

M/S Rolling Dough Cafe vs The Commissioner Of Food Safety on 1 August, 2022

Author: Abdul Quddhose

Bench: Abdul Quddhose

W.P.Nos.3526 and 7804 of 2

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2022

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.Nos.3526 and 7804 of 2022
WMP Nos.7825, 3660 and 3661 of 2022

M/s Rolling Dough Cafe,
No.605-638, Avinash Road,
P.N.Palayam,
Coimbatore-641 037,
Represented by its Partner Mahesh Kumar

... Petitioner in W.P.No.3526 of 2

The Lakshmi Mills Company Ltd.,
Represented by N.Singaravel,
Company Secretary,
No.686, Avinashi Road,
Pappanaickenpalayam,
Coimbatore-641 037

.. Petitioner in W.P.No.7804 of

Versus

1. The Commissioner of Food Safety,
5th Floor, 359, Anna Salai,
Chennai-600 006.

2. The Designated Officer,
Food Safety Wing,
219, Race Course Road,
Coimbatore – 641 018.

... Respondents in W.P.No.3526 of

1. The Commissioner of Food Safety,
<https://www.mhc.tn.gov.in/judis>
1/16

5th Floor, 359, Anna Salai,
Chennai-600 006.

2. The Designated Officer,
Food Safety Wing,
219, Race Course Road,
Coimbatore – 641 018.
3. M/s Rolling Dough Cafe,
Represented by its Partner Mahesh Kumar,
1261, 1st Floor, Sirhari Building,
Nava India, Avinashi Road,
Coimbatore – 641 004.

.... Respondents in W.P.No.7804 of 2022:

W.P.No.3526 of 2022:

Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus to call for the records connected with the writ application No.7575/2021/S9/FSD dated 22.10.2021 on the file of the first respondent and to quash the same and direct the respondents to forthwith remove the seal and permit the petitioner to carry on business in the same premises subject to the terms and conditions as this Court may deem fit and proper to impose.

W.P.No.7804 of 2022:

Petition filed under Article 226 of the Constitution of India to issue Writ of Certiorarified Mandamus to call for the records for the impleading notice in R.No.2478/A2/2021/FSSA of the second respondent dated 01.03.2021 and to quash the same and consequently to direct the respondents 1 and 2 to remove the seal of the container shop admeasuring an extent of 320 sq.ft. belonging to the petitioner and located at a larger extent of property of the petitioner, situated in 605-638, Avinashi Road, Coimbatore 641 037.

For Petitioner in : Mr.B.Kumar
W.P.No.3526 of 2022 Senior Counsel for

<https://www.mhc.tn.gov.in/judis>
2/16

W.P.Nos.3526 and 7804

Mr.S.Ramachandran

For Petitioner in : Mr.AR.L.Sundaresan
W.P.No.7804 of 2022 Senior Counsel for
Mr.S.Mukunth

For Respondents in : Mr.Kumaresan
W.P.No.3526 of 2022 Addl.Advocate General
and R.1 & R.2 in Assisted by
W.P.No.7804 of 2022 Mr.T.N.C.Kaushik
AGP

For R.3 in W.P.No.
7804 of 2022 : Mr.S.Ramachandran

COMMON ORDER

W.P.No.3526 of 2022 has been filed challenging the order dated 22.10.2021 passed by the first respondent under Section 34(2) of Food Safety and Standard Act, 2006 prohibiting the functioning/running of M/s Rolling Dough Cafe represented by its partner Mr.Mahesh Kumar, situated at No.605- 638, Avinashi Road, P.N.Palayam, Coimbatore-641037 with immediate effect until further orders.

2. W.P.No.7804 of 2022 has been filed by M/s Lakshmi Mills, who is the landlord for the petitioner in WP No.3526 of 2022, challenging the notice dated 01.03.2022 issued by the second respondent calling upon the petitioner to submit the following particulars:-

<https://www.mhc.tn.gov.in/judis> W.P.Nos.3526 and 7804 of 2022

i) Name and Father's name of the owner/proprietor, age, sex, Temporary and Permanent address.

ii)Registered Name of the Company

iii) Is the Company Registered under the Companies Act?

If yes, furnish registration particulars.

iv) The person if any who has been nominated under rule 2.5 to the incharge under FSS Act and Rules submit form IX.

3. The above notice was sent under Sections 41, 66 and Rule 2.5 of Food Safety and Standard Act, 2006 and Rules 2011.

4. Since the issue pertains to the very same property, which is owned by the petitioner in W.P.No.7804 of 2022 and taken on lease by the petitioner in W.P.No.3526 of 2022, both the writ petitions are disposed of by a common order.

5. The prohibitory order dated 22.10.2021 has been passed by the first respondent in W.P.No.3526 of 2022 under Section 34(2) of the Food, Safety and Standard Act, 2006 (hereinafter referred to as FSS Act, 2006). The said prohibition order has prohibited the functioning/running of M/s Rolling Dough Cafe represented by its partner Mr.Mahesh Kumar, situated at No.605- 638, Avinashi Road, P.N.Palayam, Coimbatore-641037 with immediate effect <https://www.mhc.tn.gov.in/judis> W.P.Nos.3526 and 7804 of 2022 until further orders on the ground that the Food Business Operator (in short 'FBO') (the petitioner) has stored alcohol and mixed the alcohol in the food products manufactured by him without approval from the competent authority. Hence, according to the first respondent in the said writ petition, the petitioner has violated the conditions of licence issued by the licensing authority under the FSS Act, 2006. Further, it is contended by the first respondent that the petitioner sold the said products to school children and college students who were below the age

of 21 years with the knowledge that the products (Dark Chocolate and Whisky Mousse Dessert, Caramel Custard Dessert) are mixed with alcohol as an ingredient in desserts.

6. According to the first respondent, as seen from the impugned order, sample of Dark Chocolate and Whisky Mousse Dessert, Caramel Custard Dessert were sent for chemical analysis. Later, sample of Rare Whisky (Signature), French Brandy (King Louis) were sent for analysis to Food Analysis Laboratory, Madurai. It is also observed in the impugned order that the process, preparation and sale of food mixing alcohol in the name of Dark Chocolate & Whisky Mousse Dessert, Caramel Custard Dessert in the food establishment of the petitioner will lead to public health risk. Therefore, the emergency prohibition notice was issued on 20.10.2021, and thereafter the <https://www.mhc.tn.gov.in/judis> W.P.Nos.3526 and 7804 of 2022 impugned order dated 22.10.2021 came to be passed prohibiting the petitioner from functioning/running M/s Rolling Dough Cafe at the aforementioned address in Coimbatore.

7. The petitioner in W.P.No.3526 of 2022 has challenged the impugned order passed under Section 34(2) of FSS Act, 2006 on the following grounds:-

a) The act of the Designated officer, Food Safety Wing, Coimbatore is against all basic principles of law and natural justice.

b) The Designated Officer has not applied his mind in issuing the prohibitory order.

c) The emergency prohibitory order has been issued without giving the petitioner an opportunity to be heard.

d) The prohibitory order has been issued in haste, even before the test reports actually arrived.

e) No statements were recorded during the seizure of samples and no opportunity was given to put forth an <https://www.mhc.tn.gov.in/judis> W.P.Nos.3526 and 7804 of 2022 explanation.

f) Even though there was a situation to comply with the provision of Section 38(1)(c) and 38(1) of FSS Act, 2006 and also the Food Business Operator was present, the provision of the statute has been infringed and the premises of the restaurant has been sealed.

g) No proper reasons have been accorded to deny the petitioner's right to challenge the food analysis report.

h) Right to challenge has been denied and while that being so, representations to open the restaurant has also been denied, which gravely affects the reputation of M/s Rolling Dough Cafe and thereby causing severe monetary losses.

i) The Emergency Prohibition Notice under Section 34(1) of FSS Act 2006 dated 22.10.2021 is not maintainable both in law and on the facts and circumstances of the case.

j) The letter dated 30.11.2021 sent by the petitioner to the respondent has not been acted upon and continuance of the prohibitory orders as against the shop is against the basic provisions of law.

k) The order passed by the respondent has not followed the dictum of this Court in WP (MD) No.1880 of 2021 and WP <https://www.mhc.tn.gov.in/judis> W.P.Nos.3526 and 7804 of 2022 (MD) No.1621 of 2021 dated 02.08.2021.

l) The respondents have failed to look into the letter given by The Lakshmi Mills Company Limited, Coimbatore dated 04.01.2022 (the petitioner in W.P.No.7804 of 2022) calling upon the respondents to unseal the unit and handover possession as the licence to operate the cafe has expired.

8. The petitioner in W.P.No.7804 of 2022 is the landlord of the property, who has challenged the notice dated 01.03.2022 received by them from the Designated Officer calling for statement of certain particulars which have been referred to supra. They have challenged the impugned notice on the ground that they are only a licensor for the subject property and they are in no way connected/involved with the running of the cafe/restaurant by the petitioner in W.P.No.3526 of 2022 who is the third respondent in W.P.No.7804 of 2022. It is also contended by them that the leave and licence agreement between the petitioner and the third respondent has expired on 09.11.2021. According to the petitioner in W.P.No.7804 of 2022, since the third respondent (M/s Rolling Dough Cafe) is the alleged offender, they cannot be held responsible and therefore, the premises will have to be unsealed and possession handed over to them.

<https://www.mhc.tn.gov.in/judis> W.P.Nos.3526 and 7804 of 2022

9. A counter affidavit has been filed by the respondents denying the allegations of both the petitioners in WP Nos.3526 and 7804 of 2022. They have reiterated the contents of the impugned prohibitory order passed under Section 34(2) of FSS Act. The petitioner in WP No.3526 of 2022 has himself admitted that alcohol was used in preparation of certain food products which were sold by him and according to the respondents, only in public interest, prohibition order was passed under Section 34(2) of FSS Act, 2006. They also deny the allegation that principles of natural justice have been violated as according to the respondents, only after issuance of emergency prohibition notice, the impugned prohibitory order was passed under Section 34(2) of FSS Act, 2006. According to the respondents, only in accordance with the provisions of Section 34(2) of FSS Act, 2006 and after the objective satisfaction, the Commissioner of Food and Safety has issued emergency prohibition order after carefully perusing the materials and documents placed before him and in the interest of public health. According to them, Article 19(6) of the Constitution of India has not been violated by the respondents as the prohibition has been imposed for the operation of the Shop only based on clinching evidence and after recording the statement of the petitioner who has himself admitted that

alcohol was used for the preparation of products which were sold in the said shop.

<https://www.mhc.tn.gov.in/judis> W.P.Nos.3526 and 7804 of 2022

10. Heard Mr.B.Kumar, learned Senior Counsel appearing for the petitioner in W.P.No.3526 of 2022 and Mr.AR.L.Sundaresan, learned Senior Counsel appearing for the petitioner in W.P.No.7804 of 2022 and Mr.Kumaresan, learned Additional Advocate General for respondents 1 and 2 in both the writ petitions and Mr.S.Ramachandran, learned counsel for the third respondent in W.P.No.7804 of 2022.

11. At the outset, the learned Senior Counsel appearing for the petitioner in WP No.3526 of 2022, who is the licensee of the subject premises, would submit that he has received instructions that the licensee is no longer interested in running the shop in the premises owned by the petitioner in WP No.7804 of 2022. The said statement is recorded.

12. The learned Senior Counsel appearing for the petitioner in WP No.7804 of 2022, who is the licensor, would submit that the petitioner, being the licensor, is in no way connected with the alleged commission of the offence. The learned Senior Counsel would submit that the subject property is situated in the heart of Coimbatore commercial area and for the past eight months, it is under lock and seal pursuant to the order passed by the respondent for no fault of the petitioner. The learned Senior Counsel would further submit that the <https://www.mhc.tn.gov.in/judis> W.P.Nos.3526 and 7804 of 2022 material objects/articles which are the basis for passing of the prohibitory order under Section 34(2) of the FSS Act, 2006 have already been seized and possession has been taken over by the respondents. The alcohol bottles and samples containing alcohol have already been seized and the equipments alone used in the manufacture remain in the premises which are inconsequential and not required for the purpose of proving the prosecution's case. Since the licensee the petitioner in W.P.No.3526 of 2022 is willing to hand over the premises to the third respondent (landlord) and that too, when investigation has already been completed and charge sheet has been filed by the investigating office, the necessity to continue keeping the premises under lock and seal will not arise.

13. However, the learned Additional Advocate General appearing for the respondents would contend that even though charge sheet has been filed before the concerned competent court, a need may arise in future for production of certain material objects that may be required which are available in the subject property. According to the learned Additional Advocate General, the objects which are retained in the property are in the nature of utensils and machines used for preparation of food items. The basis for issuing the prohibitory order which is challenged in the writ petition is that the petitioner in W.P.No.3526 of 2022 has stored alcohol and mixed the alcohol in the food <https://www.mhc.tn.gov.in/judis> W.P.Nos.3526 and 7804 of 2022 without approval from the competent authority. Further, it is contended by the respondents under the impugned order that the petitioner sold the said products to school children and college students who were below the age of 21 years with the knowledge that the products (Dark Chocolate and Whisky Mousse Dessert, Caramel Custard Dessert) are mixed with alcohol as an ingredient.

14. Admittedly, the respondents have seized the alcohol that was stored in the petitioner's premises pursuant to the impugned prohibitory order. Admittedly, there is no more alcohol left in the premises. The only articles left in the petitioner's premises are equipments used by the petitioner in WP No.3526 of 2022 for manufacturing the food products. No useful purpose would be served if the lock and seal imposed under the impugned prohibitory order is allowed to remain as it will be detrimental to the interest of landlord, who is the petitioner in WP No.7804 of 2022.

15. Learned Additional Advocate General appearing for the respondents vehemently opposed the removal of lock and seal on the ground that the petitioner in WP No.3526 of 2022 and the petitioner in WP No.7804 of 2022 are having common business interest and the petitioner in WP No.7804 of 2022 is having a share in the business income of the petitioner in WP No.3526 of 2022. <https://www.mhc.tn.gov.in/judis> W.P.Nos.3526 and 7804 of 2022 and therefore, he cannot be allowed to go scot-free. Further, it is contended by the learned Additional Advocate General that even during the course of trial, the remaining equipments which are kept in lock and seal pursuant to the impugned order may be required as material objects for the purpose of proving the prosecution case. He submits that time frame may be given by this Court for completion of the trial.

16. However, this Court is of the considered view that when the petitioner in WP No.7804 of 2022 is not an accused in the prosecution launched by the respondents and that too, it is not in dispute that the petitioner is the landlord of the subject premises, no useful purpose would be served if possession of the subject property is allowed to be retained with the respondents, as it will be detrimental to the interest of the landlord, who, even according to the respondents, is not an accused with regard to the commission of the offence. The petitioner in WP No.3526 of 2022 has also informed this Court that he is no longer interested in continuing with the licence and he is ready to surrender possession forthwith. Even according to the petitioner in WP No.7804 of 2022, the period of licence earlier granted to the petitioner in WP No.3526 of 2022 has already come to an end on 09.11.2021 which is also not disputed by the respondents as seen from the counter affidavit filed by the <https://www.mhc.tn.gov.in/judis> W.P.Nos.3526 and 7804 of 2022 second respondent. The counter affidavit was filed by the second respondent on 08.03.2022, when charge sheet was not filed, but, now, it is brought to the notice of this Court by the learned Additional Advocate General that charge sheet has been filed before the competent court and cognizance has been taken by the concerned court and summons has been issued to the accused for the hearing on 11.08.2022.

17. For the foregoing reasons, both these writ petitions are disposed of by quashing the impugned orders after recording the undertaking given by the petitioner in WP No.3526 of 2022 that he shall hand over possession of the subject property to the petitioner in WP No.7804 of 2022 and consequently this Court directs the respondents to remove the lock and seal of the said premises within a period of one week from the date of receipt of a copy of this order.

18. It is made clear that the petitioner in WP No.3526 of 2022 shall cooperate with the respondents for the completion of the trial, pending on the file of Judicial Magistrate No.VI, Coimbatore and the trial court is directed to complete the trial as expeditiously as possible.

<https://www.mhc.tn.gov.in/judis> W.P.Nos.3526 and 7804 of 2022

19. After removal of the lock and seal, pursuant to the order passed by this Court, the respondents are at liberty to remove the equipments from the premises and keep it under safe custody at the place of their choice.

No costs. Consequently, connected miscellaneous petitions are closed.

01.08.2022 sr Index: Yes/No Speaking Order/Non-Speaking Order ABDUL QUDDHOSE, J.

sr To

1. The Commissioner of Food Safety, 5th Floor, 359, Anna Salai, Chennai-600 006.
2. The Designated Officer, Food Safety Wing, 219, Race Course Road, Coimbatore – 641 018.

W.P.Nos.3526 and 7804 of 2022 <https://www.mhc.tn.gov.in/judis> W.P.Nos.3526 and 7804 of 2022
01.08.2022 <https://www.mhc.tn.gov.in/judis>