



W.P.No.25167 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 06.01.2025

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THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.No.25167 of 2021
and WMP.Nos.26534 and 26536 of 2021

Arulmurugan Starch Industries,
rep. by its Proprietor P.Natarajan,
Vadachennimalai, Attur Taluk,
Salem District.

..... Petitioner

vs.

1.Commissioner of Food Safety,
Tamil Nadu Food Safety and Drug, Administration Department,
No.359, Anna Salai, V Floor, DMS Office Building,
DMS Campus, Teynampet, Chennai – 600 006.

2.The District Collector,
Salem District, Salem.

3.Designated Officer,
Food Safety and Drug Administration,
Salem District, Salem – 1.

4.SAGO SERVE
rep by its Managing Director,
Jagirammappalayam, Omalur Main Road,
Salem – 636 302.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of



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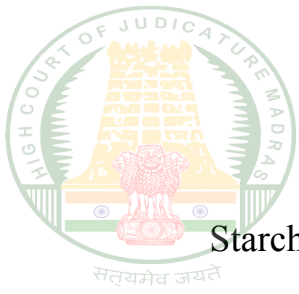
India, to issue a Writ of Mandamus, calling for the entire records relating to the Order in R.No.1756/2021/A1/FSD, dated 01.11.2021 on the file of the 3rd respondent herein and quash the same and consequently direct the respondents 1 and 3 herein release the intermediate product-wet and liquid Tapioca Starch under process seized on 30.10.2021 and restrain the respondents 1 to 3 herein from taking sample in the intermediate products-wet and liquid Tapioca Starch of the petitioner herein at the behest of its business rivals and the 4th respondent herein by abusing the provisions of the Food Safety and Standards Act, 2006.

For Petitioner : Mr.V.R.Rajasekaran
For R1 and R3 : Mr.P.Kumaresan
Additional Advocate General
Assisted by Mr.Tippu Sulthan
Government Advocate
For R2 : M/s.M.Jayanthi
Additional Government Pleader

ORDER

This writ petition is filed challenging the order passed by the 3rd respondent issuing prohibitory orders against the petitioner to stop all of its activities till the compliance of Food Safety and Standards Rules and Regulations. By impugned order, the 3rd respondent also suspended the license of the petitioner issued to him for manufacturing of Sago.

2. The petitioner is carrying on business in manufacturing of



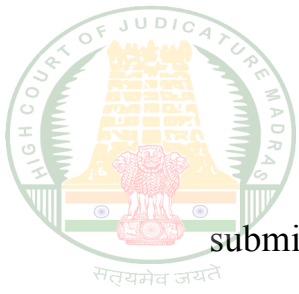
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Starch and Sago from Tapioca Roots in the name and style of Arulmurugan Starch Industries. The 3rd respondent, who conducted inspection in the manufacturing site of the petitioner on 30.10.2021 issued impugned order prohibiting the petitioner from continuing his manufacturing activity and also suspended the license mainly on the ground that the petitioner indulged in using unauthorised, harmful chemicals and acid in the manufacturing of sago. It is also stated by the 3rd respondent in his order that the petitioner has violated the conditions of the license issued by the Department. Aggrieved by the said order, the petitioner has come before this Court.

3. The learned counsel appearing for the petitioner submits that the 3rd respondent has no power to issue prohibitory orders under Section 34 of Food Safety and Standards Act and hence the impugned order is the one passed without jurisdiction. The learned counsel further submitted that the order of the 3rd respondent suspending the license issued to the petitioner was passed even without issuing any show cause notice to the petitioner and hence the same is vitiated for failure to comply with the natural justice principles.

4. The learned counsel appearing for the first respondent would



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submit that under Section 34 of Food Safety and Standards Act, 2006, if the

Designated Officer is satisfied that the health risk condition exists in respect of any Food business, he can issue emergency prohibition notice prohibiting the manufacture from continuing his business. The learned counsel further submitted that during inspection of the petitioner's manufacturing unit, it was found that the petitioner was indulged in using hazardous chemicals and acids in manufacturing food products and therefore, the impugned order has been passed prohibiting him from continuing the business till he complies with the provisions of the Act and the Rules.

5. The learned counsel appearing for the 4th respondent would submit that the petitioner is bound to follow the statutory rules and regulations imposed by the department and as such the impugned action taken by the 3rd respondent for petitioner's failure to comply with the Safety Rules and Regulations is in accordance with law.

6. Section 34 of Food Safety and Standards Act, 2006, reads as follows:



34. Emergency prohibition notices and orders.-

(1)If the Designated Officer is satisfied that the health risk condition exists with respect to any food business, he may, after a notice served on the food business operator (in this Act referred to as an "emergency prohibition notice"), apply to the Commissioner of Food Safety for imposing the prohibition.

(2)If the Commissioner of Food Safety is satisfied, on the application of such an officer, that the health risk condition exists with respect to any food business, he shall, by an order, impose the prohibition.

(3)The Designated Officer shall not apply for an emergency prohibition order unless, at least one day before the date of the application, he has served notice on the food business operator of the business of his intention to apply for the order.

(4)As soon as practicable after the making of an emergency prohibition order, the Designated Officer shall require the Food Safety Officer to-

(a)serve a copy of the order on the food business operator of the business; or

(b)affix a copy of the order at a conspicuous place on such premises used for the purposes of that business; and any person who knowingly contravenes such an order shall be guilty of an offence and shall be punishable with



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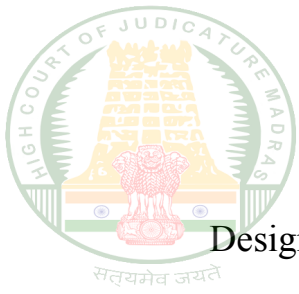
imprisonment for a term which may extend to two years and with fine which may extend to two lakh rupees.

(5)An emergency prohibition order shall cease to have effect on the issue by the Designated Officer of a certificate to the effect that he is satisfied that the food business operator has taken sufficient measures for justifying the lifting of such order.

(6)The Designated Officer shall issue a certificate under sub-section (5) within seven days of an application by the food business operator for such a certificate and on his being not satisfied, the said officer shall give notice to the food business operator within a period of ten days indicating the reasons for such decision.

7. A perusal of the above provision would make it clear that if the Designatory Officer is satisfied that the health risk condition exists in respect to any food business, he may, after serving notice on the food business operator (referred to as emergency prohibition notice), apply to the Commissioner of Food Safety for imposing prohibition.

8. Section 34(2) makes it explicitly clear that if the Commissioner of Food Safety is satisfied, on the application filed by the



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Designatory Officer that the health risk condition exists in respect to any food business, he shall by an order impose prohibition. Therefore, it is very clear, the 3rd respondent, Designatory Officer can only issue a notice under Section 34(1) of Food Safety and Standards Act, 2006 and prohibitory orders shall be passed only by the first respondent/Commissioner of Food Safety after recording satisfaction.

9. In the case on hand, the impugned order makes it very clear that even at the time of issuing notice under Section 34(1), the 3rd respondent simultaneously passed prohibitory orders preventing the petitioner from continuing the manufacturing activity. The said order is clearly without jurisdiction in the light of the plain language employed under Section 34 of Food Safety and Standards Act, 2006. Therefore, this Court is inclined to set aside the directions issued by the 3rd respondent passing prohibitory orders against the petitioner. Further, the impugned order reads about the suspension of license issued to the petitioner. However, show cause notice has not been issued to the petitioner before passing adverse order of suspension of license. If the petitioner is indulged in contravention of any of the condition of license issued to him, it is open to the 3rd respondent to



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suspend the license by virtue of power under Section 36(3) (a) r/w Section 32 of Food Safety and Standards Act 2006 and Rule 2.1.2 of Food Safety and Standards Rules 2011. However, such a drastic order involves civil consequences. In fact Section 32 itself contemplate issue of improvement notice by Designated Officer to enable food business operator to cure the defects pointed out in notice. Hence, the 3rd respondent ought to have issued show cause notice to the petitioner before suspending license on the specific ground of violation, if any. Therefore, order of 3rd respondent suspending license is vitiated by violation of natural justice principles.

10. In view of the same, this Court is inclined to set aside the impugned order passed by the 3rd respondent prohibiting the petitioner from continuing his food business and also suspending the license. The impugned order shall be treated as emergency prohibition notice issued by the 3rd respondent under Section 34(1) of Food Safety and Standards Act, 2006. It is also open to the 3rd respondent to apply before the 1st respondent seeking prohibitory order.



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11. The first respondent is directed to consider the application, if any, filed by the 3rd respondent in accordance with law and pass final orders under Section 34(2) of Food Safety and Standards Act, 2006, after giving opportunity to the petitioner and other interested parties if any, within a period of six weeks from the date of receipt of copy of this order.

12. The learned counsel appearing for the petitioner submitted that samples taken from the petitioner's manufacturing unit have been subjected to test and the lab reports are in favour of the petitioner. It is open to the petitioner to produce all the documents in his favour before the first respondent during enquiry.

13. The learned counsel appearing for the impleading petitioner in WMP.No.6125 of 2022 would submit that lot of harmful chemicals were seized from the factory of the petitioner and hence the 3rd respondent was justified in passing the impugned order prohibiting the petitioner from continuing the manufacturing process. Since it is decided that the impugned order shall be treated as notice under Section 34(1) of Food Safety and Standards Act, 2006, it is for the first respondent to



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consider the matter on merits and pass orders under Section 34(2) of Food Safety and Standards Act, 2006, regarding necessity for prohibitory orders.

It is open to the impleading petitioner to raise his objection before the first respondent, if he is so advised. It is also made clear, the order passed by this Court will not come in the way of the 3rd respondent taking action against the petitioner for violation of license conditions, if any including suspension of license, after affording reasonable opportunity to the petitioner.

14. With these observations, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

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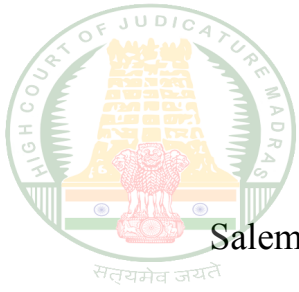
Index : Yes/No
Speaking order: Yes/No
Neutral Citation: Yes/No
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To

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2. The District Collector,

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