

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 29.11.2018

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

Writ Petition No.31378 of 2018

&

WMP No.36566 of 2018

Mrs. Krishnaveni Anandan ... Petitioner

- Vs -

- 1 Union of India
Rep by Secretary to Government Ministry of
Commerce and Industries Udyog bhawan
New Delhi- 110107
 - 2 The Chairman / Joint Secretary
Export inspection Council of India
Ministry of Commerce and Industries Udyog bhawan
New Delhi- 110107
 - 3 The Director,
Export Inspection council of India 3rd
floor NDYMCA Cultural Centra buildig 1
Jain Singh Road New Delhi- 110001
 - 4 The Director, Export Inspection Agency 6th floor CMDA
Tower II No.1 Gandhi Irvin Road Egmore
Chennai-8
 - 5 The Inquiry officer, Export inspection Agency
6th floor CMDA
Tower II No.1 Gandhi Irvin Road Egmore
Chennai - 8
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing respondents 3, 4 and 5 not to proceed with the enquiry pursuant to the charge memo issued by the 3rd respondent without furnishing the documents requested by the petitioner in

respect of her defence in the disciplinary proceedings and permit the petitioner to cross examine the prosecution witnesses and to conclude enquiry in accordance with the law.

For Petitioner : Mr. S.Selvathirumurugan

For Respondents: Mr. K.Thirukkumaran, CGSC.,

O R D E R

The petitioner has filed this writ petition seeking direction to the respondents to furnish the list of documents as requested by the petitioner in order to furnish her defence in the disciplinary proceedings, so that she can effectively participate in the enquiry.

1.1. The list of documents are listed in paragraph 35 of the affidavit filed in support of this writ petition, numbering 1 to 45, which reads thus:-

"1 Visitors register from 2016 March to till date
2 The copy of fee register from 20.03.2016 to 30.03.2016

3 Fortnightly statements records for Jude Foods from April 2011 to March 2016

4 28/03&29.03.2016 Invoice and HCs issued to M/s.Jude Foods India Pvt. Ltd

5 Production registers of M/s.Jude Foods India Pvt. Ltd., from 10th March 2016 to 15th April 2016.

6 The certificate No. EI43393729 & EI 43393736 submitted by the M/s.Gladson exporters with Invoice attached to it.

7 The GSP certificates issued to M/s.Gladson exporters from 01.11.2014 to 05.11.2014

8 Mail sent to HO (DD-l/c) as well as DD - A&A sought for new PC to the undersigned for the purpose that the desktop provided was not access GSP site due to New Microsoft word version and some other technical problem.

9 The Health Certificate application No.NGL-201604001352 on 08.04.2016 with documents including the covering letter.

10 The Certificate for Exports submitted by M/s.Gladson Exporters dated 08.04.2016.

11 The complaint details received from customs on 2013 against M/s. M/s.Gladson Exporters regarding non submission of the Certificate For Export to customs at the time of shipment and the correspondence.

12 The mail received from EIA- Chennai related to the Director's programme i.e. inauguration of new office

building for S.O:Tuticorin and visit to S.O:Nagercoil & Kanyakumari for exporters meeting.

13 Details of expenses (lunch and miscellaneous expenses spent at Kanyakumari & Nagercoil) of DD-A&A, EIA Chennai and R.Venkatraman, Consultant during their visit to Kanyakumari to monitor the arrangements regarding exporters meeting with the Director, EIC, New Delhi as per the instructions of EIA- Chennai H.O.

14 The mail sent from S.O: Nagercoil by attaching the photographs to DD-Ananda Gupta -l/c for the fixation of Conference Hall in connection to the visit of Director, EIC, New Delhi to Kanyakumari.

15 The audit report of Mr.Tangirila srinivas DD-Administration to S.O:Nagercoil after the Director's visit.

16 Internal audit reports and the corporate audit reports of S.O: Nagercoil & Chennai respectively from the financial year 2011-12 to 2016-17

17 The bills submitted to EIA,Chennai, H.O in connection with the exporters meeting with the Director, EIC, New Delhi.

18 Monitoring reports and NCR issued to Maria Aquacon Pvt. Ltd. From 2013 March to 2016 April and the list of approved and unapproved technologist list of M/s.Maria Aquacon Pvt. Ltd.,

19 Technologist approval list of S.O:Nagercoil F&FP approved establishments.

20 The set of Health Certificate application submitted by M/s.Gladson Exporters which was submitted to EIA- Nagercoil planned to make shipment from Mumbai port and rejected by S.O:Nagercoil (as per procedure)

21 The mail regarding the NCR issued to M/s.Maria Aquacon Pvt. Ltd., sent H.O:Chennai as orally instructed by DD-Ananda Gupta, by AD (Laxman Meenai after the regular monthly monitoring visit of the same - (Jan or Feb 2016)

22 The applications submitted by M/s.Jude Foods India Pvt. Ltd for the issuance of the health Certificate for export from January 2016 to April 2016 (especially the application which was rejected 4-5 times due to irrelevant submission of documents).

23 The details of the applications submitted by the exporters for getting the Health Certificate from January 2016 to 07.04.2016.

24 Employees list of S.O:Nagercoil from 01.08.2015 to April 19th 2016.

25 Hotel Canaan bills from 25.07.2015 to 15.08.2015

26 Attendance register from 28.04.2013 to 16.04.2016

27 January, February & March 2016 applications for health Certificates for Export submitted by M/s.Jude

Food India Pvt. Ltd.,
28 Tuticorin tour mail received from EIA-Chennai, DD-1/c, on 2013 and Jan 2016
29 Mail received from EIA-Chennai, H.O to conduct the HACCP audit at M/s.Penninsular Fisheries.
30 HACCP audit report of M/s. Peninsular Fisheries
31 Tour report of the Director after Kanyakumari visit on May 2015
32 Report mail sent to H.O after issuance of CoOs on daily basis from 2015 to 2016 April.
33 Health certificates consolidated statements from October 2013 to April 2016
34 The instructions/mail sent or circulated from S.O: Nagercoil to the exporters regarding the date of Frozen certificates cannot be before the charging date while getting the certificate on Saturdays Closed holidays)
35 Approved and unapproved technologist list with the appointment letters of M/s.Kanya Marine Exporters fit the record of their approval withdrawn.
36 Health Certificate fee register details of M/s. Kanya Marine Exporters from 2013 January to April 2016
37 The applications for the Health Certificate submitted by M/s.Maria Aquacon Pvt. Ltd., rejected with the covering letter from 2013 March to April 2016
38 List of the approved and unapproved technologists of M/s. Maria Aquacon Pvt. Ltd., from April 2013 to April 2016
39 The clarification letters issued to M/s. Maria Aquacon Pvt. Ltd., from April 2013 to April 2016.
40 The fortnightly statements submitted by the exporters from April 2011 to March 2016 and also the income details till 2013 and from April 2013 to April 2016 (Month wise)
41 The tour report of the JD-Chennai after Kanyakumari meeting on February 2016.
42 The mail sent to JD-EIA Chennai and exporters of Fish & Fishery products regarding the non improper submission of the fortnightly statement as per Exe. Ins.
43 The inward register of EIA-Chennai from 01.02.2016 to 19.04.2016.
44 Copy of the inspection fee register from March 2010 to March 2013 & from April 2013 to April 2016.
45 Details of the " Certificate For Export books-Blank" received from H.O: Chennai from 2010 to 2016."

2. Heard the learned counsel appearing for both sides and perused and the materials available on record.

3. It is submitted by the learned counsel appearing for

the petitioner that those documents are absolutely essential to meet out the charges.

4. At this juncture, it is necessary to consider the decision of the Hon'ble Supreme Court in the case of Chandrama Tewari vs Union Of India, Through General Manager, Eastern Railways, reported in 1988 AIR 117, 1988 SCR (1) 1102, in which it has been held as follows:-

"It is now well settled that if copies of relevant and material documents including the statement of witnesses recorded in the preliminary enquiry or during investigation are not supplied to the delinquent officer facing the enquiry and if such documents are relied in holding the charges proved against the officer, the enquiry would be vitiated for the violation of principles of natural justice."

5. Considering the facts and circumstances and considering the decision, cited supra, the respondents are directed to permit the petitioner to go through the documents and if the petitioner claims that those documents are to be marked, the respondents shall furnish true copy of the same to the petitioner. Permission shall be granted to the petitioner to peruse the documents within a period of one week from the date of receipt of a copy of this order.

6. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

srk

To

- 1 The Secretary, Union of India
Government Ministry of Commerce and Industries
Udyog bhawan New Delhi- 110107
- 2 The Chairman / Joint Secretary
Export inspection Council of India
Ministry of Commerce and Industries Udyog bhawan
New Delhi- 110107

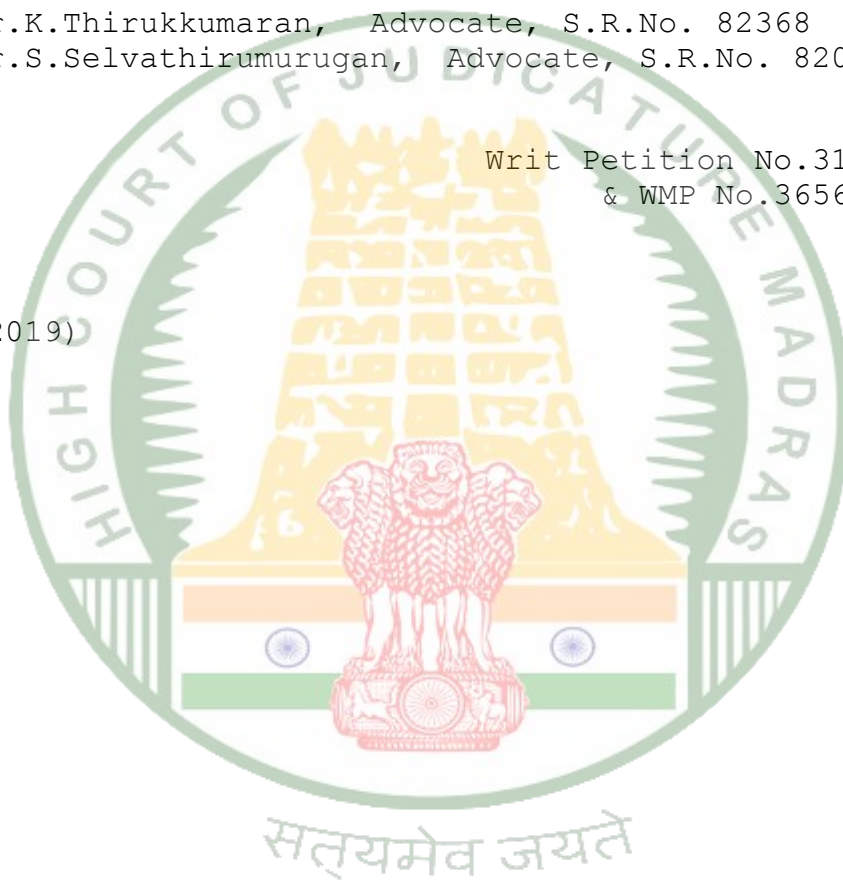
- 3 The Director, Export Inspection council of India
3rd Floor NDYMCA Cultural Centra buildig 1
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- 4 The Director, Export Inspection Agency 6th floor CMDA
Tower II No.1 Gandhi Irvin Road Egmore, Chennai-8
- 5 The Inquiry officer
Export inspection Agency 6th floor CMDA
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Chennai - 8

+1cc to Mr.K.Thirukkumaran, Advocate, S.R.No. 82368

+1cc to Mr.S.Selvathirumurugan, Advocate, S.R.No. 82014

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& WMP No.36566 of 2018

VSNI (CO)
GN(02/01/2019)



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