

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2020

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.13718 of 2020

and

M.P.Nos.17059, 17061 and 17063 of 2020

M/s.Laxmi Balaji Trading Company,
Rep by its Proprietor R.Manikandan,
No.153A/18A, Arun Nagar,
Mettupalayam, Coimbatore - 641 301

..Petitioner

Vs.

1. The Chairman,
Tea Board of India,
No.14, BTM Sarani (Brabourne Road),
Kolkata - 700 001.

2. The Executive Director,
Tea Board of India,
Department of Commerce,
Government of India,
"Shelwood", Club Road,
Post Box No.6 Coonoor,
Nilgiris District - 643 101

..Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the second respondent impugned notice vide Ref.No.5(430)/TWCO/Online/CNR 2018/329 dated 11.09.2020 and quash the same as illegal as devoid of merits and consequently sought for a direction to the second respondent to accord renewal of tea waste licence for the year 2020.

For Petitioner : Mr.Rajakarthikeyan

For Respondents : Mr.D.Muthukumar
for M/s.Paul and Paul

O R D E R

This writ petition has been filed praying to set aside the impugned notice in Ref.No.5(430)/TWCO/Online/CNR 2018/329 dated 11.09.2020 and direct the second respondent to accord renewal of tea waste licence for the year 2020.

2. The petitioner-Company is manufacturer of organic manure, for which, the raw material used is tea waste. The Company has to get licence to purchase and stock the tea waste from the Tea Board. The petitioner-Company had obtained licence for carrying on the business as buyer of Tea waste licence under the Tea Waste (Control) Order, 1959. The licence was issued in favour of the petitioner, vide TB/LC/TW-10213 dated 14.05.2019 for a period from 14.05.2019 to 31.12.2019. The petitioner also has applied for renewal licence, as per Order 8 of Tea Waste (Control) Order, 1959. When the petitioner's factory was inspected by the Officials of the respondents/Tea Board of India on 25.01.2020 and 27.01.2020 to check and satisfy about conducting the business by the petitioner, certain deviations were found.

3. Firstly, though the licence was issued to the petitioner to the address given as No.7, JN Complex, Teachers Colony, Karamadai Block, Coimbatore, upon inspection, it was found that the said premises was vacant and there was no such unit existing. Secondly, the respondents' team inspected the place of storage located at S.F.No.156/2, Mettupalayam Sub Road, Mettupalayam Taluk, Kemmarapalayam Village, Karamadai, Cimbatore and found that there was no trace of stock of Tea waste available. However, on verifying the Tea waste portal, it was evident that the unit had continuously purchased the Tea waste both in auction and private mode as well. Thirdly, every licensee should send intimation in writing containing the particulars to the Tea Board within 24 hours from the time of arrival of each consignment of Tea waste at the licensed unit, which was not done by the petitioner. Therefore, a show cause notice was issued on 29.01.2020 to the petitioner's registered address through registered post, which was returned on 31.01.2020 by the Postal Department with an endorsement "addressee left". Thereafter, a scanned copy of the show cause notice was sent to the petitioner through e-mail to the e-mail I.D., which was provided by the petitioner. Even after the said mail, there was no response from the petitioner. Therefore, a reminder was sent to the same I.D on 19.03.2020 by the respondents. As the petitioner did not give any reply for the show cause notice or for the e-mail reminders and that the licence period of the petitioner was over as early as on 31.12.2019, the application filed by the petitioner for renewal of the licence was not processed. In the

meanwhile, the respondents also had de-activated the access of the petitioner to the Tea waste e-auction web portal with effect from 06.07.2020.

4. While so, it was alleged by the respondents that the petitioner had illegally accessed the Tea Board web portal, which is the violation of the Tea Waste Control Order. After the web portal was de-activated, the respondents had issued the impugned notice dated 11.09.2020 through the registered post and also by e-mail to the petitioner's I.D. The said notice dated 11.09.2020 was returned to the respondents once again with remark "addressee left".

5. According to the petitioner, the show cause notice dated 29.01.2020 was not served and also the copy of the order of suspension dated 11.09.2020 was also not served on the petitioner. It is pointed out that the Clause 19 of the Tea Waste (Control Order), 1959 has prescribed the mode of service, which is extracted below:

"19. Mode of service of an order or direction - Any order or direction made or issued by the licensing authority may be served in the following manner, namely-
(a) in the case of an order of a general nature or affecting a class of persons by notification in the Official Gazette.
(b) in the case of an order directed to a special individual-
(1) by delivering or tendering it to that individual; or
(2) if it cannot be so delivered or tendered, by affixing it on the outer door or some other conspicuous part of the premises in which that individual lives, and a written report thereof shall be prepared and witnessed by two persons living in the neighbourhood...."

6. The respondents had specifically contended that all the notices were sent by the registered post with acknowledgment due, which were returned as the addressee was not available and the same were sent through e-mail, which were received by the petitioner. However, the petitioner had not cared to respond to any of the notices. Therefore, the renewal process was not proceeded with and the web portal was also de-activated. Though the petitioner's web portal was de-activated as early as on 06.07.2020, the petitioner seems to have purchased 33000 kgs of Tea Waste till 24.08.2020, which has been done with the connivance of the employees of the respondents fraudulently by

the petitioner. Therefore, the impugned notice dated 11.09.2020 was issued intimating that the Tea waste licence issued to the petitioner was suspended, which was also acknowledged by the petitioner through e-mail. The notice further stated that the petitioner had illegally indulged in purchasing / bidding Tea Waste to the tune of 33000 kgs, even after the cancellation of licence, which was a fraudulent action. The impugned notice is also only a show cause notice. directing the petitioner to furnish its reply as to why the criminal proceedings should not be initiated against the petitioner for the above malpractice committed illegally and continued to buy Tea waste from the Government portal, despite the fact that the petitioner's web portal was de-activated.

7. Clause 10 of the Tea Waste (Control) order, 1959, provides for the power to cancel or suspend the licence. :

" 10.Power to cancel or suspend licence:

(1) The Licensing Authority may, after giving the licensee an opportunity of being heard.

(i) Cancel the licence: or

(ii) Suspend the licence for a period not exceeding six months pending enquiry and there after cancel, the licence on any of the following grounds namely:

(a) That the licence had been obtained by misrepresentation as to a material particular; or

(b) That any of the provisions of this order or any of the terms and conditions of the licence has been contravened; or

(c) that the licensee has been convicted of any offence for adulteration of their under the prevention of Food Adulteration Act, 1954 (37 of 1954); or

(d) that the licensee has produced or maintained incorrect accounts, registers, documents or knowingly furnished in correct information.

...

(4). A licensee whose licence has been suspended shall not purchase or sell tea waste during the period of suspension of the licence."

8. A reading of the above shows that Clause 10 (4) specifically prohibits a licensee whose licence has been suspended shall not purchase or sell Tea waste during the period of suspension of the licence.

9. In the case on hand, the licence was valid only from 14.05.2019 to 31.12.2019. As per the circular of the Tea Board India dated 27.01.2020, extension of the lease is permissible on remittance of the fees along with the required particulars and the copy of the licence issued for the year 2019 to the Joint Controller of licensing Tea Board, within 30 days from the date of the Circular.

10. Even in the month of January 2020, when an inspection was conducted by the respondents, 3 of the shortcomings were found and a show cause notice was issued on 29.01.2020. There was no response from the petitioner and even the reminders were not responded to by the petitioner. Therefore, technically, after the licence period, the web portal of the petitioner should have been de-activated. Even though the petitioner had applied for extension of the licence, because of the above reasons, the same was de-activated on 06.07.2020, without extending the licence. Despite the same, the petitioner had managed to purchase 33000 kgs of Tea waste till 24.08.2020. Therefore, the above impugned notice was issued to the petitioner. As the impugned notice is nothing but a show cause notice, the petitioner ought to have appeared before the authorities and given a reasonable and valid reasons for the allegations made therein, instead, the petitioner has rushed to this Court, challenging the said notice.

11. It is well settled principle that a show cause notice cannot be challenged, without furnishing the reply. The impugned notice does not give rise to any cause of action to the petitioner to challenge, as it is not an adverse order which affects the rights of the party. It is also not the case of the petitioner that it is issued without jurisdiction or competency. The impugned notice does not infringe the right of the petitioner, as it is only a show cause notice and not a final order. Being a show cause notice, the same cannot be quashed prior to an enquiry and hold the allegations stated therein are incorrect or erroneous. It would be premature to deal with the issues stated in the impugned notice, even before a reply is given by the petitioner meeting the allegations.

12. Be that as it may, as the petitioner is alleged to have committed a fraud by bidding and purchasing Tea waste through the web portal, when it was specifically blocked, the same has to be enquired into by the authorities. Hence, it is necessary that the petitioner has to give their reply to the show cause notice and has to come out clean of the allegations made to entitle them to get the licence extended, as per the Circular dated 27.01.2020.

13. In the light of the above circumstances, the petitioner is directed to furnish their reply to the impugned notice dated 11.09.2020 issued by the second respondent within a period of two weeks from the date of receipt of a copy of this order and the first and second respondents are directed to consider the same and pass appropriate orders on merits and in accordance with law, after affording an opportunity of personal hearing or virtual hearing to the petitioner, within a period of four weeks thereafter.

14. With the above direction, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

srn

To

1. The Chairman,
Tea Board of India,
No.14, BTM Sarani (Brabourne Road),
Kolkata - 700 001.
2. The Executive Director,
Tea Board of India,
Department of Commerce,
Government of India,
"Shelwood", Club Road,
Post Box No.6 Coonoor,
Nilgiris District - 643 101

+1cc to M/s.Paul & Paul , Advocate, S.R.No.41584

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VG II (CO)
KKV/11/01/2021