



W.P.(MD)No.15110 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 08.04.2024

CORAM:

**THE HON'BLE MR.JUSTICE K.MURALI SHANKAR**

W.P.(MD)No.15110 of 2021

and

W.M.P(MD)Nos.12039, 12040 and 12041 of 2021

and

W.M.P(MD)No.15026 of 2021

R.Mohan

: Petitioner

Vs.

- 1.The Additional Director of Medical and Rural Health Services (Project and Development)  
O/o.The Additional Director of Medical and Rural Health Services,  
DMS Complex, Anna Salai, Chennai.
- 2.The Chief Resident Medical Officer,  
O/o.The Chief Resident Medical Officer,  
Government Hospital,  
Pattukottai, Tanjore District.
- 3.The Assistant Executive Engineer,  
O/o.The Assistant Executive Engineer,  
Public Works Department,  
Building and Maintenance Section,  
(Medical Works) Pattukottai,  
Tanjore District.

: Respondents



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**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 relating to the impugned order in Na.Ka.No.5024/Thiva 1/4/2021, dated 18.03.2021 on the file of the first respondent and the consequential impugned order in Na.ka.No.1395/Thiva/2018, dated 21.03.2021 on the file of the second respondent and quash the same as illegal and consequently, direct the respondents to permit the petitioner to run the kiosk tea shop in the Government Hospital, Pattukottai, Tanjore District by renewing the lease period within the time frame stipulated by this Court.

For Petitioner : Mr.M.Mahaboob Fazil,  
for Mr.T.Lajapathi Roy

For Respondents : Mr.A.K.Manikkam,  
Special Government Pleader.

### **ORDER**

The Writ Petition is directed against the order in Na.Ka. No.5024/Thiva 1/4/2021, dated 18.03.2021 passed by the first respondent, dated 18.03.2021 and the consequential impugned order in Na.ka. No.1395/Thiva/2018, dated 21.03.2021 on the file of the second respondent and consequently, direct the respondents to permit the petitioner to run the kiosk tea shop in the Government Hospital, Pattukottai, Tanjore District by renewing the lease period.



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2. The learned counsel for the petitioner would submit that the first respondent by only referring to G.O.Ms.No.93, Public Health and Family Welfare(H-2), Chennai 9, dated 25.03.2015 and without assigning any other reason has ordered to closure of the shop. The learned counsel for the petitioner has relied on the decision of this Court in W.P.No.13864 of 2019 and in a similar matter, this Court referring to G.O.Ms.No.93, Public Health and Family Welfare(H-2), dated 25.03.2015, has observed as follows :

*“13. The petitioner herein had been running a Kiosk Tea shop in the 4<sup>th</sup> respondent Hospital namely, the Government Eye and Ophthalmic Hospital, Egmore, Chennai. The Amma Canteen mentioned in the additional affidavit is in a separate building on the other side of the road. Even otherwise, Amma Canteen does not serve the Tea, milk or coffee. It is open only for a limited period of time. A small bunk shop which is run by the petitioner runs 24 hours and would cater to the small time needs of the general public. If the public authorities appreciate that such small businesses are required for upliftment of the society and the economy, then there would be a realization that the closure of such business would not benefit anyone. The respondents, can impose any condition. They can impose terms. They can impose restrictions and insist that hygiene in quality of food must be*



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*maintained and also ensure optimum price. But closure is not the answer.*

*14. In the present case, the impugned order has been passed without any application of mind. No reasons have been given except for quoting G.O.M.S.No.93, Public Health and Family Welfare (H-2) dated 25.03.2015. A learned Single Judge of this Court (S.M.Subramaniam,J) had already directed when examining the virus of the Government Order that conditions regarding hygienic, quality of food and cost can be imposed and the Authorities can examine the surroundings of the kiosk shops. The Authorities are expected to follow the directions of the Court. They cannot ignore the directions of the Court.*

*15. In view of the fact that no reasons have been given in the impugned order, the petitioner simply does not know why his shop has been closed and why he has not been permitted to reopen the same, even though other shops which had been similarly closed have reopened.”*

3. The above observation is squarely applicable to the case on hand. The learned Special Government Pleader appearing for the State would submit that subsequently, the Government Order in G.O.Ms.No.194, Health and Family Welfare (H2) Department, dated 21.06.2022, came to be issued for conducting public auction with respect to all shops. Since the



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first respondent has passed the impugned order without assigning any reason and by only referring to G.O.Ms.No.93, Public Health and Family Welfare(H-2), dated 25.03.2015, without hearing the petitioner, the impugned order cannot be legally sustained and the same is liable to be set aside.

4. In the result, the Writ Petition is allowed and the impugned order passed by the first respondent, dated 18.03.2021 is set aside. The first respondent is directed to give notice to the petitioner and after hearing the petitioner, pass orders in accordance with law with in a period of 12 weeks from the date of receipt of copy of this order. It is clarified that in case, if the respondents decide for conducting public auction, they are at liberty to proceed further by complying the Government Order in G.O.Ms.No.194, Health and Family Welfare (H2) Department, dated 21.06.2022. Consequently, connected Miscellaneous petitions are closed. No costs.

**08.04.2024**

NCC :yes/No  
Index :yes/No  
Internet:yes/No  
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**To**

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O/o.The Chief Resident Medical Officer,  
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**K.MURALI SHANKAR,J.**

DAS

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