

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.02.2020

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No.27001 of 2019

Dhanavilas Madras Snuff Co,
Rep. By its Managing Partner,
Jayasingh, Daniel

.. Petitioner

..Vs..

1. The State of Tamil Nadu,
Rep. By its Secretary,
Department for Public Health,
Fort St George,
Chennai.
2. The State of Tamil Nadu,
Rep. By its Secretary,
Department for Food Safety and
Drug Administration,
Fort St.George,
Chennai.
3. The Commissioner,
Commissioner of Food Safety Standards,
Chennai.
4. The Director,
Directorate of Primary Health and
Drug Administration, No.359, Anna Salai,
Chennai.
5. The Director General of Police,
Santhome,
Chennai.

..Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st and 2nd respondents to dispose of the petitioner's representation dated 15.07.2019 under the provision of the Cigarettes and other Tobacco Products Act 2003 within a stipulated time frame fixed by this Court.

For Petitioner

: Mr.K.P.S.Palanivel Rajan

For Respondents

: Mr.N.Inbanathan

Additional Government Pleader

ORDER

The petitioner had filed the writ petition in the nature of the mandamus, directing the 1st and 2nd respondents namely the Secretary, Department for Public Health and the Secretary, Department for Food Safety and Drug Administration, Chennai respectively to dispose of the representation of the petitioner dated 15.07.2019.

2. The petitioner Dhanavilas Madras Snuff Co which is represented by its Managing Partner, has come forward with the writ petition owing to the fact that the 4th respondent namely the Director, Directorate of Primary Health and drug Administration, Chennai, through his officials had penalized petty shop owners under Section 6 (a) of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade Distribution) Act, 2003 for selling Snuff. The petitioner is concerned with such act because, the petitioner firm which had started operation of selling Snuff powder nearly 50 years ago, is primarily engaged in manufacturing and selling Cigarettes and other tobacco products. It is stated that the products produced by the petitioner are packed into 10 grams, 1 kg and 5 kgs as per customers requirements and sold it to the whole sale dealers and retailers.

3. Attention of this Court had drawn to the definition of the Tobacco products under "the Cigarettes and other Tobacco products (Prohibition of Advertisement and Regulation of Trade and commerce, production, supply and Distribution) Act 2003 wherein Section 3 (p) defines Tobacco products and very small tobacco products are specified under the Schedule. In the Schedule a list of 10 items have been given. The 10 items are enumerated hereunder:

1. Cigarettes
2. Cigars
3. Cheroots
4. Beedis
5. Cigarette tobacco, pipe tobacco and hookah tobacco
6. Chewing tobacco
7. Snuff
8. Pan masala or any chewing material having tobacco as one of its ingredients (by whatever name called)
9. Gutka
10. Tooth powder containing tobacco

4. In the above Schedule, Snuff has shown as item No.7. The Act regulates sale and marking of these products. There is

a prohibition of smoking in public places, prohibition of the advertisements of Cigarettes and other tobacco products and Restrictions on trade and commerce in and production, supply and distribution of cigarettes and other tobacco products and prohibition of sale below the age of 18 years in particular area. It is stated that the manner in which specified warning be made and language in which the specified warning has also been expressed. The size of the letters and figures have also been specified. Power of entry and search as well as power to seize have also been given. However, the learned counsel states that the petitioner is selling the products for 50 years. This is not an issue which this Court can take up for discussion.

5. But this Court is fortified by the counter affidavit filed on behalf of the Commissioner of Food Safety namely 3rd respondent. Leaving out the facts stated in the counter affidavit, the Government Gazette No.223, No.VI (1) 233(a)/2019, dated 23.05.2019 had been reproduced, finally at paragraph of 9 of the counter affidavit, the said official has stated as follows:

"9. It is further submitted that so far no Snuff Products were seized and sent for analysis by the Food Safety Officials. Moreover the Food Safety Officials having right to take action under Food Safety and Standards Act, 2006. Hence, the official authority never fined the petty shop owners under COTPA 2003."

6. The reading of the said paragraph extracted above shows that the official namely the Director and Additional Commissioner of Food Safety, Chennai had very specifically stated that so far i.e. 27.11.2019 which is the date of the counter affidavit, no Snuff products have been seized and also not sent for analysis by the food safety officials. It is also stated that no authority has fined the Petty shop owners under the COTPA Act, 2003.

7. Recording the above paragraph 9 of the counter affidavit, this writ petition is disposed of, since the plain reading of the above is quite clear on the manner it conveys. Hence, no further orders are required in the writ petition.

8. With the above observation, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(C.S.VI)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary,
Department for Public Health,
Fort St George,
Chennai.
2. The Secretary,
Department for Food Safety and
Drug Administration,
Fort St.George,
Chennai.
3. The Commissioner,
Commissioner of Food Safety Standards,
Chennai.
4. The Director,
Directorate of Primary Health and
Drug Administration,
No.359, Anna Salai,
Chennai.
5. The Director General of Police,
Santhome,
Chennai.

+1 cc to M/s.K.P.S.Palanivel Rajan, Advocate Sr.No. 10197
+1 cc to The Government Pleader Sr.No. 10415

AKM/09.03.2020/4P-8C /

W.P.No.27001 of 2019

सत्यमेव जयते

WEB COPY