

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.02.2020

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No. 13268 of 2019

S.Hemalatha

.. Petitioner

..Vs..

1. The Director

The Directorate of Medical Service,
DMS, Tenampet,
Chennai - 600 006.

2. The Joint Director,
Medical and Health Department,
Thiruvallur.

3. The Medical Superintendent,
District Government Hospital,
Thiruvallur.

4. Aavin Kancheepuram
Thiruvallur Cooperative Society Milk Products Ltd.,
No.X-37, Head Office,
55 Kuruvappa Street,
Ayanpuram,
Chennai - 23.

.. Respondents

(R4 - Impleaded by the order of this Court in
W.M.P.No. 24028 of 2019 dated 20.08.2019)

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st respondent to issue permission order to continue the Aavin milk parlour inside the District Government Hospital Building, Thiruvallur as per the representation dated 23.04.2019.

For Petitioner : Mr.R.Sasikumar

For Respondents: Mr.L.P.Shanmugasundaram
Special Government Pleader.

O R D E R

The petitioner has filed a writ petition in the nature of Mandamus, directing the 1st respondent, namely the Director, the Directorate of Medical Service, Chennai, to issue a permission order to continue Aavin Milk Parlour inside the District Government Hospital Building, Thiruvallur as per the representation dated 24.04.2019, Pending the writ petition, 4th respondent viz., the Aavin Kancheepuram Thiruvallur Co-operative Society Milk Products Ltd., has been impleaded by order of this Court in W.M.P.No.24028 of 2019, dated 20.08.2019.

2. The writ petitioner, S.Hemalatha, had approached the first respondent seeking permission to run "Aavin Milk Parlour" inside the District Government Hospital Building and the first respondent had granted permission to the petitioner to run the Aavin Milk Parlour for a period of one year in consideration of G.O.Ms.No.59 dated 20.03.2003 with certain conditions vide order dated 04.08.2011.

3. As per the said order, the petitioner has to pay monthly share and also to pay the electricity charges / water charges. The petitioner claims that this permission was renewed periodically upto the year 2013 and again, it was also subsequently renewed finally, till, February 2019. The petitioner has also produced a copy of the order dated 30.11.2017, granting such renewal till 26.02.2019 for reference of this Court. It is the claim of the petitioner that, in the year 2019, the 3rd respondent viz., the Medical Superintendent, District Government Hospital, Thiruvallur, had issued a notice directing the petitioner to vacate and remove his Milk Parlour, within a period of seven days. Under the said circumstances, the petitioner is before this Court and the 4th respondent was also made as a party to this proceedings by order of this Court.

4. Counter Affidavit has been filed by the General Manager, Kancheepuram Thiruvallur District, Co-operative Milk Producers Union Ltd, Ayanavaram, Chennai. In the said counter affidavit, it had been stated as follows in paragraphs 8 & 9.

" 8. I submit that the above representation is pending the petitioner Tmt.S.Hemalatha requested to renew her contract since expired on 26.02.2019, for a period of 2 years thereon. She has also remitted a sum of Rs.2,000/- as renewal fee by a cash receipt dated 09.05.2019. The 4th respondent herein has not renewed the Milk Parlour agency of the writ petitioner.

9. I submit that the renewal of the contract of the writ petitioner for running the milk parlour for a

further period of 2 years from 27.02.2019 would arise only upon the grant of permission for running a parlour in the petitioner's name by the respondents 1 to 3."

5. In paragraph 8 extracted above, it is seen that the petitioner has remitted a sum of Rs.2,000/- as renewal fee, but the 4th respondent has not renewed the Milk Parlour Agency of the petitioner and further stated that the renewal would be considered only upon the grant of permission for running a parlour in the petitioner's name by the respondents 1 to 3.

6. The counter affidavit has been filed by the second respondent. In the said counter affidavit, it had been stated that the first respondent has given a temporary permission to the petitioner subject to the following conditions. By accepting the conditions, the petitioner had executed a bond in which certain assurances had been given and the same are as follows:

1. Aavin Milk Booth should be formed in the place in which the Joint Director of Health Services, Thiruvallur (i.e. the 2nd respondent) and P.W.D. identified in the premises of Government Head Quarters Hospital, Thiruvallur.

2. The Individual should act according to the conditions laid down by the Government.

3. The Director of Medical and Rural Health Services, Chennai - 6 (the 1st respondent) has power to cancel such temporary permission even before the expiry of the period permitted without any prior notice, on administrative reasons. On such occurrence, the individual has not got a right to bring the above matter to the Court. Further, if such place is required for hospital in future the individual should vacate it at his own cost.

4. Renewal application should be sent before two months from the date of expiry of term. Permission will not be granted to run Shop after the permission period get expiry, if fails to apply within the stipulated period.

5. Rent for Land/Electricity Charges/Water Charges should be paid in advance without pending.

6. Without default the individual should pay the rent fixed by the P.W.D.

7. The order for the extension of Agency obtained from the Kanchipuram Thiruvallur District Co-op Milk Society for the sale of Aavin products after 31.07.2012 should be submitted. If not it will be reconsidered to cancel such temporary permission issued.

8. By accepting the above conditions the petitioner has also executed a bond, in which, she has given the following assurance:

1. Without any default, rent will be paid as fixed by the PWD Engineer.

2. The Aavin booth to be formed by Iron sheet and which shall be in the manner to be easily moved.

3. To run Aavin Booth acceptance should be given to the Joint Director of Health Services, Thiruvallur and Assistant Engineer, PWD in writing for the conditions already imposed.

4. If the site allotted for Aavin Booth in Government Headquarters Hospital. Thiruvallur is required for the extension of the hospital that Aavin Booth should be removed and handed over with the Joint Director of Health Services.

5. The permission will be considered as automatically if it is not renewed every year.

6. No furniture and fixtures should be spread in and around the surrounding of Aavin Booth.

7. If necessary, Electric light facility may be got by the petitioner own cost and Electricity charges for every month will also be paid by her without fail. Thereby no liability should be imposed against the Govt.

8. The adjacent place of Aavin Booth should be kept clear properly, and there by no harm should be caused to the environment.

9. Aavin Booth should not extended against permission accorded.

10. No Radio, T.V.Tape recorder should used in Aavin Booth.

11. The wastage should be segregated separately and removed by her own responsibility.

12. At any cost, the product other than Aavin should not be sold.

13. A Bond should be executed in Rs.50/- stamp paper that she will bind all the conditions and the conditions laid down by the authority of Hospital in writing.

14. The petitioner's Aavin Booth should not be disturbed while giving permission to other Govt. and Govt. related institution like Tapco, Khadikraft telephone booth and staff Co-Operative Booth."

7. The only reason stated to direct the petitioner to be evicted is that, she has no renewal of the licence by Aavin. However, in the affidavit filed, it has been stated that the permission shall be granted subject to the acceptance of the above conditions by the petitioner.

8. In the counter affidavit of the 2nd respondent, it is also stated that the Aavin Booth is situated near MRI and CT Scan Centres and due to the dearth of place in hospital premises, 5 storied CEMONC building and 2 storied Trauma Care Buildings are being constructed as multi storied buildings and for the construction of the above buildings, heavy vehicles are frequently coming and going in Government Headquarters Hospital Premises. Further, it is also stated that there are average number of 3029 out patients, 278 In Patients per day and more than 500 deliveries are conducted. If that is the case, the respondent should relocate the petitioner within the premises. They cannot evict the petitioner from the workshop. It is also seen that the respondents have not complained that the petitioner has been selling substandard quality of the products or that there is a lack of serving place.

9. In view of all those, this Court is inclined to allow the Writ petition as prayed for by the writ petitioner. The 1st respondent is directed to issue an order, granting permission to continue the Aavin Milk Parlour inside the campus in the same location or in any other location within the campus. No costs.

Sd/-

सत्यमेव जयते
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kmm
To

1. The Director
The Directorate of Medical Service,
DMS, Tenampet,
Chennai - 600 006.

2. The Joint Director,
Medical and Health Department,
Thiruvallur.

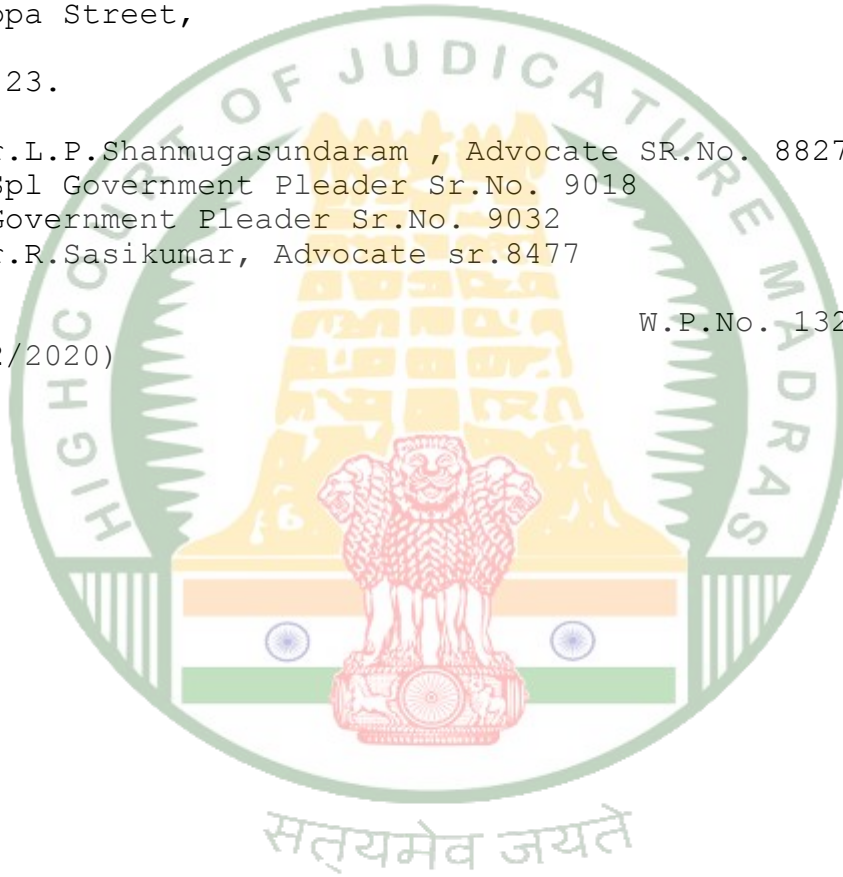
3. The Medical Superintendent,
District Government Hospital,
Thiruvallur.

4. Aavin Kancheepuram
Thiruvallur Cooperative Society Milk Products Ltd.,
No.X-37, Head Office,
55 Kuruvappa Street,
Ayanpuram,
Chennai - 23.

+1cc to Mr.L.P.Shanmugasundaram , Advocate SR.No. 8827
+1 cc to Spl Government Pleader Sr.No. 9018
+1 cc to Government Pleader Sr.No. 9032
+1cc to Mr.R.Sasikumar, Advocate sr.8477

W.P.No. 13268 of 2019

A.SK(11/02/2020)



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