

K.Karupanan vs The District Collector on 14 July, 2022

Author: G.R.Swaminathan

Bench: G.R.Swaminathan

W.P(MD)No.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.07.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.15336 of 2022

and

W.M.P.(MD)Nos.10977 and 10978 of 2022

K.Karupanan

... Petitione

Vs.

1.The District Collector,
Office of the District Collector,
Madurai District.

2.The Designated Officer,
Food Safety Department,
Viswanathapuram Main Road,
Viswanathapuram,
Madurai.

... Responde

Prayer : Writ Petition filed under Article 226 of the Constitution of India
praying this Court to issue a Writ of Certiorari and Mandamus, to call for
records pertaining to the impugned passed by the 2nd respondent in the n
No:1053/A2/2022 dated 23.06.2022 and quash the same and forebear the
respondent in any way interfere in the petitioner's business of hotel.

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

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For Petitioner : Mr.Sricharan Rangarajan,
For Mr.S.Ramsundarvijayaraj

For Respondents : Mr.M.Sarangan,
Addl. Government Pleader.

ORDER

Heard the learned counsel for the writ petitioner and the learned Additional Government Pleader for the respondents. The jurisdictional Food Safety Officer is present to instruct the learned Additional Government Pleader. With the consent of the learned counsel on either side, the writ petition is taken up for final disposal at the admission stage itself.

2.By the impugned order, the petitioner's business premises have been shut down. The learned counsel for the petitioner without going into the factual aspects, focused his attention on the fatal omission vitiating the impugned order. Section 32 of the Food Safety and Standards Act, 2006 is as follows:-

“32. Improvement notices.

(1) If the Designated Officer has reasonable ground for believing that any food business operator has failed to comply with any regulations to which this section applies, he may, by a notice served on <https://www.mhc.tn.gov.in/judis> that food business operator (in this Act referred to as an “improvement notice”)–

(a) state the grounds for believing that the food business operator has failed to comply with the regulations;

(b) specify the matters which constitute the food business operator’s failure so to comply;

(c) specify the measures which, in the opinion of the said Authority, the food business operator must take, in order to secure compliance; and

(d) require the food business operator to take those measures, or measures which are at least equivalent to them, within a reasonable period (not being less than fourteen days) as may be specified in the notice.

(2) If the food business operator fails to comply with an improvement notice, his licence may be suspended.

(3) If the food business operator still fails to comply with the improvement notice, the Designated Officer may, after giving the licensee an opportunity to show cause, cancel the licence granted to him:

Provided that the Designated Officer may suspend any licence forthwith in the interest of public health for reasons to be recorded in writing.

(4) Any person who is aggrieved by –

(a) an improvement notice; or

(b) refusal to issue a certificate as to improvement; or
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(c) cancellation or suspension or revocation of licence under this Act, may appeal to the Commissioner of Food Safety whose decision thereon, shall be final.

(5) The period within which such an appeal may be brought shall be –

(a) fifteen days from the date on which notice of the decision was served on the person desiring to appeal; or

(b) in the case of an appeal under sub-section (1), the said period or the period specified in the improvement notice, whichever expires earlier.

Explanation – For the purpose of this sub-section, the making of the complaint shall be deemed to be the bringing of the appeal.”

3.A reading of the aforesaid provision would show that the authority has to issue an improvement notice calling the food business operator to comply with the regulations. If no compliance is reported, then he has to give show cause notice and only thereafter, cancel the license granted to him. Under Section 36(2) of the Food Safety and Standards Act, 2006, the functions to be performed by the designated officer have been set out. They are as follows:-

“36. Designated Officer.

(1)

(2) There shall be a Designated Officer for each district. (3) The functions to be performed by the Designated Officer shall be as follows, namely :—

(a) to issue or cancel licence of food business operators;

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- (b) to prohibit the sale of any article of food which is in contravention of the provisions of this Act and rules and regulations made thereunder;
- (c) to receive report and samples of article of foods from Food Safety Officer under his jurisdiction and get them analysed;
- (d) to make recommendations to the Commissioner of Food Safety for sanction to launch prosecutions in case of contraventions punishable with imprisonment;
- (e) to sanction or launch prosecutions in cases of contraventions punishable with fine;
- (f) to maintain record of all inspections made by Food Safety Officers and action taken by them in the performance of their duties;
- (g) to get investigated any complaint which may be made in writing in respect of any contravention of the provisions of this Act and the rules and regulations made thereunder;
- (h) to investigate any complaint which may be made in writing against the Food Safety Officer; and
- (i) to perform such other duties as may be entrusted by the Commissioner of Food Safety.”

4. Section 36 cannot be read in isolation. It has to be read along with Section 32. In this case, the improvement notice dated 01.06.2022 issued by the second respondent does not specify the period before which the defects have to be rectified. Without mentioning a specific time for rectification and without giving any prior notice, straightaway the impugned order has been passed prohibiting the sale of food items by the petitioner herein. It cannot be in dispute that the impugned order infringes the fundamental right of the <https://www.mhc.tn.gov.in/judis> petitioner herein to carry on his business under Article 19(1)(g) of the Constitution of India. Therefore without putting the petitioner on notice, the impugned order could not have been passed. Issuance of the improvement notice cannot be construed as a show cause notice.

5. In this view of the matter, the impugned order dated 21.03.2022 is set aside and the writ petition is allowed. It is open to the second respondent to proceed in the matter in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

14.07.2022

Index : Yes / No
Internet : Yes/ No
ias
issue order copy on 15.07.2022

To:

1.The District Collector,
Office of the District Collector,
Madurai District.

2.The Designated Officer,
Food Safety Department,
Viswanathapuram Main Road,
Viswanathapuram,
Madurai.

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G.R.SWAMINATHAN, J.

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