

V.Thajudeen vs The Commissioner on 5 March, 2024

Author: B.Pugalendhi

Bench: B.Pugalendhi

W.P(MD)No.4627

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.4627 of 2024

V.Thajudeen

... Petitione

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 Food Safety Officer,
Pudukkottai District.

3. The Inspector of Police,
Keeranur Police Station,
Pudukkottai District.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, to direct the 2nd respondent to de-seal the petitioner's petty shop at Palliv Street, Keeranur, Kulathur Taluk, Pudukkottai District.

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

W.P(MD)No.4

For Petitioner : Mr.P.Ganapathi Subramanian
For R1 and R2 : Mr.G.V.Vairam Santhosh,
Additional Government Pleader

ORDER

The petitioner is running a petty shop at Pallivasal Street, Keeranur. On 05.02.2024, at about 3.15 p.m. the 3rd respondent Police visited the petitioner's shop to conduct a search and seized the tobacco product, for which, a case in Crime No.30 of 2024 has been registered as against the petitioner for the offence punishable under Section 328 of IPC and Sections 6(a) and 24(1) of the Cigarettes and other Tobacco Products Act, 2003 and Section 77 of the Juvenile Justice (Care and Protection of Children) Act, 2015. After the registration of the said case, the 2nd respondent, on 07.02.2024, sealed the petitioner's petty shop. Therefore, he submitted a representation dated 22.02.2024 to the respondents 2 and 3 requesting them to de-seal his petty shop, however, there was no response. Hence, the petitioner has filed this writ petition for a Mandamus, directing the 2nd respondent to de-seal his petty shop at <https://www.mhc.tn.gov.in/judis> Pallivasal Street, Keeranur, Kulathur Taluk, Pudukkottai District.

2. The learned counsel appearing for the petitioner submits that the petitioner has 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. The learned counsel further submits that no prior notice has been issued before sealing the petitioner's shop. He further submits that the second respondent, who has sealed the petitioner's petty shop is not having any authority to seal the premises, as per section 34 of the Food Safety and Standards Act, 2006 and the authority is the first respondent/the Commissioner, Tamil Nadu Food Safety and Drug Administration Department, Chennai.

3. The learned Special Government Pleader appearing for the respondents 1 and 2 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 <https://www.mhc.tn.gov.in/judis> Section 36 of the Food Safety and Standards Act, 2006 and not under Section 34 of the Food Safety and Standards Act, 2006 as claimed by the petitioner.

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

5. The petitioner is running a petty shop at Pallivasal Street, Keeranur, Kulathur Taluk, Pudukkottai District and on 07.02.2024, his shop was also sealed by the second respondent. According to the learned counsel for the petitioner, the Commissioner, Tamil Nadu Food Safety and Drug Administration Department alone is having a power to seal the shop. However, in this case, the second respondent/the Food Safety Officer, Pudukkottai District has sealed the petitioner's shop. On the other hand, the learned Additional Government Pleader has taken a stand that action has been taken as per Section 36 of the Food Safety and Standards Act, 2006 and not under Section 34 of the Food Safety and Standards Act, 2006. For <https://www.mhc.tn.gov.in/judis> better appreciation, the relevant Sections of the Act 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 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 <https://www.mhc.tn.gov.in/judis> 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 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 <https://www.mhc.tn.gov.in/judis> food safety administration in such area as may be specified by regulations.

(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 <https://www.mhc.tn.gov.in/judis> provisions of this Act and the rules and regulations made thereunder;

(h) to investigate any complaint which may be made in writing against the Food Safety Officer; and 36

(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. The petitioner has now realized his mistake and filed an <https://www.mhc.tn.gov.in/judis> affidavit of undertaking that he will not sell any tobacco products and other banned products in his shop.

8. In view of the undertaking of affidavit filed by this petitioner, this writ petition is disposed of with a direction to the second respondent 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 Petition is closed.

05.03.2024 NCC: Yes/No Index: Yes/No Internet: Yes [oggy https://www.mhc.tn.gov.in/judis](https://www.mhc.tn.gov.in/judis) To

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 Food Safety Officer, Pudukkottai District.

3. The Inspector of Police, Keeranur Police Station, Pudukkottai District.

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

ogy 05.03.2024 <https://www.mhc.tn.gov.in/judis>