

Muthupandi D vs The Commissioner on 6 October, 2023

Author: B.Pugalendhi

Bench: B.Pugalendhi

W.P(MD)No.24097 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.24097 of 2023 and
WMP(MD) Nos.20269 & 20270 of 2023

Muthupandi D

... Petitioner

Vs

1.The Commissioner,
Tamil Nadu Food Safety and Drug
Administration Department,
DMS Campus,
5th Floor,
No. 359, Annasalai,
Teynampet,
Chennai 600 006.

2.The Designated Officer,
Tamil Nadu Food Safety and Drug
Administration Department,
Food Safety Wing,
Madurai District.

3.The Food Safety Officer,
Madurai Corporation,
Madurai.

1/12

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W.P(MD)No.24097

4.The Inspector of Police,
C-2, Police Station,
(Subramaniapuram Police Station),
Madurai.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling the entire records from the second respondent impugned notice No. R.No. 1895/FSD/2023 dated 26.09.2023 and quash the same.

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| For Petitioner | : Mr.R.Ramasamy |
| For R1 to R3 | : Mr.J.K.Jeyaselan Government Advocate |
| For R4 | : Mr.B.Thanga Aravindh Government Advocate |

ORDER

The petitioner is running a tea shop in Pykara, Madurai. In the year 2022, the Inspector of Police, C2 Police Station has registered a case as against this petitioner for the offence punishable under section 24(1) Cigarette and Tobacco Act. In the said case, he has pleaded guilty and also paid the fine amount before the Judicial Magistrate Court No.IV, Madurai on 26.09.2023. The second respondent has once again found that this petitioner is selling <https://www.mhc.tn.gov.in/judis> tobacco products. Therefore, the second respondent has issued an Emergent Prohibition Notice as per Section 34(1) of Food Safety and Standards Act, 2006 and sealed this petitioner's shop. A notice was also issued by the second respondent on 26.09.2023 in R.No. 1895/FSD/2023 and the same is under challenge in this writ petition.

2.The learned counsel appearing for the petitioner submits that the petitioner is now realized his mistake and has also come forward with an affidavit of undertaking that hereafter he will not sell any tobacco products and other banned products in his tea shop. He has also put a board to that effect in his shop. The learned counsel further submits that the second respondent, who has sealed the petitioner's tea shop is not having any authority to seal the premises, as per section 34 of the Food Safety and Standards Act, 2006 and the authority is the first respondent/the Commissioner, Tamil Nadu Food Safety and Drug Administration Department, Chennai. Therefore, on this ground, the impugned order is liable to be set aside.

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3.The learned Government Advocate appearing for the respondents 1 to 3 submits that the Designated officer is having a power to seal the shop under Section 36 of the Food Safety and Standards Act, 2006. Accordingly, action has been taken as per Section 36 of the Food Safety and Standards Act, 2006 and not under Section 34 of the Food Safety and Standards Act, 2006 as claimed by the petitioner.

4.The learned Government Advocate appearing for the fourth respondent/the Inspector of Police, C-2 Police Station submits that the petitioner is not only involved in this case, but also he has involved in four other similar cases. In those case, he has pleaded guilty and paid the fine amount. According to the learned Government Advocate, he is a habitual offender.

5.This Court considered the rival submissions made and also perused the materials placed on record. <https://www.mhc.tn.gov.in/judis>

6.The petitioner is running a tea shop in Pykara, Madurai and he was issued with an Emergent Prohibition Notice as per Section 34(1) of Food Safety and Standards Act, 2006 and his shop was also sealed and locked by the second respondent. According to the learned counsel for the petitioner the Commissioner, Tamil Nadu Food Safety and Drug Administration Department alone is having power to seal the shop. However, in this case the second respondent /the Designated Officer, the Commissioner, Tamil Nadu Food Safety and Drug Administration Department, Food Safety Wing has sealed the petitioner's shop. On the other hand, the learned Government Advocate has taken a stand that action has been taken as per Section 36 of the Food Safety and Standards Act, 2006 and not under Section 34 of the Food Safety and Standards Act, 2006. For better appreciation, the relevant Sections of the Act are extracted as under:-

34.Emergency prohibition notices and orders.

(1) If the Designated Officer is satisfied that the health <https://www.mhc.tn.gov.in/judis> risk condition exists with respect to any food business, he may, after a notice served on the food business operator (in this Act referred to as an ‘emergency prohibition notice”), apply to the Commissioner of Food Safety for imposing the prohibition.

(2) If the Commissioner of Food Safety is satisfied, on the application of such an officer, that the health risk condition exists with respect to any food business, he shall, by an order, impose the prohibition.

(3) The Designated Officer shall not apply for an emergency prohibition order unless, at least one day before the date of the application, he has served notice on the food business operator of the business of his intention to apply for the order.

(4) As soon as practicable after the making of an emergency prohibition order, the Designated Officer shall require the Food Safety Officer to – (a) serve a copy of the order on the food business operator of the business; or (b) affix a copy of the order at a conspicuous place on such premises used for the purposes of that business; and any person who <https://www.mhc.tn.gov.in/judis> knowingly contravenes such an order shall be guilty of an offence and shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to two lakh rupees.

(5) An emergency prohibition order shall cease to have effect on the issue by the Designated Officer of a certificate to the effect that he is satisfied that the food business operator has taken sufficient measures for justifying the lifting of such order.

(6) The Designated Officer shall issue a certificate under subsection (5) within seven days of an application by the food business operator for such a certificate and on his being 35 not satisfied, the said officer shall give notice to the food business operator within a period of ten days indicating the reasons for such decision.

36. Designated Officer.

(1) The Commissioner of Food Safety shall, by order, appoint the Designated Officer, who shall not be below the rank of a Sub-Divisional Officer, to be in-charge of <https://www.mhc.tn.gov.in/judis> food safety administration in such area as may be specified by regulations.

(2) There shall be a Designated Officer for each district.

(3) The functions to be performed by the Designated Officer shall be as follows, namely :—

(a) to issue or cancel licence of food business operators;

(b) to prohibit the sale of any article of food which is in contravention of the provisions of this Act and rules and regulations made thereunder;

(c) to receive report and samples of article of foods from Food Safety Officer under his jurisdiction and get them analysed;

(d) to make recommendations to the Commissioner of Food Safety for sanction to launch prosecutions in case of contraventions punishable with imprisonment;

(e) to sanction or launch prosecutions in cases of contraventions punishable with fine;

(f) to maintain record of all inspections made by Food Safety Officers and action taken by them in the performance of their duties;

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(g) to get investigated any complaint which may be made in writing in respect of any contravention of the provisions of this Act and the rules and regulations made thereunder;

(h) to investigate any complaint which may be made in writing against the Food Safety Officer; and
36

(i) to perform such other duties as may be entrusted by the Commissioner of Food Safety.

7.The provision under Section 36 of the Food Safety and Standards Act, 2006 empowers the Designated officer to prohibit the sale of any article of food which is in contravention of the provisions of this Act and rules and regulations. However, the provision for sealing of a shop is prescribed under Section 34 of the Food Safety and Standards Act, 2006. The petitioner's shop has been sealed as per Section 34 of the Food Safety and Standards Act, 2006 and this Clause empowers the first respondent/ the Commissioner to take action, which has also been reiterated by this Court in WP(MD) No. 25556 of 2022, dated 05.01.2023.

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8.In this case, the petitioner has involved in five similar cases and now realized and filed an affidavit of undertaking that he will not sell any tobacco products and other banned products in his shop. The learned counsel for the petitioner has also placed a photograph that this petitioner has placed a Board to that effect.

9.In view of the undertaking of affidavit given by this petitioner, this writ petition is allowed. The impugned notice is hereby set aside. The second respondent is directed to de-seal the petitioner's shop immediately. In the event, if the petitioner has repeated to commit this offence, it would be treated as an offence under Contempt of Courts Act,1971 also. No costs. Consequently, connected Miscellaneous Petitions are closed.

06.10.2023 NCC: Yes/No Index:Yes/No Internet:Yes vrn Note: Issue order copy today.

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1.The Commissioner, Tamil Nadu Food Safety and Drug Administration Department, DMS Campus, 5th Floor, No. 359, Annasalai, Teynampet, Chennai 600 006.

2.The Designated Officer, Tamil Nadu Food Safety and Drug Administration Department, Food Safety Wing, Madurai District.

3.The Food Safety Officer, Madurai Corporation, Madurai.

4.The Inspector of Police, C-2, Police Station, (Subramaniapuram Police Station), Madurai.

<https://www.mhc.tn.gov.in/judis> B.PUGALENDHI, J.

vrn Order made in W.P(MD)No.24097 of 2023 and WMP(MD) Nos.20269 & 20270 of 2023
06.10.2023 <https://www.mhc.tn.gov.in/judis>