

Rajasekar 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

CORAM

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

WP(MD)No.29774 of 2023

and

WMP(MD)No.25693 of 2023

Rajasekar

... Petitioner

Vs.

1.The Commissioner,
Tamil Nadu Food Safety and Drug
Administration, Chennai – 6.

2.The District Collector,
Madurai District, Madurai.

3.The Designated Officer,
Food Safety Department,
Madurai District.

4.The Commissioner,
Madurai City, Madurai.

5.The Commissioner,
Madurai Corporation,
Madurai District.

6.The Inspector of Police,
Karimedu Police Station, Madurai City.

... Respondents

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

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Prayer : Writ Petition filed under Article 226 of the Constitution of I

praying to issue a Writ of Certiorarified Mandamus to call for the record pertaining to the impugned order passed by the third respondent in his proceedings Na.Ka.No.2696/A2/2023/U.Pa.A dated 06.12.2023 and quash the same as illegal and consequently direct the respondents 2 to 6 to desal petitioner's V.V.Cooldrinks Shop at Eethka Building Complex, Theni Main Road, Arasaradi, Madurai, based on the petitioner's representation dated 09.12.2023.

For Petitioner : Ms.A.Banumathi

For Respondents : Mr.C.Satheesh, Government Advocate
for R1 to R3

Mr.A.Albert James,
Government Advocate (crl.side) for R4

Mr.A.Nagendran for R5

ORDER

Heard both sides.

2.According to the respondents, the petitioner had kept banned Tobacco products in the shop for the purpose of sale. In this regard, Crime No.1008 of 2023 was registered on the file of the sixth respondent under relevant provisions of the Cigarette and Other Tobacco Products <https://www.mhc.tn.gov.in/judis> Act, 2003. By the impugned order, the Designated Officer, Food Safety Wing, Madurai District had suspended the petitioner's food license and also sealed the petitioner's shop. 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 and regulations framed thereunder empower the designated officer to lock and seal the premises where the contraband is <https://www.mhc.tn.gov.in/judis> kept. He relied on 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. 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 available. I had also invoked the principle of proportionality in the said case. Sealing had been done as early as on 06.12.2023. More than a month has elapsed. The petitioner's shop cannot be kept closed indefinitely. It has a bearing on his right to livelihood.

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

7.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 Index : Yes / No Internet : Yes / No Skm Issue order copy on 10.01.2024
<https://www.mhc.tn.gov.in/judis> To

1.The Commissioner, Tamil Nadu Food Safety and Drug Administration, Chennai – 6.

2.The District Collector, Madurai District, Madurai.

3.The Designated Officer, Food Safety Department, Madurai District.

4.The Commissioner, Madurai City, Madurai.

5.The Commissioner, Madurai Corporation, Madurai District.

6.The Inspector of Police, Karimedu Police Station, Madurai City.

<https://www.mhc.tn.gov.in/judis> G.R.SWAMINATHAN, J.

SKM and 02.01.2024 <https://www.mhc.tn.gov.in/judis>