

M.Thangamariappan vs The Commissioner on 2 January, 2024

Author: G.R.Swaminathan

Bench: G.R.Swaminathan

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 22.12.2023

Pronounced on : 02.01.2024

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THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)No.30565 of 2023

and

WMP(MD)Nos.26285, 26286 and 26287 of 2023

M.Thangamariappan

... Petitioner

Vs.

1.The Commissioner,
Tamil Nadu Food Safety and
Administration of Medicine,
Department, Chennai.

2.The District Collector,
Madurai District, Madurai.

3.The District Designated Officer,
Food Safety and Administration
of Medicine Department,
Madurai District.

... Respondents

Prayer : Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in Na.K 2693/A2/2023/Vu.Pa.A dated 04.12.2023 was passed by the 3rd

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respondent and quash the same as illegal and consequently directing the 3rd respondent to direct the 3rd respondent to remove the lock and seal made on 04.12.2023 at the petitioners shop namely, Thangam Store, Muthupandi Nagar 2nd Street, Nehru nagar, Madurai 625003.

For Petitioner : Mr.T.Veerakumar

For Respondents : Mr.Veera Kathiravan,

Additional Advocate General assiste

Mr.S.Ra.Ramachandran

Additional Government Pleader

ORDER

Heard both sides.

2.The petitioner is running a vegetable shop at the petition- mentioned shop at the petition-mentioned address. He is having license. Crime No.1801 of 2023 was registered on the file of the jurisdictional police for the offences under Sections 6(b) and 24(1) of Cigarettee and other Tobacco Products Act, 2003, Section 7 and 9(i) of Tamil Nadu Prohibition of Smoking & Spitting Act, 2003 and Section 77 of the Juvenile Justice (Care and Protection of Children) Act, 2015. FIR was registered on 04.12.2023. The case of the police is that the petitioner <https://www.mhc.tn.gov.in/judis> was found selling tobacco products near an educational institution.

Thereafter, the petitioner's license was suspended and the shop was also sealed on account of the passing of the impugned order dated 04.12.2023. Challenging the same, this writ petition came to be filed.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition and called upon this Court to set aside the impugned order and grant the relief as prayed for.

4.On the other hand, the learned Additional Advocate General appearing for the first respondent submitted that the impugned order has been rightly passed and that the first respondent is very much having the jurisdiction to pass the same. He pointed out that sale of gutka and such other products is having a serious bearing on public health. He submitted that such acts constitute a menace to the society. The statutory provisions set out in the Food Safety and Standards Act, 2006 and the rules framed thereunder empower the designated officer to lock and seal the premises where the contraband is kept. He relied on <https://www.mhc.tn.gov.in/judis> the order dated 13.12.2023 made in WP No.34737 of 2023 and 23.12.2020 made in WP(MD)No.14618 of 2020 etc., He called upon this Court to dismiss the writ petitions.

5.I carefully considered the rival contentions and went through the materials on record. I find considerable force in the petitioner's counsel's contention that the sequence of events projected by the respondents raised certain doubts. In the FIR, the claim is that the petitioner was selling Tobacco products near a school and that the petitioner ran away. According to the FIR, the occurrence took place at around 14.30 hours. In the impugned order, there is no reference to the FIR at all. Be that as it may, it is beyond dispute that it was not preceded by any notice.

6.Vide order dated 02.01.2024 in WP(MD)Nos.30871 and 30873 of 2023, I had held that sealing of the premises can be done only if the procedure set out in Section 38(1)(c) of the Food Safety and Standards Act, 2006 could not be fulfilled. In the case on hand, the respondents have not pleaded anywhere that the food business operator was not <https://www.mhc.tn.gov.in/judis> available. I had also invoked the principle of proportionality in the said case. Sealing had been done as early as on 04.12.2023. The impugned order is rather drastic in nature. It is true that under Regulation 2.1.8(4) of Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011, the authority can suspend the petitioner's license. But, in this case, the order of suspension has been passed as a final order. It is evident from the fact that the petitioner has been granted liberty to file an appeal before the Commissioner of Food Safety. The Allahabad High Court in Harishchandra v. State of U.P (2020 AHC 8080) had held that before passing such an order, principles of natural justice will have to be complied with. I can understand if an interim suspension order is passed, notice is given to the licensee and thereafter final order is passed. In this case, straightaway final order under the aforesaid regulation has been passed without notice. This is a clear violation of principles of natural justice. The Allahabad High Court had held that if the suspension order has been passed without notice, it has to be quashed.

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6.Respectfully following the aforesaid decision, the order impugned in this writ petition is quashed. This writ petition is allowed. No costs. Connected miscellaneous petitions are closed.

02.01.2024 Skm To

1.The Commissioner, Tamil Nadu Food Safety and Administration of Medicine, Department, Chennai.

2.The District Collector, Madurai District, Madurai.

3.The District Designated Officer, Food Safety and Administration of Medicine Department, Madurai District.

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