

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.01.2020

Pronounced on : 23.01.2020

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No.13864 of 2019

B.J.Kantharaj,

.. Petitioner

..Vs..

1.The Government of Tamilnadu,
Rep.by its Secretary,
Health and Family Welfare Department,
Fort St.George, Chennai.

2.The Director of Medical Education,
Office of the Director of Medical Education,
Chennai - 600 005.

3.The Chief Engineer,
Public Works Department,
Chepauk, Chennai - 600 005.

4.The Director and Superintendent,
The Government Eye and Ophthalmic Hospital,
Egmore, Chennai - 8.

..Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order in Na.Ka.No.5250/Thi.Va/2018 dated 07.12.2018 passed by the 4th respondent and to quash the same and consequently direct the respondents to permit the petitioner to run the kiosk tea shop in the 4th respondent hospital premises i.e Government Eye and Ophthalmic Hospital, Egmore, Chennai by renewing the license period to the petitioner.

For Petitioner : Mr.N.Vijaya Basker

For Respondents : Mr.R.Govindasamy,
Special Government Pleader

ORDER

This Writ Petition has been filed in the nature of Certiorarified Mandamus, to call for the records of the impugned order in Na.Ka.No.5250/Thi.Va/2018 dated 07.12.2018 passed by the 4th respondent namely, the Director and Superintendent, the Government Eye and Ophthalmic Hospital, Egmore, Chennai and to set aside the same and consequently, direct the respondents to permit the petitioner to run the kiosk tea shop in the premises of the Government Eye and Ophthalmic Hospital, Egmore, Chennai by renewing the license period.

2. The petitioner was running a NAESEY, (National Association of Educated Self Employed Youth) kiosk shop for vending snacks, tea, coffee, etc., in the 4th respondent hospital premises namely, the Government Eye and Ophthalmic Hospital, Egmore, Chennai. The petitioner claims that he had obtained proper permission from the competent Authorities. He had been allotted a kiosk in the year 1983 and was running the same till 2012 in the 4th respondent, hospital. He claimed that the income derived from the shop was the sole livelihood income for himself and for his family members. He had been paying the rent and electric charges without any delay or default. It was further stated in the affidavit that nearly 118 kiosks were run by the unemployed youth attached to the NAESEY Association in the premises of various Government Hospitals and Medical Colleges in Tamil Nadu. When they were asked to close down by the State of Tamil Nadu, writ petitions were filed. Challenges to the orders passed went up to the Honourable Supreme Court and finally, the Honourable Supreme Court while disposing of Civil Appeal No.20689 of 1993 was pleased to issue a direction on 21.02.1997 to the State of Tamil Nadu that the appropriate authorities should consider the representations received from the educated persons for re-location of the kiosks without delay.

3. A further writ petition was filed in W.P.No.10798 of 1997 and this Court by order dated 06.08.1997, allowed the writ petition and kiosks were allowed to commence business. With respect to the petitioner, G.O.(3D)12 dated 09.03.2012 was issued, leasing out the kiosk for a period of three years in the Government Eye and Ophthalmic Hospital, Egmore, Chennai. It was also mentioned that the lease would be renewed every three years. However, subsequently, the Officials attached to the Public Welfare Department, sealed the kiosk and directed the petitioner to close it down for two or three days. However, even after that period, the Officials did not permit the petitioner

to re-open the shop. They placed reliance on G.O.M.S.No.93, Public Health and Family Welfare (H-2), on dated 25.03.2015 and stated the same as the reason for closure of the kiosk. The said Government Order was challenged in W.P.No.14593 of 2015 and by order dated 04.07.2018, though the Government order was upheld, directions were given to the Authorities to take a decision to extend the contract of the kiosk shops and impose conditions regarding hygiene, quality of food and price.

4. The petitioner claimed that nearly 16 persons were permitted to continue their kiosk shop by extending the lease period. The petitioner filed W.P.No.29000 of 2015 and this Court by an order dated 04.07.2018, issued a direction to the petitioner to submit a fresh representation and a direction was issued to the respondents to consider the same in the light of the order dated 04.07.2018 in W.P.No.14593 of 2015. The petitioner had therefore given a request on 24.10.2018 seeking permission to run the kiosk tea shop. However, the petitioner claims that without considering any of the observations made by this Court in W.P.No.14593 of 2015, the respondents had rejected the plea of the petitioner by citing G.O.M.S.No.93, Public Health and Family Welfare (H-2) dated 25.03.2015. The petitioner claims that this order is arbitrary and seeks to set aside the same.

5. A counter affidavit has been filed on behalf of the respondents in which it had been stated that there were repeated complaints received on the quality of food and hygiene. It was stated that the food wastage was thrown around the kiosk which served the rats, cats and dogs and the total surroundings became unhygienic. It was stated that the canteen was not maintained in a proper manner. It was stated that the petitioner was informed by letter in Ref No.5250/P&D/2017 dated 07.12.2018 that the respondents were not in a position to give permission to run the shop. It was stated that the petitioner who had undertaken to sell only beverages, had also sold other food items which affected the health condition of the patients and their attenders. The respondents also relied on G.O.M.S.No.93, Public Health and Family Welfare (H-2) dated 25.03.2015 and claimed that the closure of the kiosk was in the larger interest of the public to provide hygienic, standard and lesser priced food to the patients, attenders etc. It was stated that the petitioner may participate in a tender, which the respondents had an intention to offer for opening of the kiosk shop.

6. An additional counter affidavit was also filed stating that the Amma Canteen is running in the hospital compound with the larger interest of the public to provide hygienic, standard

and lesser priced food to the patients, attenders and public. It is stated that Amma Canteen is running from September 2016. It was therefore stated that the writ petition should be dismissed.

7. Heard arguments advanced by Mr.N.Vijaya Basker learned counsel for the petitioner and Mr.R.Govindasamy learned Special Government Pleader for the respondents.

8. It is an admitted fact that the petitioner is a member of a registered association namely, National Association of Educated Self Employed Youth (NAESEY). He had been given permission to set up a 8' x 5' kiosk in Government Head Quarters Hospitals and Medical Colleges' Hospitals by G.O.Ms.No.1508 dated 22.08.1979. The petitioner was allotted a kiosk in the year 1983 and has been running the same till 2012. He had been vending Tea, Coffee and Biscuits. As a matter of fact, by a letter dated 16.04.2010, the 4th respondent had addressed the Executive Engineer, North Presidency Division, Public Works Department, Chepauk, Chennai stating that they have no objection for running of the kiosk. It had been very specifically stated that "the same is necessary for the patients and all the staff of this hospital". A further examination of the terms and conditions of the lease period for the period from 01.04.2007 to 31.03.2010 reveals that the respondents have stated that the petitioner should surrender the shop as and when demanded and that he should not approach the Court for any relief. Such a clause, prohibiting seeking remedy from a Court even on a bare reading is unenforceable in law.

9. The petitioner was forced to file W.P.No.18404 of 2015, seeking allotment of the kiosk after his kiosk had been closed by the respondent Authorities. By order dated 25.06.2015, a learned Single Judge of this Court (M.Sathyanarayanan,J) had permitted the petitioner to submit a representation to the respondents and further directed that on receipt of such representation, the respondents were to consider and pass orders in accordance with law, within a period of four weeks. The respondents, passed an order which had been signed on 12.08.2015, complaining that the petitioner was supplying other food items and that the kiosk was not maintained in a hygienic manner. It was stated that food wastages were thrown around the kiosk and this served the rats, cats and dogs and therefore the total surroundings had become unhygienic. It was stated that the Government had framed a new policy for making hygienic food in the hospital premises. It was stated that the representation was therefore rejected.

10. The petitioner thereafter filed W.P.No.29000 of 2015 questioning the said order. By order dated 05.09.2018, a learned Single Judge of this Court (R.Mahadevan,J) had drawn reference to an earlier order of another learned Single Judge of this Court (S.M.Subramaniam,J) in W.P.No.14593 of 2015 dated 04.07.2018 and once again directed the petitioner to submit a fresh representation to the respondents and the respondents were directed to consider the same and pass appropriate orders on merits and in accordance with law, in the light of the order in W.P.No.14593 of 2015 dated 04.07.2018.

11. The petitioner had given a further representation dated 24.10.2018. This came to be rejected by the impugned order dated 07.12.2018, In the impugned order reference had been made to G.O.M.S.No.93 Public Health and Family Welfare (H-2) dated 25.03.2015, and it was stated that a policy decision has been taken not to permit Tea Bunk shops in medical colleges and hospitals. However, the respondents had failed to take into consideration the observation of the learned Single Judge (S.M.Subramaniam,J) in W.P.No.14593 of 2015, in the order dated 04.07.2018. By the said order G.O.M.S.No.93, Public Health and Family Welfare (H-2) dated 25.03.2015, was upheld, but at the same time, the following directions had been granted:

"11.Under these circumstances, this Court do not find any irregularities and illegalities in respect of regulating the canteens situated inside the Hospitals.

12.However, the persons who are already running the canteen need to be given an opportunity to improve the quality of food and hygiene and other respects. In this regard, the competent authorities shall give notice to all the administrators of the canteen enabling them to improve the quality of service in all respects. If they fail to do so within a stipulated period given by the authorities, then the authorities are at liberty to take steps to evict such canteen owners.

13.In the case on hand where the contract period is lapsed, if the authorities so decide to extend the contract, sufficient conditions in these regard shall be imposed and in the event of complying with such requirements, the contract may be extended. Therefore, it is made clear that

the authorities should ensure that hygiene, quality of food and pricing are maintained by these persons who are running canteens in all respects and there cannot be any compromise. Periodical inspection of these canteens by the administrative staffs of the medical department are certainly required.

14. Taking note of all these observations, the authorities are at liberty to take a decision for extending the contract by considering all these contracts. Accordingly, these writ petitions are disposed of. Consequently, connected miscellaneous petitions are closed. No costs."

12. When a representation is received by the authorities who discharge public duty, they owe a responsibility to ensure that such representations are disposed of by passing an order with reasons and after giving full and fair opportunity to the individual who had given the representation. It must be noted that the right to live with dignity is a Fundamental Right under Article 21 of the Constitution of India. It is with that laudable object that Dr. Malcom S. Adisesaiah had started an association called the National Association of Educated Self Employed Youth, NAESEY, which was registered in 1976. Dr. Malcom S. Adisesaiah was a renowned Indian development economist and educator. He was awarded the Padma Bhushan by the Government of India in 1976. He had also found the Madras Institute of Development Studies. As a matter of fact, in 1998, the UNESCO had created 'The Malcolm Adishesiah International Literacy Prize'. The provision of self-employment to educate youth generates small income for the youth, in its own way contributes to the growth of economy in a limited manner. This nature of business has to be encouraged by the Government.

13. The petitioner herein had been running a Kiosk Tea shop in the 4th respondent Hospital namely, the Government Eye and Ophthalmic Hospital, Egmore, Chennai. The Amma Canteen mentioned in the additional affidavit is in a separate building on the other side of the road. Even otherwise, Amma Canteen does not serve the Tea, milk or coffee. It is open only for a limited period of time. A small bunk shop which is run by the petitioner runs 24 hours and would cater to the small time needs of the general public. If the public authorities appreciate that such small businesses are required for upliftment of the society and the economy, then there would be a realization that the closure of such business would not benefit anyone. The respondents, can impose any condition. They can impose terms. They can impose

restrictions and insist that hygiene in quality of food must be maintained and also ensure optimum price. But closure is not the answer.

14. In the present case, the impugned order has been passed without any application of mind. No reasons have been given except for quoting G.O.M.S.No.93, Public Health and Family Welfare (H-2) dated 25.03.2015. A learned Single Judge of this Court (S.M.Subramaniam,J) had already directed when examining the virus of the Government Order that conditions regarding hygienic, quality of food and cost can be imposed and the Authorities can examine the surroundings of the kiosk shops. The Authorities are expected to follow the directions of the Court. They cannot ignore the directions of the Court.

15. In view of the fact that no reasons have been given in the impugned order, the petitioner simply does not know why his shop has been closed and why he has not been permitted to reopen the same, even though other shops which had been similarly closed have reopened.

16. Taking into consideration the said facts, the impugned order is hereby set aside. The 4th respondent is directed to once again examine the representation of the petitioner dated 24.10.2018, by issuing notice to the petitioner, affording personal hearing, granting an opportunity to the petitioner to produce the various Court orders and also submit a plan for providing hygienic and quality food at optimum cost. The said plan can be examined and after consulting any other stakeholder, a considered order with reasons has to be passed. A duty is cast on the 4th respondent to examine the representation. He cannot summarily reject the representation. The 4th respondent is directed to issue notice to the petitioner to appear for a personal hearing in the first instant on 07.02.2020 and thereafter as stated above pass orders in the light of the guidelines of the order of this Court in W.P.No.14593 of 2015 dated 04.07.2018 on or before 29.02.2020.

17. With these observations, the Writ Petition stands disposed of. No order as to costs.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To,

1.The Secretary,
Health and Family Welfare Department,
Fort St.George, Chennai.

2.The Director of Medical Education,
Office of the Director of Medical Education,
Chennai - 600 005.

3.The Chief Engineer,
Public Works Department,
Chepauk, Chennai - 600 005.

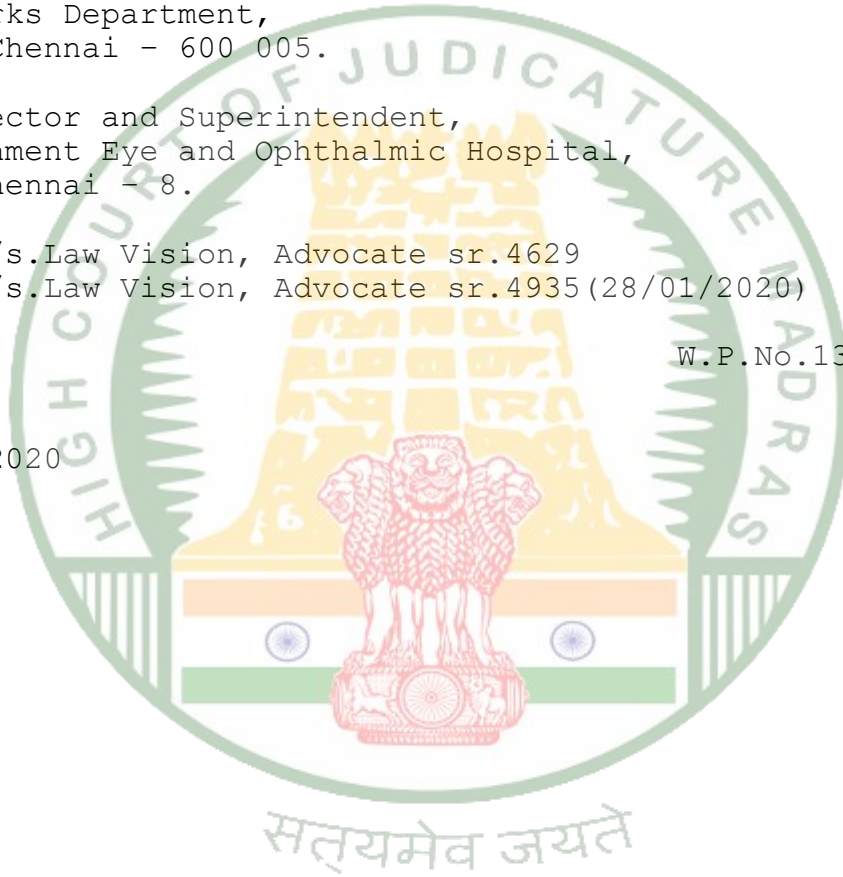
4.The Director and Superintendent,
The Government Eye and Ophthalmic Hospital,
Egmore, Chennai - 8.

+1cc to M/s.Law Vision, Advocate sr.4629

+2cc to M/s.Law Vision, Advocate sr.4935 (28/01/2020)

W.P.No.13864 of 2019

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