



W.P(MD)No.15254 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 07.11.2025

PRONOUNCED ON:02.04.2026

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P(MD)No.15254 of 2025

and

W.M.P.(MD)Nos.11524, 11525 and 15683 of 2025

Peer Mohamed

...Petitioner

Vs.

1.The Designated Officer,
Food Safety Wing,
Tamil Nadu Food Safety and Drugs Administration Department,
Tirunelveli District, Tirunelveli.

2.The Food Safety Officer,
Tirunelveli Zone,
Tirunelveli.

3.The Inspector of Police,
Tirunelveli Town Police Station,
Tirunelveli District.

...Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the 1st respondent Designated Officer, Food Safety Wing, Tirunelveli herein made in AA.No.573/A1/2025 dated 22.03.2025 and to quash the same as illegal and consequently, directing the respondents to remove the lock and seal of



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the petitioner's Tea shop namely Navab Shopping Tea Coffee bar situated at 280/1, South Mount Road, Tirunelveli Town, Tirunelveli District.

For Petitioner : M/s.K.Abiya

For R1 and R2 : Mr.A.Oliraja
Government Advocate

For R3 : M/s.Aasha
Government Advocate (Crl. side)

ORDER

The present Writ Petition has been filed for the issuance of a Writ of Writ of Certiorarified Mandamus, to quash AA.No.573/A1/2023 dated 22.03.2025 and to direct the respondents to remove the lock and seal of the petitioner's Tea shop namely Navab Shopping Tea Coffee bar situated at 280/1, South Mount Road, Tirunelveli Town, Tirunelveli District.

2. The brief facts as stated in the affidavit are that the petitioner is running the petty shop doing retail selling of Snacks and Tea in the name and style of Navab Shopping Tea Coffee Bar and having the valid license Registration Certificate No.22424587000404 granted by the food safety wing on 28.11.2024. On 22.02.2025 the 3rd respondent police registered a Criminal Case for the alleged offences under sections 296(b), 132, 351(2) of BNS Act r/ w 24(1) of COTPA Act 2003 against the workers of the petitioner's tea shop in Crime No.48 of 2025



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alleging that the petitioner shop is involving retail and whole sale of tobacco products which is banned by the State Government and seized two bundles of Ganesh tobacco weighing 225 grams and 23 pockets containing 15 grams of Ganesh tobacco from the possession of the petitioner's shop. After registering the FIR, the 3rd respondent police sent request as well as FIR to the 1st respondent office on the very same day for taking action to close the petitioner's tea shop. The 1st respondent vide proceedings dated 22.02.2025 directed the 2nd respondent to lock the tea shop immediately and to serve the proceedings to the petitioner. In the said proceedings the respondent had revoked the tea shop license temporarily and directed the petitioner that not to open the tea shop until further orders.

3. The contention of the petitioner is that before passing the impugned proceedings, the respondents have not given any opportunity of hearing. By taking the version of FIR as gospel truth, the 1st respondent had passed the order dated 22.02.2025 and the petitioner had challenged the same in W.P (MD). No. 8213 of 2025, which was listed for admission on 25.03.2025. After hearing the said writ petition, the Government Pleader stated that this is the offence committed by the petitioner as third time and sought time for getting instructions from the respondents and the case was adjourned to 28.03.2025 and it is pending for adjudication till now. The 1st respondent has not stated anything



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about the present impugned order of penalty dated 22.03.2025 at the time of hearing W.P.(MD)No.8213 of 2025. The further contention of the petitioner is that, pending the above writ petition, subsequently the 1st respondent passed the present impugned order by affixing the prior date as 22.03.2025 and had sent it through registered post on 28.03.2025 which is afterthought. The 1st respondent has directed the petitioner to pay a sum of Rs.1,00,000/- as penalty for the committed offences under sections 69 of FSSA, 2006. Further the 1st respondent stated that if the penalty has been credited in the food safety wing penalties account, the petitioner will be permitted to open the tea shop.

4. The petitioner contended that he has not committed the alleged offence and hence he has not accepted allegation in the criminal case and he is ready to face the criminal case. It is further contended that due to the wordy quarrel arose against the 3rd respondent police and the worker of petitioner's tea shop, the above false case has been registered in Crime No. 48 of 2025. The respondent police had forced to accept the criminal case but the writ petitioner denied it. Hence, the FIR registered against the petitioner's workers is not true. Further it is submitted that an alleged person is not working in the tea shop, but he had come to take tea. Further the writ petitioner contended that he is not in a position to pay such a huge amount without committing any offences under



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sections of FSSAI act 2006. Furthermore submitted that the 1st respondent has no power to impose such huge penalty to compound the offences which is required to be proved before the Court of Law.

5. The respondents submitted that the petitioner had committed the present offence for the 3rd time. For the 1st time offence, the fine would be levied as Rs.25,000/-. For the 2nd time the fine would be levied as Rs.50,000/- and for the 3rd time the fine would be levied as Rs.1,00,000/-. The petitioner had committed the same offence three times, hence the fine of Rs.1,00,000/- was levied and the said fine is levied as per the Circular dated 19.02.2025 issued by the competent authorities.

6. But the petitioner had submitted that his shop is a petty shop and for the past two months the tea shop was sealed by the respondents. Further the Learned Counsel appearing for the petitioner submitted that the respondents would have power to seal the premises but with the respondents are bound to follow the procedures stated in the rules.

7. It is seen that the said issue was elaborately considered by the Hon'ble Division Bench in the case of the Commissioner and another Vs. S.



Subramaniyan and another in W.A.(MD)No.900 of 2025 vide judgment dated 25.08.2025, wherein after extracting the provision of section 38 it is held as under:

“Section 38 of the Act empowers the Food Safety Officer to take sample, seize any article of food that appears to be in contravention of the statute, enter and inspect any place, and direct destruction of food that is unfit for human consumption. Nowhere, this provision has conferred any power to seal the premises. This power is traceable only to Rule 2.1.3(4)(i) of the 2011 Rules. The Rule itself reads that the premises may be sealed for investigation after the Food Safety Officer is of the opinion that in the given situation, it is not possible to comply with the provision of section 38(1)(c) or the proviso to section 38(1) for reasons like non-availability of the food business operator. section 38(1)(c) of the Act envisages keeping the seized food article in the custody of the food business operator. The proviso to section 38(1) empowers the Food Safety Officer in such cases to call upon the food business operator to execute a bond with sureties. If the food business operator is not available, the Food Safety Officer will have no option but to seal the premises. The sealing of premises is for the purpose of investigation.

5.It is well settled that the power to seal is a drastic power. The Act and the Rules framed thereunder are both regulatory as well as penal in character. Therefore, the Rule cannot be expansively or liberally construed. On the other hand, it has to be strictly interpreted. The application of the Rule will have to be within the four corners of the statute.



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6. *Right to property has ceased to be a fundamental right but it still retains its constitutional status under Article 300-A. When the property is used for business purposes, any action to seal the premises would have a direct bearing and effect on legal rights of the person to use and occupy the premises. The action of sealing would amount to suspension or taking away of such legal right, which cannot be resorted unless the procedure in law is adopted (vide 2023 SCC OnLine Bom 1499, Narayan Power Solutions vs UOI). The right to carry on business is a fundamental right guaranteed under Article 19(1)(g) of the Constitution of India. Though it is not an absolute right, any interference with a fundamental right has to meet the standard of proportionality. A measure restricting a right must have a legitimate goal. It must be a suitable means of furthering this goal. There must not be any less restrictive but equally effective alternative. The measure must not have a disproportionate impact on the right holder. This four-pronged approach laid down in Aadhar case was approvingly cited in Akshay N.Patel v. RBI (2022) 3 SCC 694. If on inspection, the officer finds a statutory violation, he is entitled to seize the food article. But the food business operator must be present so that the other formalities can be complied with. If the food business operator is not available in the spot, the officer has no option but to keep the seized article in the premises itself and seal the same. If in the absence of the food business operator, the seizure takes place and the officer takes the sample for testing, the food business operator can plead later that the seizure was not from his premises. Thus, this measure has a legitimate goal. It is also an appropriate method of effectuating the goal.*

7. *Let us take a look at the sequence of events. The local police had conducted an inspection of the shop in question and registered a case on 07.12.2024. The Designated Officer visited the shop full two months later*



and proceeded to seal the premises. The impugned action of the authority fails at the very threshold stage itself. There was no legitimate goal to be fulfilled. Secondly, the sealing has to be for the purpose of investigation. Here, the local police had already registered a case. The second appellant herein had not taken any sample or seized the banned food items. Hence, there was no scope for any investigation to be done by the second appellant. The statutory condition set out in the Rule is not met. Unless the twin conditions laid down in the Rule

A. The authority must be of the opinion that it is not possible to comply with the provision of section 38(1)(c) or the proviso to section 38(1)

B. Sealing is necessary for the purpose of investigation

are satisfied, any act of sealing will be without jurisdiction. The expression “for” found in the Rule cannot be ignored. P.Ramanatha Aiyar's Advanced Law Lexicon states that the word “for” is sometimes used as importing a condition precedent, or as a word of limitation. It can also mean “in the interest” or “to the benefit of”. In the present context, it can only mean that sealing must facilitate investigation. The authority is obliged to show that if sealing is not done, investigation will be hampered. The investigation referred to is not investigation by police. Since the Act contemplates further steps by the Food Safety Officer, the expression “investigation” would refer only to those steps to be taken by the Food Safety Officer and nothing else. Further, the sealing of the premises cannot be for eternity. The investigation has to be concluded within a reasonable time and once investigation is over, the premises must be de-sealed.

8. In the case on hand, such a situation did not even arise. The second appellant had sealed the premises by citing the mere registration of FIR.



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The impugned action of the authority can only be characterised as shockingly arbitrary.

9. More than six months have elapsed. The only reason for not de-sealing the premises is because the writ petitioner did not pay the fine amount of Rs.25,000/-. The second appellant levied the said penalty based on the order dated 04.01.2024 issued by the first appellant. It reads as follows :

(The Circular dated 04.01.2024 was extracted).

We have already clarified as to when the authority can resort to sealing of the premises. It cannot be linked to payment of compounding penalty. When one is accused of having acted illegally, it is open to the accused to defend himself in the manner known to law. One can either plead guilty or contest the charges. Right to defend oneself against an accusation is a fundamental right. The person accused cannot be compelled to admit that he or she committed the offence. If the offender pays the compounding penalty, he can avoid prosecution. If he does not, he has to face adjudication under Section 68 of the Food Safety and Standards Act, 2006 or face trial in the criminal court. The choice is left to the individual. Section 69 of the Act empowers the authority to compound offences. It reads as follows :

69. Power to compound offences.—The Commissioner of Food Safety may, by order, empower the Designated Officer, to accept from petty manufacturers who himself manufacture and sell any article of food, retailers, hawkers, itinerant vendors, temporary stall holders against whom a reasonable belief exists that he has committed an offence or



contravention against this Act, payment of a sum of money by way of composition of the offence which such person is suspected to have committed.

(2) On the payment of such sum of money to such officer, the suspected person, if in custody, shall be discharged and no further proceedings in respect of the offence shall be taken against such person.

(3) The sum of money accepted or agreed to be accepted as composition under sub section (1), shall not be more than one lakh rupees and due regard shall be made to the guidelines specified in [section 49](#): Provided that no offence, for which punishment of imprisonment has been prescribed under this Act, shall be compounded.

A proceeding issued in terms of the aforesaid provision cannot be invoked to validate an act of sealing. The authority cannot insist that unless the compounding penalty is paid, the shop will be sealed or not de-sealed. That would amount to rank coercion. Compounding is a consensual affair. If the offender comes forward to compound the offence by paying the penalty, the official may accept the payment and close the prosecution. It cannot be imposed on the accused.

10.An FIR has been registered against the writ petitioner. He wants to contest the proceedings. He cannot be pressurised into pleading guilty by paying the compounding penalty. Once penalty is paid, it may legally amount to an acquittal but nevertheless it is an admission of guilt

11.We have already held that the twin conditions mentioned above are absent in this case. The sealing is illegal and the shop shall be de- sealed



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immediately. The learned Single Judge had made it clear that the writ petitioner has to face the prosecution. We go one step further. The writ petitioner has to avail the appeal remedy as regards the cancellation of his business license. The relief granted to him is two folds : a) De- sealing of the business premises and b) quashing the levy of compounding penalty.”

The Division Bench had held that the sealing of premises is necessary only for investigation and sealing cannot be for eternity and the investigation ought to be concluded within a reasonable time and once the investigation is over, the premises must be de-sealed.

8. In the present case, the police had registered the case in Crime No. 48 of 2025 on 22.02.2025. The Learned Government Advocate submitted that as per the written instructions the case is under investigation even as on 15.08.2025. The investigation is pending for more than six months, which is unacceptable. This Court is of the considered opinion that the respondents cannot keep the premises under seal endlessly under the guise of investigation.

9. As per the circular, the fine is imposed for effective implementation of ban notification but as per Rules the premises can be sealed only for investigation. Therefore, the seal beyond investigation and prolonged



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investigation cannot be ground to keep the premises sealed. Further it cannot be linked to payment of compounding penalty, since compounding under section 69 of the Act is independent and the same cannot be linked with sealing of the premises. Therefore the petitioner is entitled to the prayer of de-sealing of the premises.

10. This Court had already directed the respondents to reopen the premises through interim order dated 05.06.2025 and the same is confirmed in the final order as well. As far as the Criminal Case is concerned the petitioner is directed to face the same as per law.

11. With the above observations, the impugned order is set aside and the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

12. This Court is bound to record the inconsistent stand of the respondents and the government. The object of issuing the said circular dated 04.01.2024 and the circular 05.06.2025 is in order to implement the ill effects of tobacco on the health and to prevent cancer by consumption of tobacco and nicotine, more so to prohibiting the manufacture, storage, transport and distribution or sale of such products. On the other hand the government is selling



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the liquor which also have ill effects on the health. Hence this Court is of the considered opinion that in order to prevent the liver issues and other health issues etc. the government ought to prohibit the manufacture, storage, transport and distribution or sale of liquor. This Court hopes that the government would prohibit the sale of liquor in future.

02.04.2026

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

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To:

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S.SRIMATHY, J.

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**ORDER MADE IN
W.P(MD)No.15254of 2025**

DATED :02.04.2026