



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.11.2018

CORAM:

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.17855 of 2018

and

W.M.P(MD)No.15739 of 2018

M.Mohamed Asraf

... Petitioner

Vs.

1.The General Manager,
Southern Railways,
Central Branch, Park Town,
Chennai - 600 003.

2.The Chief Communal Manager,
Southern Railways,
Central Branch, Park Town,
Chennai - 600 003.

3.The Senior Divisional Commercial Manager,
Southern Railways,
Commercial Branch,
Tiruchirappalli.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a writ of Mandamus, forbearing the respondents from interfering with the petitioner's running of Aavin Milk stall in platform No.1, MDU end of Tiruchirappalli Railway station till the expiry of the lease period upto 31.03.2019 as per the proceedings of the third respondent dated 20.02.2018.

For Petitioner : Mr.G.Prabhu Rajadurai

For Respondents : Mr.S.Manohar

ORDER

This writ petition is filed seeking a Writ of Mandamus, to forbear the respondents from interfering with the petitioner's Aavin Milk stall in platform No.1, MDU end of Tiruchirappalli Railway station till the expiry of the lease period upto 31.03.2019 as per the proceedings of the third respondent dated 20.02.2018, which has been run by the petitioner.

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

2. The case of the petitioner is that in order to cater the



needs of the passengers in the train as well as in the railway station, the respondents have established various shops along the platforms. In Tiruchirappalli Railway Station in Platform No.1, the respondents have established two milk parlors one at Madras end and another at Madurai end.

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3. In the said milk parlor, the Tiruchirappalli District Co-operative Milk Producers Union Limited is the licensee for more than 15 years by extension of their license period periodically. Insofar as the milk stall at platform No.1 Madurai end is concerned, the petitioner has been appointed as an agent of the said co-operative limited to run the aavin parlor.

4. The petitioner further states that for the purpose of license, the Tiruchirappalli District Co-operative Milk Producers Union Limited and the third respondent have entered into an agreement and the license is governed by the terms and conditions of the said agreement. The petitioner is running the said aavin milk parlor for the past 10 years and till date he is running the same, without any complaint either from the respondents or from any of the passengers.

5. In the month of May, 2018, the vigilance team of the respondents have inspected the Aavin parlor run by the petitioner in platform No.1, Madurai end and seems to have recorded a complaint on its own, as if he has sold coffee in the Aavin parlor. The third respondent had orally directed the petitioner to close down the parlor stating that as per the vigilance report, he has violated the terms of contract by selling coffee in the Aavin parlor. Even as per the terms and conditions, violation would warrant only penalty and they cannot terminate the said agency.

6. On 04.07.2018, the third respondent issued six months show-cause notice, as per Clause 22(b) of the Agreement executed between the General Manager, Tiruchirappalli District Co-operative Milk Procedures Union Limited, Trichy and the Railway Administration. For the said show-cause notice, the Tiruchirappalli District Co-operative Milk Producers Union Limited has sent a reply on 18.07.2018. Since the third respondent has issued only a six months show-cause notice, they cannot insist the petitioner to close down the shop during the notice period and the oral order of the third respondent asking the petitioner to close down the shop is absolutely illegal. Challenging the same, the petitioner has filed the present Writ Petition.

7. When the matter came up for hearing on 13.08.2018, this Court granted an order of interim injunction.

8. Mr.S.Manohar, learned counsel appearing for the respondents submitted that the petitioner was already awarded a penalty for an another offence and the petitioner cannot plead



innocence, as if he has not been awarded with any punishment.

9. It has been brought to the notice of this Court that the respondents have not issued any notice to close down the said parlor and also the petitioner was not given chance to express his stand. The petitioner's agreement comes to an end on 31.03.2019 and in the reply given by the Tiruchirappalli District Co-operative Milk Producer's Union Limited, dated 18.07.2018, it could be seen that clause 21 and 22 of the agreement clearly pointed out that notices should be issued before cancellation or closure of any of the unit. Aavin parlor products are sold at MRP to the benefits of the railway passengers. The said licence is for a period of three years upto 31.03.2019. Since hardly four months is left and the petitioner has already suffered business for the closure period, this Court is of the view that a chance can be given to the petitioner and as such, the petitioner can continue his sale till the period of lease ie., 31.03.2019 and for the mistake committed by him, as per clause 21 and 22 penalty can be issued to the petitioner for the said offence and as such, the petitioner is directed to pay a sum of Rs.10,000/- as penalty to the third respondent within a period of two weeks from the date of receipt of copy of this order and the show-cause notice was not served on the agency, but served on the Tamil Nadu Co-operative Milk Producer's Federation Limited headed by the General Manager. It is also made clear that the petitioner is directed to abide by the terms and conditions of the contract and he should not indulge in such activities and further he cannot sell any other items other than the Aavin products. If it is found that the petitioner sells other items, the concerned authorities can terminate the tenure of the petitioner, without even giving any notice.

10. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (Crl.Side)

/True Copy/

Sub Assistant Registrar (cs-IV)

To

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Chennai - 600 003.

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3. The Senior Divisional Commercial Manager,
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Commercial Branch,
Tiruchirappalli.

+1cc to Mr.G.Prabhu Rajadurai Advocate in SR.No.97822
+1cc to Mr.S.Manohar Advocate in SR.No.97514

W.P (MD) No.17855 of 2018
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