

(2016) 08 MAD CK 0151

In the Madras High Court

Case No : Writ Petition (MD).No.6751 of 2016 and W.M.P.(MD).No.5820 of 2016

Nigetha Trading Company

APPELLANT

Vs

Commissioner

RESPONDENT

Date of Decision : 09-08-2016

Acts Referred:

Food Safety and Standards Act, 2006 — Section 38

Citation : (2016) 7 MLJ 142

Hon'ble Judges : Mr. M. Venugopal, J.

Bench : Single Bench

Advocate : Mr. S.R. Suresh Kumar, Advocate, for the Petitioner; Mr. A. Muthukaruppan, Addl. Govt. Pleader, for the Respondents

Final Decision : Dismissed

Judgement

Mr. M. Venugopal, J.—; Heard both sides. By consent, the main writ petition itself is taken up for final disposal.

2. Counter affidavit of the fifth respondent is filed. (adopted by the other respondents i.e. respondent Nos.1, 2 to 4 and 6)

3. According to the petitioner/company, it is registered under the Government of Tamil Nadu, Commercial Tax Department as a dealer under Sections 7(1), 7(2) of the Central Sales Tax Act in the office of the second respondent/Assistant Commissioner, Commercial Taxes, Karur West. The stand of the petitioner/company is that it had obtained a licence towards purchase, use and sale of Edible, Non Edible Oil, Fatty Acids, Waste Gum, Soap Oils, Rice Brand Oil, Glycerin and Rice Brand Oil Gum.

4. The version of the petitioner/company is that is permitted to trade and store the aforstated products for manufacturing and processing the same, for which, the petitioner is paying necessary taxes till now as per Law. Furthermore, every receipt of the purchased material is duly accounted for in the statutory records and accounts maintained at the petitioner"s/company"s premises and subject to

check and audit by the jurisdictional officers of the second respondent and the Development Commissioner. Furthermore, the sale items are duly documented in the statutory record, register and books of accounts, which are also checked and cross verified in a strict manner by the aforesaid authorities.

5. At this stage, the Learned counsel for the Petitioner brings it to the notice of this Court that on 01.03.2016, the fifth respondent/Designated Officer, Tamil Nadu Food Protection and Drugs, Administration Department, Karur District (as per para No.4 of the counter affidavit filed by the fifth respondent) and the 6th respondent/Food Safety Officer, Tamil Nadu Food Protection and Drugs, Administration Department, Karur District, along with the Revenue Divisional Officer, Karur, Tahsildar, K. Paramathi, Inspector of Police, K. Paramathi Police Station, Village Administrative Officer, K. Paramathi and media persons made an entry into the petitioner's company, without any Search Warrant and intimation, during evening time and without the presence of the Proprietor, they searched the company premises and took samples without consent, without any prior notice and due opportunity to the petitioner/company, to state its explanation and against the Law. Moreover, even without obtaining the result of the analysis report from the Food Analyst and that without jurisdiction and without following the mandatory proceedings contemplated under the Rules and Regulations, formulated under the Food Safety and Standards Act, 2006.

6. As a matter of fact, the fifth respondent/Designated Officer, Tamil Nadu Food Protection and Drugs, Administration Department, Karur District had forcefully locked and sealed the petitioner's premises without any order passed to that effect. The petitioner/company, in this regard, had addressed a representation, dated 02.03.2016 to the respondents, through registered post, requesting them to remove the lock and seal put up by the 5th respondent and allow it to run his business. But the fifth respondent had not considered his request till now. Also, he had approached the fifth respondent in person and asked for removal of the lock and seal. He also explained that he is the sole Proprietor of the Nigitha Trading Company and he is having licence to trade edible, non edible oil, fatty acids, waste gum, soap oils, rice brand oil, glycerin and rice brand oil gum and produced the licence copy and related papers. But his efforts ended in vain.

7. The Learned Counsel for the Petitioner takes a legal plea that the fifth respondent/Designated Officer, Tamil Nadu Food Protection and Drugs, Administration Department, Karur District, had failed to adhere to the ingredients of "Section 38 of the Food Safety and Standards Act, 2006". Further, it is represented on behalf of the petitioner that the fifth respondent has no jurisdiction to lock and seal any premises. As a matter of fact, the respondents had put up the lock and seal in the premises of the petitioner/company even before sending the sample for Food Analyst Report and caused damage to the company.

8. The core contention advanced on behalf of the petitioner is that the petitioner/company is possessing edible and non-edible oil business licence and the

company is trading only in non-edible oils and they are used for production of soaps. Also, that on seeing the stock, the fifth respondent ought to have understood that the stocks are not edibles and if there is any doubt, he has power to take samples, as per Law for food analysis and after the receipt of the food analysis report and he may proceed further. However, the fifth respondent had entered into the petitioner company without following Section 38(6) of the Food Safety and Standards Act, 2006. In short, the fifth respondent had never turned up to rectify his unlawful activity, even after the representations made by the petitioner/company. In fact, the respondents 1, 3 and 4 had also received petitioner's representation and slept over the matter, without considering the loss and injury of the petitioner's company. Hence, the petitioner has filed the present writ petition seeking for passing of an order by this Court in restraining the respondents from in any manner interfering nor disturbing with the running of its business by name Nigetha Trading Company, which are permitted under Law.

9. Conversely, it is the submission of the Learned Counsel for the respondent Nos.1 to 5 that the third respondent/District Collector, Karur District had received representation from the public that the petitioner/ company is indulging in purchasing of substandard edible oil and changing them as cooking oil by mixing chemical and supplied adulterated edible oil to the public and caused health hazards to the public. Also that, the Superintendent of Police, Karur District also received a communication from the District Collector and that the fourth respondent/District Revenue Officer, Karur District and the fifth respondent/ Designated Officer, Tamil Nadu Food Protection and Drugs, Administration Department, Karur District, had visited the P.P. Oil Mills situated at Athirettipalayam, K. Paramathi, Aravakurichy Taluk, on 19.02.2016 and on that inspection, the said P.P.Oil Mill was found to be run by one A.N. Priya, W/o. Nehru and Punithavathi, W/o. Palanivel as a partnership firm and the unit was not functioning for the past 6 months and no employee was working at that premises.

10. In this connection, the Learned Counsel for the respondents brings it to the notice of the Court that the third respondent/District Collector, received a representation from the public that adulterated oil was processed in the petitioner's premises and in that process, the District Collector directed the Revenue, Police Officials and the 5th and 6th respondents to inspect the P.P. Oil Mill situated at Athirettipalayam, K. Paramathi and submit a report to him. As per direction issued, the above said officials and the 5th and 6th respondents had inspected the premises on 01.03.2016 and found that one P.P. Oil Mill situated in front of the premises, was closed before 6 months and there was no production in that unit.

11. Apart from the above, it transpires that the 5th and 6th respondents inspected the other parts of the premises and found that there was an another unit in a running condition without any licence from the competent persons and stored 20 barrels oil (totally 4000 litres) and 11 plastic cans, (totally 300 litres

chemicals) and on enquiry, it came to light that one Palanivel, S/o. Thandapani is running the unit and the available person at the premises Thandapani, S/o. Periyasamy Gounder has not co-operated with the officials. Therefore, it is represented on behalf of the respondents that the fifth and sixth respondents took samples and sent them for Food Analysis. In fact, the fifth and sixth respondents put the above 20 oil barrels and 11 plastic cans (chemical) in a room of the premises and locked and sealed it, as per Law. Added further, the petitioner had not disclosed the Bona fide Business viz., from whom the oil was purchased and what type of the oil was purchased and for whom, it was sold.

12. The Learned Counsel for the Respondents submits that the sixth respondent sent the samples to the Food Analyst Laboratory, Thanjavur and after analysis, the result was received by the sixth respondent on 18.03.2006. The result was that "the sample does not confirm to Edible Oil parameters with respect to 2.2.1 of FSSR (FPS & FA), 2011".

13. It is to be noted that Section 38(1) to (6) of the Food Safety and Standards Act, 2006 speaks of "Powers of Food Safety Officer" and the same runs as under:

"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

(ii) of any article of food or substance which is found by him on or in any such premises; which he has reason to believe that it may be required as evidence in proceedings under any of the provisions of this Act or of the regulations or orders made thereunder; 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

(c)Keep it in the safe custody of the food business operator such article of food after taking a sample;

and in both cases send the same for analysis to a Food Analyst for the local area within which such sample has been taken.

Provided that where the Food Safety Officer keeps such article in the safe custody of the food business operator, he may require the food business operator to execute a bond for a sum of money equal to the value of such article with one or more sureties as the Food Safety Officer deems fit and the food business operator shall execute the bond accordingly.

(2) The Food Safety Officer may enter and inspect any place where the article of food is manufactured, or stored for sale, or stored for the manufacture of any other article of food, or exposed or exhibited for sale and where any adulterant is manufactured or kept, and take samples of such articles of food or adulterant for

analysis.

(3)Where any sample is taken, its cost calculated at the rate at which the article is usually sold to the public shall be paid to the person from whom it is taken.

(4)Where any article of food seized under clause (b) of sub-section (1) is of a perishable nature and the Food Safety Officer is satisfied that such article of food is so deteriorated that it is unfit for human consumption, the Food Safety Officer, may, after giving notice in writing to the food business operator, cause the same to be destroyed.

(5)The Food Safety Officer shall, in exercising the powers of entry upon, and inspection of any place under this section, follow, as far as may be, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to the search or inspection of a place by a police officer executing a search warrant issued under that Code.

(6)Any adulterant found in the possession of a manufacture or distributor of, or dealer in, any article of food or in any of the premises occupied by him as such and for the possession of which he is unable to account to the satisfaction of the Food Safety Officer and any books of account or other documents found in his possession or control and which would be useful for, or relevant to, any investigation or proceeding under this Act, may be seized by the Food Safety Officer and a sample of such adulterant for analysis to a Food Analyst.

Provided that no such books of account or other documents shall be seized by the Food Safety Officer except with the previous approval of the authority to which he is subordinate."

14. Besides the above, the Learned Counsel for the respondents invites the attention of the Court to Rule 2.1.3(4) of the Food Safety and Standards Rules under the caption "Power and Duties", which runs as under:

"Without prejudice to the powers conferred on him under Section 38 of the Act, where the Food Safety Officer is of the opinion or he has reason(s) to be recorded in writing that in the given situation it is not possible to comply with the provision of section 38(1)(c) or the proviso to section 38(1) for reasons like non availability of the Food Business Operator, the Food Safety Officers may seize the adulterant or food, which is unsafe or sub-standard or mis-branded or containing extraneous matter, may seal the premises for investigation after taking a sample of such adulterant or food for analysis."

and takes an emphatic stand that in view of the aforesaid rule, the fifth and sixth respondents are empowered to enter into the premises of the petitioner Oil Mill and take samples and seal the premises for further investigation.

15. On behalf of the respondents 1 to 6, the Learned Additional Government Pleader projects an argument that the fifth respondent/Designated Officer, Tamil Nadu Food Safety and Drugs, Administration Department, had issued a notice to

the petitioner on 31.03.2016 to produce the purchase and sales bills of the raw materials purchased by the petitioner and the same was received by him on 02.04.2016. However, the petitioner/company had not produced the necessary documents to show its bona fide business and in the mean while, it filed the present writ petition on 02.04.2016.

16. The pith and substance of the plea of the respondent Nos.1 to 6 is that the writ petition filed by the petitioner is per se not maintainable in Law and facts. Apart from that, as per Section 38 of the Food Safety and Standards Act, 2006, the Food Safety Officer has the requisite power to take a sample of any food or any substance which appears to him to be intended for sale, or to have been sold for human consumption etc., Further, as per Food Safety and Standards Rules 2.1.3(4), the fifth and sixth respondents are empowered to enter into the premises of the petitioner/Oil Company and take sample and seal the premises for the purpose of carrying out further investigation.

17. By way of reply, the Learned Counsel for the Petitioner submits that the Proprietor of the petitioner's company had addressed a representation to the District Collector, Karur District (3rd respondent) and the District Revenue Officer, Karur District (4th respondent) and the Designated Officer, Tamil Nadu Food Safety and Drugs, Administration Department (5th respondent), praying for removal of seal in respect of Nigetha Trading Company, K.Paramathi, Karur District (owned by him). Further, he had also made a request for examining his purchase receipts, sale receipts etc.,

18. As far as the present case is concerned, the petitioner has filed the present writ petition praying for passing of an order by this Court in forbearing the respondents from in any manner interfering nor disturbing with the running of his business viz., Nigetha Trading Company, which are permitted under Law.

19. At this stage, the Learned Counsel for the respondents invites the attention of this Court by submitting that the respondents are not interfering with the petitioner's/company's functioning nor its running of its business by name Nigetha Trading Company and in fact, the writ is not to be entertained by this Court, in the eye of Law.

20. On a careful consideration of respective contentions and also this Court taking note of the divergent stand taken by the parties concerned and also this Court, by considering the attendant circumstances of the present case, in a conspectus fashion, comes to an inevitable conclusion that Section 38 of the Food Safety and Standards Act, 2006 confers power on the Food Safety Officer to take a sample of any food or any substance which appears to him to be intended for sale or to have been sold for human consumption or of any article of food or substance, which is found by him on or in any such premises etc., In fact, the said Officer has power to seize any article of food which appears to him to be in contravention of Food Safety and Standards Act, 2006 or the regulations made thereunder and keep it in the safe custody of the food business operator such

article of food, after taking a sample etc., Furthermore, Rule 2.1.3(4) speaks of Powers and Duties of the Food Safety Rules, in and by which, where the Food Safety Officer is of the opinion or he has reason to be recorded in writing, in the given situation, it is not possible to comply with the provision of section 38(1)(c) or the proviso to section 38(1) for reasons like non availability of the Food Business Operator, the Food Safety Officers may seize the adulterant or food, which is unsafe or sub-standard or mis-branded or containing extraneous matter, may seal the premises for investigation after taking a sample of such adulterant or food for analysis.

21. Considering the fact that the fifth respondent/Designated Officer, Tamil Nadu Food Safety and Drugs, Administration Department had issued a notice to the petitioner on 31.03.2016 to produced the purchase and sales bills of raw materials purchased and the same was received by the petitioner on 02.04.2016 and till date, the petitioner/company had not produced the relevant documents to establish or to prove their Bona fide Transaction/action, this Court is of the considered view that the present writ petition filed by the writ petitioner is a premature and otiose one. Consequently, the writ petition sans merits.

22. In fine, the writ petition is dismissed, leaving the parties to bear their own costs. It is abundantly made clear by this Court that the dismissal of the writ petition will not preclude the fifth respondent/Designated Officer, Tamil Nadu Food Safety and Drugs, Administration Department, Karur, to look into the representation of the petitioner, dated 02.03.2016 with all seriousness and earnestness and to proceed further in the manner know to Law and in accordance with Law and also as per Rules and Regulations, which are in force from time to time. In case, the fifth respondent/Designated Officer, Tamil Nadu Food Safety and Drugs, Administration Department is in requirement of any bills, receipts or voucher, any other bills or copy of records from the possession of the petitioner/company, in the subject matter in issue, then, it is open to the fifth respondent/Designated Officer, Tamil Nadu Food Safety and Drugs, Administration Department to issue notice/memo to the petitioner seeking particulars of required documents and soon after receipt of the same, it is incumbent on the part of the petitioner/company to supply such documents/records so as to enable the fifth respondent/Designated Officer, Tamil Nadu Food Safety and Drugs, Administration Department to do the needful in the subject matter in issue. Consequently, connected miscellaneous petition is also dismissed.