

# A.Zahir Hussain vs The Food Safety Officer on 24 June, 2021

**Author: N.Anand Venkatesh**

**Bench: N.Anand Venkatesh**

W.P.(MD)No.1  
A.Zahir Hussain v. The Foo

BEFORE THE MADURAI BENCH OF MADRAS HIGH Court

DATED: 24.06.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.(MD)Nos.14961 and 15003 of 2020  
(Through Video Conferencing)

A.Zahir Hussain

... Pet  
W.P.No.

N.Vijay Dinesh

... Pet  
W.P.No.

Vs.

1.The Food Safety Officer,  
Code No.577  
Office of the Designated Officer,  
Tamil Nadu Food Safety and administration wing,  
1st Floor, Office of the deputy Director of Health Services,  
Multipurpose Health Supervisors,  
Training School, Viswanathapuram, Madurai.

2.The Designated Officer,  
Tamil Nadu Food Safety and administration wing,  
1st Floor, Office of the Deputy Director of Health Services,  
Multipurpose Health Supervisors  
Training School, Viswanathapuram  
Madurai 14

... Respo  
both W.Ps

1/9

<https://www.mhc.tn.gov.in/judis/>

W.P.(MD)N  
A.Zahir Hussain v. The F

COMMON PRAYER : Writ Petitions are filed under Article 226 of the Constitution of India for issuance of a Writs of Mandamus to to direct respondents to remove the seal from the business premises of the petitioners at 23, East Veli Street, Madurai and 312 North Masi Street, Madurai respectively.

For Petitioners :Mr.M.Rajaraman  
For Respondents :Mr.R.Suresh Kumar  
Government Advocate

COMMON ORDER

The issue involved in both the writ petitions are common and therefore, they are taken up together, heard and disposed of through this common order.

2. The petitioners have approached this Court seeking for the issue of a writ of mandamus directing the respondents to remove the seal from the business premises.

<https://www.mhc.tn.gov.in/judis/> A.Zahir Hussain v. The Food Safety Officer

3. The case of the petitioners is that they are involved in the business of Lorry service. On 07.10.2020, the respondents made a surprise inspection in the business premises of the petitioners and on conducting a search, banned tobacco product was found in the premises and the same was immediately seized. The respondent also sealed the entire premises.

4. The petitioners made a representation to the respondents to remove the seal. Since the same was not considered, the present writ petition has been filed before this Court seeking for appropriate directions.

5. The learned counsel for the petitioners submitted that there is no requirement to seal the entire premises and the alleged banned tobacco product can be kept in a single room and the same can be sealed and the rest of the portions can be permitted to be utilized by the petitioners.

6. The learned counsel for the petitioners further submitted that in view of the sealing of the entire business premises, the petitioners have lost <https://www.mhc.tn.gov.in/judis/> A.Zahir Hussain v. The Food Safety Officer their livelihood and therefore, have approached this Court seeking for appropriate directions.

7. The learned Government Advocate appearing on behalf of the respondents submitted that the Gutka products were found in the business premises of the petitioners and therefore the respondents have proceeded to seal the premises after taking a sample of the banned product lying inside the premises and sending it for expert opinion.

8. The learned Government Advocate further submitted that there is absolutely no ground to remove the seal from the premises, which was used by the petitioners to store the banned Gutka products.

9. This Court has carefully considered the submissions made on either side and the materials placed before this Court. <https://www.mhc.tn.gov.in/judis/> A.Zahir Hussain v. The Food Safety Officer

10. The attention of this Court was drawn to the earlier orders passed by the Division Bench of this Court in W.A.(MD) No.356/2021 dated 30.03.2021. The learned Single Judge, who had dealt with a similar case had come to the conclusion that the respondents have sufficient power to seal the property under the Food Safety and Standards Act. The learned Single Judge also took into consideration the fact that the investigation is pending and till the same is completed, there is no question of removing the seal from the business premises. It is this order that went on appeal before the Division Bench.

11. The Division Bench disposed of the appeal and the relevant portions of the judgment are extracted hereunder:

“3.The issue before us is rather small and limited ie., whether the lock and seal may be opened or not. We are of the view that the removal of the contraband can be done only after getting appropriate orders from the Court and it would happen after the charge sheet is filed and cognizance being taken. The difficulty for the appellant is that from 07.10.2020, the entire premise has been put under lock and seal and he is not able to <https://www.mhc.tn.gov.in/judis/> A.Zahir Hussain v. The Food Safety Officer carry on his lawful activities.

4.We are also of the view that for the purpose of keeping the contraband seized the entire buildings need not be kept under lock and seal and the contraband can be kept in one room under lock and seal and the lock and seal of the other two rooms can be removed. If the respondents are satisfied that the contraband seized can be kept in one room with lock and seal, they shall accordingly, do so in the presence of the appellant, after getting his signature with respect to the material seized and lock and seal and if he is not agreeable, the order of the learned single Judge would get revived. In that case, it is open to the petitioner to get appropriate orders from the Court, which takes cognizance.”

12. A careful reading of the order passed by the Division Bench shows that the Division Bench has tried to find out a workable solution, wherein the removal of the seal should not cause prejudice to the investigation and at the same time, the owner of the premises is also not prevented from putting to use the entire premises. Therefore, as a via media the Division Bench directed the contraband seized to be kept in one room under lock and seal <https://www.mhc.tn.gov.in/judis/> A.Zahir Hussain v. The Food Safety Officer and permitted the other portions of the premises to be used by the appellant therein. The same course can be adopted in the present writ petitions also.

13. In view of the above discussion, there shall be a direction to the respondents to remove the seal from the premises to keep the contraband seized in one room and put the lock and seal for that room in the presence of the petitioners. While undertaking this process, the respondents shall prepare a Panchanama and also get the signatures of the petitioners. On the completion of this process, the petitioners can be permitted to use the other portions of the premises. Immediately after completion of the investigation and the final report being taken cognizance by the competent criminal Court, the petitioners can approach the concerned Court and seek for appropriate orders to remove the seal from the room in which the contraband was kept by the respondents. This process shall be complied with by the respondents within a period of two weeks from the date of receipt of a copy of this order. <https://www.mhc.tn.gov.in/judis/> A.Zahir Hussain v. The Food Safety Officer

14. The writ petitions are disposed of accordingly. No costs.

Index	: Yes/No
Internet	: Yes
RR	

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned. To

1.The Food Safety Officer, Code No.577 Office of the Designated Officer, Tamil Nadu Food Safety and administration wing, 1st Floor, Office of the deputy Director of Health Services, Multipurpose Health Supervisors, Training School, Viswanathapuram, Madurai.

2.The Designated Officer, Tamil Nadu Food Safety and administration wing, 1st Floor, Office of the Deputy Director of Health Services, Multipurpose Health Supervisors Training School, Viswanathapuram Madurai 14 <https://www.mhc.tn.gov.in/judis/> A.Zahir Hussain v. The Food Safety Officer N.ANAND VENKATESH, J.

RR W.P.(MD)Nos.14961 and 15003 of 2020 24.06.2021 <https://www.mhc.tn.gov.in/judis/>