



W.P.(MD)No.3758 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 26.02.2025

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THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

W.P.(MD) No.3758 of 2025

and

W.M.P.(MD) Nos.2698 and 2699 of 2025

C.Ravichandran

... Petitioner

vs.

1.The Commissioner,
Tamil Nadu Food Safety and Drug Administration Department,
DMS Campus, 5th Floor,
No.359, Anna Salai,
Thenampet,
Chennai 600 006.

2.The Authorized Officer,
Food Safety Wing,
Tamil Nadu Food Safety and Drug Administration Department,
Ramanathapuram District,
Ramanathapuram.

3.The Inspector of Police,
R.S.Mangalam Police Station,
Ramanathapuram District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the



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records relating to the impugned notice cum penalty order in Notice No. 1/A1/2024 dated 07.01.2025 passed by the 2nd respondent and quash the same and consequently direct the respondents to remove the seal forthwith put on the petitioner's small petty shop situated at Thoovar Village, R.S.Mangalam Taluk, Ramanathapruam District based on the petitioner's representation dated 06.02.2025.

For Petitioner :Mr.T.Veerakumar

For R1 & R2 :Mr.M.Muthumanikkam
Government Advocate

For R3 : Mr.M.Karunanithi
Government Advocate

ORDER

The petitioner seeks for issuance of a Certiorarified Mandamus on the file of the second respondent in Notice No.1/A1/2024, dated 07.01.2025, to quash the same and to remove the seal forthwith put on the petitioner's petty shop at Thoovar Village, R.S.Mangalam Taluk, Ramanathapuram District.

2. The petitioner claims that he is a chronic kidney patient undergoing dialysis twice a week. To eke-out for his livelihood , he has been running a small petty shop at Thoovar Village. On 04.01.2025, the

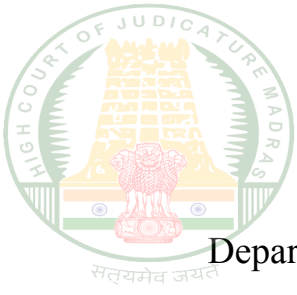


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police conducted a surprise search and found that the petitioner was selling tobacco pockets, each weighing 12.6 gms and found 12 pockets of 'cool lip'. Consequently, an FIR was registered against the petitioner in Crime No.6 of 2025 for the offence under Section 24(1) of the Cigarette and Other Tobacco Products Act, 2003. After registering the FIR, the second respondent passed an order on 07.01.2025, sealing the premises and imposing penalty of Rs.25,000/- against him. Aggrieved by the same, the petitioner made a representation on 06.02.2025. As the same was not considered, he has approached this Court for the aforesaid relief.

3. When the matter came up for admission, Mr.M.Muthumanikkam, learned Government Advocate took notice for the respondents 1 and 2 and Mr.M.Karunanithi, learned Government Advocate took notice for the third respondent. They sought time for filing counter and the time was also granted.

4. Mr.Muthumanikkam has filed a counter affidavit of the Designated Officer, Tamil Nadu Food Safety and Drug Administration



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Department, Food Safety Wing, Ramanathapuram District on 21.02.2025.

Mr.Muthumanikkam submits that the Minutes of the joint inspection against sale of banned food products containing tobacco and nicotine, habit forming drugs meeting by Additional Chief Secretary, Health and Family Welfare Department on 11.06.2024 at 03.00 pm., enables the Commissioner of Food Safety on receipt of an FIR from the Police Officials, to impose penalty and order closure of shops. He urges it is only on the basis of the Act, Rules and the Regulations and the Minutes that the impugned order came to be passed.

5. Mr.Karunanithi states that a positive final report was filed by the Police. It has been taken on file as S.T.C.No.43 of 2025 on the file of the learned Judicial Magistrate at Thiruvadanai, Ramanathapuram District.

6. I heard Mr.T.Veerakumar, learned counsel for the petitioner, Mr.M.Muthumanikkam, learned Government Advocate for the respondents 1 and 2 and Mr.M.Karunanithi, learned Government Advocate for the third respondent.



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7. Mr.T.Veerakumar pleads that no sample was drawn from the petitioner's shop and that the respondents had straight away sealed the premises without following due process of law.

8. Mr.M.Muthumanikkam states that the Designated Officer has the power to cancel or suspend the shop license or registration in terms of Regulation 2.1.8(4) of the Food Safety and Standards (Licensing and Registration of Food Businesses), Regulations, 2011 and also has the power to seal the premises, as he has been empowered to do so in terms of the Food Safety and Standards Act, 2006 r/w Food Safety and Standards Rules, 2011.

9. Mr.T.Veerakumar relies upon a judgment of this Court in ***Nagoorkani Vs. Commissioner, Tamil Nadu Food Safety and Drug Administration, Chennai and others*** reported in **2024 (1) CTC 792** to argue that the power of sealing under Rule 2.1.3.4 (i) of the Food Safety and Standards Rules, 2011 can be resorted to only if the conditions of that Clause are satisfied and since in this case, it has not been satisfied, the sealing of the premises is wrong. He further states that there cannot



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be a demand for compounding the offence, as the requirements of the Act have not been satisfied.

10. I have carefully considered the submissions of both sides. I have gone through the records.

11. The power to seal the premises is available to the Authority under Food Safety and Standards Rules, 2011. This is found under Rule 2.1.3.4 (i). For the purpose of exercising this power, the Food Safety Officer should be of the opinion or should have recorded in writing that it is not possible to comply with the requirements of Section 38 (1)(c) or the proviso to Section 38(1) of the Act, like non availability of the Food Business Operator.

12. In those circumstances, the Food Safety Officer may seize the adulterant or food, which is unsafe or sub-standard or mis-branded and may seal the premises for investigation after taking a sample of such adulterant or food for analysis, which is required as per Section 38 of the Food Safety and Standards Act, 2006. Under Section 38(1)(c), the Food



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Safety Officer should come to a conclusion that the sample taken from the Food Business Operator cannot be kept in safe custody of such Operator. He may at the time of keeping the food in the safe custody of the food business operator also require him to execute a bond for a sum of money equal to the value of the article with one or more sureties as he deems fit and the Food Safety Operator should also execute a bond accordingly. The power to seal can be exercised only when the aforesaid requirements cannot be met with in the given facts.

13. In the facts of this case, on 04.01.2025, the police had already seized the alleged contraband from the hands of the writ petitioner. Therefore, the question of applying Section 38 to the Food Business Operator in this writ petition does not arise. When the law demands an act to be done in a particular way, it should be done in that way and in no other way. Regulation 2.1.8(4) of the Food Safety and Standards (Licensing and Registration of Food Businesses), Regulations, 2011 does not empower the authority to seal the premises. It empowers the authority to suspend the license granted to a Food Business Operator. It is not the case of the petitioner that he was benefited with the license and therefore,

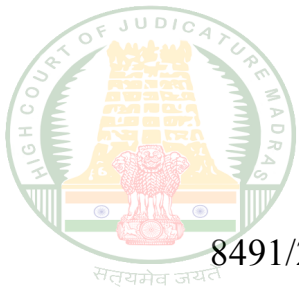


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the question of applying the said regulations does not arise here. When the power to seal under 2.1.3.4(i) requires certain conditions to be fulfilled and those conditions are not fulfilled in the facts of this case, the second respondent erred in sealing the premises.

14. Insofar as the Minutes that has been relied upon by Mr.M.Muthumanikkam, I have to point out that they cannot substitute or supplant the Rules and Regulations. It is, at best, a resolution passed in a meeting of Officers, who decide as to how the Act, Rules and Regulations must be implemented. When the Parliamentary statute requires that the power of sealing should be exercised in one particular way and lays down conditions precedent to exercise that power, the Minutes cannot enlarge that power. The executive does not possess the power to amend the Act or enhance the powers conferred on them.

15. Mr.Muthumanikkam further pointed out that if the petitioner pays a sum of Rs.25,000/-, the case registered against the petitioner can be compounded. He relies upon a circular issued by the Tamil Nadu Food Safety and Drug Administration Department in R.No.



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8491/2019/S1/FSSA dated 04.01.2024 to press this point.

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16. Mr.T.Veerakumar states that his client is willing to face the prosecution in STC.No.43 of 2025 before the learned Judicial Magistrate, Thiruvadanai and is not willing to compound the offence.

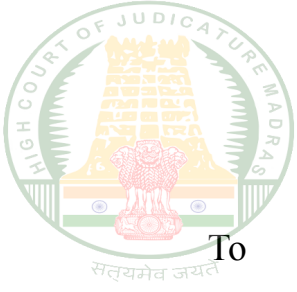
17. In the light of the above discussions, the Writ Petition stands ordered only insofar as sealing of the premises is concerned. The respondents are directed to de-seal the premises forthwith. This order will not stand in the way of the respondents to prosecute the petitioner in S.T.C.No.43 of 2025 on the file of the learned Judicial Magistrate at Thiruvadanai, Ramanathapuram District for the alleged offences committed by him. No costs. Consequently, connected Miscellaneous Petitions are closed.

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

26.02.2025

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V. LAKSHMINARAYANAN, J.

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