

N.Rajan vs The Designated Officer on 19 January, 2024

Author: B.Pugalendhi

Bench: B.Pugalendhi

W.P(MD)No.31324 of

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.31324 of 2023
WMP(MD) Nos.26871 & 26872 of 2023

N.Rajan

... Petitioner

Vs

1.The Designated Officer,
Tamil Nadu Food Safety Wing,
Kanyakumari District.

2.The Food Safety Officer,
Agateeshwaram Block,
Kanyakumari District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the first respondee pertaining to its impugned proceedings in Na.Ka.No.2530/A2/2023, dated 22.12.2023 and to quash the same and consequently direct the respondent to de-seal the premises at Ottayalvilai, Agateeswaram Block, Kanyakumari District, so as to enable the petitioner to continue his business.

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W.P(MD)No.31324 of

For Petitioner : Mr.S.C.Herold Singh
For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

ORDER

The petitioner is running a petty shop in Ottayalvilai, Agateeswaram Block, Kanyakumari. In the month of November 2023, a case has been registered in Cr.No.302/2023, for the offences punishable under Section 6(a) r/w 24/(1) Cigarette and Tobacco Act, 2003 as against this petitioner. Subsequently, the respondent by his proceedings in Na.Ka.No.2530/A2/2023, dated 22.12.2023 has sealed the petitioner's shop. Challenging the same, the petitioner is before this Court.

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 petty shop. Therefore, he may be permitted to continue to run his shop.

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3.The learned Additional Government Pleader appearing for the respondents 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.

4.This Court considered the rival submissions made and also perused the materials placed on record.

5.The petitioner is running a petty shop in Ottayalvilai, Agateeswaram Block, Kanyakumari and by proceedings in Na.Ka.No.2530/A2/2023, dated 22.12.2023, the petitioner's shop was sealed and locked by the second respondent. The relevant provisions are extracted as under:-

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 <https://www.mhc.tn.gov.in/judis> 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 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 <https://www.mhc.tn.gov.in/judis> 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 food safety administration in such area as may be specified by regulations.

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

(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 <https://www.mhc.tn.gov.in/judis> made thereunder;

(h) to investigate any complaint which may be made in writing against the Food Safety Officer; and
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(i) to perform such other duties as may be entrusted by the Commissioner of Food Safety.

6.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.

7.In this case, the petitioner has realized his mistake and filed an affidavit of undertaking that he will not sell any tobacco <https://www.mhc.tn.gov.in/judis> products and other banned products in his shop in future.

8.In view of the undertaking of affidavit given by this petitioner, this writ petition is allowed. The impugned order 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.

19.01.2024 NCC: Yes/No Index:Yes/No Internet:Yes vrn <https://www.mhc.tn.gov.in/judis> To

1.The Designated Officer, Tamil Nadu Food Safety Wing, Kanyakumari District.

2.The Food Safety Officer, Agateeshwaram Block, Kanyakumari District.

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

vrn Order made in WMP(MD) Nos.26871 & 26872 of 2023 19.01.2024
<https://www.mhc.tn.gov.in/judis>