



W.P.(MD)No.5522 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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**DATED: 24.03.2025**

CORAM

**THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN**

**W.P.(MD) No.5522 of 2025**

S.Nelson

... Petitioner

vs.

1.The Commissioner,  
Tamil Nadu Food Safety and Drug  
Administration Department,  
DMS Campus, 5<sup>th</sup> Floor,  
No.359, Annasalai,  
Tyenampet,  
Chennai -6.

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

... Respondents

**PRAYER:** Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 2nd Respondent to open the lock and seal and hand over the possession of Shop to the Petitioner.

For Petitioner :Mr.R.Sreenivasan

For Respondents :Mr.S.Shaji Bino

Special Government Pleader



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**ORDER**

The writ petition has been filed for a Mandamus, directing the second respondent to open the lock and seal and hand over the possession of shop to the petitioner.

2.The petitioner states that his father one Sankaran has been running a small petty shop at Thozhicode Junction in Kanyakumari District. In the said petty shop, his father was selling fruits, banana, chocolates and betel leaf. The petitioner states that he is working as a Driver with the TNSTC.

3.On 08.10.2024 at about 05.00 pm., Puthukadai Police conducted a search on the premises. They found 25 packets of 'Ganesh 701' tobacco packets. Consequently, the Inspector of Police registered a complaint under Section 24(1) of Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003. The Compliant was taken on file as Crime No.314 of 2024. Soon thereafter, the second



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respondent sealed the premises, invoking powers under the provisions of Food Safety and Standards Act, 2006. As more than 14 weeks had lapsed and the seal had not been removed, hence, the petitioner has come forward with the present writ petition.

4. When the matter came up for admission, Mr.S.Shaji Bino, learned Special Government Pleader took notice for the respondents.

5. I heard Mr.R.Sreenivasan for the petitioner and Mr.S.Shaji Bino for the respondents.

6. Mr.S.Shaji Bino points out that earlier, the writ petitioner had challenged the proceedings dated 18.10.2024 before this Court in W.P. (MD) No.26626 of 2024. The said writ petition was disposed of on 08.11.2024, permitting the petitioner to file an appeal before the Commissioner of Food Safety at Chennai with a direction to dispose of the appeal within a period of six weeks. He points out that the appeal was taken up for hearing on 11.03.2025 and the petitioner did not appear before the appellate authority. Hence, he pleads that the writ petition may be dismissed.



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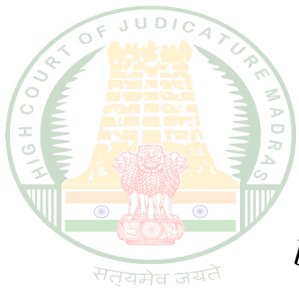
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7.I have carefully considered the submissions of both sides.

8.It is not in dispute that 24 packets of “Ganesh 701” tobacco available in the shop of the petitioner were seized by the police. No tobacco product was left in the custody of the petitioner, in terms of Section 38 of Food Safety and Standards Act, 2006, or in terms of Rule 2.1.3.4 (i) of Food Safety and Standards Rules, 2011.

9.The issue as to whether when no product is placed in the custody of the Food Business Operator, can the premises be locked and sealed was considered by a learned single Judge in W.P.(MD) Nos.30871 and 30873 of 2023 dated 02.01.2024. The learned Judge had passed the following order:-

*“6.Rule 2.1.3..4(i) refers to Section 38 of the Act. Section 38 of the Act empowers the Food Safety Officer to take a sample and seize any article of food that appears to be in contravention of the Act or the regulations made thereunder. The Food Safety Officer can also keep the seized food article in the safe custody of the Food Business Operator after taking a sample. The Food Business Operator may also*

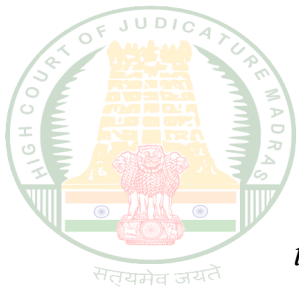


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*be required to execute a bond for a sum of money equal to the value of the seized article with one or more sureties. Only if the Food Safety Officer is of the opinion that Section 38(1)(c) or the proviso to Section 38(1) could not be complied with, the premises can be sealed. The Rule itself contemplates one such situation. If the Food Business Operator is not available, then, the seized article cannot be kept in his safe custody. It is only under such circumstances sealing is permissible. The second respondent has not complied with the statutory requirement set out in the Rule. The power of sealing is a drastic one and it cannot be expansively construed. This is all the more so because in the parent Act, there is no provision for sealing. The Rules have been framed only to carry out the provisions of the Act. Section 38 (1)(c) of the Act refers to the safe custody of the seized article. Sealing can be done only if the mode set out in the parent Act cannot be fulfilled. Rule 2.1.3..4 should be understood in the light of Section 91(1) of the Act.*

.....

*The doctrine of proportionality can be invoked to test the validity of an executive action. In this case, the seized articles could have been left in the safe custody of the petitioners. This is contemplated by the Act itself. Instead, the second respondent resorted to sealing the premises itself. The act of the second respondent fails the test laid down in the*



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*third prong. The sealing was done on 16.12.2023. More than two weeks have passed. The petitioners are small time shop keepers. Right to carry on business is guaranteed under Article 19(1)(g) of the Constitution of India. Of course, there is no right to trade in banned items. But the petitioners can sell other products in their shops. By sealing the shop, the petitioners' right to livelihood is affected. This will have a disproportionate impact on the petitioners' rights. In any event, by keeping the shops closed, the investigation in this case is not going to be advanced. If the shops are ordered to be opened, the investigation will not suffer. It is not necessary that the premises should continue to remain closed as that may not serve any purpose. Even if there is justification in initially sealing the premises, at some point of time or the other, they have to be de sealed. Merely for the reason that banned tobacco products were kept for sale, a shop cannot be closed forever. That is why, the Rules provide for sealing the premises only for one reason ie., inability to adhere to the procedure contemplated in Section 38(1)(c) of the Act or the proviso thereto."*

10. Against the order in W.P.(MD) No.30871 of 2023, an appeal was presented before the Division Bench of this Court in W.A.(MD) No. 33 of 2024. At the time of admission, the learned Additional Advocate

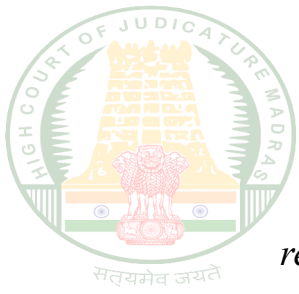


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General had submitted to the Division Bench that the State Authorities will comply with the order passed by the learned single Judge insofar as de-sealing of the premises is concerned, but sought for stay only with respect to the observations that there is no provision for sealing the shop. Acceding to the request of the learned Additional Advocate General, the Division Bench had permitted de-sealing of the premises.

11. In addition, Mr.R.Sreenivasan brings to my notice a judgment passed by this Court in ***J.Sikkandar Vs. The Commissioner, Food Safety and Drugs Administration, Chennai and others, W.A.(MD) No. 356 of 2021 dated 30.03.2021***. In the said judgment, the Division Bench had taken a view as follows:-

*“4. We are also of the view that for the purpose of keeping the contraband seized the entire buildings need not be kept under lock and seal and the contraband can be kept in one room under lock and seal and the lock and seal of the other two rooms can be removed. If the respondents are satisfied that the contraband seized can be kept in one room with lock and seal, they shall accordingly, do so in the presence of the appellant, after getting his signature with respect to the material seized and lock and seal and if he is not agreeable, the order of the learned Single Judge would get*



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revived. In that case, it is open to the petitioner to get appropriate orders from the Court, which takes cognizance.”

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12.In fact, following this view, Hon'ble Mr.Justice N.ANAND VENKATESH in *A.Zahir Hussain and another Vs. The Food Safety Officer, Madurai and another, W.P.(MD) Nos.14691 and 15003 of 2020, dated 24.06.2021*, has observed that the order passed in W.A.(MD) No.356 of 2021 is a workable solution, as it will not cause prejudice to the investigation and at the same time, the owner of the premises is not prevented from enjoying the benefit of the other portions.

13.The conspectus of the view set forth above would make it clear that in case, the contraband goods are kept under the custody of the Food Business Operator, that portion of the shop alone need to be sealed, whereas, the remaining areas can be used for normal business purposes. Applying these rulings to the facts of this case, it is clear that 24 packets having been seized and being in the custody of the police, de-sealing of the premises is not going to affect the investigation.



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14.In the light of the above discussion, the Writ Petition is ordered.

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The petitioner's premises situated at Thozhicode Junction is directed to be de-sealed. This order will not stand in the way of the respondents in prosecuting the petitioner in Crime No.314 of 2024 on the file of Pudhukadai Police or in disposal of the appeal that is pending before the first respondent. No costs.

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

**24.03.2025**

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To

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Tamil Nadu Food Safety and Drug  
Administration Department,  
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**V. LAKSHMINARAYANAN, J.**

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