



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.1419 of 2021

S.Karthik Pandi

... Petitioner

-Vs-

1.The Food Safety Officer,
Vishwanathapuram,
Madurai-625 014,
Madurai District.

2.The Designated Officer,
(TNFS & DA Department)
O/o. The Deputy Director of Health Services,
Multipurpose Health Supervisors(F),
Training School,Viswanathapuram,
Madurai District.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, directing the first respondent to remove the lock and seal and permit the petitioner to open Hari Prasath Store bearing license No.12419012000646 along with the godown in Narasingam, Othakadai at Madurai within the time stipulated by this Court.

For Petitioner	:	Mr.S.Louis
For Respondents	:	Mr.C.Ramar
		Additional Government Pleader

ORDER

Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

2.The petitioner is running a grocery shop in the name and style of Hari Prasath Store in Narasingam, Othakadai at Madurai. The petitioner has taken license from the department also. On 05.10.2020, the petitioner's shop and godown was inspected by the officials from the respondents department. Certain food items were seized from the petitioner's godown on the ground that their storage, distribution and sell have been banned. The petitioner's shop and godown were also sealed after the samples were taken. The petitioner has moved this Court for directing the first respondent to remove the lock and seal and permit him to open the store and the godown.

3.The primary contention of the learned counsel for the petitioner is that the respondents have no jurisdiction to lock and



seal the petitioner's premises. This Court issued notice to the respondents and called upon them to answer the contentions raised by the petitioner. The respondents have filed a counter.

4.The learned Additional Government Pleader pointed out that in the petitioner's godown, the inspecting officials found banned tobacco products weighing 112.804 kgs. They were handed over to the Food Safety Officer and sent for analysis. The results of the analysis have now come and they read as follows:-

Sample No	Nature of Sample	Result of Analysis
308/2020-21	Coollip filter Tobacco	Unsafe and Prohibited
209/2020-21	Golden Kali Tobacco	Unsafe and Prohibited
210/2020-21	Ganesh 701 Tobacco	Unsafe and Prohibited
311/2020-21	Vimal Pan Masala	Substandard unsafe and Prohibited

5.The contention of the petitioner's counsel that the respondents have no jurisdiction to lock and seal the petitioner's premises is incorrect. Rule 2.1.3(4) of Food Safety and Standards Rules, 2011 reads as follows:

4.Powers and Duties: - (i)Without prejudice to the powers conferred on him under section 38 of the Act, where the Food Safety Officer is of the opinion or he has reason(s) to be recorded in writing that in the given situation it is not possible to comply with the provision of section 38 (I) (e) or the proviso to section 38(1) for reasons like non availability of the Food Business Operator, the Food Safety Officer may seize the adulterant or food which is unsafe or sub-standard or mis-branded or containing extraneous matter, may seal the premises for investigation after taking a sample of such adulterant or food for analysis.

(ii) Where the Food Safety Officer is of the opinion or he has reason(s) to believe that any person engaged in selling, handling or manufacturing any article of food is suffering from or harbouring the germs of any infectious disease, he may cause such person to be examined by a qualified medical professional duly authorized by the Designated Officer.

Provided that where such person is a female, she shall be examined by a qualified lady medical professional duly authorized by the Designated Officer.

If on such examination the qualified medical professional certifies that such person is suffering from any such disease, the Food Safety Officer may by order in writing under intimation to the Designated Officer direct such person not to take part in selling of manufacturing any article of food.

(iii) Furthermore, it shall be the duty of the Food Safety



Officer

(a) To inspect, as frequently as may be prescribed by the Designated Officer, all food establishments licensed for manufacturing, handling, packing or selling of an article of food within the area assigned to him;

(b) To satisfy himself that the conditions of licenses are being complied with by each of the Food Business Operators carrying on business within the area assigned to him and report to the Designated Officer;

(c) To procure and send for analysis if necessary, samples of any article of food which he has reason to believe or on the basis of information received including from a purchaser are being manufactured, stocked or sold or exhibited for sale in contravention of the provisions of the Act, Or rules and regulations framed thereunder;

(d) To draw samples for purposes of surveillance, survey and research, which shall not be used for prosecution;

(e) To investigate any complaint which may be made to him in writing in respect or any contravention of the provisions of the Act, or rules framed thereunder;

(f) To maintain a data base of all Food Business within the area assigned to him;

(g) To recommend Designated Officer to issue of improvement notices to the Food Business Operator whenever necessary;

(h) To maintain a record of all inspections made and action taken by him in the performance of his duties, including the taking of samples and seizure of stocks, and to submit copies of such records to the Designated Officer as directed in this regard;

(i) To make such inquiries and inspections as may be necessary to detect the manufacture, storage or sale of articles of food in contravention of the Act or rules framed thereunder;

(j) To stop and inspect any vehicle suspected to contain any unsafe food or food which does not comply with the provisions of this Act and rules, intended for sale or delivery for human consumption;

(k) To recommend to the Designated Officer giving specific grounds, suitable action in regard to licenses issued to



Safety Officer finds that the Food Business Operator had violated the conditions for grant of license;

(l) To carry out food safety surveillance to identify and address the safety hazards;

(m) To respond to incidents of food poisoning in his area and to send report to and assist the Designated Officer to enable him to initiate corrective action;

(n) To facilitate preparation of Food safety plans for Panchayat and Municipalities in accordance with the parameters and guidelines given in schedule IV of Chapter 3 of Regulation.

(o) To detain imported packages which are suspected to contain articles of food, the import or sale of which is prohibited;

(p) To coordinate with the Food Business Operators within his area of operation and facilitate the introduction of food safety systems by the Food Business Operators.

(q) To perform such other duties, as may be entrusted to him by the Designated Officer or Food Safety Commissioner having jurisdiction in the local area concerned."

6.The Additional Government Pleader also brings it to my notice that similar contention raised by another affected individual was rejected by a learned Judge of this Court in W.P.(MD)No.14618 of 2020.

7.Since the jurisdictional issue had already been elaborately dealt with in W.P.(MD)No.14618 of 2020, dated 23.02.2020, I am of the view that it is not necessary to consider the same once again. I respectfully concur with the ratio laid down in the aforesaid decision. Now, the only question that arises for my consideration is whether the petitioner's premises should continue to remain under lock and seal. Even though I hold that the respondent was justified in locking and sealing the petitioner's premises and godown, their continued closure may not really serve any purpose. The respondents will have to be mindful of the principle of proportionality. The measure of locking and sealing has a drastic consequence on the petitioner's livelihood. It is not as if the petitioner was dealing only in prohibited products. He is running a regular grocery shop. If so happened that some prohibited items were also found in the petitioner's godown.

8. The learned counsel for the petitioner would point out that famous celebrities have been endorsing these products. But the petitioner cannot be justified because they have



been banned for sale for the current year in Tamil Nadu. In the counter, it is fairly admitted that the samples were sent for analysis and the results have also come. It is for the respondents to continue the proceedings initiated against the petitioner and it is entirely for the petitioner to defend the same in the manner known to law. It is not for this Court to go into the merits of the petitioner's defence at this point of time. The only question that has arisen for my consideration is whether the respondent should be directed to remove the lock and seal and permit the petitioner to open the shop in question along with the godown. In as much as the purpose of locking and sealing have been served and since the results of the analysis have also come, the respondents are directed to remove the lock and seal forthwith and permit the petitioner to open the petition mentioned store along with the godown.

9. The Writ Petition is allowed. No costs.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

rmi

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Food Safety Officer,
Vishwanathapuram,
Madurai-625 014, Madurai District.

2.The Designated Officer,
(TNFS & DA Department)
O/o. The Deputy Director of Health Services,
Multipurpose Health Supervisors(F),
Training School, Viswanathapuram, Madurai District.

+1 CC to M/s.S.LOUIS, Advocate (SR-3862[F] dated
08/02/2021)

+1 CC to M/s.GP (SR-3994[F] dated 09/02/2021)

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(SJ)CO

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