



W.P(MD)No.21805 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2022

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.21805 of 2022

and

W.M.P(MD)Nos.15967 & 15968 of 2022

V.KMohamed Yacoob

...Petitioner

Vs

- 1.The Commissioner,
Food Safety and Drugs Administration,
No.359, Anna Salai,
Teynampet,
Chennai.
 - 2.The District Collector,
O/o.The District Collector,
Madurai.
 - 3.The Designated Officer,
Tamil Nadu Food Safety and Drug Administration
Department,
Food Safety Wing,
Madurai District.
 - 4.The Food Safety Officer,
O/o.The Food Safety Officer,
Area Code:577,
Madurai Corporation,
Madurai.
 - 5.The Inspector of Police,
O/o.The Inspector of Police,
Theppakulam Police Station,
Madurai.
- ..Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in R.No.1513/FSD/2022, dated 30.08.2022 issued by the Respondent No.3 and quash the same as illegal, consequently directing the respondents to remove the lock and seal of the petitioner's shop namely V.K.Fathima Store situated in Keela Marat Veethi, Munichalai Road, Madurai.

For Petitioner : Mr.S.M.A.Jinnah
For R1 to R4 : Mr.A.Kannan
Additional Government Pleader
For R5 : Mr.B.Thanga Aravindh
Government Advocate

ORDER

The writ petitioner is running a retail shop in the name and style of V.K.Fathima Store at Keela Marat Veethi, Munichalai Road, Madurai. The Inspector of Police, Theppakulam Police Station registered a case in Crime No.436 of 2022 under Section 24(1) of Cigarette and other Tobacco Products Acts 2003 following the recovery of five packets of Ganesh Tobacco each contains 250 grams. The writ petitioner was implicated in the said case. The petitioner was arrested on 25.08.2022 and released on bail on the same day.



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2. Thereafter, the petitioner was started to run his above said lawful business without any illegalities. In such circumstances, on 30.08.2022 at about 07.00 p.m., the third respondent issued the impugned order in R.No.1513/FSD/2022, dated 30.08.2022 under Section 34(1) of FSS Act 2006 and without giving any opportunity and sought explanation and violated the statutory provisions and without following the Section 34 of Food Safety and Standards Act (herein after referred as FSS Act), straight away adopted the Section 34(2) of FSS Act and then on the same day, the third respondent lock and seal his above said shop wherein Rs.1,50,000/- worth goods were there. The impugned order of the third respondent, dated 30.08.2022 is under challenge in this writ petition.

3. The learned counsel appearing for the writ petitioner submitted that the issue on hand is no longer *res-integra* and that, it is covered by a catena of the decisions rendered by the Madras High Court. The short argument advanced by the learned counsel appearing for the writ petitioner that chewing tobacco will not fall under the purview of the Food Safety and Standards Act, 2006. The petitioner has referred the order, dated 23.04.2018 made in W.P.(MD)No.5924 of 2018, wherein it was held that since chewing tobacco would not fall under the purview of the said Act, the authorities under the said Act will not be justified in initiating coercive action against the petitioner. The learned Judge allowed the said



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writ petition by following the earlier order, dated 27.04.2015 made in Crl.O.P.(MD)No.5505 of 2015, wherein, it was held that FSSA cannot be invoked against manufacturing Gutka and Pan Masala since tobacco is covered under COTPA (Cigarettes and other Tobacco Products Act, 2003). Hence, he prayed for allowing the writ petition.

4. The learned Government Advocate (Crl.side) appearing for the fifth respondent filed counter affidavit and submitted that the petitioner is a habitual offender and he is having 10 previous cases. In order to curtail the continuous illegal activities of the petitioner/accused, he has sent a requisition letter to the Food Safety Officer, Food Safety Department, Madurai for sealing the shop namely VK Fathima Store, East Maret street, Munichalai Road, Madurai City for the interest of public. The officials of the Food Safety Department had carefully considered contents of the requisition letter with copy of FIR and statement of witnesses and sealed the shop under Section 34(1) of Food Safety and Standard Act 2006 on 30.08.2022 for preventing public health risk condition after issuing Emergency Prohibition Notice in Rc.No.1513/FSD/2022, dated 30.08.2022 of Tamilnadu Food Safety and Drug Administration Department, Madurai. Hence, he prayed for dismissal of the writ petition.



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5. It would be useful to extract the operative portion of the order dated 27.04.2015 in CrI.O.P.(MD)NO.5505 of 2015 (**Manufacturer, Tejram Dharam Paul, Maurmandi, Bhatinda District, Punjab and another Vs. The Food Safety Inspector, Ambasamudram**) in its entirety.

"4.The only submission made by the learned counsel for the petitioners is that the sale of Tobacco would not attract the provisions of the enactment. He further submits that as per Rule 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulation Act, 2011, Tobacco shall not be used as ingredients in any food products. As the Tobacco does not come within the purview of the food product, the provisions will not apply. Moreover, when the allegation itself is that it has been sold in packet as Tobacco.

7.Considering the very same issue with respect to the petitioners, the High Court of Kerala was pleased to hold while dealing with the very same provisions in the following manner:

"30. Having found that chewing Tobacco is not a food product as defined under the FSS Act, I am of the view that the writ petitions are only to be allowed as follows: (i) That Tobacco or Tobacco products are not food as defined under Section 3(j) of the FSS Act and it is not a food product as specified in the Regulation 2.3.4 of the Regulations.

(ii) Tobacco and Tobacco products are to be manufactured and sold strictly in accordance with the provisions of the CTP Act and the Rules framed thereunder.

(iii) The Respondents have no right take any action against



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Tobacco or Tobacco products by virtue of Government Order dated 22.05.2012 (Ext.P9 in W.P.C.No.13580 of 2012)."

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8.Thus, it is clear that the petitioners, who are manufacturing Gutkha and Pan Masala cannot be proceeded under the FSSAI. Tobacco is covered under the COTA (Cigarettes and other Tobacco Products Act, 2003)

9.In the light of the above, this Court is constrained to quash the proceedings. Accordingly, the proceedings initiated against the petitioners in C.C.No.9 of 2014 on the file of the Judicial Magistrate Court, Ambasamudram, is hereby quashed and the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed. However, it is made clear that the Order will not stand in the way the Appropriate Authority to take action under COTA (Cigarettes and other Tobacco Products Act, 2003)"

This Order was followed in **2017 (4) CTC 149 (Jayavilas Tobacco Traders LLP, Vs. The Designated Officer).**

6. Now, the petitioner has filed an undertaking affidavit stating that he decided not to pursue his general grocery shop business and decided to run a tea stall and would not sell any banned food and Gutka's & Tobacco items to save his family. He further states that due to the lock and seal of his above shop, his entire family suffered a lot physically, mentally & economically. He undertakes that in future he will not sell any banned Tobacco Products at his shop.



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7. Considering the above referred cases and also considering the undertaking affidavit filed by the petitioner, this Court is inclined to allow the writ petition on condition that the petitioner shall pay a cost of Rs.10,000/- (Rupees Ten Thousand only) to H.M.MDU East P U Primary School, A/C.No.10111536270, State Bank, IFSC Code No.SBIN0002246 and convert his business into a tea stall.

8. Accordingly, the writ petition is allowed by setting aside the impugned order dated 30.08.2022 in R.No.1513/FSD/2022 passed by the third respondent. No costs. Consequently, connected miscellaneous petitions are closed.

30.09.2022

Index : Yes/No
Internet:Yes/No
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