

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P.NO.34622 OF 2019

IN

W.M.P.NOS.35375 & 35377 OF 2019

M/s.Swamy & Swamy Plantation Pvt. Ltd.,
Rep.By its Managing Director, Mr.K.Kandavadivel,
Highfield Tea Factory, Highfield Estate,
Coonoor, The Nilgiris - 643 101. ...Petitioner

Vs.

1. Tea Board of India,
Represented by its Executive Director and
Registering Authority,
Ministry of Commerce and Industry,
Department of Commerce, Government of India,
'Shelwood', Club Road, P.O.Box.No. 6,
Coonoor - 643 101, Nilgiris.
2. Mr.Haroon Sait
3. Mr.H.Sajith ...Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorarified Mandamus, calling for the records of the impugned order dated 18.10.2019, in Ref.No.:6(355)/TMC0/CNR/Part-II/2301, issued by the 1st respondent and quash the same and consequently, directing the 1st respondent to forbear from interfering in the petitioner's business otherwise than a process known to law.

For Petitioner : Mr.K.R.Arun Shabari

For Respondents : Mr.D.Muthukumar for
Paul & Paul for R1.

O R D E R

The petitioner is a Company registered under the Companies Act, 1956, involved in the business of manufacturing of tea, which is registered with the first respondent namely, Tea Board

of India at Conoor in Nilgiris. The first respondent had also issued a registration certificate bearing number RC-26, under Rule 3 (4) of the Tea (Marketing) Control Order, 2003, permitting the petitioner to carry on the process of manufacturing of tea at the High Field Tea Factory and Instant Tea Factory.

2. It is stated that the petitioner Company had taken loans from a Bank for the development of the factories and also for upgradation of the machineries. Since there were difficulties in the repayment of the loan amount, the High Field Tea Factory was leased out to the second and third respondents by a leave and licence agreement dated 01.11.2018. It has been stated that the petitioner company received a show cause notice dated 14.06.2019 from the first respondent, which mentioned that the High Field Tea Factory was not in operation for several months and that it was not involved in the process of manufacturing tea in any manner. Thereafter, the petitioner company cancelled the leave and licence agreement which had been executed in favour of the 2nd and 3rd respondents. The petitioner Company was also given an opportunity of personal hearing on 25.06.2019 before Executive Director (in-charge).

3. It is stated by the learned counsel that sufficient explanations were given to the first respondent with respect to the show cause notice. However, the first respondent had issued the impugned order dated 18.10.2019. It is the grievance of the petitioner that the personal hearing was conducted by the Executive Director (in-charge) on 25.06.2019, but final order dated 18.10.2019 had not been issued by the said official but by another Official namely, Executive Director of the first respondent. In this connection, in the counter affidavit, it has been stated by the first respondent as follows:-

"iii) Though, the petitioner has complained that one officer heard them personally and another officer had passed a final order, they could not point out any prejudice caused to them due to an order passed by another officer. When there is no prejudice caused on the petitioner, the impugned order cannot be assailed on the ground of violation of principles of natural justice."

4. However, it is seen that by passing the impugned order, the licence of the petitioner company has been cancelled and that has caused serious prejudice to the petitioner herein. It is a fundamental aspect that the authority which grants personal hearing and had examined the records, must pass the order based on his observations. If the authority is not in a position to pass the order in the event of transfer/retirement then the

succeeding officer should also grant personal hearing and then pass orders. Providing opportunity of personal hearing is a fundamental tenet and would defeat the said principle, if one authority were to grant personal hearing and another authority were to pass orders pursuant to said personal hearing.

5. Naturally, the petitioner is prejudiced by the impugned order since the licence itself has been cancelled. Therefore, the impugned order is set aside and the matter is remitted back to the first respondent namely, Executive Director of the first respondent who is directed to issue a fresh notice to the petitioner and also grant an opportunity of personal hearing and also permit the petitioner to substantiate the case with relevant records thereafter, pass an order with reasons. The Executive Director of the first respondent may direct the petitioner to appear before the said Authority in the first instance on 07.02.2020 and thereafter after examine the records and pass final orders on or before 31.03.2020.

6. This direction is also given since in this case, the personal hearing was granted on 25.06.2019 and the impugned order was passed on 18.10.2019 nearly after four months by a different authority.

7. This writ petition is disposed of with the above observations. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

kkn

To

1. The Executive Director and Registering Authority,
Tea Board of India, Ministry of Commerce and Industry,
Department of Commerce, Government of India,
'Shelwood', Club Road, P.O.Box.No. 6,
Coonoor - 643 101, Nilgiris.

+1cc to Mr.K.R.Arun Shabari, Advocate, S.R.No.2845

+1cc to M/s.Paul & Paul, Advocate, S.R.No.3555

W.P.No.34622 of 2019
in

W.M.P.Nos.35375 & 35377 of 2019

PPA(CO)
CS/28/02/2020