

Mr.Jaylabudeen vs The Commissioner on 5 April, 2024

Author: S.M.Subramaniam

Bench: S.M.Subramaniam

W.P.No.5354

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.5354 of 2024

and

W.M.P.No.5877 of 2024

Mr.Jaylabudeen

... Petiti

Vs.

1.The Commissioner,
Tamilnadu Food Safety And Drug Administration Department,
DMS Campus, 5th Floor,
No.359 Annasalai, Teynampet, Chennai 600006.

2.The Authorised Officer/The Designated Officer,
Tamilnadu Food Safety And Drug Administration Department,
Food Safety Wing, Ariyalur District.

3.The State Represented by
Inspector Of Police,
Jayankondam Police Station,
Ariyalur District.
Crime No. 41/2024.

... Respon

Prayer :- Writ petition filed under Article 226 of the Constitution
praying for issuance of a writ of Certiorarified Mandamus, calling f
record in relation to order passed Vide Order No. 90/A2/2023-2024 da
06.02.2024 issued by the 2nd respondent and quash the same as illeg
further direct the 2nd respondent to remove the lock and seal made i

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

1/14

W.P.No

petitioner's shop in the name and style of Dheen Grocery Shop situat
Sannathi Street, Jayankondam, Ariyalur District.

For Petitioner : M/s.P.Tamilavel

For Respondents : Mr.K.Tippu Sulthan,
Government Advocate (for R1)
: Mr.S.Vinoth Kumar,
Govt. Advocate (Crl. Side) (

ORDER

The proceedings of the Designated Officer under the Food Safety and Standards Act dated 06.02.2024, is under challenge in the present writ proceedings.

2. The petitioner states that he is running a Grocery shop in the name and style of Dheen Grocery Shop, situated at Sannathi Street, Jayankondam, Ariyalur District. Admittedly a criminal case is registered against the petitioner and other accused in Crime No.41 of 2024, for the alleged offence under Section 272, 273 & 328 of IPC and under Section 59 of Food Safety and Standards Act, 2006, and under Section 7(5) of Cigarette and other Tobacco Products Act, 2003, on 06.02.2024. It is states that 255 Kilo Grams of banned tobacco products were ceased from the shop belonging to the petitioner. The petitioner was arrested and subsequently, released on bail.

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

3. The learned counsel for the petitioner would mainly contend that under Section 38 of the Food Safety and Standards Act, 2006, the Food Safety Officer is empowered to seized the goods but he has no power to seal the entire shop. Thus, the action of the respondent of sealing the entire Gocery shop is in violation of the provisions of the Food Safety and Standards Act, 2006,

4. The learned counsel for the petitioner Mr.P.Tamilvel would further contend that a criminal case has been registered and the banned tobacco products were seized by the authorities. Thus, they can proceed with the prosecution in the manner know to law. Sealing of the entire premises is beyond the scope of the powers conferred under the Act and thus, the writ petition is to be allowed.

5. The learned Government Advocate (criminal side), appearing on behalf of the 3rd respondent, would oppose by stating that the criminal case has not only been registered under the Food Safety and Standards Act, 2006, but also under the Indian Penal Code. The petitioner was found to be a habitual offender in dealing with the prohibited/banned tobacco products and therefore, the authorities have conducted a joint inspection <https://www.mhc.tn.gov.in/judis> and seized the goods and sealed the premises since the shop was being run in the name of Grocery shop but the materials stored were banned tobacco products.

6. It is contended that the banned tobacco products were found to be in commercial quantity, which were seized from the premises of the petitioner and therefore, the writ petition is to be rejected.

7. The learned Government Pleader, appearing on behalf of the respondents 1 and 2, would contend that the petitioner was running the Grocery shop without any proper license from the competent authority. It is not as if only the banned tobacco products are seized, but the authorities found that the shop itself is without license and therefore, they sealed the entire premises considering the fact that large commercial quantity of banned tobacco products are kept in an unauthorised premises. The petitioner is a third time offender and therefore, the authorities found that he is habitually dealing such banned tobacco products in that locality, causing health hazard to the people of that locality.

8. With reference to the arguments of the petitioner that there is no power for the Food Safety Officer to seize and seal the premises, Section <https://www.mhc.tn.gov.in/judis> 38 of the Food Safety and Standards Act, 2006, enumerates that the Food Safety Officer may take a sample, Section 38(1)(b) stipulates that, "Food Safety Officer may seize any article of food which appears to the Food Safety Officer to be in contravention of this Act or the Regulations or order made thereunder".

9. Pertinently, Sub-section (5) to Section 38 stipulates that "The Food Safety Officer shall, in exercising the powers of entry upon, and inspection of any place under this Section, follow, as far as may be, the provisions of the Code of Criminal Procedure, 1973(2 of 1974) relating to the search and inspection of a place by a police officer executing a search warrant issued under that code."

10. In the present case, it is brought to the notice of this Court that to strengthen the enforcement and to eliminate the banned food products from the State of Tamil Nadu, 391 joint inspection teams have been formed, with each team consisting of Food Safety Officer and Police Officer at Corporation/ Municipality / Block wise, from 01.11.2023. During joint inspection, in the interest of public health, the Designated Officer / Food Safety Officer, cancel or suspend FBO's <https://www.mhc.tn.gov.in/judis> License/Registration Certificate as the case may be, who have been found to be selling banned food products in their premises, under regulations 2.1.8(4) of Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011, and also seals the premises/ shops in accordance with the Acts, Rules and Regulations as the Food Business Operators shall not carry on the business without License / Registration Certificate.

11. In the present case, the authorities found that the petitioner was running the shop without any license and therefore, they have sealed the premises. In this context the counter affidavit filed by the Designated Officer reads as under:

"5. I submit that pursuant to the guidelines and instruction given by the Chief Secretary of Tamil Nadu and Health Secretary, Health and Family Welfare, the 2nd and 3rd respondent inspected the petitioner grocery shop on 06.02.2024. During inspection the respondents 2nd and 3rd had found stock of banned tobacco products in petitioner shop and seized those banned tobacco products. In continuation the 2nd respondent has applied his mind and ensured that the food business operator (petitioner) was running his grocery shop without obtaining any valid FSSAI license /registration <https://www.mhc.tn.gov.in/judis> which is mandatory to run the food business under section 31(1), (2) of FSSA, 2006. Section 31(1), (2) reads as,

1. No person shall commence or carry on any food business except under a licence.
2. Nothing contained in sub-section (1) shall apply to a petty manufacturer who himself manufactures or sells any article of food or a petty retailer, hawker, itinerant vendor or a temporary stall holder or small scale or cottage or such other industries relating to food business or tiny food business operator, but they shall register themselves with such authority and in such manner as may be specified by regulations, without prejudice to the availability of safe and wholesome food for human consumption or affecting the interests of the consumers.

Accordingly, it is proved that the petitioner was running his grocery shop without valid FSSAI license/registration certificate. It is a punishable offence under section 63 of FSSA, 2006 (without license),

6. I submit that the responsibilities of Food <https://www.mhc.tn.gov.in/judis> Business Operators have been prescribed in section 26(2)(iv) of FSSA, 2006 read as, "No food business operator shall himself or by any person on his behalf manufacture, store, sell or distribute any article of food, which is for the time being prohibited by the food authority or the Central Government or the State Government in the interest of public health." It is clear that no food business operator indulged in sale of prohibited food articles to the larger public. Whereas, the 2nd and 3rd respondent had seized banned tobacco products from the petitioner shop. Hence the petitioner willfully disobeyed the order of Government of Tamil Nadu and Ban notification issued by the Commissioner of Food Safety.

7. I submit that during the inspection the 2nd respondent had seized banned tobacco products of 255 kgs from petitioner shop which is causing public health issue and affect the school children health also. Hence the Designated Officer had issued the order and sealed the petitioner shop under sec 36[3], 31[2] and regulation 2.1 licensing and registration of food business) of Food Safety and Standards Act rules and regulations 2011.

<https://www.mhc.tn.gov.in/judis> "No person shall commence any food business unless he possess a valid license."

8. I submit that the Hon'ble High Court of Madurai Bench in its order in W.P. (MD) No 14618/2020 dated: 23.12.2020. In that order the Hon'ble High Court affirmed the Designated Officer action taken against the food business operator for storing banned tobacco products in its premises and order issued by the Designated Officer to seal the food business operator premises. Hence it is clear that the 2nd and 3rd respondent has power to seal the petitioner's shop in accordance with law.

9. It is submitted that section 91[1] of the act 2006 provides that the Central Government may by notification in the official gazette make rules for carrying out the provisions of the Act while section 91[2] of the act reads that in particular and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters. [a].....

.....

[n] any other matter which is required to be or may be <https://www.mhc.tn.gov.in/judis> prescribed or in respect of which provision is to be made by rules by the central government.

Therefore, the conjoint reading of the rule91[1] and 91[2] of the rules 2011 ??re particularly when section 91[2] [n] of the Act empowers the Central Government to make rules for any other matter which is required to be in respect of which provision is to be made by rules by the central government

10. It is submitted that the petitioner has stated in his affidavit in para 2nd that the 3rd respondent also registered FIR in Crime No.41 of of 2024 for offences alleged u/s 272,273,328 of IPC 1860, Section 59 of Food Safety and Standards Act and Section 7[5] of cigarette and other Tobacco products act, 2003 on 6.02.2024 The petitioner hereby is a habitual offender where he has already paid compounding penalty twice dated 18/10/2021 and 12/07/2022 which was imposed by the 2nd respondent under food safety and standards act section 69. There is willful disobedience of the petitioner and the contention of prior notice for sealing the premises is not acceptable and ignorance of law is not an excuse. The contention raised by the petitioner is legally not maintainable and unsustainable. <https://www.mhc.tn.gov.in/judis> The continuous selling of banned tobacco products to the public including school children is causing endanger to the public health and when there is no scope for the authority that such offender will not indulge in such selling of the banned tobacco products in future, the shop was sealed and therefore, there is clear justification in sealing such premises against the habitual seller.

Regulation 2.3.4 of food safety and standards Act [prohibition and restrictions on sales] Regulations 2011 was issued by the Food Safety and Standards Authority of India [FSSAI] that Tobacco and nicotine should not be used as ingredients in food products and as such Gutkha is banned.

The Hon'ble Supreme Court of India held in criminal appeal No. 1195/2018 dated: 20.09.2018 in para 7 that, "there is no bar to a trial or conviction of an offender under two different enactments, by the bar is only to the punishment of the offender twice for the offence. Where an act or omission constitutes an offence under two enactments, the offender may be prosecuted and punished under <https://www.mhc.tn.gov.in/judis> either or both enactments but shall not be liable to be punished twice for the same offence. The same set of facts, in conceivable cases, can constitute offences under two different laws. An act or omission can amount to and constitute an offence under the IPC and the same time, an offence under any other Law."

It is clear that there is no bar to prosecute the offender under two enactments. The bar only to the punishment of the offender twice for the offence."

12. In view of the fact that the respondent could able to establish that a criminal case has been registered and during the preliminary investigation, they found that the petitioner is a habitual offender in dealing with banned tobacco products and further, the authorities prima facie found that there is no license to run the shop was validly granted. All such issues require further investigation

and the petitioner is at liberty to submit the available documents, if he could establish his innocence or otherwise.

13. It is not in dispute that the investigations are in progress. Therefore un-sealing the premises, at this point of time, would hamper the <https://www.mhc.tn.gov.in/judis> investigation process, which is not desirable. Thus, this Court is not inclined to entertain the writ petition.

14. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

05.04.2024 Index : Yes Speaking Order Neutral Citation : Yes (sha) To

1.The Commissioner, Tamilnadu Food Safety And Drug Administration Department, DMS Campus, 5th Floor, No.359 Annasalai, Teynampet, Chennai 600006.

2.The Authorised Officer/The Designated Officer, Tamilnadu Food Safety And Drug Administration Department, Food Safety Wing, Ariyalur District.

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<https://www.mhc.tn.gov.in/judis> S.M.SUBRAMANIAM. J., (sha) and 05.04.2024
<https://www.mhc.tn.gov.in/judis>