



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2017

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THE HONOURABLE MR.JUSTICE R.MAHADEVANW.P.(MD)No.15498 of 2016andW.M.P(MD)Nos.11393 & 11394 of 2016

S.Chairmadurai

... Petitioner

Vs.

1.Thoothukudi Medical College Hospital,
Rep. By its Dean,
Thoothukudi,
Thoothukudi District.

2.The Executive Engineer,
Public Works Department (Building),
Medical Services,
Tirunelveli District.

...Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records on the files of the first respondent pertaining its order bearing Na.Ka.No.7072/Thiva/2016 dated 10.08.2016 and to quash the same and consequently direct the first respondent to grant No Objection Certificate and consequently direct the second respondent to execute the lease agreement for further period from 21.08.2016 to 19.08.2019 for running the Aavin Booth within the premises of the first respondent.

For Petitioner : Mr.S.C.Herold Singh

For Respondents : Mr.S.Kumar,

Additional Government Pleader

ORDER

The petitioner seeks for a Writ of Certiorarified Mandamus to quash the impugned order passed by the first respondent in Na.Ka.No.7072/Thiva/2016 dated 10.08.2016 and to direct the first respondent to grant No Objection Certificate and consequently, direct the second respondent to execute the lease agreement for a further period from 21.08.2016 to 19.08.2019, to run the Aavin Booth within the premises of the first respondent.



2. The case of the petitioner, in nutshell, is as follows:

2.1. The petitioner was permitted to have "Aavin Milk Booth" at Thoothukudi Government Medical College premises, by proceedings in No.79160/Thi.Va/2/2003 dated 17.12.2003, by the authorities concerned. Thereafter, based on the request of the petitioner, he was permitted to shift his Booth to Thoothukudi Government Medical College Hospital Campus, by virtue of G.O.No.236, Health and Family Welfare (J1) Department, dated 07.03.2013. Based on the same, the first respondent, by proceedings dated 21.08.2013, allotted a place in their premises for the petitioner to run the said Aavin booth. The said lease period has to be renewed once in every three years. While so, as the lease period was going to expire on 20.08.2016, the petitioner approached the first respondent seeking No Objection Certificate, however, the same was rejected by the first respondent based on G.O.Ms.No.93, Health and Family Welfare (H2) Department, dated 25.03.2015.

2.2. The main grievance of the petitioner is that the said Government Order speaks only about the canteen which is run inside the premises and the petitioner is running only 'Aavin Booth', however, the impugned order has been passed by the first respondent stating that the petitioner is running a tiffin centre. Therefore, the petitioner sent several representations to the first respondent, but, they were rejected. Aggrieved by which, the petitioner is before this Court, praying for quashing the impugned order on that ground alone.

3. Per contra, the learned Additional Government Pleader appearing for the respondents submitted that the petitioner is violating the conditions of lease by selling eatables and other items, which is stoutly refuted by the learned counsel appearing for the petitioner.

4. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

5. It is seen that the petitioner has been allotted a bunk shop for running 'Aavin Booth' for the period between 20.08.2013 and 19.08.2016 by the proceedings of the first respondent dated 21.08.2013, however, with certain terms and conditions. The same has to be renewed once in three years after getting No Objection Certificate from the first respondent. The licence period of the petitioner was going to expire on 19.08.2016 and hence, he approached the first respondent seeking No Objection Certificate by submitting several representations, however, the said request of the petitioner came to be turned down by the first respondent on the ground that No Objection Certificate could not be issued based on G.O.Ms.No.93, Health and Family Welfare (H2) Department, dated 25.03.2015.



6. Considering the facts and circumstances of the case, this Court finds that the impugned order passed by the first respondent in Na.Ka.No.7072/Thiva/2016 dated 10.08.2016, is liable to be set aside only on the ground that the same has been passed on a wrong notion that G.O.Ms.No.93, Health and Family Welfare (H2) Department, dated 25.03.2015, prohibits granting of No Objection Certificate in respect of Aavin Booths also. In fact, the said Government Order confines the restriction only with regard to canteen alone.

7. In the result, this writ petition is allowed and the impugned order passed by the first respondent in Na.Ka.No.7072/Thiva/2016 dated 10.08.2016, is set aside. Accordingly, the petitioner is directed to file an affidavit before the respondents to the effect that he will only sell the Aavin products as permitted and on such filing, the respondents are directed to consider the same for the purpose of issuing No Objection Certificate and pass appropriate orders, after affording due opportunity of hearing to the petitioner, within a period of four weeks thereafter. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub-Assistant Registrar

To

1.The Dean,
Thoothukudi Medical College Hospital,
Thoothukudi,
Thoothukudi District.

2.The Executive Engineer,
Public Works Department (Building),
Medical Services,
Tirunelveli District.

+One cc to Mr.S.C.Herold Singh, Advocate, SR.No.67793
+One cc to The Special Government Pleader, SR.No.68660

gk

RL/5C/3P/SV/SAR2/3/8/2017

W.P. (MD) No.15498 of 2016

and
W.M.P (MD) Nos.11393 & 11394 of 2016