

W.P.(MD)No.6095 of 2025

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

W.P.(MD)No.6095 of 2025

and

W.M.P.(MD)Nos.4479, 4480 & 4483 of 2025

Keerthikumar

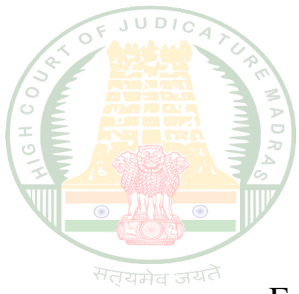
... Petitioner

-VS-

- 1.The Commissioner,
Tamil Nadu Food Safety and Drug Administration,
DMS Campus, 5th Floor,
No.359, Anna Salai,
Teynampet, Chennai - 6.
- 2.The Designated Officer,
Tamil Nadu Food Safety and Drug Administration Department,
Viswanathapuram,
Madurai, Madurai District.
- 3.The Food Safety Officer,
Madurai Corporation (Code No. 573),
Madurai.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings issued by the second respondent dated 19.12.2024 and quash the same.



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For Petitioner

: Mr.M.Gnanagurunathan

For Respondents

: Mr.S.Shaji Bino
Special Government Pleader

ORDER

The petitioner is the owner of the premises of Flat No.A8/1 in R.S.Nos. 161/1A and 168/8 Part in Ward No.44 of M.I.G. Colony, K.K.Nagar, Madurai. In front of the premises, the petitioner is running a Petty shop. He states that he engaged one Sivakumar to take care of the shop. He was informed by the said Sivakumar that the Inspector of Police, Anna Nagar Police Station, Madurai, is causing a search for him and therefore, the petitioner immediately rushed to the Police Station to join in investigation. At that stage, he came to know that an F.I.R. has been registered against his servant Sivakumar in F.I.R.No.622 of 2024 on 29.09.2024. The alleged charge against the said Sivakumar is that, he had been selling banned tobacco products in the bunk shop.

2. The petitioner pleads that he is only selling rolling paper for the purpose of smoking tobacco and is not selling any banned tobacco products. The petitioner pleaded that he paid G.S.T. for the said product and he is having tax invoice to support the same.



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3. He pleaded that from 03.10.2024, the premises is under lock and seal on the directions of the second respondent / the Designated Food Safety Officer, Viswanathapuram, Madurai. The petitioner had received a notice stating that since he has come to adverse notice for the first time, he has an option of paying Rs.25,000/- and compounding the offence. It was also pointed out in the impugned order that unless and until, the fine amount of Rs.25,000/- is paid, the seal placed over the premises will not be removed. Aggrieved over the same, the present Writ Petition.

4. Mr.S.Shaji Bino, learned Special Government Pleader states that as the petitioner had sold tobacco products in the Petty shop, the Police were constrained to initiate action under Section 24(1) of the Cigarettes and Other Tobacco Products Act, 2003 [hereinafter referred to as "the Act"] and consequently, the premises were locked and sealed. He further points out that the second respondent has passed the impugned order, dated 19.12.2024, imposing a fine of Rs.25,000/- on the petitioner. He states that if the fine amount is paid, the premises will be unlocked.



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5. I heard Mr.Gnanagurunathan for the petitioner and Mr.S.Shaji Bino, learned Special Government Pleader for the respondents.

6. It is not in dispute that the petitioner's shop is under lock and seal. The power of the Food Safety Officer is set forth under Section 38 of the Food Safety and Standards Act, 2006. The said Act does not empower the Food Safety Officer to seal the premises. However, the rules that, have been framed in the year 2011, confer certain powers on the first respondent to lock and seal the premises. This is outlined under Rule 2.1.3(4) of the Food Safety and Standards Rules, 2011. In addition to the powers granted to the Food Safety Officer under Section 38 of the Food Safety and Standards Act, 2006, certain additional powers have been conferred upon him. As per the Rules, the Food Safety Officer should be of the opinion or should have reasons to be recorded by him in writing that it is not possible to comply with the provisions of Section 38(1)(c) of the Food Safety and Standards Act, 2006 or the proviso to Section 38(1) of the Food Safety and Standards Act, 2006. Thereafter, he/she may seize the adulterant or food, which is unsafe or sub-standard or misbranded or containing extraneous material and then,



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may proceed to seal the premises for investigation after taking samples of the food material.

7. This process necessarily requires adherence to Section 38(1)(c) and the proviso to Section 38(1) of the Food Safety and Standards Act, 2006. Under Section 38(1)(c) of the Food Safety and Standards Act, 2006, the Food Safety Officer is empowered to place any substance or food in the safe custody of the food business operator and subsequently, send it for sampling. While keeping the product in safe custody, as provided under Section 38(1)(c) of the Food Safety and Standards Act, 2006, the Food Safety Officer is also entitled to require the food business operator to execute a bond equal to the value of the article. In addition to this, he is also entitled to direct the food business operator to give two sureties in order to stand by the bond.

8. A reading of Section 38(1)(c) and proviso to Section 38(1) together with 2.1.3(4) of the Food Safety and Standard Rules makes it clear that in case, the action of keeping a food or article in the custody of the food business operator is **not** possible, then, he is entitled to seal the premises, after drawing the samples.

[emphasis supplied]



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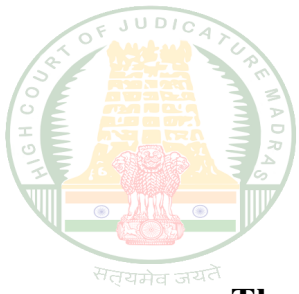
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9. It is not in dispute, in the present case, the Food Safety Officer had not proceeded under Section 38(1)(c) of the Food Safety and Standards Act, 2006 or proviso to Section 38 (1) of the Food Safety and Standards Act, 2006.

10. The condition precedent for exercise of the power under Rule 2.1.3(4) of the Food Safety and Standards Rules, 2011, not having been complied with, the Food Safety Officer is not entitled to seal the premises.

11. At this stage, Mr.S.Shaji Bino, learned Special Government Pleader relies upon the minutes of a meeting held under the Chairmanship of the Additional Chief Secretary-cum-Secretary to the Government, Health Department, in order to plead that minutes have been passed by the Government, enables the Food Safety Officer to seize and seal the premises. Minutes of a meeting held under an executive authority cannot substitute the statutory provisions and the Rules made thereunder.

12. The discussion above is no longer *res integra*. It has been discussed in detail by my learned brother **G.R.Swaminathan, J.** in **Nagoorkani and another**



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vs. The Commissioner, Tamil Nadu Food Safety and Drug Administration and another, W.P.(MD)Nos.30871 and 30873 of 2023, dated 02.01.2024 and by this Court in S.Subramaniyan vs. The Commissioner, Tamil Nadu Food Safety and Drug Administration and others, W.P.(MD)No.5378 of 2025, dated 28.02.2025 . In both the cases, this Court has held that in case the statutory provision under Section 38(1)(c) and the proviso to Section 38(1) of the Food Safety and Standards Act, 2006 are not followed, then, the question of sealing the premises does not arise.

13. In the light of the above discussions, the impugned order, insofar as it imposes a condition for the payment of Rs.25,000/- for removing the lock and seal, is quashed. All other proceedings may continue. The respondents shall forthwith de-seal the premises in question.

14. It is clarified that nothing in this order will prevent the respondents from taking appropriate action, including the imposition of fine and prosecution of the writ petitioner, or allow the writ petitioner to compound the charges levelled against him. This order is limited solely to the power of the respondents



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to seal the premises under the Food Safety and Standards Act, 2006, and the Rules made thereunder.

15. In fine, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

NCC : Yes / No

06.03.2025

Index : Yes / No

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Note:- Issue order copy on 07.03.2025.

To:-

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No.359, Anna Salai,
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V. LAKSHMINARAYANAN, J.

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