

# Kamalakannan vs The Commissioner on 5 January, 2023

**Author: G.R.Swaminathan**

**Bench: G.R.Swaminathan**

W.P(MD)No

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.25556 of 2022

Kamalakannan

... Petitioner

versus

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

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

3.Food Safety Officer,  
Madurai Corporation,  
Madurai.

4.The Inspector of Police,  
B-6, Jaihinthpuram Police Station,  
Madurai.

... Responden

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Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking for the issuance of Writ of Certiorari Mandamus, calling for the records pertaining to the impugned order passed by the second respondent in R.No.1670/FSD/2022 dated 11.10.2022 and quash the same and direct the respondents to de-seal the petitioner's tea stall namely Sakthi situated at Visalabagam 1st Street, Jaihindpuram, Madurai.

For Petitioner : Mr.M.Saravanan

For R1 & R2 : Mr.G.Suriyananth  
Additional Government Pleader

For R3 : Mr.S.Vinayak

For R4 : Mr.B.Thanga Aravindh  
Government Advocate (crl.sid)

ORDER

Heard the learned counsel on either side.

2. The petitioner is running a Coffee Vending Shop at Jaihindpuram, Madurai. It came under adverse notice of the second respondent as the petitioner was found selling Gutka. The Coffee bar was sealed on 17.10.2022. Seeking de-sealing of the premises, the present writ petition has been filed.

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

3.The fourth respondent has filed counter affidavit. The learned Additional Government Pleader as well as the learned Government Advocate reiterated the averments set out therein.

4.It is seen that the petitioner was shown as an accused in as many as 8 FIRs registered under Cigarette and Other Tobacco Products Act(COTPA). The learned Government Counsel submitted that the petitioner does not deserve any indulgence.

5.Though the antecedents of the petitioner are fairly bad, still relief can be granted to him because of certain reasons. Section 34 of the Food Safety and Standards Act, 2006, provides for sealing the premises of the food business operator under certain circumstances. Section 34 of the said Act reads as follows:

"34. Emergency prohibition notices and orders.-

(1) If the Designated Officer is satisfied that the health 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 <https://www.mhc.tn.gov.in/judis> 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 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 <https://www.mhc.tn.gov.in/judis> 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 sub-section (5) within seven days of an application by the food business operator for such a certificate and on his being 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."

6.It can be seen there from that the Designated Officer can only serve emergency prohibition notice on the food business operator and then apply to the Commissioner of Food Safety, who alone can pass an order for sealing the premises. In this case, the Commissioner has passed such an order on 19.10.2022, but the premises came to be sealed on 17.10.2022 itself. This was clearly illegal. The Designated Officer does not have the jurisdiction to seal the premises on his own. However, the learned counsel for the petitioner, on instructions, states that he will not claim any damages on this account. This undertaking given by the petitioner that he will treat the issue as closed, is placed on record. <https://www.mhc.tn.gov.in/judis>

7.The learned Government Counsel produced a copy of the order dated 19.10.2022 passed by the Commissioner of Food Safety for sealing the premises. But this order was never communicated to the petitioner. An order that has not been communicated to the individual, cannot have any legal consequence. More than anything else, similarly placed individuals were allowed to reopen their business premises based on their undertaking that they will resist from selling Gutka and other banned substances. The petitioner should not be treated otherwise. The petitioner has also filed an undertaking affidavit before this Court. The petitioner is permitted to file a similar affidavit before the second respondent. The second respondent is directed to de-seal the premises immediately and without any delay.

8.This Writ Petition is disposed of with the aforesaid directions. No costs.

05.01.2023 NCC : Yes / No Index : Yes / No. Internet: Yes / No. Note: Issue order copy on 06.01.2023 rmk To <https://www.mhc.tn.gov.in/judis>

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