

Hashir K.R vs The Commissioner Of Food Safety on 27 October, 2023

Author: Devan Ramachandran

Bench: Devan Ramachandran

IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN
FRIDAY, THE 27TH DAY OF OCTOBER 2023 / 5TH KARTHIKA, 1945
WP(C) NO. 34318 OF 2023

PETITIONER:

HASHIR K.R.
AGED 47 YEARS
S/O.MUHAMMED RASHEED, KADAMBOTT HOUSE, ERIYAD P.O.,
KODUNGALLUR, THRISSUR DISTRICT, PIN - 680666
BY ADVS.
BABU S. NAIR
SMITHA BABU
P.A.RAJESH
PRANAV
SHAMSEERA. C.ASHRAF
SIDDHARTH KARUN PISHARODY
K.P.DHANEESH
NISHA J.KOCHERY

RESPONDENTS:

- 1 THE COMMISSIONER OF FOOD SAFETY
OFFICE OF THE COMMISSIONER OF FOOD SAFETY, THYCAUD
P.O., THIRUVANANTHAPURAM, PIN - 695014
- 2 THE ASSISTANT COMMISSIONER OF FOOD SAFETY
KODAMKULANGARA, EROOR SOUTH, TRIPUNITHURA,
ERNAKULAM DISTRICT, PIN - 682306
SRI SUNIL K KURIAKOSE-GP

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 27.10.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:
WP(C) NO.34318 OF 2023

The petitioner says that even though he had earlier obtained Ext.P1 Licence, under the Food Safety and Standards Act, 2006 ('the Act' for short), it has been refused to be renewed, even though he had preferred Ext.P10 application for the same. He, therefore, prays that Ext.P10 be directed to be taken up and disposed of without any avoidable delay.

2. Smt.Smitha Babu - learned counsel for the petitioner, further explained that, there are some disputes between her client and landlord of the premises; and that, it is therefore, that authorities are refusing to consider Ext.P10. She added that her client has now been asked to obtain a No Objection Certificate (NOC) from the landlord, which is impossible and unnecessary as per the statutory provisions. She, thus reiteratingly prayed that Ext.P10 be directed to be considered by the Competent Authority, without insisting on her client obtaining 'NOC' from the landlord.

3. In response, Sri. Sunil Kumar Kuriakose - learned Government Pleader, submitted that, as is ex facie evident from Ext.P1, it is not a Licence as per the 'Act', but only a Registration. He added that under the strength of this Registration, petitioner can only run a 'petty food business' - WP(C) NO.34318 OF 2023 which is not a restaurant, but that petitioner has, in violation, been running a restaurant and hence, that Ext.P7 proceedings have been initiated against him. He added that, however, if this Court is only inclined to direct Ext.P10 be considered by the Competent Authority, adverting to all relevant aspects, there is no legal impediment in doing so; but prayed that this Court may not make any affirmative declarations.

4. When I evaluate and consider the afore rival submissions, it is manifest that, as per the official respondents, Ext.P1 is only a Registration and not a Licence; and hence that it cannot be renewed. The petitioner, on the other hand, asserts that Ext.P10 is a composite application for renewal of licence, as also for a fresh one; and therefore, that it is up to the Authority to decide in which manner it is to be construed.

5. I think the afore contention of the learned counsel for the petitioner is certainly deserving of being acceded to.

In the afore circumstances, this Writ Petition is ordered with the following directions:

a. The competent among the respondents is directed to take up Ext.P10 application and consider the same -

either as an application for renewal of licence or as an WP(C) NO.34318 OF 2023 application for fresh one.

b. While considering Ext.P10, either as an application for renewal, or for a fresh licence. If there are any deficiencies found with respect to documents or such other requirements, the petitioner will be notified of the same; and he will be then heard within a period of two weeks from the date of receipt of a copy of this judgment.

c. On the hearing being so done and subject to all other requirements being complied with the Competent Authority will issue appropriate orders on Ext.P10, within a period of one week thereafter.

I, however, make it clear that this Court has not entered into the merits of any of the rival contentions and all of them are left open.

Sd/-DEVAN RAMACHANDRAN, JUDGE lsn WP(C) NO.34318 OF 2023 APPENDIX OF WP(C) 34318/2023 PETITIONER EXHIBITS Exhibit P1 TRUE COPY OF THE REGISTRATION CERTIFICATE ISSUED TO THE PETITIONER BY THE 2ND RESPONDENT DATED, 25-8-2022 Exhibit P2 TRUE COPY OF THE MEDICAL FITNESS CERTIFICATE ISSUED TO ONE SANTHA DATED, 15-7-2023 Exhibit P3 TRUE COPY OF THE MEDICAL FITNESS CERTIFICATE ISSUED TO ONE PURUSHOTHAMAN P.R. DATED, 15-7-2023 Exhibit P4 TRUE COPY OF THE MEDICAL FITNESS CERTIFICATE ISSUED TO ONE AJITHKUMAR K.S. DATED, 15-7-2023 Exhibit P5 TRUE COPY OF THE MEDICAL FITNESS CERTIFICATE ISSUED TO ONE ERNASTEENA JOSEPH DATED, 15-7-2023 Exhibit P6 A TRUE COPY OF THE CURRENT LICENCE ISSUED BY THE COCHIN CORPORATION DATED, 2-7-2023 Exhibit P7 A TRUE COPY OF THE ORDER, DIRECTING TO PAY FINE ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER DATED, 12-10-2023 Exhibit P8 TRUE COPY OF THE TEST REPORT OF WATER DATED, 12-10-2023 Exhibit P9 A TRUE COPY OF THE LETTER DATED, 13- 10-2023 ALONG WITH THE E-CHALAN DATED, 13-10-2023 Exhibit P10 A TRUE COPY OF THE APPLICATION FOR RENEWAL OF REGISTRATION/LICENCE SUBMITTED BY THE PETITIONER BEFORE THE 2ND RESPONDENT DATED, 11-10-2023 RESPONDENTS EXHIBITS: NIL TRUE COPY P.A TO JUDGE LSN