



2025:KER:1431

WP(C) NO. 25329 OF 2024

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C.S.DIAS

THURSDAY, THE 9TH DAY OF JANUARY 2025 / 19TH POUSHA, 1946

WP(C) NO. 25329 OF 2024

PETITIONER:

SIJI

AGED 42 YEARS

W/O.LAIJU, KANNAMPUZHA HOUSE, MURUNGOOR TEKKUMURI
DESOM, NALUKETTU P.O., CHALAKUDY TALUK, THRISSUR
DISTRICT,, PIN - 680308

BY ADVS.

N.L.BITTO

MITHUL T ANTO

RESPONDENTS:

- 1 STATE OF KERALA
REP. BY CHIEF SECRETARY TO THE GOVERNMENT,
SECRETARIAT, THIRUVANANTHAPURAM, PIN - 695001
- 2 KERALA EXERCISE DEPARTMENT
REPRESENTED BY SECRETARY, SECRETARIAT,
THIRUVANANTHAPURAM,, PIN - 695001
- 3 KERALA STATE FOOD AND SAFETY DEPARTMENT
REPRESENTED BY SECRETARY, SECRETARIAT,
THIRUVANAMTHAPURAM,, PIN - 695001
- 4 DEPUTY EXCISE COMMISSIONER, WAYANAD DIVISION,
1ST FLOOR, MUNDERI TOWER, MUNDERI VILLAGE,
KALPETTA P.O, WAYANAD DISTRICT,, PIN - 673121
- 5 DEPUTY EXCISE COMMISSIONER, PALAKKAD DIVISION,
EXCISE TOWER, DURGA NAGAR, KENATHUPARAMBU,
KUNATHURMEDU, PALAKKAD DISTRICT,, PIN - 678001
- 6 DEPUTY EXCISE COMMISSIONER, ERNAKULAM DIVISON,
DEPUTY EXCISE COMMISSIONER, ERNAKULAM DIVISON,
EXCISE ZONAL COMPLEX, KACHERIPADY, ERNAKULAM
DISTRICT,, PIN - 682018



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- 7 THE EXCISE INSPECTOR, WALAYAR CHECK POST,
VALAYAR P.O., PALAKKAD DISTRICT,, PIN - 678624
- 8 EXCISE INSPECTOR, MUTHANGA CHECK POST
EXCISE INSPECTOR, MUTHANGA CHECK POST MUTHANGA
P.O., VAYANAD DISTRICT,, PIN - 673592

OTHER PRESENT:

GOVT.PLEADER SMT.VIDYA KURIAKOSE

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR
ADMISSION ON 09.01.2025, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:



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“C.R”

JUDGMENT

Dated this the 09th day of January, 2025

The petitioner is a wholesale dealer of tobacco-free pan masala named 'Vimal and Shikkar Pan Masala'. The petitioner has the requisite statutory licenses to manufacture and sell the product. The product is a mouth freshener free from tobacco. The product is found to be edible for human consumption after undergoing a rigorous testing process. The petitioner proposes to transport the product to Kerala through the Muthanga and Valayar Check Posts. The petitioner apprehends that the respondents may seize the product and take unnecessary action against her as done against similar dealers. The authorities have no authority to seize the product. If the product is seized, it would be unnecessarily detained, which would cause injustice to the petitioner. The petitioner is willing to cooperate with the respondents. Hence, a direction may



be issued to the respondents to desist from seizing the product merely on a suspicion that it contains tobacco.

2. Heard: Sri. N.L.Bitto, the learned counsel for the petitioner and Smt. Vidya Kuriakose, the learned Government Pleader.

3. The petitioner seeks an anticipatory mandamus to direct the respondents to desist from seizing the petitioner's product, which she proposes to bring from Karnataka and New Delhi for sale in Kerala.

4. In **Praga Tools Corporation v. C. V. Imanual** (AIR 1969 SC 1306), the Supreme Court has held that a writ will lie not only for compelling an authority to perform its statutory duty but also for restraining or prohibiting them from doing anything that is not legally permissible.

5. It is also well settled that a petitioner doesn't need to establish that he has suffered an actual injury; apprehension of injury or threat of injury is more than



sufficient to maintain a writ petition under Article 226⁵ of the Constitution of India. (Refer to **Bengal Immunity Co. v. State of Bihar** (AIR 1955 SC 661) and **Kochuni v. State of Madras** (AIR 1959 SC 725).

6. In the light of the above exposition of law, there is no doubt that a statutory authority can be restrained from doing an act not permitted under the law.

7.The production, supply and distribution of cigarettes and tobacco products are regulated by The Cigarettes And Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 ('Act', in short).

8. As per Section 3 (p) of the Act, 'tobacco products' means the products specified in the Schedule. Serial No.8 under the Schedule is pan masala or any chewing material with tobacco as one of its ingredients



(by whatever name called).⁶

9. The petitioner contends that since her product does not contain tobacco, the provisions of the Act are not applicable to her product.

10. Admittedly, the petitioner has not brought the product to the State, and the respondents have not seized or tested it.

11. It is apposite to refer to Section 12 of the Act, which reads as follows:

12. Power of entry and search.—(1) Any police officer, not below the rank of a sub-inspector or any officer of State Food or Drug Administration or any other officer, holding the equivalent rank being not below the rank of Sub-Inspector of Police, authorised in writing by the Central Government or by the State Government may, if he has any reason to suspect that any provision of this Act has been, or is being, contravened, enter and search in the manner prescribed, at any reasonable time, any factory, building, business premises or any other place,—

(a) where any trade or commerce in cigarettes or any other tobacco products is carried on or cigarettes or any other tobacco products are produced, supplied or distributed; or

(b) where any advertisement of the cigarettes or any other tobacco products has been or is being made.

(2) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), shall apply to every search and seizure made under this Act.



12. Section 12 ⁷ confers powers on the competent officer to enter and search any factory, building, business premises, or other place, if he suspects that any of the provisions of the Act are being contravened.

13. Sections 13 and 14 of the Act confer power on the competent officer to seize and confiscate a product, if they suspect that the provisions of the Act are being contravened.

14. In view of the above provisions in the Act, it is explicit that the respondents have the power to enter, search, seize, and confiscate a product if they suspect any of the provisions of the Act are being violated.

15. In the case at hand, admittedly, the petitioner has not brought her product to the State. Merely because the petitioner states that her product does not contain tobacco, the same cannot be a ground for forbearing the respondents from exercising their



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statutory powers under the Act. Likewise, just because the respondents have seized and confiscated products of other traders, the same also cannot be a reason to restrain the respondents from exercising their statutory powers, if they have a suspicion regarding the petitioner's product. In any given case, the petitioner is not entitled to a peremptory mandamus to prohibit the respondents from exercising their statutory duties in a hypothetical situation like this. The Act is a self-contained enactment with specific provisions for adjudication of disputes. If the respondents seize the petitioner's products, she has an alternative remedy under the Act. The writ petition is misconceived, lacks merits, and is consequentially dismissed.

Sd/-C.S.DIAS,
JUDGE



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APPENDIX OF WP(C) 25329/2024

PETITIONER EXHIBITS

- EXHIBIT- P1 A TRUE COPY OF THE REGISTRATION CERTIFICATE OF MC
TRADERS FROM THE GOVERNMENT OF INDIA DATED 19/9/2022
- EXHIBIT- P2 A TRUE COPY OF THE GST REGISTRATION CERTIFICATE OF MC
TRADERS FROM THE GOVERNMENT OF INDIA DATED 1/5/2023
- EXHIBIT- P3 A TRUE COPY OF THE CERTIFICATE OF EXAMINATION NO.457
A/2023-24 OF SHIKKAR PAN MASALA FROM THE REGIONAL
ANALYTICAL LAB ERNAKULAM DATED 11/12/2023
- EXHIBIT- P4 A TRUE COPY OF THE CERTIFICATE OF EXAMINATION NO.457
B/2023-24 OF SHIKKAR PAN MASALA FROM THE REGIONAL
ANALYTICAL LAB ERNAKULAM DATED 11/12/2023
- EXHIBIT- P5 A TRUE COPY OF THE CERTIFICATE OF EXAMINATION NO.458
A/2023-24 OF VIMAL PAN MASALA FROM THE REGIONAL
ANALYTICAL LAB ERNAKULAM DATED 11/12/2023
- EXHIBIT- P6 A TRUE COPY OF THE CERTIFICATE OF EXAMINATION NO.458
B/2023-24 OF VIMAL PAN MASALA FROM THE REGIONAL
ANALYTICAL LAB ERNAKULAM DATED 11/12/2023
- EXHIBIT- P7 A TRUE COPY OF THE CERTIFICATE OF EXAMINATION FROM
THE GOVERNMENT ANALYST LABORATORY
THIRUVANANTHAPURAM DATED 8/4/2019
- EXHIBIT- 8 A TRUE COPY OF THE ORDER PASSED IN CMP.1998 OF 2024 BY THE
JFCM PERUMBAVOOR DATED 12/6/2024



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