



W.P.(MD).No.26474 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2022

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.(MD)No.26474 of 2022

and

W.M.P.(MD).No.20649 of 2022

R.Kalidoss

... Petitioner

vs.

1.The Commissioner of Food Safety,
Food Safety and Drug Administration Department,
DMS Compound,
Chennai.

2.The District Collector,
Collectorate,
Madurai District.

3.The Commissioner of Police,
Madurai City,
Madurai.

4.The Food Safety Officer,
Madurai Corporation,
Aringar Anna Maligai,
Madurai.

5.The Inspector of Police,
Thirunagar Police Station,
Madurai City.

... Respondents



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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the impugned notice in R.No.1586/FSD/2022 on the file of the 4th respondent dated 29.09.2022 and the consequential impugned order in R.No.9641/2022/S9/FSD dated 17.10.2022 on the file of the 1st respondent and quash the same and consequently direct the respondents to permit the petitioner to run the Pitchaiyammal Grocery Shop situated at Ambedkar Colony, Thanakankulam, Madurai District.

For Petitioner : Mr.R.Selvaraj
For R1, R2 & R4 : Mrs.K.Christy Theboral
Additional Government Pleader
For R3 & R5 : Mr.B.Thanga Aravindh
Government Advocate (Crl.side)

ORDER

This Writ Petition has been filed challenging the notice issued by the 4th respondent dated 29.09.2022 and the consequential order of the first respondent dated 17.10.2022 and to quash the same and consequently direct the respondents to permit the petitioner to run the Pitchaiyammal Grocery Shop situated at Ambedkar Colony,



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Thanakankulam, Madurai District.

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2. The case of the petitioner is that he is the owner of a grocery shop and the shop containing grocery things worth about Rs.50,000/-. At the time of COVID-19 Pandemic situation, one unknown person viz., Yesurajan from Rajapalayam came to his shop and asked him to receive some of Tobacco stocks from him to sell. The said Yesurajan had managed to convince the petitioner to buy 20 packets of Tobacco. At this juncture, he came to know that a case has been registered against him for selling those banned products. Thereafter, on 14.09.2022, with the help of Inspect of Police lodged another complaint before the Food Safety Department and he was arrested and remanded. While he was in lockup, the designated officer of Food Safety Department sealed his shop without his knowledge and handed over the emergency prohibition notice to his wife. Since 29.09.2022, the shop remains sealed. He was released on bail on 13.10.2022. The shop contains things worth of Rs.50,000/- which is counting its expiry date. Hence, he seeks relief from the emergency prohibition order dated 17.10.2022 and allow him to operate his grocery



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shop as usual.

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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 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.



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4. Heard the learned counsel for the petitioner, learned Additional Government Pleader appearing for the respondents 1, 2 and 4 and the learned Government Advocate (Crl.side) appearing for the respondents 3 and 5.

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.



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

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*



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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. Considering the above referred cases, this Court is inclined to allow the writ petition on condition that the petitioner shall pay a cost of Rs.25,000/- (Rupees Twenty Five Thousand only) to H.M.MDU East P U Primary School, Y.Othakadai, A/C.No.10111536270, State Bank, IFSC Code No.SBIN0002246 and on further condition that the petitioner shall not sell any banned food and Gutka's & Tobacco items and to fix the board in his shop stating that “as per the undertaking and order of the Madurai Bench of Madras High Court, there will be no sale of Tobacco items”, failing which, his license will be cancelled by the concerned



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authorities.

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7. Accordingly, the writ petition is allowed by setting aside the notice issued by the fourth respondent dated 29.09.2022 and the consequential order of the first respondent dated 29.09.2022. No costs. Consequently, the connected Miscellaneous Petition is closed.

24.11.2022

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To

- 1.The Commissioner of Food Safety,
Food Safety and Drug Administration Department,
DMS Compound,
Chennai.
- 2.The District Collector,
Collectorate,
Madurai District.
- 3.The Commissioner of Police,
Madurai City,
Madurai.
- 4.The Food Safety Officer,

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Madurai Corporation,
Aringar Anna Maligai,
Madurai.

5.The Inspector of Police,
Thirunagar Police Station,
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V.BHAVANI SUBBAROYAN,J.

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