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W.P.(MD)NO.18115 OF 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 18.07.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.18115, 18116, 18117

and

20397 of 2021 & 13398 of 2022

and

W.M.P.(MD)Nos.14960, 14962, 14964 & 17046 of 2021

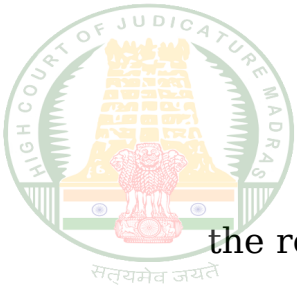
i) W.P.(MD)No.18115 of 2021

M/s. E.S. Mydeen and Co.,
Rep. By its Managing Partner E.S.M.P. Kaleel,
59, Thukkampalayam Street,
Yanaiyadi,
Kumbakonam 612 001. ... Petitioner

Vs.

1. The Designated Officer(Thanjavur District)
Tamil Nadu Food Safety and Drug Administration,
Office of the Deputy Director of Health Services,
Gandhi Road, Thanjavur 613 001,
dofssatnj@gmail.com, +91-0436-2276511.
2. Food Safety Officer(Kumbakonam Municipality),
FSO Code 459,
Tamil Nadu Food Safety and Drug Administration,
Office of the Deputy Director of Health Services,
Gandhi Road, Thanjavur 613 001.
+91-99524-00427 ... Respondents

Prayer: Writ petition filed under Article 226 of the
Constitution of India, to issue a Writ of Certiorari, calling for



the records pertaining to the sale stop order dated 20.09.2021 bearing Na.Ka.No.1663/A2/VuPaThu/2021/JM3 issued by the first respondent and quash the same.

For Petitioner : Mr.V.Raghavachari,
for Mr.M.Karthikeyan.

For Respondents: Mr.R.Baskaran,
Additional Advocate General,
assisted by,
Mr.M.Sarangan,
Additional Government Pleader.

* * *

ii) W.P.(MD)No.18116 of 2021

M/s. E.S. Mydeen and Co.,
Rep. By its Managing Partner E.S.M.P. Kaleel,
59, Thukkampalayam Street,
Yanaiyadi,
Kumbakonam 612 001. ... Petitioner

Vs.

1. The Designated Officer(Thanjavur District)
Tamil Nadu Food Safety and Drug Administration,
Office of the Deputy Director of Health Services,
Gandhi Road, Thanjavur 613 001,
dofssatnj@gmail.com, +91-0436-2276511.
2. Food Safety Officer(Kumbakonam Municipality),
FSO Code 459,
Tamil Nadu Food Safety and Drug Administration,
Office of the Deputy Director of Health Services,
Gandhi Road, Thanjavur 613 001.
+91-99524-00427 ... Respondents



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Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the sale recall order dated 20.09.2021 bearing Na.Ka.No.1663/A2/VuPaThu/2021/JM4 issued by the first respondent and quash the same.

For Petitioner : Mr.V.Raghavachari,
for Mr.M.Karthikeyan.

For Respondents: Mr.R.Baskaran,
Additional Advocate General,
assisted by,
Mr.M.Sarangan,
Additional Government Pleader.

* * *

iii) in W.P.(MD)No.18117 of 2021

M/s. E.S. Mydeen and Co.,

Rep. By its Managing Partner E.S.M.P. Kaleel,

59, Thukkampalayam Street,

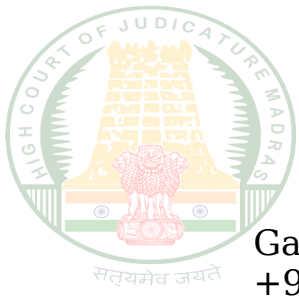
Yanaiyadi,

Kumbakonam 612 001.

... Petitioner

Vs.

1. The Designated Officer(Thanjavur District)
Tamil Nadu Food Safety and Drug Administration,
Office of the Deputy Director of Health Services,
Gandhi Road, Thanjavur 613 001,
dofssatnj@gmail.com, +91-0436-2276511.
2. Food Safety Officer(Kumbakonam Municipality),
FSO Code 459,
Tamil Nadu Food Safety and Drug Administration,
Office of the Deputy Director of Health Services,



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W.P.(MD)NO.18115 OF 2021

Gandhi Road, Thanjavur 613 001.
+91-99524-00427

... Respondents

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Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the seizure memo dated 23.09.2021 issued by the second respondent and quash the same.

For Petitioner : Mr.V.Raghavachari,
for Mr.M.Karthikeyan.

For Respondents: Mr.R.Baskaran,
Additional Advocate General,
assisted by,
Mr.M.Sarangan,
Additional Government Pleader.

* * *

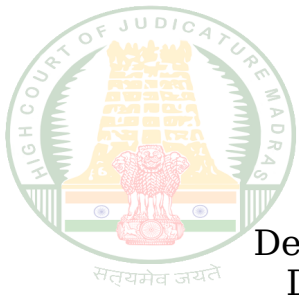
iv) in W.P.(MD)No.20397 of 2021

Tajmahal Tobacco Company (P) Ltd.,
Rep. by its Managing Director Mr.M.N.A.M.Sajiullah,
T.S.No.2253, South Main Street,
Pudukkottai. ...Petitioner

Vs.

1. The Designated Officer,
Office of the Designated Officer,
Department of Food Safety and Drug Administration,
Pudukkottai-622 001.

2. The Commissioner of Food Safety and
Drug Administration,



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Department of Food Safety and
Drug Administration,
(Food Safety Division),
Health & Family Welfare Department,
Government of Tamil Nadu,
No.359, Anna Salai, Teyampet,
Chennai – 600 006.

...Respondents

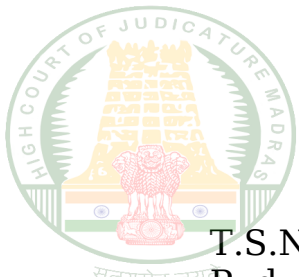
Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to emergency prohibition order No.R. No.513-5(Taj)/A1/FSSA/2021 dated 01.10.2021 and the consequential emergency prohibition notice No.R. No.513-5(Taj)/A1/FSSA/2021 dated 04.10.2021 issued by the first respondent and the subsequent consequential order R.No.7460-05/2021/S9/FSSA dated 08.10.2021 passed by the second respondent and quash the above three orders and notice as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondents: Mr.R.Baskaran,
Additional Advocate General,
assisted by,
Mr.M.Sarangan,
Additional Government Pleader.

* * *

v) in W.P.(MD)No.13398 of 2022
M/s.M.U.Mohamed Sultan and Co.,
Represented by its Managing Partner Mr.M.U. Ubayathullah,



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W.P.(MD)NO.18115 OF 2021

T.S.No.3556/1, West 3rd Street,
Pudukkottai -622 001.

...Petitioner

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Vs.

1. The Designated Officer,
Office of the Designated Officer,
Department of Food Safety and Drug Administration,
Pudukkottai-622 001.

2. The Central Tobacco Research Institute,
CTRI Research Station,
Vedasandur,
Dindigul – 624 710.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to emergency prohibition order No.R. No.513-2(Taj)/A1/FSSA/2021 dated 01.10.2021 and subsequent emergency prohibition notice No.R. No.513-2(Taj)/A1/FSSA/2021 dated 04.10.2021 issued by the first respondent and to quash both as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondents: Mr.R.Baskaran,
Additional Advocate General,
assisted by,
Mr.M.Sarangan,
Additional Government Pleader.

* * *

**COMMON ORDER**

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Heard the learned counsel appearing for the writ petitioners and the learned Additional Advocate General appearing for the respondents.

2.The writ petitioners deal with “unmanufactured tobacco”. The nature of trade involves purchase of tobacco leaves from farmers, spraying of jaggery water on them, cutting them into small pieces and packing. The stand of the department is that the raw tobacco leaves have been subjected to manufacturing process for human consumption. They have therefore passed the impugned orders prohibiting their sale. The godowns where the articles were kept have been sealed after taking of samples. That led to the filing of these writ petitions.

3.The learned counsel appearing for the writ petitioners reiterated all the contentions set out in the affidavits filed in support of the respective petitions and submitted that the impugned orders are patently without jurisdiction and that they deserve to be quashed.



4.Per contra, the learned Additional Advocate General

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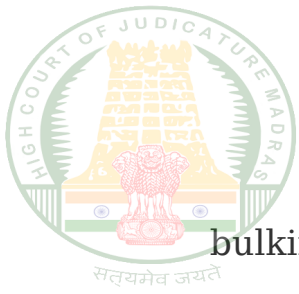
appearing for the respondents submitted that no case has been made out for interference. He pointed out that as a result of the liquoring process, the raw tobacco undergoes a fundamental change and emerges as distinct product which alone makes it edible. He would specifically contend that the petitioners procure the raw tobacco leaves and carry out the liquoring process in their yards. He contested the stand of the petitioners that they are only dealing with unmanufactured tobacco. According to him, by removing the dust and sand and by spraying the tobacco leaves with jaggery water and cutting them into small pieces, there is an element of manufacture. He referred to the definition of the term “food” as set out in Section 3(1)(j) of the Food Safety and Standards Act, 2006. According to him, Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011 categorically mandates that Nicotine shall not be used as an ingredient in any food product. In this case, the test reports have indicated that Nicotine is very much present in the sample and that is why, the officials proceeded to issue the impugned orders and notices. A



conjoint reading of the statutory provisions with the aforesaid regulation and applying the same to the facts of the case would lead one to the conclusion that Nicotine had been mixed with food item by employing the aforesaid methods. The raw tobacco had been made fit for chewing and consumption. Since this is clearly prohibited in law, the impugned notices and orders had been issued by the respondents authorities. He submitted that no case for interference has been made out and he pressed for dismissal of these writ petitions.

5.I carefully considered the rival contentions and went through the materials on record.

6.The first objection raised by the learned Additional Advocate General that the petitioners have subjected the raw tobacco leaves to manufacturing process need not detain me in view of the authoritative decision of the Hon'ble Division Bench of the Madras High Court reported in **(1963) 2 MLJ 71 (Pachiappa Chettiar V. State of Madras)**. The Hon'ble Division Bench had held that the sprinkling of jaggery water, drying tobacco in the shade and subjecting it to the process of

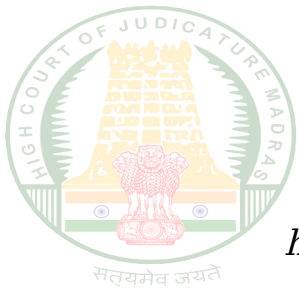


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bulking would not convert raw tobacco into some other product and that cutting the same also will not mean that there is a process of manufacture. In any event, the concept of manufacturing process that may have some relevance under some other statute would not have any relevance or application to the case on hand.

7.The core argument of the respondents is that the Regulation 2.3.4 of Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations 2011 has been violated in the instant case. I have to see whether there is any merit in this contention. Section 3(1)(j) of the Food Safety and Standards Act 2006 is as follows:-

“ Food ” means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food to the extent defined in clause (zk), genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for



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human consumption, plants prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances:

Provided that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, nature, substance or quality;"

Regulation 2.3.4 of Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations 2011 is as follows:-

"2.3.4 : PRODUCT NOT TO CONTAIN ANY SUBSTANCE WHICH MAY BE INJURIOUS TO HEALTH
Tobacco and nicotine shall not be used as ingredients in any food products. "

8.The only question that arises for consideration is whether conjoint reading of the aforesaid provisions as applied to the factual matrix can trigger the jurisdiction of the respondent authorities under the aforesaid Act. I am more than satisfied that the products dealt with by the petitioners herein would fall within the definition of the term "food" under Section 3(1)(j) of the Act. Even a chewing gum is also included within the concept of the said definition. Therefore, the applicability of Section 3(1)(j) of the Act to the item on



hand is not in doubt. If the petitioners have used tobacco or Nicotine as an ingredient in any food product, certainly Regulation 2.3.4 of the Regulations would directly come into play. But in this case, the tobacco leaf itself is a food product.

9.I went through the test reports of the respondents. A mere look at the same would reveal that on account of the sprinkling of jaggery water, there has been no change in the Nicotine content. Jaggery water is sprayed only to ensure that the leaf does not turn brittle. In other words, the Nicotine content in the tobacco remains the same before and after the liquoring process. Nicotine is inherent in the product itself. It is not as if the petitioners have added Nicotine as an ingredient in the food product. The State has not prohibited the cultivation of tobacco as it has done in the case of Ganja. There is even Central Tobacco Research Institute located in Veda sandur, Dindigul which trains the tobacco farmers regarding tobacco cultivation. Applying the ratio laid down by the Hon'ble Division Bench in *Pachiappa Chettiar* case, I hold that the petitioners are dealing only with unmanufactured tobacco and that they have not been mixing the same in any food product.



10. At this stage, the learned Additional Advocate

General would draw my attention to Article 47 of the Constitution of India which reads as follows:-

“47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health. ”

He would contend that consumption of tobacco is causing serious health hazard and that it is injurious to public health and that this Court should not lose sight of Article 21 of the Constitution while considering the case.

11. The above contention of the State would have impressed me if the State has enforced Article 47 in its totality. Unfortunately, that is not the case. The State has monopolized the privilege of selling liquor. The government of Tamil Nadu is raising huge revenue through liquor sale. Tamil Nadu State Marketing Corporation (TASMAC), a wholly



government owned company, has thousands of retail outlets throughout the State. The argument of the State anchored on Article 47 is like devil quoting the scripture or pot calling the kettle black. I am not rejecting this contention on the ground of whataboutery. Nicotine is inherent in tobacco and its content in the tobacco leaf has not gone up on account of spraying of jaggery water. Regulation 2.3.4 only mandates that tobacco and nicotine shall not be used as ingredients in any food products. Since the petitioners are dealing only with unmanufactured tobacco, they have not breached any of the statutory provisions.

12.In this view of the matter, the impugned orders and notices are quashed. The writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

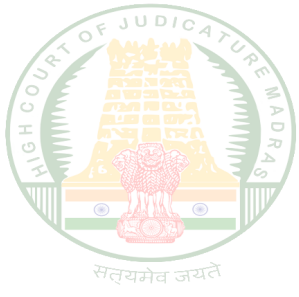
18.07.2022

Index : Yes / No
Internet : Yes/ No

PMU/skm

**WEB COPY To:**

1. The Designated Officer(Thanjavur District)
Tamil Nadu Food Safety and Drug Administration,
Office of the Deputy Director of Health Services,
Gandhi Road, Thanjavur 613 001,
dofssatnj@gmail.com, +91-0436-2276511.
2. Food Safety Officer(Kumbakonam Municipality),
FSO Code 459,
Tamil Nadu Food Safety and Drug Administration,
Office of the Deputy Director of Health Services,
Gandhi Road, Thanjavur 613 001. +91-99524-00427
3. The Designated Officer,
Office of the Designated Officer,
Department of Food Safety and Drug Administration,
Pudukkottai-622 001.
4. The Commissioner of Food Safety and
Drug Administration,
Department of Food Safety and Drug Administration,
(Food Safety Division), Health & Family Welfare
Department,
Government of Tamil Nadu, No.359, Anna Salai, Teyampet,
Chennai – 600 006.
5. The Central Tobacco Research Institute,
CTRI Research Station,
Vedasandur, Dindigul – 624 710.



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W.P.(MD)NO.18115 OF 2021

G.R.SWAMINATHAN ,J.

PMU/skm

W.P.(MD)Nos.18115,18116,18117and
20397 of 2021 & 13398 of 2022

18.07.2022