



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :18.09.2019

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THE HONOURABLE **MR. JUSTICE M. GOVINDARAJ**

W.P. (MD) No.15535 of 2019
and W.M.P. (MD) Nos.12185 & 16130 of 2019

V.Rajasekaran

... Petitioner

vs.

1.The General Manager,
Madurai District Co-operative Milk Producers
Union Limited, Madurai-20.

2.The Assistant Manager (Sales),
Madurai District Co-operative Milk Producers,
Union Limited, Madurai-20.

... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records passed by the first respondent order in Na.Ka.No.6191/Sales.1/2006 dated 02.07.2019 and quash the same as illegal and arbitrary.

For Petitioner : Mr.K.Baalasundharam

For Respondents : Mr.M.Murugan,
Government Advocate

For Bar Association : Mr.Veerakathiravan
Senior Counsel

ORDER

The order under challenge in this Writ Petition is that cancellation of license given to the Aavin Parlour No.565 in shop No.6, which is functioning in the campus of Madurai Bench of Madras High Court, Madurai.

2.The first respondent issued a licence to the petitioner to sell only Aavin products and that they should not sell other company's products. Since the petitioner is selling other products, other than the Aavin products, a show cause notice was issued to him on 12.06.2019. The petitioner has sent a reply stating that from the date of warning given by the General Manager, they have not selling tea, coffee, biscuits. However, the respondent have cancelled the licence for the violation of conditions of licence.



3.I have heard the submissions made on either side.

4.Mr.Veerakathiravan, learned Senior Counsel made representation on behalf of the Bar Association and submitted that tea sold in Aavin shop has better quality and it is more convenient to all the Bar members to have access to that shop and consume tea at that place. Since the tea is also made of Aavin milk, the reputation of the respondent will not be affected and that the General Manager has powers to alter or modify or introduce new licence conditions as per Clause 15 of the licence Act. Therefore, he would seek that the licence may be permitted to sell tea alone, which is made of Aavin milk.

5.On consideration of licence conditions, it could be seen that the licence will be cancelled, if licensee acts contrary to the licence conditions. The licensor, in order to maintain the unique identity and reputation, laid conditions to the licensees. It cannot be altered for the convenience of the consumers and the licensee should not violate the conditions for his profits as well as on the request of the consumers. Therefore, from the factual submissions made by the parties, it is clear that the licensee has been selling tea and other products, which is contrary to the terms of the licence conditions.

6.The learned counsel appearing for the respondents would submit that the licensee not only sell tea, but also sell vadai, muruku, biscuits and other products. If anything happens, such as food poison due to other products, it will affect their reputation throughout the State. Therefore, the impugned order is justifiable and cancellation order should not be interfered with.

7.It is true that the licensor, in the interest of his business prospects, is entitled to impose conditions to licensee. It is always open to the parties to the contract to rescind the contract, at will, for non-performance, breach or for impossibility of performance or compliance of terms and conditions. The case on the hand is one of breach of conditions by the licensee when the terms and conditions were violated and whether the parties are entitled to damages, are questions of facts. In such circumstances, this Court, exercising jurisdiction under Article 226 of the Constitution of India, should not indulge in conducting roving enquiry into factual disputes with regard to commercial contracts. Hence, the present writ petition cannot be sustained for deciding disputed facts.

8.Therefore, the impugned order passed by the first respondent as such cannot be interfered with. However, the request of the Bar members can be considered with open mind by the General



Manager while issuing the licence in future.

9.The Writ Petition is dismissed, with the above observations.
No costs. Consequently, connected Miscellaneous Petitions are closed.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The General Manager,
Madurai District Co-operative Milk Producers
Union Limited, Madurai-20.

2.The Assistant Manager (Sales),
Madurai District Co-operative Milk Producers,
Union Limited, Madurai-20.

+1 CC to M/s.K.BAALASUNDHARAM, Advocate (SR-87523[F] dated
18/09/2019)

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