

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2020

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU

W.P.NO.37644 OF 2004

AND

W.M.P.NOS.45148 AND 45149 OF 2004

P.Balamurugan
Proprietor, M/s.Meenakshi Ayurveda Pharmacy,
No.37/3-67-1, Asarimar South Street
Meenakshipuram, Nagercoil,
Kanyakumari District.

... Petitioner

-vs-

1. The Commissioner Prohibition and Excise
Chepauk, Chennai - 5.
2. The District Collector,
Kanyakumari District
at Nagercoil
Kanyakumari District.
3. The Assistant Commissioner-Excise,
Collectorate,
Nagercoil,
Kanyakumari District.
4. The Superintendent of Police,
Kanyakumari District,
Nagercoil.

... Respondents

Prayer:-

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the record in proceedings D.Dis.P&E 1(3) 10933/2004 dated 31.08.2004 on the file of the Commissioner Prohibition and Excise, Chepauk, Chennai - 5, quash the same and direct the First Respondent to issue licence in Form L-2 under Medicinal and Toilet Preparation Excise Duties Rules 1956.

For Petitioner : No appearance

For Respondents : Mr.N.Inbanathan
Additional Government Pleader

O R D E R
(through video conference)

Heard Mr.N.Inbanathan, Learned Additional Government Pleader appearing for the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. There is no representation for the Petitioner when the matter is called at 10.47 a.m., 1.55 p.m. and 4.21 p.m.

3. The Writ Petition challenges the Order in D.Dis.P&E 1 (3) 10933/2004 dated 31.08.2004 passed by the First Respondent. The operative portion of the said order reads as follows:-

"6. The limited question before me is whether the impugned order is legally sustainable or not. I have perused the connected records and also the arguments advanced by the learned senior counsel and the relevant materials on record I am of the view that the Collector, Kanyakumari, while rejecting the request the appellant has not fully complied with the statutory provision contained in rule 84 read with Rule 95 of the Medical and Toilet preparation (Excise duty) Rules 1996. It is obligatory on the part of the Collector to satisfy himself by making necessary enquires "as envisaged under sub rule (1) of the Rule 95 on the following matters as set out in the rules:

(i) the qualifications and previous experience of technical personnel engaged in the manufacturing operation;

(ii) the equipment of the bonded and non-bonded manufactory;

(iii) soundness of the applicant's financial position; and

(iv) suitability of the proposed building for the establishment of manufactory.

7. As the above mandatory provisions have not been complied with and the procedure laid down in the rules has not been followed. I hold that the impugned order suffers irregularly violating Rule 95. For the reason, I set aside the order of the Collector, Kanyakumari issued in Proceedings to K.P4 79864/02 dated 01.03.2004 and remand the case to him

for fresh disposal in accordance with the namely Rule 95 and other relevant rules of the Medicinal and Toilet Preparation (Excise Duty) Rules, 1956."

4. On a bare perusal of the impugned order, it is evident that the matter has been remanded for fresh consideration, which would not cause any prejudice to the rights of the Petitioner. The affidavit filed in support of the Writ Petition also does not disclose as to how the impugned order entails any civil consequences to the Petitioner. It is needless to add here that it is only in the event of the Second Respondent passing any adverse order, the Petitioner could be aggrieved so as to seek any redressal. In that view of the matter, this Court does not find any justification to entertain the Writ Petition in the exercise of the discretionary powers of judicial review under Article 226 of the Constitution. Though obvious, it is made clear that no opinion has been expressed by this Court on the correctness or otherwise on the merits of the controversy involved in the matter.

5. In the result, the Writ Petition is dismissed on the aforesaid clarifications. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

Maya/kv
To

1. The Commissioner Prohibition and Excise
Chepauk, Chennai - 5.
2. The District Collector
Kanyakumari District at Nagarcoil, Kanyakumari District.
3. The Assistant Commissioner-Excise
Collectorate, Nagercoil, Kanyakumari District.
4. The Superintendent of Police
Kanyakumari District, Nagercoil.

+1cc to the Government Pleader, S.R.No.36327

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KK(CO)
CS/20/11/2020