

S.M.I.L.E. Microfinance Limited vs State Of Tamil Nadu on 22 September, 2022

Author: R.N.Manjula

Bench: R.N.Manjula

CRL.O.P.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.09.2022

CORAM:

THE HON'BLE Ms.JUSTICE R.N.MANJULA

Crl. O.P. No.25190 of 2021
and Crl.M.P. No.13924 of 2021

S.M.I.L.E. Microfinance Limited,
No.14/25, Chakrapani Street,
West Mambalam,
Chennai – 33
represented by its Director
Murali Srinivas

Versus

State of Tamil Nadu
represented by
Food Safety Officer,
Nangavalli Union,
Salem District – 636103.

Criminal Original Petition filed under Section 482 of
of Criminal Procedure to call for the records and quash the
proceedings relating to STC No.953 of 2021, pending before the
learned Judicial Magistrate-II, Mettur.
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<https://www.mhc.tn.gov.in/judis>

For Petitioner : Mr. P.H.Aravind Pandi
Senior Counsel
for Pawan Jhabakah
For Respondent : Mr. A.Damodaran
Additional Public Pro

ORDER

This Criminal Original Petition is filed to call for the records relating to S.T.C. No.953 of 2021 pending on the file of the learned Judicial Magistrate-II, Mettur and quash the same as illegal.

2. The petitioner is the 9th accused in the case in S.T.C. No. 953 of 2021 pending on the file of Judicial Magistrate II, Mettur for the offences under Section 31(1), 61, 63 of Food Safety and Standard Act, 2006. The case has been taken on file on a private complaint given by the respondent / Food Safety officer, Omalur. The petitioner company S.M.I.L.E Microfinance Limited, Omalur, is a non-banking finance company registered under the Company's Act and regulated by Reserve Bank of India. The petitioner company involves itself in providing microfinance services to poor and under-privileged women in rural areas and financial support is being offered to the needy villagers to start small business ventures or to promote <https://www.mhc.tn.gov.in/judis> their self employment. On 17.09.2020, the respondent had conducted an inspection at M/s. S.M.I.L.E. Microfinance Limited, Omalur and found that the petitioner's company has allowed its employees to stay with their respective Branch Officers and prepare their own food without obtaining licence from the concerned department. On these allegations, a private complaint was filed and it has been taken on file in S.T.C. No.953 of 2021 and its Directors have been impleaded as accused A1 to A9.

3. Mr. P.H.Aravind Pandian, learned Senior Counsel appearing for the petitioner company submitted that cooking in the office premises was done primarily to cater the needs of its own employees who are staying in the remote areas in connection with the services of the company and it was not done for sale purposes; a person is liable to be punished under Section 63 of Food Safety and Standard Act, 2006 (hereinafter referred to as 'the Act') only if there is any violation of the mandates of Section 31 (2) of the Act; as per Section 31 (2) of the Act, a license is required to be obtained only for those who carry on business in food; the petitioner is not even a petty manufacturer and the food is being prepared only for self-service of the employees who were staying in the company's premises. <https://www.mhc.tn.gov.in/judis>

4. The respondent has filed a counter affidavit by stating that a Cook by name Tamilselvi was employed and she was paid with a salary of Rs.3,000/- per month and for which vouchers have been executed; though the term 'Food Business' and 'Food Business Operator' have been defined under Section 3(n) of the Act, the above said Act was being carried out by the petitioner's company and hence a private case has been given in accordance with the procedures contemplated under Section 42(5) of the Act.

5. Records would show that the primary business of the petitioner's company is 'Finance'. It is submitted that the petitioners's company offers micro level finance to the farmers in the village in order to support their livelihood. The case of the respondent is that during inspection, he found a

gas cylinder obtained in the name of the company and the employees of the company have given a statement that by making use of cylinder they used to make coffee, tea and distribute the same to their customers. It is further stated that the employees of the company have stated that a Cook was appointed for the purpose of cooking food to the employees on a monthly salary basis.

<https://www.mhc.tn.gov.in/judis>

6. No doubt that a person who starts a business in food, has to get license in terms of Section 31 of the Act. For the sake of convenience, the Section 31 of the Act is extracted hereunder:

"31. Licensing and registration of food business.— (1) No person shall commence or carry on any food business except under a licence.

(2) Nothing contained in sub-section (1) shall apply to a petty manufacturer who himself manufactures or sells any article of food or a petty retailer, hawker, itinerant vendor or a temporary stall holder or small scale or cottage or such other industries relating to food business or tiny food business operator; but they shall register themselves with such authority and in such manner as may be specified by regulations, without prejudice to the availability of safe and wholesome food for human consumption or affecting the interests of the consumers.

(3) Any person desirous to commence or carry on any food business shall make an application for grant of a licence to the Designated Officer in such manner containing such particulars and fees as may be specified by regulations.

(4) The Designated Officer on receipt of an application under sub-

section (3), may either grant the licence or after giving the applicant an opportunity of being heard and for reasons to be recorded in writing, refuse to grant a licence to any applicant, if he is satisfied that it is necessary so to do in the interest of public health and shall make available to the applicant a copy of the order:

Provided that if a licence is not issued within two months from the date of making the application or his application is not rejected, the applicant <https://www.mhc.tn.gov.in/judis> may start his food business after expiry of the said period and in such a case, the Designated Officer shall not refuse to issue a licence but may, if he considers necessary, issue an improvement notice, under section 32 and follow procedures in that regard.

(5) Every licence shall be in such form and subject to such conditions as may be specified by regulations.

(6) A single licence may be issued by the Designated Officer for one or more articles of food and also for different establishments or premises in the same area.

(7) If the articles of food are manufactured, stored, sold or exhibited for sale at different premises situated in more than one area, separate applications shall be made and separate licence shall be issued in respect of such premises not falling within the same area.

(8) An appeal against the order of rejection for the grant of licence shall lie to the Commissioner of Food Safety.

(9) A licence unless suspended or cancelled earlier shall be in force for such period as may be specified by regulations: Provided that if an application for a renewal of licence is made before the expiry of the period of validity of the licence, the licence shall continue to be in force until orders are passed on the application.

(10) The licence shall subsist for the benefit of the deceased's personal representative or any other member of his family, until the expiry of—

(a) the period of three months beginning with his death; or

(b) such longer period as the Designated Officer may allow."

7. In accordance with the above provision, a person shall obtain license if he carries on a business in food. The word employed in Section 31 of the Act is 'Food business'. The definition of 'Food Business' as defined <https://www.mhc.tn.gov.in/judis> under Section 3(n) of the Act is extracted hereunder:

“ 3.Definition:

n) “food business” means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution of food, import and includes food services, catering services, sale of food or food ingredients.

8. The above definition would show that it includes every undertaking whether for a private of public purpose with regard to food or its ingredients either for sale or for profit or otherwise. By relying on the above definition, the respondent department has invoked Section 63 of the Act against the petitioner by alleging that the food business was being conducted in the premises of the petitioner's company without getting any license.

9. Even according to the complaint, it is seen that they mainly rely upon the statements of the officials of the petitioner's company. In a statement given by one Prakash, it is stated that he is working in the petitioner's company and he is staying the company's premises. The employees used to get the ingredients for cooking food and for which they <https://www.mhc.tn.gov.in/judis> have been paid Rs.1,500/- as allowance and if the expenses exceed Rs.1,500/-, the employees have to meet it from their own pocket.

10. The Branch Manager, by name Jeevanandan, has given a statement that he is staying along with the said Prakash in the company's premises and that they would get the ingredients for cooking for themselves. For the said purpose, they have engaged a Cook for whom they have been paying salary. Since they were unable to pay salary to her subsequently, they wanted assistance from the company and the company has undertaken to pay the salary on their behalf to the Cook. The Cook by name Tamilselvi, stated that she has been working as a cook and was getting a monthly salary of Rs.3,000/- per month from the company's branch manager directly.

11. The case has been registered only on the basis of the above statements of the persons as supporting documents. It is alleged by the respondent that they have prompted to conduct inspection only on the basis of a complaint received from one Kasimayan. But in the list of witnesses attached with the compliant, the name of Kasimayan is not found and neither the complaint of Kasimayan has been attached as a document. <https://www.mhc.tn.gov.in/judis> Without substantiating the origin of the very inspection, the respondent officer has proceeded to file a case against the petitioner and others.

12. Section 31(2) of the Act would exempt Petty Manufacturers or Petty retailers, hawker, itinerant vendor or a temporary stall holder or small scale or cottage industries and such other industries from getting the required licence. However it is obligatory on their part to register themselves with the concerned authorities in accordance with the regulations.

13. Under the Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011, a "Petty Food Manufacturer" is identified as under:

"1.2.4. "Petty Food Manufacturer" means any food manufacturer, who

(a) manufacture or sells any article of food himself or a petty retailer, hawker, itinerant vendor or temporary stall holder; or distributes foods including in any religious or social gathering except a caterer; or

(b) such other food business including small scale or cottage or such other industries relating to food business or tiny food <https://www.mhc.tn.gov.in/judis> business with an annual turnover not exceeding Rs.12 lakhs and/or whose

(i) production capacity of food (other than milk and milk products and meat and meat products) does not exceed 100 kg / ltr per day or

(ii) procurement or handling and collection of milk is up to 500 litres of milk per day or

(iii) slaughtering capacity is 2 large animals or 10 small animals or 50 poultry birds per day or less."

14. Unless the respondent could bring the petitioner or his activities of cooking food under the caption “Petti Food Manufacturer”, it cannot be said that the petitioner should obtain license or to register the company with the concerned authority. Though the statement has been obtained from the cook Tamilselvi, her statement does not reveal whether the food cooked by her was being distributed to any other persons other than staff who opted to stay in the company premises. Even according to her statement, she was getting the salary directly from the Branch Manager of the company. The salary seems to have got credited to her bank account during the Covid Pandemic period.

15. The main contention of the respondent is that the Cook was being <https://www.mhc.tn.gov.in/judis> paid from the company’s fund and hence the company has established a canteen like structure and the food is being sold to others as well. Had the food was being sold in the company, it could have been ideal if the respondent officer had got sample food on cost and got a statement in this regard from anyone who was handling the canteen. But the complaint is very bald and it contains just the statements of two of the employees of the petitioner. The Cook has stated nothing except that she has been cooking in the company for the consumption of the employees.

16. It is submitted by the learned counsel for the petitioner that since the company is being located at the outskirts of the city or in rural area, the employees of the company need to sustain themselves by preparing foods by themselves. It is further submitted that a cook was engaged by themselves and at some inevitable point of time, the salary component for the cook being borne by the company and with that alone it cannot be presumed that the company was doing food business.

17. No documents have been produced in order to show that the <https://www.mhc.tn.gov.in/judis> ingredients for cooking were being purchased in a large scale from any shops by cash or on credit basis regularly. So the records produced before this Court would only show that the food was being cooked in the company premises by a Cook to serve foods to the staffs of the company. At times, it may be possible that coffee or tea would have been made to serve the people who visits the company, out of courtesy. The respondent has not obtained any statement from any of alleged consumers who have consumed food in the food stall of the company for cost or free regularly. Neither any of the local people have been shown as witnesses to speak that the petitioner’s company had involved itself in food business. The records would only show that the petitioner’s company has neither involved in food business of a substantial size or it was a Petty Food Manufacturer as defined under Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011.

18. The Commissioner of Food Safety, Chennai seems to have given sanction under Section 42(5) of the Act without sufficient and fundamental materials. However, it is reliably learnt from the learned counsel for the petitioner that in order to avoid risk, the petitioner’s company has also <https://www.mhc.tn.gov.in/judis> registered itself with the respondent department subsequent to the inspection.

19. In the absence of any fundamental materials, if the trial is allowed to be conducted, that can only be a wasteful exercise. Hence, I feel that it is an appropriate case where the powers of this Court

should be exercised under Section 482 Cr.P.C.

20. In view of the above, this Criminal Original Petition is allowed and the proceedings in S.T.C. No.953 of 2021 on the file of the learned Judicial Magistrate II, Mettur is hereby set aside. Consequently, connected miscellaneous petition is closed.

22.09.2022 Index: Yes/No Speaking order / Non-speaking order bkn
<https://www.mhc.tn.gov.in/judis> R.N.MANJULA, J., bkn To:

1. The Judicial Magistrate II, Mettur.
2. The Food Safety Officer, Nangavalli Union,, Salem District – 636103.
3. The Public Prosecutor, Madras High Court.

22.09.2022 <https://www.mhc.tn.gov.in/judis>