



Crl.O.P.Nos.14351, 14354, 14359, 14362 & 14366 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.08.2024

Pronounced on: 12 .08.2024

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.Nos.14351, 14354, 14359, 14362 & 14366 of 2024
& Crl.M.P.Nos.8798 to 8800, 8796 & 8794 of 2024

Crl.O.P.No.14351 of 2024 batch:

Anindya Dutta, Age 41,
Son of Anup Kumar dutta,
Occupier cum Manager,
DTwelve Spaces Pvt. Ltd.,
SLC MAA Guindy Kitchen,
G.R.Enclave, No.2/1, Dhanakodi Raja Street,
Ekattuthangal, Chennai – 600 032.
Residential Address,
F:14/2, River View Enclave, Telco Colony,
Jamshedpur, Jharkand – 831 004. Petitioner/Accused

/versus/

The Deputy Director – IV (i/c),
Industrial Safety and Health,
47/1, Thiru Vi.Ka.Industrial Estate,
Guindy, Chennai – 600 032. Respondent/Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C.,
to call for the records of C.C.No.343 of 2024 on the file of Chief Metropolitan
Magistrate, Egmore and quash the same.



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For Petitioner : Mr.Arun Anbumani,
for Mr.S.M.Vivek Anandh

For Respondent : Mr.S.Udaya Kumar,
Government Advocate (Crl.Side)

COMMON ORDER

These Criminal Original Petitions to quash the complaint filed by the Deputy Director-IV, Industrial Safety and Health, Guindy, Chennai, for violation of Factories Act.

2. Gist of the complaint:-

On 22/09/2023, the premises situated at SLC MAA, Guindy Kitchen, G.R. Enclave No:2/1, Dhanakodiraja Street, Ekkattuthangal, Chennai was inspected by the Officials of Industrial Safety and Health Department and noticed that the premises is used as a 'Factory' by the Occupier-cum-Manager, wherein manufacturing of food being carried out by engaging 14 workers and using 23.75 HP machines without permission of the Director of Industrial Safety and Health. A show cause notice dated 19/10/2023 was sent to the Occupier-cum-Manager providing the details of 9 contraventions of the



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Factories Act noticed during the inspection and called for explanation. In response to the Show Cause Notice (SCN), reply dated 07/11/2023 was sent stating that the Establishment is duly registered under the Tamil Nadu Catering Establishments Act, 1958. As per Section 30 of the Tamil Nadu Catering Establishment Act, the provisions of The Factories Act, 1948 will not apply to its establishment. Not being satisfied with the said reply, five complaints presented before the Chief Metropolitan Magistrate, Egmore against Thiru.Anindya Dutta, the petitioner herein as Occupier-Cum-Manager of DTwelve Space (P) Ltd for the alleged contraventions of:-

(i)	Section 6(1)(a)(aa)(b)(c) r/w Rule 3(1)(2) Section 6(1)(d) Rules 4(1)(2)(3) Section 7(1) Rule 12
(ii)	Section 6(1)(9) r/w Rule 79 Section 45(1) r/w Rule 63
(iii)	Section 45(3) r/w Rule 63-B Section 38 r/w Rule 61(10)(f)
(iv)	Section 3 r/w Rule 3(1)(2)
(v)	Section 4(1)(b)(i)



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3. The Learned Chief Metropolitan Magistrate, Egmore taken the five complaints on file as C.C.Nos.340/2024, 341/2024, 342/2024, 343/2024 and 344/2024 and caused summons to the petitioner.

4. Gist of the quash petition:-

(i) The Petitioner company is engaged in the business of running, managing and operating the day-today affairs of residential premises, and license/sub-licenses such residential premises to individuals (including students and working professionals) for the purpose of long-stay accommodation. Over a period, it has acquired an immense reputation for the quality of services it provides. For those living in the accommodation spaces run by the Petitioner Company, it provides meals as well. Since, there are multiple accommodation facilities that are run by the Company within the same city, for achieving operational efficiency, a common centralized kitchen was established by the Company to serve meals to all those people residing in its facilities. This facility was established and became operational in March 2023.



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(ii) The Petitioner being an establishment, which falls under the definition of '*Catering Establishment*' as per Section 2(1) of Tamil Nadu Catering Establishments Act, 1958, filed application for license and registration for its operation under the Act on 13.06.2023 by the Petitioner Company. This application was allowed by the relevant authority on 20.10.2023 and this application was allowed by the relevant authority on 20.10.2023 was made applicable for the whole year of 2023, ending on 31.12.2023. Subsequently, for the year 2024, a fresh application was made in the month 25.02.2024, which was allowed on 27.02.2024. This renewed license is valid till 31.12.2024.

(iii) The petitioner's establishment being duly registered under the Tamil Nadu Catering Establishments Act, 1958 which is a Special Act enacted specifically for regulation of conditions of work in Catering Establishments in the State of Tamil Nadu. Section 30 of the Tamil Nadu Catering Establishments Act excludes its establishment from the preview of the Factories Act.

5. According to the Learned Counsel for the petitioner, the petitioner's Company was registered under the Catering Establishment Act and



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holds a valid license issued by the Authority. Therefore, the petitioner Company is exempted from the Factories Act. Therefore, the complainant i.e., Deputy Director of Industrial Safety and Health have no jurisdiction over the petitioner's Company. Since, the impugned summon issued in violation of Section 30 of the Catering Establishments Act, the consequential complaint is liable to be quashed.

6. Referring the Statement of Objects and Reasoning for enacting Tamil Nadu Catering Establishments Act and Sections 2(1), 2(11), 2(12) and 30 of the Catering Establishments Act, besides the other Sections which are analogous to the Factories Act to ensure Safety and Health of the workers which find place in the Catering Establishments Act. The Learned Counsel for the petitioner emphatically submitted that, the Special Act override the General Act and the lapse which are pointed out in the complaint and sought to be prosecuted does not form part of the Show Cause Notice. Further, the lapses for which the complaint laid are:-



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i) For not applying through online portal of DISH for permission to run a manufacturing food.

ii) For not submitting notice of occupation to the premises at Block 3, A3 and A4 Olympia National Tower, North Phase, Guindy Industrial Estate as 'Factory'.

iii) For not displaying the notice of period of work for Adults in Form No.II.

iv) For not providing First Aid Appliances as per Section 45 of the Factories Act r/w Rules 61.

v) For not provided adequate Fire Extinguishers as per Section 38 r/w Rule 38 of the Factories Act and Rules.

vi) For not sending proposal in Form-I to the Deputy Director for specification of five festival holidays and

vii) For failure to maintain Register of persons employed-cum-employment card and Master Roll-cum-Wage Register.

7. Through the below comparison chart, the Learned Counsel for the petitioner claim that all the above provisions are found in Catering Act and



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an Establishment registered under the Catering Act, for being a Catering Establishments as defined under Section 2(1) and no further registration under the Factories Act is required in view of the exclusion under Section 30 of the Tamil Nadu Catering Establishments Act, 1958.

Sl. Nos.	Factories Act, 1948	Catering Establishments Act, 1958
1.	Section 6. Approval, licensing and registration of factories.	Section 3-A. Catering establishments to be registered.
2.	Section 7. Notice by occupier.	Section 4. Procedure for registration of catering establishments.
3.	Section 8. Inspectors. Section 9. Powers of Inspectors.	Section 20. Appointment of Inspectors. Section 21. Powers and duties of Inspectors.
4.	Section 38. Precautions in case of fire Section 45. First-aid appliances	Section 29. Fire extinguishers and first-aid boxes.
5.	Section 51. Weekly hours.	Section 11. Holidays
6.	Section 52. Weekly holidays. Section 53. Compensatory holidays.	Section 7. Daily and weekly hours of work in catering establishments.
7.	Section 55. Intervals for rest. Section 56. Spread over. Section 57. Night shifts. Section 58. Prohibition of overlapping shifts.	Section 9. Interval for rest. Section 10. Spread over.
8.	Section 59. Extra wages for overtime.	Section 8. Extra wages for overtime work.
9.	Section 61. Notice of periods of work for adults. Section 62. Register of adult workers.	Section 11-A. Notice of periods of work.
10.	Section 67. Prohibition of employment of young children.	Section 17. Prohibition of employment of children.
11.	Section 69. Certificates of fitness.	Rule 20. Medical examination of persons



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		prior to employment.
12.	Section 75. Power to require medical examination.	Rule 22. Periodical medical, examination of employees.
13.	Section 79. Annual leave with wages. Section 80. Wages during leave period Section 81. Payment in advance in certain cases. Section 82. Mode of recovery of unpaid wages.	Section 12. Leave with wages. Section 13. Wages during leave period. Section 14. Payment in advance in certain cases. Section 15. Mode of recovery of unpaid wages.
14.	Section 89. Notice of certain diseases	Section 23. Reporting of illness. Section 24. Reporting of illness of employee to Health Officer.
15.	Section 92. General penalty for offences.	Section 23. Penalties.
16.	Section 104. Onus as to age.	Section 26. Onus as to age.
17.	Section 106. Limitation of prosecutions.	Section 25. Limitation of prosecution.
18.	Section 108. Display of notices.	Rule 38. Maintenance of registers and display of notices.

8. Per contra, Mr.S.Udaya Kumar, Learned Government Advocate (Crl.Side) for the respondent submitted that, the Establishment of the petitioner admittedly engaged in manufacturing food using 14 workers and electrical motor of 23.75 HP. All Establishment wherein 10 or more workers are working on any day preceding 12 months and in any part of which a manufacturing process is being carried on with the aid of power is a 'Factory' as per the definition under Section 2(m) of the Factories Act.



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9. To fall under the definition of 'Catering Establishment' as defined under Section 2(1) of the Tamil Nadu Catering Establishment Act, it must be a restaurant as defined under Section 2(12) of the said Act or must be a residential Hotel as defined under Section 2(11) of the said Act.

10. The petitioner establishment is a Kitchen and not a Restaurant or Residential Hotel. Just because the petitioner's establishment has got itself registered under the Catering Establishment Act wrongly, he cannot take umbrage under Section 30 of the Tamil Nadu Catering Establishments Act and contravene the Factories Act.

11. In support of his submission the Learned Government Advocate (Crl.Side) for the respondent rely upon the following judgments:-

(i) *Employees' State Insurance Corporation, Madras -vs- Spencer & Co., Ltd Madras* reported in *1977 Lab IC 1759 (Mad)*,

(ii) *East West Hotel Ltd -vs- Regional Director, E.S.I.C* reported in *(1986) 1 LLN 840*,



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(iii) *Poona Industrial Hotel, Ltd -vs- I.C Sarin and another*

reported in (1983) 63 FJR 354 and

(iv) *Regional Director, Employees' State Insurance*

Corporation, Trichur -vs- Kerala Kaumudi, Ltd reported in (1987) 70 FJR

93.

12. Per contra, the Learned Counsel for the petitioner submitted that the above cited judgments are invariable with reference to application of Employees State Insurance Act to a canteen and Hotel/Restaurants. These judgments cannot be relevant for the issue whether factories Act will also apply to a Restaurant or Residential Hotel covered under the Tamil Nadu Catering Establishments Act.

13. Heard the Learned Counsel for the petitioner and the Learned Government Advocate (CrI.Side) for the respondent.

14. It is the admitted case of the petitioner that the premises is a common centralized kitchen established by the Company, where food is



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prepared and the prepared food is transported and delivered to other premises/accommodation facilities run by the Company of the petitioner and it not consumed in the premises during inspection by the Complainant on 22.09.2023 and the manufactured food is transported and delivered to the petitioner's company premises located at other nearby locations, with a view of its use to cater to the needs of the residents residing at those premises. As per the Tamil Nadu Catering Establishments Act, 1958 by definition under Section 2(1) of the Act, "Catering Establishment" means a restaurant or a residential hotel and includes a restaurant or canteen attached to, or run or managed by, any society registered under any law for the time being in force. The relevant provisions necessary to look at are extracted below:-

"2. Definitions. - In this Act, unless the context otherwise requires,-

*(1) "**catering establishment**" means a restaurant or residential hotel and includes a restaurant or canteen attached to, or run or managed by, any society registered under any law for the time being in force but does not include a restaurant or canteen attached to, or run or managed by, any educational institution.*

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(11) "residential hotel" means any premises in which the business of providing dwelling accommodation and supply of meals to any member of the public or a class of the public is carried on;

(12) "restaurant" means any premises in which is carried on the business of the supply of refreshments or meals to the public or a class of the public for consumption on the premises."

15. If any establishment falls within the definition under Section 2(11) and 2 (12) of the Tamil Nadu Catering Establishments Act then it is exempted from the application of certain enactments. Section 30 of the Catering Establishments Act enlist those enactment with a proviso that anything done under the exempted enactments could have been done under the Catering Establishments Act if the act been in force at the relevant time, shall be deemed to have been done under the Catering Establishments Act.

16. The deeming proviso is in the nature of saving the compliance done under the exempted Acts as compliance under the Catering Establishments



17. For quick reference, Section 30 of Tamil Nadu Catering Establishments Act, 1958 is reproduced below:-

30. Certain enactments not to apply to catering establishments: –

On and from the date of the commencement of this Act, the Weekly Holidays Act, 1942 (Central Act XVIII of 1942), the Factories Act, 1948 (Central Act LXIII of 1948), and the [Tamil Nadu Shops and Establishments Act, 1947 (Tamil Nadu Act XXXVI of 1947), shall not apply to catering establishments:

Provided that anything done under the said enactments which could have been done under this Act if it had been in force at the relevant time shall be deemed to have been done under this Act.

18. The petitioner claims that the petitioner's Company applied for registration under Catering Establishments Act on 13.06.2023 with fees prescribed. The Labour Department had issued registration certificate on 20.10.2023 assigning Registration No.TNCHEAIL18CHECE-1-23-00633, valid in force till 31.12.2023. The inspection of the petitioner's premises by the



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respondent was on 22.09.2023 (i.e.,) after application but before registration.

19. To the Show Cause Notice dated 19.10.2023, the petitioner had replied stating that, “the leased premises is being used to prepare food and cater to the residents residing at our premises at other nearby locations and prepared food is not for sale to the general public”.

20. To claim exemption from Factories Act, the petitioner establishment must come under the definition of Section 2(1) of '*Catering Establishment*'. For which, it should fall either under Section 2(11) of '*Residential Hotel*' or under Section 2(12) a Restaurant or Canteen. If literal interpretation given to these definitions, to fall under either of these two categories, the supply of refreshment or meals must be within the premises and a place away from the premises. However, if literal interpretation given as above, it will lead to situation that an Establishment which carry on activity of manufacturing food for consumption either in the same premises of its preparation or else where, will have to register both under Factories Act as well as Catering Establishments Act.



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21. The provisions of Factories Act focus on Safety and Health of the Worker. The Catering Establishment Act also take care of Safety and Health of the workers but regulation of the conditions of work is different to suit the Catering Establishment. The Statement of Objects and Reasons to bring a Special registration by the State makes clear the intention of the legislators. Hence, same is extracted below:-

“It has long been felt by this Government as well as by the Government of India that the Factories Act, 1948 (Central Act LXIII of 1948) is not the appropriate legislation to regulate the conditions of work in hotels and similar establishments. In 1951 this Government suggested to the Government of India that the Factories Act, 1948, might be amended to remove hotels and similar establishments from its purview and that a separate Central legislation might be undertaken to regulate the conditions of work in hotels, etc. The Government of India were also consulted whether the hotels which were covered by the Factories Act, 1948, might be removed from its purview and dealt with under the Madras Shops and Establishments Act, 1947



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(Madras Act XXXVI of 1947). The Government of India stated that they had no objection to such a course.

The question of suitability of the Madras Shops and Establishments Act, 1947, for application to hotels and other catering establishments was discussed by the Commissioner of Labour in 1953 with some hotel owners and labour leaders and it was agreed that separate legislation was necessary. It is, therefore, proposed to enact a separate piece of legislation to regulate the conditions of work in hotels and other catering establishments. The Bill provides for the registration of catering establishments on payment of fees. The Bill follows generally the provisions in the Factories Act, 1948 in regard to the chapter on leave with wages. It has also been provided in the Bill that the provisions of the Payment of Wages Act, 1936 (Central Act IV of 1936) and the rules made thereunder should apply to the catering establishments.”

22. The Tamil Nadu Catering Establishments Act, 1958 came into force from 08.04.1959 covering the Territory within the City of Madras and District Municipalities.



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23. The exclusion of Factories Act under Section 30 of the Catering Establishments Act is to give effect to the intention and purpose of the Act. Hence, a purposeful interpretation of Section 2(11) and Section 2(12) of the Tamil Nadu Catering Establishments Act is to be done or else it will defeat the very object of the legislation.

24. The judgments relied by the Learned Government Advocate (CrI.Side) for the respondent drawing parallel view to the Employees' State Insurance Act with Catering Establishments Act is not sustainable for the multiple reasons.

Firstly, the object of Employees' State Insurance Act is different from Factories Act. Secondly, there is provision under the Act which excludes Factories Act from the purview of Catering Act.

25. In fact, Employees' State Insurance Act is a Complementary Act to all other Labour Welfare Legislations like Factories Act, including



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Catering Establishments Act. Unlike, Catering Establishments Act, the Employees' State Insurance Act as the title connotes, it deals with scheme of insurance providing benefit to employees in case of health related contingency employees. It is entirely on a different subject domain, not covered under Factories Act.

26. The provisions of Catering Establishments Act, 1958 and Rules, 1959 framed taking into consideration the uniqueness of the food manufacturing activity and the need of its activity on all 7 days a week unlike other manufacturing activities. The Act and Rules prescribes regulation of work adopting different criteria, which will suit the Catering Establishment. No doubt, if more than 10 workers and power is used in the process of manufacturing food, the definition of 'Factory' as defined under Section 2(m) of the Factories Act will get attracted, but insofar as Catering Establishments in Tamil Nadu, even the activity fall within the definition of 'Factory', it will be excluded from the purview of Factories Act in the light of Section 30 of the Tamil Nadu Catering Establishments Act, 1958.



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27. The State Act been enacted in consultation with Government of India. It come into force after getting the assent of the President of India. Therefore, any Establishment which satisfies the definition of '*Catering Establishments*' as defined under Section 2(1) of the Act cannot be called upon to get it registered under the Factories Act or be prosecuted for any contravention of Regulations under the Factories Act or Rules framed thereunder.

28. The complainant herein therefore have no authority to inspect the premises which fall under the definition of Catering Establishment under Section 2(1) of Tamil Nadu Catering Establishments Act. The power of Inspector conferred under Section 9 of Factories Act to the Inspecting Staff notified under Section 8 of the Factories Act cannot be exercised, if the establishment is duly registered under the Tamil Nadu Catering Establishments Act. Under Section 21 of the Tamil Nadu Catering Establishments Act, the power of Inspecting the Catering Establishment is vested with Inspectors. The Inspectors under the Tamil Nadu Catering Establishments Act are to be



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appointed in terms of Section 20 of the Tamil Nadu Catering Establishments Act, 1958.

29. In this case, this Court holds that the complainant without power had inspected the premises of the petitioner which fall within the definition of 'Catering Establishment', taking advantage of the fact that the food manufactures not served in the same premises.

30. This Court makes it is very clear that place of serving the food manufactured cannot be the test to exclude an Establishment from the Tamil Nadu Catering Establishments Act. The nature of activity to be taken into consideration and not place of its consumption. Provided, the consumption of the food manufactured must be immediate and direct. Semi cooked food or pre-cooked food stored for consumption in future and consumed after carrying out further cooking process or heating process will be covered under Factories Act and not under the Tamil Nadu Catering Establishments Act.

31. As a result, this *Criminal Original Petitions are allowed.* The



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five complaints in C.C.Nos.340/2024, 341/2024, 342/2024, 343/2024 and 344/2024 on the file of Chief Metropolitan Magistrate, Egmore, stands quashed.

Consequently, connected Miscellaneous Petitions are closed.

12.08.2024

Index :Yes.

Internet :Yes.

Speaking Order/Non-Speaking Order.

bsm

To:-

1. The Chief Metropolitan Magistrate, Egmore.
2. The Deputy Director – IV (i/c),
Industrial Safety and Health, 47/1,
Thiru Vi.Ka.Industrial Estate,
Guindy, Chennai – 600 032.
3. The Public Prosecutor, High Court, Madras.



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DR.G.JAYACHANDRAN,J.

bsm

Pre-delivery common order made in
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