

R.Rengasamy vs The District Collector on 18 October, 2022

Author: V.Bhavani Subbaroyan

Bench: V.Bhavani Subbaroyan

W.P(MD)No.22109

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.10.2022

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.22109 of 2022

and

W.M.P(MD)No.16268 of 2022

R.Rengasamy

...Petitioner

Vs

1.The District Collector,
Thanjavur District.

2.The District Superintendent of Police,
Thanjavur District.

3.The Zonal Deputy Tahsildar,
Papanasam Taluk,
Thanjavur District.

4.The Revenue Divisional Officer,
Kumbakonam Taluk,
Thanjavur District.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the record relating to impugned order, dated 29.08.2022 in the proceedings in Na.Ka.No.992/2022 A5 of the Zonal Deputy Tahsildar, Papanasam, the third respondent herein "Sanjana Maligai General Store" situated in Rail Road, Ammapettai, Papanasam Taluk, Thanjavur District based on his representation, dated 12.09.2022.

For Petitioner :Mr.T.Mahendran
For R1, R3 & R4 :Mr.C.Satheesh
Government Advocate
For R2 :Mr.B.Thanga Aravindh
Government Advocate

ORDER

The writ petitioner is running a shop in the name and style of 'Sanjana Maligai General Store' at Ammapettai, Papanasam Taluk, Thanjavur District. His shop also registered in the Food Safety and Standards Authority of India (FSSAI). On 20.08.2022, the Police Officials, Ammapettai doing raid in the said shop and seized 5 pockets of HANS- Tobacco and the same was expiry product. The Inspector of Police, Ammapettai Police Station registered a case in Crime No.1128 of 2022 under Section 24(1) of Cigarette and other Tobacco Products Acts 2003. The writ petitioner was implicated in the said case. The petitioner was arrested and released on bail.

2. In such circumstances, on 29.08.2022 the Tahsildar, Papanasam issued a notice in na.Ka.No.992/2022- A5 dated 29.08.2022 to seal the shop based on the FIR dated 20.08.2022 and direct the petitioner to give explanation about the case within 48 hours. The petitioner appeared before Tahsildar, Papanasam on 01.09.2022 and gave detailed reply. After receiving his reply no action was taken by the Tahsildar. On 09.09.2022 <https://www.mhc.tn.gov.in/judis> the Tahsildar, Police Officers and Revenue Divisional Officer seal his shop without his knowledge. The impugned order of the third respondent, dated 29.08.2022 is under challenge in this writ petition.

3.The learned counsel appearing for the writ petitioner submitted that the issue on hand is no longer res-integra and that, it is covered by a catena of the decisions rendered by the Madras High Court. The short argument advanced by the learned counsel appearing for the writ petitioner that chewing tobacco will not fall under the purview of the Food Safety and Standards Act, 2006. The petitioner has referred the order, dated 23.04.2018 made in W.P.(MD)No.5924 of 2018, wherein it was held that since chewing tobacco would not fall under the purview of the said Act, the authorities under the said Act will not be justified in initiating coercive action against the petitioner. The learned Judge allowed the said writ petition by following the earlier order, dated 27.04.2015 made in Crl.O.P.(MD)No.5505 of 2015, wherein, it was held that FSSA cannot be invoked against manufacturing Gutka and Pan Masala since tobacco is covered under COTPA (Cigarettes and other Tobacco Products Act, 2003). Hence, he prayed for allowing the writ petition.

4. The third respondent filed counter affidavit. The learned Government Advocate (Crl.side) appearing for the respondents would <https://www.mhc.tn.gov.in/judis> submit that the petitioner is a habitual offender and he is having 6 previous cases. The contention of notice is mainly aimed to restrict the trade practice of the petitioner during the working days of Ukkadai Appa Devar Higher

Secondary School adjacent to which the petitioner is vigorous in supplying prohibited tobacco products to students. The Tahsildar, Papanasam has considered the welfare of the students studying in Ukkadai Appa Devar Higher Secondary School which is situated within 50 feet of the Sanjana Maligai General Store which indulges in the sale and distribution of prohibited tobacco to students studying in the school and make them to become addict to Psychotropic drugs gradually. The petitioner has not committed the offence not only on this occasion but also on several occasions and for which the cases registered against him and pending before the learned Judicial Magistrate Court, Papanasam. Hence, he prayed for dismissal of the writ petition.

5. It would be useful to extract the operative portion of the order dated 27.04.2015 in Crl.O.P.(MD)NO.5505 of 2015 (Manufacturer, Tejram Dharam Paul, Maurmandi, Bhatinda District, Punjab and another Vs. The Food Safety Inspector, Ambasamudram) in its entirety.

“4.The only submission made by the learned counsel for the petitioners is that the sale of Tobacco would not attract the <https://www.mhc.tn.gov.in/judis> provisions of the enactment. He further submits that as per Rule 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulation Act, 2011, Tobacco shall not be used as ingredients in any food products. As the Tobacco does not come within the purview of the food product, the provisions will not apply. Moreover, when the allegation itself is that it has been sold in packet as Tobacco.

7.Considering the very same issue with respect to the petitioners, the High Court of Kerala was pleased to hold while dealing with the very same provisions in the following manner:

“30. Having found that chewing Tobacco is not a food product as defined under the FSS Act, I am of the view that the writ petitions are only to be allowed as follows: (i) That Tobacco or Tobacco products are not food as defined under Section 3(j) of the FSS Act and it is not a food product as specified in the Regulation 2.3.4 of the Regulations.

(ii) Tobacco and Tobacco products are to be manufactured and sold strictly in accordance with the provisions of the CTP Act and the Rules framed thereunder.

(iii) The Respondents have no right take any action against Tobacco or Tobacco products by virtue of Government Order dated 22.05.2012 (Ext.P9 in W.P.C.No.13580 of 2012).”

8.Thus, it is clear that the petitioners, who are manufacturing Gutkha and Pan Masala cannot be proceeded under the FSSAI. Tobacco is covered under the COTA (Cigarettes and other Tobacco Products Act, 2003) <https://www.mhc.tn.gov.in/judis>

9.In the light of the above, this Court is constrained to quash the proceedings. Accordingly, the proceedings initiated against the petitioners in C.C.No.9 of 2014 on the file of the Judicial Magistrate Court, Ambasamudram, is hereby quashed and the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed. However, it is made clear that the

Order will not stand in the way the Appropriate Authority to take action under COTA (Cigarettes and other Tobacco Products Act, 2003)” This Order was followed in 2017 (4) CTC 149 (Jayavilas Tobacco Traders LLP, Vs. The Designated Officer).

6. The petitioner also field an affidavit of undertaking that henceforth he will not sell any such goods and will abide by any order of the Court.

7. Considering the above referred cases, this Court is inclined to allow the writ petition on condition that the petitioner shall pay a cost of Rs.20,000/- (Rupees Twenty Thousand only) to H.M.MDU East P U Primary School, A/C.No.10111536270, State Bank, IFSC Code No.SBIN0002246 and on further condition that the petitioner shall not sell any banned food and Gutka's & Tobacco items and to fix the board in his shop stating that “as per the undertaking and order of the Madurai Bench of Madras High Court, there will be no sale of Tobacco items”, failing which, his license will <https://www.mhc.tn.gov.in/judis> be cancelled by the concerned authorities.

8. Accordingly, the writ petition is allowed by setting aside the order, dated 29.08.2022 in Na.Ka.No.992/2022-A5 of the Zonal Deputy Tahsildar, Papanasam, the third respondent. No costs. Consequently, connected miscellaneous petitions are closed.

18.10.2022 Index : Yes/No Internet:Yes/No am To

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<https://www.mhc.tn.gov.in/judis> V.BHAVANI SUBBAROYAN,J.

am 18.10.2022 <https://www.mhc.tn.gov.in/judis>