisite parameters, including compliance of the defects pointed out by them during the course of their earlier inspection and the fulfilment 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 or for violation of any other Rules.

(vi) It is made clear that this order has been passed only on the ground that the sealing of the premises was done in violation of the principles of natural justice. This order, therefore, will not confer any right on the petitioners to either manufacture or sell their products for commercial purpose without obtaining orders or clearance from the respondents.''

11. In view of the above and having regard to the submissions made by the learned counsel on either side, without expressing any opinion on the merits of the case, this Court disposes of the present Writ Petition with the following directions:

(i) The order impugned in this Writ Petition, in so far as it relates to closure of the manufacturing facility of the petitioner alone, is set aside as it violates principles of natural justice.

(ii) The respondents are directed to forthwith remove the seal put up by them in the manufacturing facility of the petitioner to enable the petitioner to have their routine maintenance work and to manufacture water only for the purpose of testing or taking samples thereof. It is made clear that the petitioner shall not resort to manufacture water for commercial sale or to sell the existing stock for commercial purpose.

(iii) The affidavit of undertaking filed by the petitioner in this Writ Petition is recorded. As per the affidavit of undertaking, the petitioner shall run the unit for maintaining the membrane and not effect sales of the product and he shall subject his product for testing with the accredited or certified laboratories of the Central Government and produce the report thereof to the respondents.

(iv) The respondents are directed to cause inspection of the manufacturing facility of the petitioner. While doing so, the respondents are directed to cause inspection of the manufacturing facility of the petitioner which was sealed on the ground that the products manufactured by them is "mis-branded" 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 petitioner which was sealed on the ground that the products manufactured by the petitioner is "unsafe" for human consumption.

(v) During such inspection, the respondents shall ensure compliance of the various requisite parameters, including compliance of the defects pointed out by them during the course of their earlier inspection and the fulfilment 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 or for violation of any other Rules.

(vi) It is made clear that this order has been passed only on the ground that the sealing of the premises was done in violation of the principles of natural justice. This order, therefore, will not confer any right on the petitioner to either manufacture or sell their products for commercial purpose without obtaining orders or clearance from the respondents.''

No costs. Consequently, connected W.M.P.Nos.38519 to 38521 of 2016 are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To:

1. The Commissioner of Food Safety,
5th Floor of DMS Office Building,
No.359, Anna Salai,
DMS Campus, Teynampet,
Chennai 600 006.
2. The Designated Officer,
Tamil Nadu Food Safety and Drug Administration
Department,
Office of DDHS Campus,
Vishwanathapuram,
Madurai 625 014.
3. The Food Analyst,
Food Analysis Laboratory,
Madurai.

+1cc to the Government Pleader Sr.759
+1cc to M/S.Om.Sairam, Advocate Sr.300

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W.P.No.44675 of 2016

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