

WP(MD) No.16192 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Special Original Jurisdiction)

Thursday, the Eighteenth day of July Two Thousand and Twenty Four
PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

WP(MD) No.16192 of 2024

and

WMP(MD) No.14073 of 2024

SAPPHIRE FOODS INDIA LTD.,
REPRESENTED BY ITS AUTHORISED SIGNATORY,
AMRIT BABURAO LALE,
HAVING ITS OFFICE AT,
PLTO NO. 995 J, NEW NO. 172,
2ND AVENUE,
ANNA NAGAR,
CHENNAI-600040

... PETITIONER

Vs

1 THE COMMISSIONER
TAMIL NADU FOOD SAFETY AND DRUG ADMINISTRATION DEPARTMENT,
DMS CAMPUS, 5TH FLOOR,
NO. 359, ANNA SALAI,
TYENAMPET, CHENNAI, TAMIL NADU 600 009

2 THE DESIGNATED OFFICER
TAMIL NADU FOOD SAFETY AND DRUG ADMINISTRATION DEPARTMENT,
AGRICULTURE JOINT DIRECTOR BUILDINGS,
1ST FLOOR, COLLECTORATE CAMPUS,
KORAMPALLAM,
THOOTHUKUDI, TAMIL NADU-628 101

3 THE FOOD SAFETY AUTHORITY OF INDIA,
FDA BHAWAN,
KOTLA MARG,
NEAR BAL BHWAN,
DELHI 110 002

... RESPONDENTS



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Writ Petition filed praying that in the circumstances stated therein and in the affidavit filed therewith the High Court may be pleased to issue a Writ of Certiorari, to call for the impugned order issued by Second Respondent dated 04.07.2024 with Ref. No. 2320/A2/2024 and subsequent summon dated 08.07.2024 and quash the same being illegal and thus render justice.

Prayer in WMP(MD). 14073/ 2024 :

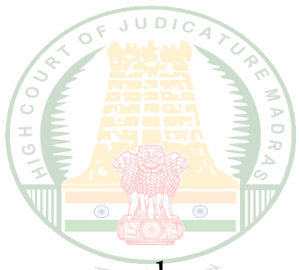
To Stay the operation of the impugned order dated 04.07.2024 passed by the second respondent made in Reference No. 2320/A2/2024 and subsequent summons dated 08.07.2024 issued by the second respondent for petitioners restaurant under brand name KFC located as 53, Gin Factory Road, Thoothukudi and thus render justice.

ORDER : This Writ Petition coming up for orders on this day, upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Mr.SATHISH PARASARAN, Senior Counsel for Mr.VIJAYAN SUBRAMANIAN, Advocate for the petitioner and of Mr.K.BALASUBRAMANIAN, Special Government Pleader on behalf of the Respondents, the court made the following order:-

Mr.K.Balasubramanian, learned Special Government Pleader takes notice for the respondents.

2. Heard the learned Senior counsel appearing for the writ petitioner and the learned Special Government Pleader appearing for the respondents.

3.By the impugned order, the second respondent had suspended the petitioner's license. As rightly pointed out by the learned Senior counsel appearing for the writ petitioner, the order is liable to be faulted on several grounds. Section 32(1) of the Food Safety and Standards Act, 2006 provides for issuance of improvement notices; if the food business operator fails to comply with the improvement notice, his licence



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can be suspended. In this case, the license has been suspended straightaway in the
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first instance.

4. The primary ground set out in the impugned order is that the petitioner has used Magnesium Silicate Synthetic. Mr. Mariyappan, second respondent herein is present in person before this Court. He states that edible oil cannot be reused. He also relied on the provisions of Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations 2011. They are as follows:-

“3. Cooking

...

(e) Re-use of cooking oil should be avoided.

...

(j) In case of reheating of oil use maximum three times to avoid the formation of trans fat. It is ideal to use once if possible.”

5. I am satisfied that clause (e) is in the nature of an advisory. Clause (j) is mandatory. I do not find any merit in the objection raised by the second respondent that reuse of edible oil is prohibited. That apart, the Director, Regulation Division, FSSAI, New Delhi has issued circular dated 14.03.2024 calling upon the authorities concerned not to take punitive action on FBOs for using the processing aids listed in Annexure that are yet to be notified for enforcement.



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6. There is also prima facie merit in the petitioner counsel's contention that Magnesium Silicate Synthetic far being a prohibited agent is a permitted filtration agent.

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7. A learned Judge of this Court vide order dated 30.09.2022 made in W.P.No.26652 of 2022 had specifically prohibited the designated officers from giving any public interview either at the time of or completion of inspection. There is a reason for having issued such direction. The FBO may ultimately turn out to be innocent of any wrong-doing. If the reputation and goodwill of the business is damaged following inspection, the FBO will have difficulty in restoring it. In this case, the second respondent had clearly breached the said direction. Initially, I felt inclined to issue contempt notice against Mr.Mariyappan. But then, the learned Special Government Pleader submitted that the lapse was not intentional and he will get along with the matter on 24.07.2024. In view of the said undertaking, I refrain from initiating contempt action against the second respondent for the present. There shall be an order of interim stay.

sd/-
18/07/2024

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19/07/2024
Sub-Assistant Registrar (A.D.II)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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3 THE FOOD SAFETY AUTHORITY OF INDIA,

FDA BHAWAN,
KOTLA MARG,
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DELHI 110 002

+1 CC to M/s.VIJAYAN SUBRAMANIAN, Advocate (SR-8063[I] dated 18/07/2024)

ORDER

IN

WP(MD) No.16192 of 2024

and

WMP(MD) No.14073 of 2024

Date :18/07/2024

SA/SAR. /19.07.2024/5P/5C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.