



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.01.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRA BAABU

W.P (MD) Nos.24583, 22030 and 22064 of 2016
and W.M.P. (MD) No.15773 of 2016, 15736 of 2016

In W.P. (MD) No.24583 of 2016:

K. Reguapthi Ammal Water Systems
represented through its Partner
N.Rogan, S/o. Nagarajan
137/B, Shasthiripuram Villakku
Karisalpatti post, Tirumangalam Taluk
Madurai District.

.. Petitioner

vs.

1. The Commissioner Food Safety
5th Floor, DMS Office Building
359, Anna Salai, Teynampet,
Chennai-6.

2. The Designated Officer,
Tamil Nadu Food Safety and Drug
Administration Department
Madurai

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorarified Mandamus calling for the records relating to the 2nd respondent in his proceedings order dated 03.08.2016 and subsequently the 2nd respondent's impugned order of closure of the petitioner unit in his proceedings Na.Ka.No. 161 A1 2013, dated 09.11.2016 and quash the same and further direct the 2nd respondent to allow the petitioner to open the premises only to carry on maintenance work and manufacture water only for the purpose of testing.

For Petitioner : Mr. PT.S. Narendra Vasan
For Respondents : Mr. T.S. Mohammed Mohideen
Additional Government Pleader

In W.P (MD) No.22030 of 2016

Sathishkumar

.. Petitioner



1. The Designated Officer,
Tamil Nadu Food Safety and Chemical,
Administration Department (Food Section),
Viswanathapuram,
Madurai-625 014.

2. The Scientist -C,
Bureau of Indian Standards,
Southern Regional Office,
CIT Campus, IV Cross Road,
Tharamani, Chennai-113.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari to call for the records in proceedings of 1st respondent in No. Na.ka.No.161/A1/2013, dated. 09.11.2016 and QUASH the same.

For Petitioner : Mr. N. Mohideen Basha
For Respondents : Mr. T.S. Mohammed Mohideen
Additional Government Pleader

In W.P(MD)No.22064 of 2016

Latha Maheshwari

.. Petitioner

vs.

1. The Designated Officer,
Tamil Nadu Food Safety and Chemical,
Administration Department (Food Section),
Viswanathapuram,
Madurai - 625 014.

2. The Scientist - C,
Bureau of Indian Standards,
Southern Regional Office.
CIT Campus, IV Cross Road,
Tharamani, Chennai - 113.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of Certiorari to call for the records in proceedings of 1st respondent in No.ka.No.161/A1/2013, dated. 09.11.2016 and QUASH the same.

For Petitioner : Mr. N. Mohideen Basha
For Respondents : Mr. T.S. Mohammed Mohideen
Additional Government Pleader



C O M M O N O R D E R

All these three writ petitions are filed by individual writ petitioners challenging the proceedings wherein and whereby the respective drinking water manufacturing units of the petitioners were sealed on the reason that the packed drinking water manufactured by the respective petitioners was found to be unsafe by the concerned laboratory.

2. In all these writ petitions, the respective writ petitioners, apart from raising other grounds on merits, have also raised the grounds of violation of principles of natural justice by specifically contending that before passing the impugned order, the petitioners were not put on notice on the allegations made against the petitioners with regard to their manufacturing. The petitioners deny the same by raising very many grounds on merits. However, this Court is not inclined to go into all those contentions now in view of the fact that similar writ petition filed by similar water manufacturing units before the Principal Seat of this Court at Chennai in W.P.No.42292 of 2016 etc., were heard by a learned single Judge of this Court and an order came to be passed on 01.12.2016 thereby disposing of all those writ petitions by giving certain directions.

3. The learned counsel appearing for the writ petitioners herein prayed for passing similar orders in these writ petitions as well since the issue involved in both the cases are one and the same.

4. Though the respondents have filed a counter affidavit and disputed the contentions of the writ petitioners on merits of the matter, the learned Special Government Pleader appearing for the respondent is not disputing the fact that the issue involved in these cases are squarely covered by the said order passed by the Principal Bench of this Court dated 01.12.2016 in batch of writ petitions.

5. He however pointed out that though notice was not issued before passing the impugned order of closure, earlier notices were sent to the respective parties not to sell water.

6. A perusal of the order, passed in the batch of writ petitions by the Principal Bench of this Court dated 01.12.2016, would show that the petitioners who are similarly situated are also entitled to similar relief as has been given in those cases. Paragraph No.9 of the above said order reads as follows:

<https://hcservices.ecourts.gov.in/hcservices/> 19. 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 affidavit 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.

<https://hcservices.ecourts.gov.in/hcservices> 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 directions 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 order of clearance from the respondents".

7. In W.P.(MD)Nos.22030 and 22064 of 2016, the petitioners have filed an affidavit of undertaking separately. Paragraph Nos. 2 and 3 of the same are extracted hereunder:

In W.P. (MD) No.22030 of 2016:

"I most respectfully state that this writ petitioner has invested huge amount in installing this packed drinking water unit and also huge amount are spent for the maintenance of the same and these kind of units has to be run without any stoppage and if this processing unit is stopped, the food business operator/Petitioner has to incur heavy loss and the unit itself will get ruined, for instance, the Reverse Osmosis unit contains 3 Membranes, Sand Filter, Carbon Filter, Micron Filter, Ozonator and UV filters which would roughly cost about Rs.5 lakhs and it would vary depending upon the capacity of the each unit, which would cost up to Rs.10 lakhs. If these units are sealed and the productions process is stopped these membranes and filters would get jammed and would become unusable and the petitioner has to suffer a huge loss and therefore, it is imminent that these units has to be permitted to run at least for the purpose of maintenance.

3. I humbly submits that this Hon'ble Court may kindly permit the petitioner drinking water unit to process the drinking water for the present and after the cleaning process and other maintenance process are over, the respondents can be directed to lift samples in accordance with act and then such samples can be tested by the accredited laboratories.

In W.P. (MD) No.22064 of 2016:

2. I most respectfully state that this writ petitioners unconditionally undertakes to do only



maintenance work and to manufacture water only for the purpose of testing or taking samples thereof.

3. I most restfully submit that this petitioner further undertakes the petitioner will not resort to manufacture water for commercial sale or to sell the existing stock for commercial purpose.

8. In W.P.(MD) No.24583 of 2016, the petitioner has given the similar undertaking in the affidavit filed in support of the writ petition itself at paragraph No.6 which reads as follows:

"Hence, under such circumstances the petitioner is ready and willing to undertake that the petitioner will not use the unit for commercial purpose except to maintain the machineries and for taking samples for test. The Principal Bench of this Court in the batch of writ petitions allowed several units like the petitioner unit to open the unit with certain conditions. The petitioner may be allowed to open the premises only to carry on maintenance work and manufacture water only for the purpose of testing. Once again the petitioner undertakes that the petitioner will not resort to manufacture water for commercial sale or to sell the existing stock for commercial purpose except to manufacture water only for the purpose of testing".

9. Considering the above stated facts and circumstances and by following the similar order passed by the learned single Judge in the above batch of cases as stated supra, these writ petitions are disposed of without expressing any opinion on merits as to whether the products manufactured by the petitioner are sub-standard, misbranded 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, by imposing 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 affidavit 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

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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 directions 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 order of clearance from the respondents.

No costs. Consequently, all the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS II)

/True copy/

Sub Assistant Registrar

To,

1. The Commissioner Food Safety, 5th Floor, DMS Office Building, 359, Anna Salai, Teynampet, Chennai-6.

2. The Designated Officer, Tamil Nadu Food Safety and Chemical, Administration Department (Food Section), Viswanathapuram, Madurai - 625 014.



3. The Scientist - C, Bureau of Indian Standards,
Southern Regional Office.
CIT Campus, IV Cross Road,
Tharamani, Chennai - 113.

+2cc to Mr.N.Mohideen Basha, Advocate SR.No.260,259
+1cc to special Government Pleader SR.No.463
+1cc to Mr.PTS.Narendravasan, Advocate SR.No.287

CM

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W.P (MD) Nos.24583, 22030 and
22064 of 2016
03.01.2017