



W.A(MD)No.831 of 2024

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.04.2024

CORAM:

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

**W.A(MD)No.831 of 2024
and
C.M.P(MD)No.6150 of 2024**

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

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

3. The Food Safety Officer,
Tamil Nadu Food Safety and Drug
Administration Department,
Madurai Corporation,
Madurai

... Appellants/Respondents 1 to 3

1/10



W.A(MD)No.831 of 2024

WEB COPY

Vs

1. D Muthupandi,

... 1st Respondent/Writ Petitioner

2. The Inspector of Police,
C 2 Police Station,
(Subramaniapuram Police Station),
Madurai.

... 2nd Respondent/4th Respondent

PRAYER : Writ Appeal filed under Clause 15 of Letters Patent to allow the writ appeal by setting aside the order passed in WP(MD) No.5805 of 2024, dated 25.03.2024.

For Appellants

: Mr.Veerakathiran
Additional Advocate General
Assisted by
Mr.A.Kannan
Additional Government Pleader

For R1

: Mr.R.Ramasamy



W.A(MD)No.831 of 2024

WEB COPY

JUDGMENT

[Judgment of the Court was delivered by R.SURESH KUMAR, J.)

The Writ Appeal has been directed against the order passed by the Writ Court, dated 25.03.2024 in W.P(MD)No.5805 of 2024. That the first respondent herein is a petty shop owner, where the Appellant Department found that banned items like Tobacco products had been sold. Therefore, already action had been taken and his premises were sealed. Thereafter, he had given a written undertaking on 06.10.2023 that he will not indulge in such activities to sell such prohibited or banned or hazardous or dangerous chewing or eatable items to the public.

2.Only on such written undertaking given by him, he was permitted to open the shop. When that being so, again on the tip of information that was received by the Appellant Department, they went for sudden search at the shop of the first respondent on 14.02.2024.



W.A(MD)No.831 of 2024

WEB COPY

3. During the sudden search on 14.02.2024, they found that these banned items in bulk were available in the second floor of the residential premises belonging to the first respondent/writ petitioner, that was seized from his premises and this is an admitted fact.

4. Thereafter, again the shop has been put under seal and the investigation is on, where the samples of the items seized from the premises, had been sent for analysis and the reports are yet to be received.

5. At that juncture, the first respondent filed the said writ petition seeking for a writ of Certiorari to set aside the order, dated 14.02.2024, passed by the Appellant Department and by quashing the same, the shop premises of the first respondent to be de-sealed, was a prayer sought for by him.

6. Considering the said writ petition, the learned Judge, who passed the impugned order on 25.03.2024 has given the following reasons and the conclusion, which reads as follows:



W.A(MD)No.831 of 2024

WEB COPY

'4.This submission of the learned Additional Advocate General undoubtedly a merits acceptance. But taking note of the fact that the petitioner's shop has been sealed for more than 40 days and since the petitioner has to face prosecution if he does not compound the offence, I am inclined to grant relief. The petitioner is warned that if he is caught again, he may lose the license to conduct his business even. The learned Additional Advocate General also informs this Court that the petitioner's registration has been cancelled.

5.In these circumstances, the shop need not continue to remain sealed. I direct the respondents to desal the petition mentioned shop. I do so and give this direction without setting aside the impugned order.

6.This writ petition is allowed on these terms. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.'

7.Aggrieved over the same, the present Appeal has been directed by the Appellant Department.

8.Since it is an admitted fact that objectionable or banned or hazardous or dangerous chewable or eatable items mainly attracting the younger generation of the society have been seized from the premises of the first respondent, such an



W.A(MD)No.831 of 2024

WEB COPY action has been taken by the Appellant Department on 14.02.2024.

9.However, the Writ Court in the said order, in paragraph No.4 as has been extracted hereinabove, has observed that the writ petitioner's shop had been sealed for more than 40 days and since the petitioner has to face the prosecution if he does not compound the offence, the Court was inclined to grant the relief. The Court also warned that if the petitioner is caught again, he may lose the license to conduct his business even. By making these observations, the Writ Court directed to de-seal the writ petitioner's shop without setting aside the impugned order, dated 14.02.2024.

10.If at all, the Appellant Department has an authority to search the premises and to seize the objectionable materials and in this case, admittedly, those materials have been seized from the premises of the first respondent/writ petitioner, where the investigation is on and the sample has been sent for chemical analysis and the sealing order of the shop has been passed by the second appellant on 14.02.2024. the merits of the said order could have been gone into by the writ Court. However, the writ Court has stated that the order is not set



W.A(MD)No.831 of 2024

WEB COPY

aside. If that order is not set aside, the question of showing any sympathy on the first respondent/writ petitioner does not arise to de-seal the premises and open the same for the public to sell.

11. Moreover, warning if anything given by the Court, that must be on the basis of the legal provision in any punitive law. Here, since the investigation is on and it is yet to be concluded, at that stage such a sudden conclusion cannot be arrived at by the Court, that too, placed on misplaced sympathy.

12. The reasons being that the first respondent already faced such an action at the hands of the Appellant Department where he had given an undertaking that he will not indulge in any such activities in future.

13. In fact, the said undertaking had been recorded by the writ Court by another learned Judge, vide order dated 06.10.2023 in W.P(MD)No.24079 of 2023. The learned Judge has recorded as follows:

'8. In this case, the petitioner has involved in five similar cases and now realized and filed an affidavit of undertaking that he will not sell any tobacco products and other banned products in his shop. The learned



W.A(MD)No.831 of 2024

WEB COPY *counsel for the petitioner has also placed a photograph that this petitioner has placed a Board to that effect.'*

14.The learned Judge, in fact, recorded in the said order that in the event, if the writ petitioner has repeated to commit this offence, it would be treated as an offence under the Contempt of Courts Act, 1971.

15.Only in those circumstances, the present impugned order has been passed by the writ Court giving only the warning against the writ petitioner and given a direction to the Appellant Department to open the shop.

16.The said approach of the Writ Court, in our considered opinion, is erroneous. Therefore, we are inclined to interfere with the order impugned.

17.In the result, the impugned order is set aside and there shall be a direction to the Appellant Department to complete the investigation or enquiry in accordance with law after getting a report from the concerned Lab and accordingly, as per law action can be taken against the first respondent/writ



W.A(MD)No.831 of 2024

WEB COPY

petitioner. The aforesaid exercise shall be undergone by the Appellant Department as quickly as possible without keeping this case as one of the cases as usual for longer duration.

18. With these directions, the Writ Appeal is allowed. However, there shall be no order as to costs. Consequently, the connection miscellaneous petition is closed.

[R.S.K.,J.] [G.A.M.,J.]
25.04.2024

NCC : Yes / No
Index : Yes / No
LR

Note: Issue Order copy on 29.04.2024.

To
The Inspector of Police,
C 2 Police Station,
(Subramaniapuram Police Station),
Madurai.

9/10



WEB COPY



W.A(MD)No.831 of 2024

R.SURESH KUMAR,J.
and
G.ARUL MURUGAN,J.

LR

ORDER MADE IN
W.A(MD)No.831 of 2024

DATED : 25.04.2024

10/10