

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.09.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.706 of 2020

Care 4 Life,
rep. by its Managing Director Samir Kamra,
R.S.No.54/8, 24th Cross,
6th Main Road, MSI Area,
PIPDIC, Mettupalayam Industrial Estate,
Puducherry - 605 009. ..Appellant/Petitioner

Vs.

- 1.The Secretary to Government,
Department of Industries & Commerce,
Govt. of Puducherry,
Puducherry - 605 001.
- 2.The Chief Inspector of Factories and Boilers,
Government of Puducherry,
Gandhi Nagar,
Puducherry - 605 009.
- 3.The Managing Director,
Pondicherry Industrial Promotion
Development and Investment Corporation Ltd.,
(PIPDIC), Govt. of Puducherry,
No.60, Romain Rolland Street,
Puducherry - 605 001. ...Respondents

Prayer: Appeal filed under Clause 15 of the Letters Patent
against the order dated 18.8.2020 made in W.P.No.9381 of 2020.

WP.Prayer:- Writ Mandamus, directing the respondents to permit
the petitioner to restart its manufacturing operations.

For Appellant

: Mr.R.Prabhakaran

For Respondents : Mrs.N.Mala
Addl. Government Pleader
(Puducherry)
for respondent Nos.1 and 2

: Mr.D.Ravichander
for respondent No.3

JUDGMENT

(Delivered by The Hon'ble Chief Justice)

Heard Shri R.Prabhakaran, learned counsel for the appellant, Smt N.Mala, learned Additional Government Pleader (Puducherry) for respondent Nos.1 and 2 and Shri D.Ravichander, learned counsel for respondent No.3.

2. The appeal questions the impugned judgment of the learned Single Judge dated 18.8.2020, whereby the learned Single Judge has refused to exercise discretion in favour of the appellant with regard to opening of the appellant industrial unit, which is involved in the manufacturing of Masks, etc.

3. The contention raised by learned counsel for the appellant is that as a matter of fact certain workers who had got infected led to the respondents in taking action against the appellant and an FIR was lodged, in which case, the Managing Director of the appellant has taken an anticipatory bail.

4. The factory has however not been allowed to operate since June 2020 and in the given circumstances, it is causing loss of livelihood to the workers and a greater loss not only to the industry, but to the public at large, as the appellant is involved in manufacturing of an essential commodity viz., Mask, which is a necessity in these COVID times.

5. The learned Single Judge found that no relief could be granted at this moment and the appellant/petitioner has to necessarily wait till normalcy is restored, and permitting the appellant to reopen the factory will send wrong signals.

6. The contention of the appellant is that the health guidelines, which have been issued by the Government of India as well as by the Union Territory of Puducherry, indicate the circumstances in which the closure of work place can be resorted to, that too for not more than 48 hours. He has referred to Clause 6 of the guidelines issued by the Ministry of Health and Family Welfare, Government of India, dated 18.5.2020, which is extracted herein under:

"6. Closure of workplace

If there are one or two cases reported, the disinfection procedure will be limited to places/areas visited by the patient in past 48 hrs. There is no need to close the entire office building/halt work in other areas of the office and work can be resumed after disinfection as per laid down protocol (see para 7)

However, if there is a larger outbreak, the entire building will have to be closed for 48 hours after thorough disinfection. All the staff will work from home, till the building is adequately disinfected and is declared fit for re-occupation."

7. He has then urged that the consolidated guidelines that were issued earlier and were applicable in the Union Territory of Puducherry also indicate that there are exceptions carved out. For this, he has invited the attention of the Court to Clause 5 of the guidelines issued on 24.3.2020, and modified later on. Clause 5 of the guidelines is extracted herein under:

"5. Industrial Establishments will remain closed.

Exceptions:

- a. Manufacturing units of essential goods, including drugs, pharmaceutical, medical devices, their raw materials & intermediates.
- b. Production units, which require continuous process, after obtaining required permission from the State Government.
- c. Coal and mineral production, transportation, supply of explosives and activities incidental to mining operations.
- d. Manufacturing units of packaging material for food items, drugs, pharmaceutical and medical devices.
- e. Manufacturing and packaging units of Fertilizers, Pesticides and Seeds."

8. The contention is that keeping in view the aforesaid position, the appellant had made representations, one to the Inspector of Factories dated 6.7.2020 and another to the District Collector, Puducherry, making a request to allow the appellant unit to resume functioning. Learned counsel for the appellant submits that the appellant has also made an offer of conducting the unit with lesser number of workers and in accordance with the guidelines in order to prevent any such mishaps in future. He therefore submits that to keep the appellant's request pending without any certainty would deprive the appellant of its right to carry on business and trade, thereby violating the fundamental rights guaranteed under

Article 19 of the Constitution of India and also simultaneously, depriving the workmen of the factory involved in the manufacturing process from receiving their due of livelihood.

9. Having considered the submissions raised, it is not for this Court to exercise any discretion for an assessment as to whether the appellant can be allowed to operate the unit or not, inasmuch as this will require a factual assessment and an appropriate application of law in order to either accept or deny the request of the appellant by a competent authority. We, therefore, find that the writ petition ought to have been disposed of with a direction to the competent authority to assess the request of the appellant and take an appropriate decision in the matter. The dismissal of the writ petition would serve no purpose, and even otherwise to keep the appellant wait unendingly would also be detrimental not only for the industry, but also for the workmen and may also have an effect on the manufacturing and supply of Mask, which is an essential commodity in these COVID times.

10. We will say nothing further, but we dispose of the appeal modifying the impugned judgment of the learned Single Judge dated 18.8.2020 with a direction to the District Collector, Puducherry to consider the request of the appellant in accordance with law and pass an appropriate order preferably within a period of two weeks of the presentation of a web copy of this order before him by the appellant along with an application, which the appellant may choose to file, bringing to the notice of the District Collector the circumstances in which such request for opening of the unit is made.

The appeal is disposed of with the said observations. No costs. Consequently, C.M.P.Nos.9608 and 9609 of 2020 are closed.

Sd/-

सत्यमेव जयते Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

bbr

To

1.The District Collector,
Pruducherry.

2.The Secretary to Government,
Department of Industries & Commerce,
Govt. of Puducherry,
Puducherry - 605 001.

3.The Chief Inspector of Factories and Boilers,
Government of Puducherry,
Gandhi Nagar, Puducherry - 605 009.

4.The Managing Director,
Pondicherry Industrial Promotion
Development and Investment Corporation Ltd.,
(PIPDIC), Govt. of Puducherry,
No.60, Romain Rolland Street,
Puducherry - 605 001.

+2ccs To Mr.R.Prabhakaran, Advocate, Sr.No. 29662

RV(CO)
RMP(12/10/2020)

W.A.No.706 of 2020



WEB COPY