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W.P.(MD)NO.31105 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.12.2023

PRONOUNCED ON : 02.01.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.31105 of 2023 AND
W.M.P.(MD)No.26657 of 2023

P.Velmurugan

... Petitioner

Vs.

1. The Commissioner,
Tamil Nadu Food Safety and Drug
Administration Department,
359, Anna Salai, Teynampet,
Chennai – 6.

2. The Designated Officer,
Tamil Nadu Food Safety and Administration Wing,
1st Floor, D.D.H.S. Compound,
Vishwanathapuram,
Madurai – 14.

3. The Food Safety Officer,
Code No.435,
Usilampatti Block and
Usilampatti Municipality.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the 1st respondent made in R. No.11004/2023/S9/FSD dated 12.12.2023, quash the same and directing the respondents to remove the lock and seal made by



the 2nd respondent dated 24.11.2023 on the petitioner's cool drinks shop in the name and style of Vel Cool Drinks Shop near Chatham School at Usilampatti Market Gate, Usilampatti.

For Petitioner : Mr.S.Ramu

For Respondents: Mr.M.Sidharthan,
Additional Government Pleader.

* * *

ORDER

Heard both sides.

2. The petitioner is running a small provisional shop at Usilampatti. On 24.11.2023, the petitioner's shop was locked and sealed. The petitioner sent representations seeking removal of the same. In the meanwhile, the first respondent issued the emergency prohibition order dated 12.12.2023 under section 34(2) of the Food Safety and Standards Act, 2006. Challenging the same, the present writ petition came to be filed.



3. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to grant relief as prayed for.

4. The learned Additional Advocate General submitted that the writ petition deserves summary dismissal. He pointed out that the sale of Gutkha and such other products is having a serious bearing on public health. He submitted that such acts constitute a menace to the society. According to the learned Additional Advocate General, the statutory procedure has been fully complied with. He also added that the petition-mentioned shop was rightly sealed. He relied on the order dated **13.12.2023** made in **W.P.No.34737 of 2023** and **23.12.2020** made in **WP(MD)No.14618 of 2020 etc.** and called upon this Court to dismiss the writ petition.

5. I carefully considered the rival contentions and went through the materials on record.



6. The impugned order has been issued under Section 34(2) of Food Safety and Standards Act, 2006. Section 34 of the Act reads as follows:-

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 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.



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(6) The Designated Officer shall issue a certificate under sub-section (5) within seven days of an application by the food business operator for such a certificate and on his being 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.”

7. In this case, the emergency prohibition notice was in fact served on the petitioner. But the petitioner had submitted a representation dated 13.12.2023 requesting the respondents to de-seal the premises and return the shop key. In my view, the said representation must be treated as an application under Section 34(6) of the Act. The designated officer ought to have issued certificate under sub-Section 5 within seven days thereof.

8. The moot question in this case is whether the second respondent was justified in locking and sealing the premises.

9. For the reasons set out in the order dated 02.01.2024 in W.P.(MD)No.30871 of 2023, I hold that the



petitioner's premises deserves to be de-sealed. Considering the impact on the petitioner's livelihood, the respondents are directed to de-seal the petition-mentioned premises forthwith. The petitioner is directed to file an affidavit before this Court undertaking not to trade in any banned item including tobacco products. If the undertaking is breached, consequences will follow. This writ petition stands allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

02.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No

PMU

To:

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G.R.SWAMINATHAN,J.

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