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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.06.2023

CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

W.P.(MD)No.8968 of 2023

and

W.M.P.(MD)Nos.8143 and 8145 of 2023

M/s.Lakshmi Traders,
represented by its Managing Partner,
S.Selvakumar, Kumakonam- 612 103.

... Petitioner

vs.

1.The Designated Officer (Thanjavur District),
Tamil Nadu Food Safety and Drug Administration,
Office of the Deputy Director of Health Services,
Gandhi Road, Thanjavur – 613 001.

2.Food Safety Officer,
(Thiruppanandhal Block & Thiruvidaimarudur Block),
FSO Code 217,
Tamil Nadu Food Safety and Drug Administration,
Office of the the Deputy Director of Health Services,
Gandhi Road, Thanjavur – 613 001.

3.The Inspector of Police,
Thiruvidaimaruthur Police Station,
Thiruvidamaruthur, Thanjavur District.
(FIR in Cr.No.985/2022)

... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the entire record pertaining to the impugned Seizure Memo, dated 27.08.2022 issued by the second respondent in the name of the petitioner company, viz., M/s.Lakshmi Traders, Ammachatram, Thiruvidadaimaruthur Taluk, Thanjavur District and quash the same as illegal.

For Petitioner :Mr.P.M.Vishnuvarthanan
For Respondents :Mr.N.Muthu Vijayan
Special Government Pleader

ORDER

This Writ Petition had been filed in the nature of a Certiorari seeking records relating to a seizure memo, dated 27.08.2022 by the second respondent/Food Safety Officer, Thiruppanandhal Block & Thiruvidadaimarudur Block, Tamil Nadu Food Safety and Drug Administration, Office of the Deputy Director of Health Services, Thanjavur, in the name of the petitioner company, M/s.Lakshmi Traders, Ammachatram, Thiruvidadaimaruthur Taluk, Thanjavur District and to quash the same and to pass further directions.



2.Heard Mr.P.M.Vishnuvarthanan, learned Counsel for the petitioner and Mr.N.Muthu Vijayan, learned Special Government Pleader for the respondents. The learned Special Government Pleader had also filed counter affidavit.

3.In the affidavit filed in support of this Writ Petition, it had been stated that the petitioner is running a tobacco manufacturing unit as a partnership firm and had obtained necessary licences and registration under the Goods and Services Tax Act. It had also been stated that the second respondent had inspected the processing unit at Ammachatram at Thiruvidadimaruthur Taluk in Thanjavur District and also the stock room-cum-godown on 27.08.2022 and had issued a seizure memo in Form No-II on 27.08.2022, which has been issued under Section 38 of the Food Safety and Standards Act, 2006.

4.The main premise under which the goods were seized was that they were contradictory to Regulation 2.3.4 and to Section 26 of the aforementioned Act. It is contended by the petitioner that the seized products do not fall under such Regulation 2.3.4 or under Section 26 of



the Act. It had been stated that the third respondent on 07.10.2022 further seized 10 tons raw tobacco along with one Omni van and APE auto along with Rs.60,000/- cash and had registered an FIR in Cr.No.985 of 2022 under Sections 5, 20(1), 22(a) and 24(1) of COTPA Act, 2003, r/w Section 328 of IPC. It had been stated that the respondents are in possession of the seized items and the petitioner and his partner were also arrested and they have subsequently obtained bail.

5.The learned Counsel for the petitioner first placed reliance on the judgment of a Division Bench of this Court in ***W.A.No.2093 of 2018 and in W.P.Nos.3076 and 3084 of 2019, [The Designated Officer, The Food and Safety and Drugs Control Department, Villupuram vs Jeyavilas Tobacco Traders LLP]***, dated 20.01.2023, wherein, after quite an elaborate discussion, the Division Bench appears to have taken a view in favour of the respondent/Writ Petitioner therein and had stated that the various notifications issued by the Commissioner of Food Safety by relying on Regulation 2.3.4 are not within the powers of the Commissioner and that the Commissioner had exceeded his authority in issuing successive notifications. The notifications were struck down and



Writ Appeal was dismissed and the Writ Petitions were allowed.

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6.It must be stated that though an impression was given that the order of the Division Bench is still in force, a little research showed that the Honourable Supreme Court had actually stayed the said Division Bench judgment very specifically, by order dated 25.04.2023. In view of that particular order of the Honourable Supreme Court, no reliance can be placed on the judgment of the Division Bench.

7.The learned Counsel for the petitioner then placed reliance on the common order of the learned Single Judge in ***W.P(MD)Nos.18115 of 2021 and batch [M.s,E.S.Mydeen and Company, Kumbakonam vs Designated Officer (Thanjavur District) Tamil Nadu Food Safety and Drug Administration, Thanjavur]***, wherein, tobacco products have been seized, but taking recourse an emergency prohibition order No. 513-5(Taj)/A1/FSSA/2021, dated 01.10.2021. The learned Single Judge first examined the definition of “Food” as given under Section 3(1)(j) of the Food Safety and Standards Act, 2006 and then examined Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on



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Dales), Regulations, 2011, and had come to conclusion that the definition of “food” is not covered under Regulation 2.3.4.

8.The learned Single Judge also referred to Article 47 of Constitution of India and wondered as to how the State can place reliance on the said Article, when the State promotes TASMAC shops and stated that on the one hand, the State is effectively, according to the learned Judge, promoting sales of liquor, while on the other hand, the State prohibits the sale of tobacco products, which an equally injurious to health.

9.Let me at the very outset, very clearly state that the said observations of the learned Single Judge are *per incurium*. I am of the firm view that every product affecting the health of the common public should be viewed independently not compared with any other product. If taking tobacco is injurious to health, it is injurious to health. The sale of that product cannot be justified, merely because, some other product is being sold by the State. Each product must be viewed independently and tobacco should be viewed independently and it is a fact that it is injurious



to health. Arguments should be restrained and reasoning should be restricted only to that particular product and not to any other product. Therefore, I hold that this particular reasoning of the learned Single Judge is *per incuriam* and is rejected by me and I very specifically and categorically hold that it is not binding on this Court. This Court has to independently examine the materials on record so far this Writ Petition is concerned.

10. Nowhere in the order has the learned Single Judge referred to Section 38 of Food Safety and Standards Act, which facts gives me additional material to reject the reasonings given by the learned Single Judge. The products in this case have been seized under Section 38 of the said Act. There should have been atleast a cursory reference to Section 38 of the Act, which reads as follows:

38. Powers of Food Safety Officer. - 1. The Food Safety Officer may-

a. take a sample-

i. of any food, or any substance, which appears to him to be intended for sale, or to have been sold for human consumption; or

b. seize any article of food which appears to the Food Safety Officer to be in contravention of this Act or the regulations made thereunder; and

.....”



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11. Section 38(1)(b) of the Act gives authority and a responsibility is as a matter of fact cast on the Food Safety Officer, to seize any article of food, which “appears” to the Food Safety Officer to be in contravention of the Act and the regulations made thereunder. The word used by the Legislature is very clear. It is “appears”. Therefore, in the first instance, seizure is permitted and thereafter, the items seized should be subjected to further examination and further testing.

12. It is also seen from the records that the petitioner had filed an appeal before the Designated Authority as provided under Section 46(4) of the Food Safety and Standards Act, 2006. In effect, the petitioner wants to ride two horses at the same time. He wants examination of the issue of seizure of the products by the Appellate Authority and also wants this Court to examine the validity of such seizure. All necessary points can be raised before the Appellate Authority and this Court while invoking Article 226 of Constitution need not and should not enter into the jurisdiction of that statutory authority. That respect must be borne in mind while examining any quasi judicial act taken by the officer.



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13. For the sake of completion of facts, it must be mentioned that the product seized in the instant case were 800 kgs chewable tobacco raw materials with printed label and 100 kgs of tobacco products cutting piece for peeking. One fact is clear, that they are tobacco products. So long as Regulation 2.3.4 and so long as Section 38 of Food Safety and Standards Act, 2006, are in force and are on the statute book, the Food Safety Officer has every right to seize the products.

14. All grounds can be raised before the Appellate Authority. The Writ Petition has been filed more out of misconception probably hoping that this Court would be swayed by the various orders referred. This Court is not swayed. The judgment of the Division Bench has been stayed and the judgment of the learned Single Judge is hold per incuriam.

15. The Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous Petition is closed.

Index : Yes / No
Internet : Yes
NCC : Yes/No
cmr

05.06.2023

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To

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2.Food Safety Officer,
(Thiruppanandhal Block & Thiruvidaimarudur Block),
FSO Code 217,
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3.The Inspector of Police,
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Thiruvidamaruthur, Thanjavur District.



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C.V.KARTHIKEYAN, J.

cmr

Order made in
W.P.(MD)No.8968 of 2023

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