

S.Vijayalakshmi vs The Food Safety Officer on 12 November, 2024

Author: G.K.Ilanthiraiyan

Bench: G.K.Ilanthiraiyan

W.P(MD)No.9821 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.11.2024

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P(MD)No.9821 of 2018

and

W.M.P(MD)Nos.9022 & 9023 of 2018

S.Vijayalakshmi

... Petitioner

Vs

1.The Food Safety Officer,
Dindigul (Urban 1 area),
Department of Food Safety and Drug Administration,
Dindigul District.

2.The District Environmental Engineer,
Tamil Nadu Pollution Control Board,
District Collectorate Complex,
Dindigul.

3.The Assistant Engineer (Operations & Maintenance),
Town Bus Stand,
Tamil Nadu Generation and Distribution
Corporation Limited (TANGEDCO),
New Industrial Road,
Dindigul.

... Respondents

(RR 2 & 3 are suo motu impleaded vide
order dated 27.04.2018)

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the impugned order dated 17.03.2018 on the file of the

first respondent and quash the same as illegal, arbitrary and without jurisdiction and further direct the respondents to de-seal the

<https://www.mhc.tn.gov.in/judis>
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W.P(MD)No.

premises of the petitioner in Door No.82/L, in TMS Puram, Nagal Nagar, Dindigul.

For Petitioner : Mr.H.Lakshmi Shankar

For R – 1 : Mrs.M.Aasha
Government Advocate (Crl.Side)

For R – 2 : Mrs.Vijayakumari Natarajan
Standing Counsel

ORDER

This Writ Petition has been filed challenging the order dated 17.03.2018 passed by the first respondent, thereby sealed the premises of the petitioner in Door No.82/L, in Thirumalaisampuram, Nagal Nagar, Dindigul.

2.The petitioner is a tenant of the property in Door No. 82 situated at Thirumalaisampuram from the month of November 2009 by the lease agreement between the petitioner and the landlord. In the said premises, the petitioner is running a small cottage industry of packaging ghee for lamp/lighting purposes in the said premises and also she is residing in one of the portions. While being so, there was a dispute between the landlord and the petitioner and as such, the landlord had taken steps to forcible <https://www.mhc.tn.gov.in/judis> eviction of the petitioner from the premises and as such, the petitioner was constrained to file a suit in O.S.No.474 of 2017 on the file of the Principal District Munsif Court, Dindigul for permanent injunction not to evict the petitioner except under due process of law. Thereafter, a complaint was lodged as against the petitioner's business on the ground that the industry run by the petitioner emanated bad smell. The petitioner is engaging in the business of packaging the lighting ghee for the purpose of pooja. It is non- edible lighting lamp oil. It is not a food product. This product is titled as 'Kubera Krishna Lighting ghee'. It is not sold for human consumption or for cooking. However, it does not come under the food product within the definition of food as defined in the Food Safety and Standards Act, 2006. However, on the complaint, the petitioner was directed to stop the work. The petitioner had submitted a detailed explanation stating that the petitioner is never engaged in the production of any food product. On receipt of the said explanation, the authority concerned conducted an enquiry and no action was taken as against the petitioner and she was permitted to continue with the business. Once again, in the month of January, 2018, the Pollution Control Board passed an order to disconnect the electricity supply and closure of the unit on 21.02.2018 alleging that at the time of inspection, they felt foul smell. Therefore, the <https://www.mhc.tn.gov.in/judis> petitioner filed a Writ Petition in

W.P(MD)No.5310 of 2018 before the Division Bench of this Court and the Division Bench of this Court, by order dated 13.03.2018, disposed of the Writ Petition directing the Pollution Control Board to study the unit and conduct test in respect of the running of the unit in accordance with law and directed the respondents 2 and 3 therein to restore electricity connection to the house portion alone. Thereafter, the first respondent visited the premises and took samples of lighting ghee packets. Though the petitioner explained that the entire product is a lighting ghee, it is non-edible and does not come under the category of food, the first respondent came to the premises of the petitioner and sealed the unit by serving the order, dated 17.03.2018.

3.The learned counsel appearing for the petitioner would submit that it is non-edible product and it is not coming under the meaning of food. It is only lighting ghee used for Dheepam and Pooja purposes in the Temple. Without considering the same, all of a sudden, the entire premises have been sealed including the house portion in which the petitioner resides. It happened only due to the instigation of the landlord since he failed to evict the petitioner forcibly from the premises. Further, the first respondent was served <https://www.mhc.tn.gov.in/judis> with an analysis report stating that the packaged ghee is unsafe for human conception and there is misbranding. The petitioner also produced the package cover in the name of Kubera Krishna Lighting ghee and it is stated that not recommended for cooking.

4.The first respondent filed a counter-affidavit and on the submissions made by Mrs.M.Aasha, learned counsel appearing for the first respondent would reveal that on receipt of the complaint, the first respondent inspected the premises and found that the petitioner was processing the pooja oil and deepam oil from waste ghee and palm oil. Both were heated by using gas fuel in a large vessel and during the heat process, bad odour was emitted, which caused harmful to the health of nearby public. The exhaust fumes which came out during the processing of ghee and while lighting the same in Temples would bring respiratory problems, and affect the lungs of human beings and thereby it is very unsafe for human health. The first respondent also found that 20 aluminium containers each contained 20 liters of ghee and 200 packets each contained 20 ml ghee which packet indicates green symbol in the label of Kubera Krishna Lighting ghee packet. As per the rules and regulations of the Food Safety and Standard Act, 2006, the green <https://www.mhc.tn.gov.in/judis> symbol should be used for edible foods. The green dot symbol which was found on the label of Kubera Krishna Lighting ghee packet indicated as food product to the public. Therefore, the petitioner committed an offence under Sections 51, 52(1), 59(i) and 63 of the Food Safety and Standards Act, 2006. Hence, the first respondent lodged a complaint before the Judicial Magistrate No.II, Dindigul and it has been taken cognizance in C.C.No.445 of 2020 and it is pending for trial.

5.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

6.Admittedly, the petitioner was engaged in the packaging of lighting ghee in the name of Kubera Krishna Lighting ghee. It means it is used for lighting Dheepam and other performances during pooja in the Temple. The label is also very clear that not recommended for cooking. In fact, it is not used for manufacturing of any food items such as prasatham in the Temple. It is used only for lighting Dheepam and other performances during pooja in the Temple. Unfortunately, the first

respondent, on inspection, had taken a sample as if it were a food product and sent <https://www.mhc.tn.gov.in/judis> it for analysis. As per the analysis report, the product which was seized from the petitioner is sub-standard and it tests positive for the presence of palmolein oil. It is less than the minimum prescribed standards for ghee under Regulation 2.1.8(2) of the Food Safety and Standards (Food Products Standards and Food Activities) Regulations, 2011 r/w F.No.A-1(1)/Standards/MMP/2012(Part-1) of FSSAI. Further, it is also misbranded as it is not labelled in accordance with the requirements under Regulations 2.2.1(3), (7), 2.2.2(8), (9) & (10) of the Food Safety and Standards (Packaging and Labeling) Regulations, 2011.

7.Further, on perusal of Form V A issued by the first respondent dated 12.03.2018 mentioned the samples of the product as Kubera Krishna Lighting ghee. It is not recommended for cooking and it is not edible. It is used for lighting Dheepam. Therefore, it does not come under the definition of food and the entire proceedings as against the petitioner are vitiated. That apart, the first respondent sealed the entire premises without considering the portion in which the petitioner resides. In view of the above, the impugned order passed by the first respondent, dated 17.03.2018 cannot be sustained and the same is liable to be quashed. <https://www.mhc.tn.gov.in/judis>

8.Accordingly, the impugned order passed by the first respondent, dated 17.03.2018 is quashed and the Writ Petition is allowed. The first respondent is directed to desal the premises of the petitioner in Door No.82/L situated at Thirumalaisampuram, Nagal Nagar, Dindigul, forthwith. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

12.11.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
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<https://www.mhc.tn.gov.in/judis>

To

1.The Food Safety Officer,
Dindigul (Urban 1 area),

Department of Food Safety and Drug Administration, Dindigul District.

2.The District Environmental Engineer, Tamil Nadu Pollution Control Board, District Collectorate Complex, Dindigul.

3.The Assistant Engineer (Operations & Maintenance), Town Bus Stand, Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO), New Industrial Road, Dindigul.

<https://www.mhc.tn.gov.in/judis> G.K.ILANTHIRAIYAN, J.

ps Order made in 12.11.2024 <https://www.mhc.tn.gov.in/judis>