

Mahaveer Tea Company Rep. By Its ... vs The Commissioner on 5 December, 2022

Author: Anita Sumanth

Bench: Anita Sumanth

W.P.Nos.19213 & 1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.12.2022

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THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.Nos.19213 & 15336 of 2017 and
WMP.Nos.20738, 20739 & 16629 of 2017

Mahaveer Tea Company rep. by its Proprietor,
R.Ashok Kumar S/o. M.Rathan Chand,
No.12, Police Manickam Street,
Ayanavaram, Chennai-600 023.

... Petitioner in both WPs

Vs

1.The Commissioner,
Tamil Nadu Food Safety and
Drug Administration Department,
259, Anna Salai, DMS Campus,
5th Floor, Teynampet, Chennai-600 006.

2.The Deputy Director,
Public Health and Preventive Medicine,
Tamil Nadu Food Safety and
Drug Administration Department,
259, Anna Salai, DMS Campus,
5th Floor, Teynampet, Chennai-600 006.

3.The Designated Officer,
Tamil Nadu Food Safety and
Drug Administration Department,
Chennai District, No.33, West Jones Road,
Saidapet, Chennai-600 015.

... R1 to R3 in both WPs

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4.The Director,
Referral Food Laboratory,
CSIR-CFTRI, Mysore-20.

5.Dr.R.Kathiravan
S/o S.Rajagopalan,
Designated Officer,
Tamil Nadu Food Safety and
Drug Administration Department,
Chennai District, No.33, West Jones Road,
Saidapet, Chennai-600 015.

(R5 impleaded as per order dated 21.3.2018 by this Court
in WMP.3433 of 2018 in WP.19213 of 2017)

6.Dr.V.Manimaran,
Deputy Director,
Public Health and Preventive Medicine,
Tamil Nadu Food Safety and
Drug Administration Department,
259, Anna Salai, DMS Campus,
5th Floor, Teynampet, Chennai-600 006.

(R6 impleaded as per order dated 31.7.2018 by this Court
in WMP.14397 of 2018 in WP.19213 of 2017)

... R4 to R6 in WP.19213 of 2017

PRAYER in WP.No.19213 of 2017: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari Mandamus, calling for records relating to the 4th respondent's impugned Reports of Referral Lab vide (i) Certificate No 186F/FSSA/2017 and 180F/FSSA/2017 dated 13.6.2017 communicated by the 3rd respondent through R.No.2226/FSSA/D0/CH/2017 dated 22.06.2017, (ii) Certificate Nos.185F/FSSA/2017; 183F/FSSA/2017; 182F/FSSA/2017 dated 20.6.2017, communicated by the 3rd res

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R.No.2226/FSSA/D0/CH/2017 dated 23.06.2017 & (iii) No.181F/FSSA/2017 dated 22.06.2017 communicated by the 3rd respondent through R.No.2226/FSSA/D0/CH/2017 dated 28.06.2017, quash the same and to consequently direct the respondents 1 to 3 to forthwith remove the se petitioner's business premises viz., Mahaveer Tea Company at No.12, Poli Manickam Street, Ayanavaram, Chennai-600 023 on the basis of the original Analysis Report of the samples for having passed the FSSAI parameters with regard to Tea.

PRAYER in WP.No.15336 of 2017: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Mandamus,

directing the respondents 1 to 3 to forthwith remove the seal of the pet business premises viz., Mahaveer Tea Company at No.12, Police Manickam Street, Ayanavaram, Chennai-600 023 on the basis of the Analysis Report the samples for having passed the FSSAI parameters with regard to Tea.

For Petitioner : Mr.L.Chandrakumar (in both WPs)

For Respondents : Mr.Alagu Goutham, Government Advocate
(for R1 to R3 in both WPs)

Mr.T.Ravikumar, Standing Counsel
(for R4 in WP.No.19213 of 2017)

No Appearance
(for R5 & R6 in WP.No.19213 of 2017)

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W.P.Nos.19213 &

COMMON ORDER

WP.No.19213 of 2017 has been filed by a company that is engaged as the stockist for various brands of tea. The petitioner seeks a writ of Certiorarified Mandamus, calling for and quashing a report of the 4 th respondent/referral lab, dated 13.06.2017, that has proceeded on the basis that the tea stocked is 'sub-standard' as defined under Section 3(1)(zx) of the Food Safety and Standards Act, 2006 (in short 'Act') and does not conform to the standards laid down therein and under the provisions of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011, on the ground that water soluble ash falls below the minimum standard limit.

2.Pending writ petition, this Court had directed R4 to engage in yet another exercise of assessment of the stock. A counter has been filed by R4 on 14.09.2017 wherein they accede to the position that the earlier report had been issued in error and without taking note of an amendment by the Food Safety and Standards Authority of India with effect from 29.12.2016. Paragraphs 6, 8 and 11 of the counter are extracted below:

'6..... Experts found that there is an inadvertent bonafide calculation error made by the analyst. Consequently analyst has taken the corrective action and re-calculated the <https://www.mhc.tn.gov.in/judis> W.P.Nos.19213 & 15336 of 2017 same and submitted the recalculated correct values. Corrective action has been taken in this

regard in the report and same has been amended in the reports and had been submitted. These amended test reports 180F/FSSA/2017, 181F/FSSA/2017, 182F/FSSA/2017, 183F/FSSA/2017, 184F/FSSA/2017, 185F/FSSA/2017 and 186F/FSSA/2017 dated 31.08.2017 will supersede the test reports issued earlier by this laboratory as cited in Para (2). It is humbly requested to this Hon'ble Court that the rest report issued earlier as cited in Para(2) may be treated as cancelled as null and void.

7.

8. In view of non-receipt of official hard copy of the Gazette to the laboratory, inadvertently earlier limit of 150mg/kg has been applied while rendering the opinion on the above said samples. The same has been amended now and copies of reports are enclosed for kind perusal of Hon'ble Court. These amended test reports 180F/FSSA/2017, 181F/FSSA/2017, 182F/FSSA/2017, 183F/FSSA/2017, 184F/FSSA/2017, 185F/FSSA/2017 and 186F/FSSA/2017 dated 31.08.2017 will supersede the test reports issued earlier by this laboratory as cited in Para (2). It is herewith humbly requested that the test report issued earlier as cited in Para(2) may be cancelled as null and void.

9.....

10.....

11.I state that with regard to the averments made in Ground (e) of the writ affidavit, it is submitted that samples are analysed as per the provisions under the Food Safety & Standards Act, 2006 and Rules framed thereof. Subsequently amended test reports have been issued on 31.08.2017 after taking corrective actions against earlier inadvertent bonafide errors.' <https://www.mhc.tn.gov.in/judis> W.P.Nos.19213 & 15336 of 2017

3.With this, the earlier report dated 13.06.2017, is rendered inconsequential. At paragraph 18, the laboratory accepts the errors that have been transpired in the assessment process and has also assured the Court that corrective action has been taken in this regard to ensure such errors will not re-

occur. Paragraph 18 reads as follows:-

'18.It is submitted that this Laboratory accepts the errors that had crept in the earlier test reports filed, which was unintended and therefore sincerely apologise for the inadvertent bonafide error and also had taken corrective measures by amending the Test reports by correcting it and requests this Hon'ble Court to take them on record. Further this Laboratory assures this Hon'ble Court that corrective actions had been taken to render opinion in time and error free manner so that the same may not

reoccur and sincerely apologise for the bonafide error that had crept in the first report given.'

4. In W.P.No.15336 of 2017, the petitioner seeks a mandamus to de-seal the business premises at No.12, Police Manickam Street, Ayanavaram, Chennai-600 023. This prayer is liable to be accepted in view of the order passed in WP.No.19213 of 2017. The premises as aforesaid shall be de-sealed with immediate effect and the contents thereof, being admittedly beyond expiry date shall be destroyed by the authorities.

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5. WP.No.19213 of 2017 is thus allowed. WP.No.15336 of 2017 is disposed in the aforesaid terms. No costs. Connected miscellaneous petitions are closed.

05.12.2022 vs Index : Yes/No Speaking Order To

1.The Commissioner, Tamil Nadu Food Safety and Drug Administration Department, 259, Anna Salai, DMS Campus, 5th Floor, Teynampet, Chennai-600 006.

2.The Deputy Director, Public Health and Preventive Medicine, Tamil Nadu Food Safety and Drug Administration Department, 259, Anna Salai, DMS Campus, 5th Floor, Teynampet, Chennai-600 006.

3.The Designated Officer, Tamil Nadu Food Safety and Drug Administration Department, Chennai District, No.33, West Jones Road, Saidapet, Chennai-600 015.

4.The Director, Referral Food Laboratory, CSIR-CFTRI, Mysore-20.

<https://www.mhc.tn.gov.in/judis> W.P.Nos.19213 & 15336 of 2017 Dr.ANITA SUMANTH,J.

vs

5.Dr.R.Kathiravan S/o S.Rajagopalan, Designated Officer, Tamil Nadu Food Safety and Drug Administration Department, Chennai District, No.33, West Jones Road, Saidapet, Chennai-600 015.

6.Dr.V.Manimaran, Deputy Director, Public Health and Preventive Medicine, Tamil Nadu Food Safety and Drug Administration Department, 259, Anna Salai, DMS Campus, 5th Floor, Teynampet, Chennai-600 006.

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