

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 19TH DAY OF SEPTEMBER, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.25756 OF 2012 (GM - RES)

BETWEEN:

- 1 . KARNATAKA PRADESH HOTEL & RESTAURANTS
ASSOCIATION (R)
AN ASSOCIATION REGISTERED UNDER THE
KARNATAKA SOCIETIES REGISTRATION ACT
HAVING ITS REGISTERED OFFICE AT
NO.1, KPHRA GOLDEN BHAVAN
3RD FLOOR, 2ND MAIN
SHESHADRIPURAM, BENGALURU - 560 020
REPRESENTED BY ITS HON SECRETARY
SRI B.S.NAGARAJA DHANYA

- 2 . BRUHAT BENGALURU HOTELS ASSOCIATION (R)
SHRESHTA BHOOMI, UNIT NO. 307
3RD FLOOR, NO. 87, K.R.ROAD
BENGALURU - 560 004
REPRESENTED BY ITS PRESIDENT
SRI K.N.VASUDEVA ADIGA

... PETITIONERS

(BY SRI UDAYA HOLLA, SR.ADVOCATE FOR
SRI VIVEK HOLLA, ADVOCATE)

AND:

- 1 . UNION OF INDIA
REPRESENTED BY ITS
SECRETARY TO GOVERNMENT
MINISTRY OF HEALTH & FAMILY WELFARE
NIRMAN BHAVAN,
NEW DELHI – 110 011.

- 2 . THE FOOD SAFETY COMMISSIONER &
COMMISSIONER FOR HEALTH,
FAMILY WELFARE SERVICES OF KARNATAKA
ANANDA RAO CIRCLE
BENGALURU – 560 009.

- 3 . FOOD SAFETY & STANDARDS AUTHORITY OF INDIA
FDA BHAWAN, NEAR BAL BHAWAN
KOTTA ROAD, NEW DELHI – 110 002
REPRESENTED. BY ITS DIRECTOR (ADMINISTRATION).

... RESPONDENTS

(BY SRI ANUJ UDUPA, ADVOCATE FOR
SRI H.SHANTHI BHUSHAN, DSGI FOR R-1;
SRI SPOORTHY HEGDE, HCGP FOR R-2;
SRI DORE RAJ, ADVOCATE FOR R-3)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE
NOTIFICATION DATED 13.3.2012 ISSUED BY THE SECOND
RESPONDENT VIDE ANNEXURE-G; DECLARE THAT THE
PROVISIONS OF REGULATIONS FRAMED BY FOOD SAFETY AND

STANDARDS AUTHORITY OF INDIA FRAMED UNDER SECTION 92 OF ACT, 34 OF 2006 NAMELY, THE REGULATIONS 1.2.4 IN CHAPTER I, 2.1 IN CHAPTER II, 5.1 IN PART II OF SCHEDULE IV, 7 IN PART II OF SCHEDULE IV, OF THE FOOD SAFETY AND STANDARDS [LICENSING AND REGISTRATION OF FOOD BUSINESSES] REGULATIONS, 2011 AND CONDITIONS IMPOSED FOR GRANTING OF LICENCE UNDER THE FOOD SAFETY AND STANDARDS [LICENSING AND REGISTRATION OF FOOD BUSINESSES]; REGULATION 2.2.2 OF THE FOOD SAFETY AND STANDARDS [PACKAGING AND LABELLING] REGULATIONS, 2011 AND THE FOOD SAFETY AND STANDARDS [FOOD PRODUCTS STANDARDS AND FOOD ADDITIVES] REGULATIONS, 2011 AND THE PENALTIES PRESCRIBED IN SECTIONS 50 TO 65 OF THE FOOD SAFETY AND STANDARD ACT, 2006 AS UNCONSTITUTIONAL, ULTRA VIRES, ILLEGAL, UNREASONABLE AND ARBITRARY AND HOLD THAT THEY ARE INVALID AND UNENFORCEABLE AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioners/Karnataka Pradesh Hotel & Restaurants Association and Bruhat Bengaluru Hotels Association are the at the doors of this Court, calling in question a letter dated 13-03-2012, directing all states to implement the rules and regulations, which are framed by the Food Safety and Standards Authority of India, thereby mandating every food business operator to either get a license or registration to carry on their business and have also sought for a consequential relief of declaration declaring few of the provisions of the Food Safety and Standards Act, 2006 ('the Act' for short) and the regulations framed thereunder, as found in the prayer to be unconstitutional.

2. Facts, in brief, germane are as follows: -

The 1st petitioner is the Association of hotels and restaurants in the State of Karnataka; all District level hotel Associations are said to be affiliates of the 1st petitioner. It is claimed that the 1st petitioner strives for betterment of hospitality industry, more

specifically the hotels and restaurants, by assisting owners in their various needs. The Association is said to have been founded in the year 1954. The 2nd petitioner is the Association of Hotels and Restaurants in the City of Bangalore which is also an affiliate of the 1st petitioner. The issue is with regard to food and food products being regulated. The regulatory regime began in the year 1954, when Prevention of Food Adulteration Act, 1954 ('Food Adulteration Act' for short) comes to be enacted concentrating on health hazards that may be caused to the citizens by consuming adulterated food. Since 1954 the Food Adulteration Act held its place. Thus, the members of the petitioners claim to be in complete adherence to the standard and quality, as obtaining under the Food Adulteration Act.

2.1. Government of India by Act 34 of 2006 enacted Food Safety and Standards Act, 2006 to consolidate the law relating to food and to establish food safety and standards and also creation of statutory Authority of India for laying down the science-based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import. The Food Safety and

Standards Authority of India called for objections or suggestions from the stake holders in terms of a notification for review, if necessary. The said notification had enlisted 19 months' timetable for possible implementation of such recommendations or suggestions in the standards, after due approval by various panels and committees.

2.2. The objections come to be forwarded long after their receipt on 31-03-2012 and the time was thus extended up to 20-04-2012. The petitioners also are said to have rendered their objections for consideration, prior to the enactment becoming final. The petitioners are said to have explained the difficulties in the implementation of the Act and notwithstanding the same, it is the averment in the petition that, Government of India enacted the Act and framed Rules thereunder for implementation throughout the nation. On such enactment, the subject petition is preferred alleging impracticability of implementation of the regulations.

3. Heard Sri Udaya Holla, learned senior counsel appearing for the petitioners, Sri Anuj Udupa, learned counsel for

Sri H. Shanthi Bhushan, learned Deputy Solicitor General of India appearing for respondent No.1, Sri Spoorthy Hegde, learned High Court Government Pleader appearing for respondent No.2 and Sri Dore Raj, learned counsel appearing for respondent No.3.

SUBMISSIONS:

PETITIONERS':

4.1. **The learned senior counsel Sri Udaya Holla** appearing for the petitioners would contend that the Regulations seeking to regulate food standards in the nation are on the face of them violative of Article 14 of the Constitution of India, as they deny equal treatment under law to all hoteliers or restaurants. It fails to pass the reasonable test, as every restriction imposed on the face of it, is unreasonable. He takes this Court through the documents appended to the petition to demonstrate that Sections 50 to 65 of the Act which deal with penal provisions, impose impractical compliance, while that is not taken note of to penalize the non-compliance. According to the learned senior counsel the Regulations framed under the Act in the year 2011 are impractical,

impossible, to be implemented, as they are unworkable, they are not in line with Indian requirements.

4.2. He would submit that the Food and Safety Standards Act of the United States of America is completely paraphrased into the subject Act. He would quote illustrations of constitutional Courts annulling regulatory overreach in the agriculture, food sector and media sector where the Courts have come down heavily upon unreasonable conditions in the licensing and have struck down those unreasonable conditions. He has enumerated the Regulations that have become the bone of contention and the reason for laying down a constitutional challenge.

UNION OF INDIA:

5. Per contra, the **learned Deputy Solicitor General of India Sri H Shanthi Bhushan** appearing for the respondents- Union of India and the State, would in unison contend that the presumption of constitutional validity of every legislation of the Act of Parliament or the legislature is valid till it is declared ultra vires. The Act has received the assent of the President on 23-08-2006.

The Act repealed and consolidated Food Safety and Standards in the nation. The food safety and standards that form part of the Act are all based on international legislations, instrumentality like the Codex. Alimentary Commission also takes care of international practices and envisages overarching policy frame work in a single window. The learned counsel, in unison, would seek to place reliance upon certain judgments rendered by the constitutional Courts and several other High Courts to buttress their submissions.

6. Having bestowed anxious consideration upon the rival submissions and traversing the material on record, this Court is now required to answer, a delicate balance between individual enterprise and collective welfare between economic freedom and sanctity of human health.

CONSIDERATION:

7. The facts are largely undisputed, and the controversy lies not in the existence of the Act, but in the scope and reach of the regulations framed thereunder.

Therefore, the consideration of the issue would necessitate noticing the dates in the history of the regulation. The Prevention of Food Adulteration Act, 1954 comes to be enacted for the manufacture and sale of food products. Long thereafter, in the year 2004, a public interest petition, comes to be filed before the Apex Court in **CENTRE FOR PUBLIC INTEREST LITIGATION v. UNION OF INDIA**¹, under Article 32 of the Constitution of India in Writ Petition No.681 of 2004 seeking constitution of an independent expert/technical committee to evaluate the harmful effects of soft drinks on human health, particularly the health of children and a direction to the Union of India to put in place, a regulatory regime which could control and check the contents of a particular chemical additives in foods including soft drinks. During the pendency of the said petition, a Food Safety Standard Bill was introduced in the year 2005 to consolidate laws relating to establishing an authority i.e., the Food Safety and Standards Authority of India for laying down science-based standards for articles of food and to regulate their standards. It is, thus, the Food Safety and Standards Act, 2006 comes into existence, laying down or bringing in a regulatory

¹ (2013) 16 SCC 279

regime statutorily recognized for safety of food and food articles, their manufacture, storage, sale and import. The 3rd respondent Food Safety and Standards Authority of India ('FSSAI') was thus created in terms of a notification calling for objections from all the stake holders. The receipt of objections concluded on 20-04-2012.

8. Certain developments happen in the interregnum. On 24-01-2010, the 1st petitioner files detailed objections to the Bill and the regulatory regime that was sought to be introduced. One of the objections is germane to be noticed:

"To,

The Hon'ble Minister of Health and Family Welfare
Government of India
Delhi
Sir,

Food Safety & Standards, Act, 2006 Licensing &
Registration Regulatory suggestions/Comments-
Submitted.

Sub: Bangalore Hotel Owners Association-Food Safety Act-
Concerns

We are an association that strives for the betterment of the hospitality industry more specifically hotels and restaurants through assisting hotel owners in their various needs and by creating a forum for them to channel their needs and concerns. Further more as an association, we are also committed to channelizing the resources of the hospitality industry (consisting of hotels and restaurants) for social purposes as a consequence

of our corporate social responsibility. Given the fact that the hospitality industry has become a significant player in the social and economic policies of the nation, we understand and appreciate the need for being proactive by constantly keeping the hotel owners updated about changes in policy and educate them about the need to meet such policy directives.

We take special pride in the fact that the hospitality industry is one of the few sources of employment whereby people notwithstanding their educational qualification and economic status have equal opportunities in terms of employment and growth. As an association, we constantly encourage and urge our members to give priority to the weaker sections of society while securing employment as a further step in achieving our social responsibility, which we meet as a matter of choice as well as matter of duty. Behind the fact that the hospitality industry contributes 5.8% of the total GDP of India, lies a vast demand for manpower translating to lives depending on the industry for their survival. While we definitely admit that the hospitality industry's resources are limited, we optimize our operations and frame policies to ensure that each and every employee/worker is provided a fairly handsome salary, provident fund and insurance benefits. This is besides the benefits emanating from our own initiative such as education for the children of such workers, constant training and development of job skills, etc. Traditional prejudices and stereotypes in the nature of caste, religion, creed, sex and race find no place in our policy making and we firmly believe that equality is the basis of prosperity and equal opportunities the basis of growth.

With specific reference to consumer relations, notwithstanding statutory requirements, the hospitality industry has undertaken self regulation to meet the highest levels of quality and standards. Increased competition within the industry and the priority to goodwill over profit making has instigated an enhanced focus on quality control and ensuring the best quality products and services reach the consumer. Given this background, the hospitality industry welcomed, albeit its share of reservations, the Prevention of Food Adulteration Act, 1954 and Rules 1955 as it forced unscrupulous vendors who we have always reprimanded, to get their act together and ensure the health, safety and welfare of the public as a consequence. Those members of the industry who understood the well founded need

to meet the highest standards of quality found no trouble whatsoever in meeting the duties and obligations cast upon them by the said Act.

Given that the said Act had a long history of being in force, there was a great level of clarity as to the subject matter of the said Act enabling the hospitality industry to meet the requirements therein effectively and promptly. We have always felt that fairness breeds compliance and as such we found the said Act fairly reasonable and thus understood the sanctity and necessity of the same, while reiterating our belief that changing times require adaptations in the policy making also.

However, upon the announcement that the food adulteration laws in the country were set for a revamp, the hospitality industry has closely followed the connected developments as a result of a great deal of curiosity. As we represent the industry which is directly affected by such laws, we consider it our duty to keep ourselves aware of these developments and assist in the process of ensuring that the noble intention of the legislature is expressed in the right way to instigate and occasion the appreciation of the concerned members.

We thus respectfully and most humbly submit our observations and concerns about the proposed Food Safety and Standards Act, 2006,

At the outset, this initiative of your ministry is highly appreciated and we take this opportunity to commend the parliament's recognition for the need to revamp the Food Adulteration Laws. It is our view that this Act signifies the wisdom of your ministry in recognising the changing scenario of the consumer oriented market and understanding the need to change policy.

The context of our concern emanates out of the fact that only 30% of the Hospitality Industry consist of star rated hotels. The rest 70% of the industry comprises of small scale and medium scale industry players. The immediate concern is that the proposed new law does not classify between different categories of entities in the hospitality industry and as a result creates an unreasonable set of obligations on the small and medium scale

industry members. Thus enactment of this Food Safety and Standards Act, 2006 would result in an increased burden upon the small scale members of the hospitality industry, who are, as it is facing a great level of difficulty owing to the fluctuating food commodities market and ever dynamic consumer needs. Further there is a enormous volume of statutes covering the businesses of the small scale players, resulting in further burdens of having to divert resources and attention in pleasing the administrative setup involved and this often involves putting up with gross abuse of power and corruption. You would appreciate that the small scale players of the hospitality industry constitute 70% of the industry itself and it is they who serve as the primary employers dedicated to serving the social needs of generating employment for the weaker sections of society.

Further having acquainted and enlightened ourselves of this bold and commendable initiative of your Hon'ble ministry, we feel that the new Act while greatly enhancing the need for vigilance in the industry also serves to aggravate the constraints faced by the industry members, without addressing their needs and concerns. To begin with, the Food Safety and Standards Act, 2006 has taken the step to provide for a great level of disincentives for failure to meet its requirements. While that is the case, the enormous strides made by the hospitality industry in terms of quality control have been almost entirely ignored and we would have been grateful if the wordings of the Act served to accommodate the industry practices and needs. You would appreciate that the hospitality industry is engaged in providing real time products and services. It is a service oriented industry as much as it involves providing food to the consumers. As a result, the operations of the hospitality industry are sufficiently different from the operations of the food products manufacturing industry involved in packaged commodities. In keeping with the more demanding nature of the hospitality industry market, the treatment afforded to packaged food products manufacturers cannot be afforded on the hospitality industry. Even on this count the new proposed law fails to meet the needs of the hour.

We also draw reference of your good self to the wordings of the provisions of the new Act. A majority of industry members are represented by people who are uneducated and in some cases

illiterate. These people represent the entrepreneurship spirit of our people and illustrate the fact that this is a land of opportunities, where any person can grow socially and economically. To illustrate our point, the wordings of the General Provisions pertaining to offences and corresponding penalties employ terms such as "Primary Food" and "Health Sensitivities" which are vague and the scope of such words are undefined. This creates a great deal of confusion and chaos giving rise to the very real possibility of abuse of process and power. In any event, efforts to educate the hospitality industry about the new Act would have to be greatly enhanced, at the cost of resources both unavailable and impractical. We thus propose and request your considerate self to simplify the wordings of the Act and clarify, within the Act, itself, the nature and scope of the terms employed. In the alternative, we request you to kindly consider the hospitality industry as a separate industry substantially different from the food products manufacturing industry and consider the prospect of involving the industry players in the process of regulating them under a separate enactment.

liabilities will invoke greater fear amongst the industry players (consisting of illiterate as well as uneducated people). Unscrupulous members, hopefully few in number, of the administration overseeing the enforcement of the new Act would make victims of such innocent and fearful players resulting in greater corruption than what is already present. While we reiterate the hospitality industry's commitment to meeting quality standards, you would appreciate that the situation enumerated here would result in no favourable consequence for even those industry players who make prompt statutory compliances. Further this sort of an atmosphere will discourage people from entering into the hospitality industry greatly constraining investments and funding. This aggravates the problems already faced by the hospitality industry.

The guidelines laid down for adjudicating authorities stipulate the amount of gain or unfair advantage, the amount of loss or likely to cause to a person on account of a violation/contravention, the pattern of contravention and whether knowledge can, be attributed to person contravening and other relevant factors. On a perusal of these guidelines, it appears that the intention is to determine the penalty on the

basis of these considerations and hence a case by case approach for the same is allowed for. Thus the possible penalties for contraventions may fluctuate violently and this will prove very difficult for many members of the hospitality industry.

The penalties for the various offences are detailed as under,

TABLE OF OFFENCES AND PENALTIES

Offence	Penalty
1. Sale of Food not meeting the nature, substance or quality demanded.	Not exceeding Rupees Two Lakhs
2. Substandard Food	Penalty extended to Rupees Five Lakhs
3. Misbranded Food	1. Penalty extended upto Rs. Three Lakhs. 2. Direction for destruction of the offending food article for failure to correct offence.
4. Misleading Advertisement	Extended to Rupees Ten Lakhs
5. Food containing extraneous matter	Extended to Rupees One Lakh
6. Failure to comply with directions of food safety officer	Extended to Rupees Two Lakhs
7. Unhygienic or unsanitary processing or manufacture of food.	Extended to Rupees One Lakh
8. Penalty for possessing adulterant	Extended to Rupees Two Lakhs where adulterant not injurious to health

	Not Exceeding Rupees Ten Lakhs where adulterant injurious to health
9. Contravention not specifically penalised or provided for.	Extended to Rupees Two Lakhs
10. Unsafe Food where no injury caused	Extended to Six months imprisonment and fine extended to Rupees One Lakh.
11. Unsafe Food resulting in non grievous injury	Extended to One Year Imprisonment and Fine extended to Rupees Three Lakhs
12. Unsafe Food resulting in grievous injury	Extent of Six years imprisonment and fine to the extent of Rupees Five Lakhs
13. Unsafe Food resulting in death	Not less than Seven Years imprisonment but extent of life imprisonment accompanied by fine not less than Rupees Ten Lakhs.
14. Interference with seized items:	Extent of Six Months Imprisonment and fine to the extent of Rupees Two Lakhs.
15. Providing false information:	Extent of three years imprisonment and fine to the extent of Rupees Two Lakhs.
16. Business without license.	Extent of Six Months imprisonment and fine to the extent of Rupees One Lakh.

In any event, we firmly believe that the ideal situation policy making should strive to achieve is one where every industry regulates itself through adequate encouragement of standards setting practices and marked increase in competition. Stringent regulation without fair classification would discourage the entry of more players in the hospitality industry market and the already present corruption would allow the unscrupulous hoteliers and restaurateurs to escape liability even in the face of violation. If the intention is to assist the cause of consumer protection, we suggest that the same be achieved through more apt competition laws and increasing the quantum of compensation available to consumers within the purview of the Consumer Protection Act, 1986.

We respectfully and humbly submit that the situation at the grass root level necessitates a reanalysis of the Food Safety and Standards Act, 2006 and its implications on the country. We fervently look up to you to kindly consider our concerns and take appropriate measures to put our concerns and fears to rest, so that we may be able to function smoothly and continue our efforts to serve the nation's social and economic needs. We thank you in advance for all your help, guidance and assistance and look forward to your ministry's support in all, our endeavours for the future.

Thanking you

Yours faithfully

Sd/-

Secretary

Karnataka Pradesh Hotels & Restaurants association"

The afore-quoted objections were in great detail. Penalties were also spoken of and impracticability of implementation of the regime.

9. During the subsistence of consideration of the said objections, before the Apex Court, submissions were made that the scientific panels and committees that were constituted were not in consonance with the Act. On the said contention, the Apex Court in terms of its order dated 08-02-2011, directed scrapping of the scientific panel which was constituted and further directed that the FSSAI should be reconstituted as an independent Scientific Panel afresh, in terms of Section 13 of the Act. Thus, FSSAI is

reconstituted with a particular scientific panel. This comes about on 08-03-2011. The newly formed scientific panel is alleged to have failed to achieve its purpose, as it did not perform the duties in a scientific manner. Representations galore from the hands of these petitioners intimating that it is difficult to implement the Regulations framed under the Act. In reply to the representations, the 2nd respondent communicates to the petitioners intimating that Government of India, has directed all States to implement the rules and regulations framed under the Act and it would become applicable to every food business operator who is wanting to secure a licence or registration to carry out the business and also to convert the existing Prevention of Food Adulteration license into a new FSSAI license.

The communication reads as follows:

"GOVERNMENT OF KARNATAKA
Commissionerate of Health and Family Welfare Services
Ananda Rao Circle, Bengaluru-560009.

No: PHUFSSAV17/2011-12

Date: 13:03:2012.

To,

The President
Karnataka State Hotel and Restaurant Association,
Bangalore

Sir,

Subject: FSSAI 2006.

Ref: Letter no: KPHRA/3581/11-12 date: 28/12/2011.

As you know, the government of India has gazzeted the rules and regulations of FSSAI 2006 and directed all the states to implement the same from 5 august 2011. Before gazetting these rules and regulations, FSSAI has published the draft rules many times inviting objections from stake holders in the internet.

Now as per the above rules, every food business operator has the responsibility either to get the license or registration to carry out his food business and convert the existing PFA license or obtain new FSSAI license before 4th august 2012.

The government of Karnataka has notified 106 Food safety officers, who are the registering authorities at Taluk and Municipality areas and 30 Designated officers for each district, Chief Health officer of BBMP as Designated Officer for BBMP area, who are the licensing authorities. You are required to contact the above officers for your registration /Licensing and other procedures and details.

If you are able to arrange a State level awareness workshop or seminar, the officers will interact with the members regarding implementation of the rules and regulations.

Thanking you

Yours Sinciarly

Sd/-

Food Safety Commissioner & Commissioner,
Health and Family Welfare Services,
Bengaluru."

(Emphasis supplied)

10. The afore-quoted communication is in reply to the representation. It is this that drives the petitioner to this Court in the subject petition. The grant of license to the petitioners and the

like, is dealt with under several regulations. They are, the **Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011** (hereinafter referred to as 'the Licensing Regulations, 2011' for short); the entirety of the **Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011**; **Regulation 2.2.2 of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011** and penalties prescribed under Sections 50 to 65 of the Act. This petition is preferred seeking the following prayer:

PRAYER

WHEREFORE the petitioner prays that this Hon'ble Court may be pleased to:

- i. Issue a writ of certiorari or any other writ, order or direction quashing the notification BEARING No. PHI/FSSAI/17/2011-12 dated 13.03.2012 issued by the second respondent; (ANNEXURE G)
- ii. Issue a writ, direction or Order in the nature of a WRIT OF DECLARATION declaring that the provisions of Regulations framed by Food Safety and Standards Authority of India framed under Section 92 of Act 34 of 2006 namely: the regulations 1.2.4 in Chapter 1, 2.1 in Chapter II, 5 in Part II of Schedule IV. 7 in Part II of Schedule IV, of The Food Safety and Standards (Licensing and Registration of Food Businesses) licence under The Food Safety and Standards (Licensing and Regulations, 2011 and conditions imposed for granting of Registration of Food Businesses):

Regulation 2.2.2 of The Food Safety and Standards (Packaging and Labelling) Regulations, 2011; and The Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011. And the penalties prescribed in Sections 50 to 65 of the Food safety and Standard Act, 2006 as unconstitutional, ultra vires, illegal, unreasonable and arbitrary and hold that they are invalid and unenforceable.

- iii. Issue a writ, direction or order in the nature of declaration declaring that the provision/regulation 2.1.3, Regulation 2.1.9(1), Regulation 2.1.13(1) of Chapter II, Regulation 8 of Part II of the Schedule IV, Part of Regulation 11.2.1(2) of Part V of the Schedule IV, Regulations 3 (f),(g)& (i) of Part V of the Schedule IV. Regulation 11.4 of Part V of the Schedule IV, Regulation in (1),(3) & (4) of Part V of the Schedule IV, Regulation of Part V of the Schedule IV, Regulation VI.1(1), Regulation VI.2.(1),(2)&(3), Regulation VI.3.(5), Regulation VI.4.(7)&(9), Regulation VI. 5 (1)&(2), Regulation VI.6.(1),(2) &(3), Regulation VI.7(2), Regulation VI 8 of the Food Safety and Standards (Licensing and Registration of Food Business). Regulations,2011 are unconstitutional, ultra vires, illegal, unreasonable, arbitrary and hold that they are invalid and unenforceable.
- iv. and to pass such other further orders in the interest of Justice."

11. During the subsistence of the subject petition the Apex Court disposes of the writ petition in W.P.No.681 of 2004 on 22-10-2013, in the case of **CENTRE FOR PUBLIC INTEREST LITIGATION v. UNION OF INDIA**², by rendering certain

² (2013) 16 SCC 279

directions. The observations and directions of the Apex Court are as follows:

“.... ”

9. We find that the Scientific Panel consists of eminent food scientists, chemical engineers, nutritionists, public health experts, toxicologists, etc. The petitioner raised the contention that the objection raised by it was considered by the Committee whose title is the Scientific Panel on Labelling and Claims/Advertising, even though the Food Authority has a panel with the words “Food Additives” in its title. We find not much force in this contention, when we examine the credentials of the members of the Scientific Panel on Labelling/Advertising. Further, we notice that the grievances were examined by the experts who are scientific experts, not by the members of the Panel chosen, who are only conversant with labelling/advertising, etc. In any view, we notice that the Act provides for a machinery for examining the grievances and if a citizen has got any complaint with regard to the ingredients of any soft drinks, he can approach the machinery. Section 40 of the FSS Act also enables the purchaser of any article of food to get analysed such food from the Food Analyst after informing the food business operator at the time of purchase of his intention to have such article so analysed. The statute also provides penal provisions in case there is a contravention or non-compliance of the Regulations framed.

10. The FSS Act has been enacted to consolidate laws relating to food and to establish the Food Safety and Standards Authority in India for laying down science-based standards for articles of food. The Act is also intended to regulate the manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption. The Act is based on international legislations, instrumentalities and Codex Alimentarius Commission (CAC). CAC was created in 1961/1962 by the Food and Agricultural Organisation

of United Nations (FAO) and WHO to develop the food standards, guidelines and related texts such as codes of practice under the Joint FAO/WHO Food Standards Programme. The main purpose of this programme is to protect the health of consumers, ensure fair practices in the food trade, and promote coordination of all food standards work undertaken by international governmental and non-governmental organisations. "Codex India", the National Codex Contact Point (NCCP) for India, coordinates and promotes Codex activities in India in association with the National Codex Committee and facilitates India's input to the work of Codex through an established consultation process.

11. The Act empowered the Central Government to constitute the Food Safety and Standards Authority of India (hereinafter being referred to as "the Food Authority") under Section 4 of the FSS Act. The Food Authority is also authorised to constitute a Central Advisory Committee, so also scientific panels. Section 13 of the FSS Act states that the Food Authority shall establish Scientific Panels which shall consist of independent scientific experts with representatives of industry and consumer organisations in its deliberations. The Food Authority may also establish as many Scientific Panels, as it considers necessary, in addition to panels on food additives, flavourings, processing aids and materials in contact with food; pesticide and antibiotic residues. The Food Authority, under Section 14 of the FSS Act, can also constitute Scientific Committee consisting of Chairpersons of Scientific Panels and six independent scientific experts not belonging to any of the Scientific Panels. The Committee shall be responsible for providing the scientific opinions to the Food Authority and shall have the powers for organising public hearings. The Scientific Committee shall provide opinion on multi-sectoral issues falling within the competence of more than one Scientific Panel and set up working groups on issues which do not fall under Scientific Panels. The duties and functions of the Food Authority have been elaborately dealt with in Section 16 of the FSS Act, which states that it shall be the duty of the Food Authority to regulate and monitor the manufacture, processing, distribution, sale and import of food, and shall specify, by regulations, the standards and guidelines in relation to articles of food, mechanisms and guidelines for accreditation of certification bodies engaged in

certification of food safety management systems for food businesses and notify the accredited laboratories, etc.

.....

13. The Food Authority, while discharging its functions, shall take into account the prevailing practices and conditions in the country, including agricultural practices and handling, storage and transport conditions, including international standards and practices. The Food Authority shall be guided by the general principles of food safety, such as, risk analysis, risk assessment, risk management, risk communication, transparent public consultation, protection of consumers' interest, etc.

14. Section 19 of the Act stipulates that:

"19. Use of food additive or processing aid.—No article of food shall contain any food additive or processing aid unless it is in accordance with the provisions of the Act and regulations made thereunder."

15. Section 21 is of paramount importance and is extracted hereunder for an easy reference:

"21. Pesticides, veterinary drugs residues, antibiotic residues and microbiological counts.—(1) No article of food shall contain insecticides or pesticides residues, veterinary drugs residues, antibiotic residues, solvent residues, pharmacological active substances and microbiological counts in excess of such tolerance limits as may be specified by regulations.

(2) No insecticide shall be used directly on article of food except fumigants registered and approved under the Insecticides Act, 1968 (46 of 1968).

Explanation.—For the purposes of this section—

(1) 'pesticide residue' means any specified substance in food resulting from the use of a pesticide and includes any derivatives of a pesticide, such as conversion products, metabolites, reaction products and impurities considered to be of toxicological significance and also includes such residues coming into food from environment;

(2) 'residues of veterinary drugs' include the parent compounds or their metabolites or both in any edible portion of any animal product and include residues of associated impurities of the veterinary drug concerned."

The abovementioned section provides that no article of food shall contain insecticides or pesticides, veterinary drugs residues, antibiotic residues, solvent residues, pharmacological active substances and microbiological counts in excess of such tolerance limit as may be specified by the regulations. It also provides that no insecticide shall be used directly on articles of food except fumigants registered and approved under the Insecticides Act, 1968.

16. Section 24 of the FSS Act deals with restrictions of advertisement and prohibition as to unfair trade practices and reads as follows:.....

The abovementioned section provides for restrictions on advertising of any food which misleads or contravenes the provisions of the FSS Act or the Rules and Regulations framed thereunder. It also provides for prohibition as to any unfair trade practice for the purpose of promoting sale, supply, use and consumption of articles of food or adoption of any unfair or deceptive practice to mislead the public regarding the standards, quality, quantity, usefulness or giving of any guarantee of the efficacy that is not based on an adequate or scientific justification thereof.

17. The Food Authority, in exercise of its powers conferred under clause (e) of sub-section (2) of Section 92 read with Section 16 of the FSS Act, made the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011. The same is intended to regulate and monitor the manufacture, processing, distribution, sale and import of food so as to ensure safe and wholesome food. The contents of soft drinks, in particular, are regulated by Regulation 2.10.6 of the Regulations under the title "Carbonated Water". The Food Authority is also conferred with the powers under clause (k) of sub-section (2) of Section 92 read with Section 23 of the FSS Act and in exercise of those powers it framed the Food Safety and Standards (Packaging and Labelling)

Regulations, 2011. Section 23 read with the abovementioned Regulations provides that no person shall manufacture, distribute, sale or expose for sale or dispatch or deliver to any agent or broker for the purpose of sale, any packaged food products which are not marked and labelled in the manner, as may be specified. It further provides that every food business operator shall ensure that the labelling and presentation of food does not mislead the consumers. Section 24, which we have already referred to earlier, provides for restriction on advertisement of any food which misleads or contravenes the provisions of the FSS Act or the Rules and Regulations made thereunder. The advertisements for carbonated beverages are being monitored by the Advertisement Standards Council of India (ASCI), as per the abovementioned Regulations as well as the ASCI Code.

18. We may indicate that most of the situations have already been taken care of by the abovementioned provisions of the FSS Act as well as the Regulations mentioned hereinbefore, so as to achieve an appropriate level of protection of human life and health and protection of consumers' interest, including fair practices in all counts of food trade with reference to food safety standards and practices.

19. The manufacture and sale of carbonated soft drinks is regulated by the Prevention of Food Adulteration Act, 1954 (the PFA Act), the PFA Rules and the Fruit Products Order, 1955 issued under the Essential Commodities Act, 1955. Section 3 of the PFA Act provides for constitution of a Committee called the Central Committee for Food Standards (CCFS) and the same is already constituted which has very wide powers, to deal with all matters relating to food items and to advise the Central Government and the State Governments on all matters relating to food and to carry out the other functions assigned to it under the Act. Section 23(1) of the PFA Act enjoins a duty upon the Central Government, after consultation with CCFS, to make rules which, inter alia, prescribe standards of quality for 340 food items in Appendix B and the labelling requirements for all foods in Part VII.

20. Under Rule 44 in Part VIII of the PFA Rules, notifications have been issued from time to time regulating or

prohibiting the sale of various ingredients/foods keeping in view the specific nature of those ingredients/foods based upon scientific study. CCFS and its sub-committees on various issues are not only seized of the process of implementing the standards but are also involved in regularly reviewing the standards and various additives that are used in the manufacture/processing of any article of food.

21. The PFA Act, the PFA Rules and the FPO already control and check the contents, in particular chemical additives in food including soft drinks. Section 2(v) of the Act defines "food". This definition also includes in itself any flavouring matter or condiments. The Central Government has been given the power to notify any other articles which having regard to its use, nature, substance or quality to be declared as food for the purposes of this Act. The Central Government has the power under Section 23 of the Act to take steps under Part VII of the PFA Rules to prohibit and regulate the sale of certain foods.

22. Adequate provisions have already been made and the Rules and Regulations are in force for prescribing labelling requirements as per Rule 32 to Rule 44 of the PFA Rules, 1955. As per Rule 32 of the PFA Rules, as amended vide Notification GSR (E) dated 19-9-2008, declaration of all the ingredients of the food products and in particular soft drinks, is required to be made in the descending order and nutritional information is also required to be declared. Adequate provisions are also in place under PFA together with the Rules and Regulations made in that behalf to deal with misleading advertisements. Reference may also be made to Rule 43-A of the PFA Rules, 1955.

23. Article 21 of the Constitution of India guarantees the right to live with dignity. The right to live with human dignity denies the life breach from the directive principles of State policy, particularly clauses (e) and (f) of Article 39 read with Article 47 of the Constitution of India. Article 47 reads as follows:

"47. Duty of the State to raise the level of nutrition and the standard of living and to improve

public health.—The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption, except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

24. Article 12 of the International Covenant on Economic, Social and Cultural Rights, 1966 reads as follows:

“**12. (1)** The States parties to the present Covenant recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

(2) The steps to be taken by the States parties to the present Covenant to achieve the full realisation of this right shall include those necessary for—

(a) the provision for the reduction of the still birth-rate and of infant mortality and for the healthy development of the child;

(b) the improvement of all aspects of environmental and industrial hygiene;

(c) the prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) the creation of conditions which would assure to a medical service and medical attention in the event of sickness.”

25. We may emphasise that any food article which is hazardous or injurious to public health is a potential danger to the fundamental right to life guaranteed under Article 21 of the Constitution of India. A paramount duty is cast on the States and its authorities to achieve an appropriate level of protection to human life and health which is a fundamental right guaranteed to the citizens under Article 21 read with Article 47 of the Constitution of India.

26. We are, therefore, of the view that the provisions of the FSS Act and the PFA Act and the Rules

and Regulations framed thereunder have to be interpreted and applied in the light of the constitutional principles discussed above and endeavour has to be made to achieve an appropriate level of protection of human life and health. Considerable responsibility is cast on the authorities as well as the other officers functioning under the abovementioned Acts to achieve the desired results. The authorities are also obliged to maintain a system of control and other activities as appropriate to the circumstances, including public communication on food safety and risk, food safety surveillance and other monitoring activities covering all stages of food business.

27. Enjoyment of life and its attainment, including right to life and human dignity encompasses, within its ambit availability of articles of food, without insecticide or pesticide residues, veterinary drugs residues, antibiotic residues, solvent residues, etc. But the fact remains, many of the food articles like rice, vegetables, meat, fish, milk, fruits available in the market contain insecticide or pesticide residues, beyond the tolerable limits, causing serious health hazards. We notice, fruit based soft drinks available in various fruit stalls contain such pesticide residues in alarming proportion, but no attention is made to examine its contents. Children and infants are uniquely susceptible to the effects of pesticides because of their physiological immaturity and greater exposure to soft drinks, fruit based or otherwise.

28. We, therefore, direct the Food and Safety Standards Authority of India, to gear up their resources with their counterparts in all the States and Union Territories and conduct periodical inspections and monitoring of major fruits and vegetable markets, so as to ascertain whether they conform to such standards set by the Act and the Rules.

29. The penal provisions are also provided in the Act. It is, therefore, of utmost importance that the provisions of the Acts are properly and effectively implemented so that the State can achieve an appropriate level of human life and health, safeguarding the right to

life guaranteed under Article 21 of the Constitution of India.

30. The writ petition is disposed of with the above directions, leaving its respondents, as already indicated, to strictly follow the provisions of the FSS Act as well as the Rules and Regulations framed thereunder.”

(Emphasis supplied)

The Apex Court considers the existing legal frame work and holds it to be inadequate. The Apex Court affirmed the Food Safety Standards Act and their respective Rules and Regulations. The Apex Court also notices that soft drinks are classified and regulated as carbonated water, and were subject to other regulations under the afore-quoted Regulations. The competence of the scientific panel comes to be affirmed. It is also noticed that the Act is based upon internationally based practices. The Apex Court affirms comprehensive labelling and advertising being brought into force and also the fact that the public has access to grievance redress mechanism and strict limits on contamination of food, right to safe food as a fundamental right and the petition was disposed of with a direction for strict implementation.

12. After the judgment of the Apex Court noticing the importance of food safety, the Apex Court and other High Courts have further elucidated the law in amplification of the necessity of food safety and standards. The Apex Court in the case of **BRIHANMUMBAI v. WILLINGDON SPORTS CLUB**³ has held as follows:

“ ”

14. In its publication titled *Safe Food for Better Health* (2002 Edn.), the World Health Organisation (WHO) has recognised that the availability of safe food is a basic human right because it contributes to health and productivity. Many countries including USA, Australia, Germany, France, Canada, United Kingdom and India have adopted a food safety regulation mechanism, either through sui generis legislation or through the adoption of global codes prescribed by WHO and other UN agencies. However, the implementation of these regulations cannot be guaranteed if there is no monitoring system. It is essential for the success of these regulations and policies that adequate steps are taken to ensure the compliance with standards by those in the industry. In order to ensure compliance, a strong licensing system has been developed by these countries. The purpose of such a system is to ensure that the food supplied to customers in a food establishment is certified to be of high quality and standard by a recognised authority. Although licensing alone cannot be a foolproof mechanism for ensuring food safety but it is certainly one of the most effective methods of ensuring that quality food is prepared in most hygienic conditions and is made available to the consumers. The licensing system prevents the opening of establishments that pose a

³ (2013) 16 SCC 260

threat to the health of the people. The licensing mechanism also provides for penalties in case of non-compliance with licensing conditions, which could lead to cancelling or suspension of the licence. Such a fear created in the minds of the licensees also ensures that they comply with licensing conditions in order to continue enjoying the benefits of the licence. Thus, it can be said that a licensing system goes a long way in ensuring food safety thereby guaranteeing the supply of fresh and safe food and preventing the spread of foodborne diseases.

15. At this stage, we may also take notice of the Food Safety and Standards Act, 2006 (for short "the 2006 Act"). This Act provides for establishment of the Food Safety and Standards Authority of India which is mandated to lay down science-based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto. In exercise of the powers vested in it under the 2006 Act, the Food Safety and Standards Authority of India made multiple regulations including the Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011 (for short "the Regulations"). Regulations 2.1 and 2.2 make the obtaining of licence mandatory for commencement of any food business. Part II of Schedule 4 to the Regulations prescribes general requirements of hygienic and sanitary practices to be followed by all food business operators applying for licence. Part V of Schedule 4 to the Regulations prescribes the specific hygienic and sanitary practices to be followed by food business operators engaged in catering/food service establishments.

16. Relevant portions of these two parts are extracted below:

"SCHEDULE 4
PART II
[See Regulation 2.1.1 (4)]

General Requirements on Hygienic and Sanitary Practices to be followed by all Food Business Operators applying for Licence

The establishment in which food is being handled, processed, manufactured, packed, stored, and distributed by the food business operator and the persons handling them should conform to the sanitary and hygienic requirement, food safety measures and other standards as specified below. It shall also be deemed to be the responsibility of the food business operator to ensure adherence to necessary requirements.

In addition to the requirements specified below, the food business operator shall identify steps in the activities of food business, which are critical to ensure food safety, and ensure that safety procedures are identified, implemented, maintained and reviewed periodically.

PART V

Specific Hygienic and Sanitary Practices to be followed by Food Business Operators engaged in catering/food service establishments

In addition to Part II the Catering/Food Service establishment in which food is being handled, processed, manufactured, stored, distributed and ultimately sold to the customers and the persons handling them should conform to the sanitary and hygienic requirement, food safety measures and other standard as specified below.

It includes premises where public is admitted for repose or for consumption of any food or drink or any place where cooked food is sold or prepared for sale. It includes:

- (a) Eating Houses
- (b) Restaurants & Hotels
- (c) Snack Bars,
- (d) Canteens (Schools, Colleges, Office, Institutions)
- (e) Food Service at religious places
- (f) Neighbourhood Tiffin Services/dabba walas
- (g) Rail and airline catering
- (h) Hospital catering."

17. The definition of the term “food business” contained in Section 3(1)(n) of the 2006 Act reads thus:

“3. (1)(n) ‘food business’ means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution of food, import and includes food services, catering services, sale of food or food ingredients;”

18. These provisions reinforce the determination of the legislature and the executive to ensure safety of food articles manufactured and supplied by the food business operators and others engaged in catering/food service establishments. Part V of Schedule IV to the Regulations is inclusive and covers eating houses, restaurants and hotels, snack bars, canteens, food service at religious places, hospital catering, etc.”

(Emphasis supplied)

The Apex Court holds that Food and Safety Standards Authority of India has made multiple regulations including the subject regulations to reinforce the determination of the legislature and the executive to ensure safety of food articles manufactured and supplied by the food business operators and that availability of safe food is a basic human right. The Apex Court in **BRIHANMUMBAI** *supra*, further holds that Part V, of Schedule IV to the Licensing Regulations, 2011 covers eating houses, restaurants and hotels too.

13. The legislative background of the Act and its object is judicially recognized by the Apex Court and by the Bombay High Court in several cases. The Apex Court in the case of **SWAMI ACHYUTANAND TIRTH v. UNION OF INDIA**⁴ has held as follows:

“....”

36. On behalf of the Union of India, it was submitted that a fair mechanism for dealing with food safety and standards and for checking adulteration is in place. As Parliament has enacted the Food Safety and Standards Act, 2006 and the Regulations, 2011 which are effective in taking care of the food safety and standards, it becomes, therefore, important to firstly refer to the legislative efforts made by the Union of India. Parliament has enacted the Food Safety and Standards Act, 2006 which is exhaustive on laws relating to food and repeals two other earlier laws relating to prevention of food adulteration. Preamble of the FSS Act, 2006 reads as under:

“An Act to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto.”

37. Some of the objectives of the Food Safety and Standards Act, 2006 are as follows:

- (i) To consolidate the laws relating to food.**
- (ii) To establish Food Safety and Standards Authority of India for laying down science-based standards for articles of food.**

⁴ (2016) 9 SCC 699

- (iii) To regulate their manufacture, storage, distribution, sale and import.**
- (iv) To ensure availability of safe and wholesome food for human consumption.**

38. The Act, apart from making more stringent provisions (e.g. prescribing higher penalties, etc.) to curb food adulteration, also ushers in new concepts such as putting in place food safety management systems and food safety audit to realise its ultimate goal of ensuring availability of safe and wholesome food for human consumption. In order to ensure food safety, effective food safety systems implementation and to ensure that food producers and suppliers operate responsibly and supply safe food to consumers, the Act further stipulates:

(i) Licensing for manufacture of food products, which is presently granted by the Central agencies under various Acts and orders, would stand decentralised to the Commissioner of Food Safety and his officer.

(ii) Single reference point for all matters relating to food safety and standards, regulations and enforcement.

(iii) Shift from mere regulatory regime to self-compliance through food safety management systems.

(iv) Responsibility on food business operators to ensure that food processed, manufactured, imported or distributed is in compliance with the domestic food laws.

39. Exercising power under the Act, the Central Government constituted the Food Safety and Standards Authority of India (FSSAI). Duties and functions of the Food Safety and Standards Authority have been elaborately dealt with in Section 16 of the FSS Act, which states that it shall be the duty of the Food Authority to regulate and monitor the manufacture, processing, distribution, sale and import of food, and shall specify, by regulations, the standards and guidelines in relation to

articles of food, mechanisms and guidelines for accreditation of certification bodies engaged in certification of food safety management systems for food businesses and notify the accredited laboratories, etc. In exercise of powers conferred by Section 91 of the FSS Act, the Central Government framed the Food Safety and Standard Rules, 2011 which came into force on 5-8-2011. In exercise of the powers conferred by clause (o) of sub-section (2) of Section 92 read with Section 31 of the FSS Act, Central Government framed regulations viz. Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011. Under the said Regulations by virtue of Regulation 2.1, all food businesses and food operators are required to obtain licence and get themselves registered as per the provisions of the FSS Regulations, 2011. The definitions of the food operator, food business and food are laid down under Sections 3(o), 3(n) and 3(j), respectively of the FSS Act, 2006. Likewise, in exercise of powers conferred by clause (k) of sub-section (2) of Section 92 read with Section 23 of the FSS Act, Regulations insofar as they relate to Food Safety and Standards (Packaging and Labelling) Regulations, 2011 were made.

40. Chapter III of the Food Safety and Standards Act, 2006 deals with the general principles of food safety. The Central Government, the State Governments, the Food Authority and other agencies while implementing the provisions of the Act shall be guided by the principles indicated in Chapter III of the Act, which read as under:

"CHAPTER III
GENERAL PRINCIPLES OF FOOD SAFETY

18. General principles to be followed in administration of Act.—The Central Government, the State Governments, the Food Authority and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following principles, namely—

(1)(a) endeavour to achieve an appropriate level of protection of human life and health and the protection of consumers' interests, including fair practices in all kinds of

food trade with reference to food safety standards and practices;

(b) carry out risk management which shall include taking into account the results of risk assessment, and other factors which in the opinion of the Food Authority are relevant to the matter under consideration and where the conditions are relevant, in order to achieve the general objectives of regulations;

(c) where in any specific circumstances, on the basis of assessment of available information, the possibility of harmful effects on health is identified but scientific uncertainty persists, provisional risk management measures necessary to ensure appropriate level of health protection may be adopted, pending further scientific information for a more comprehensive risk assessment;

(d) the measures adopted on the basis of clause (c) shall be proportionate and no more restrictive of trade than is required to achieve appropriate level of health protection, regard being had to technical and economic feasibility and other factors regarded as reasonable and proper in the matter under consideration;

(e) the measures adopted shall be reviewed within a reasonable period of time, depending on the nature of the risk to life or health being identified and the type of scientific information needed to clarify the scientific uncertainty and to conduct a more comprehensive risk assessment;

(f) in cases where there are reasonable grounds to suspect that a food may present a risk for human health, then, depending on the nature, seriousness and extent of that risk, the Food Authority and the Commissioner of Food Safety shall take appropriate steps to inform the general public of the nature of the risk to health, identifying to the fullest extent possible the food or type of food, the risk that it may present, and the measures which are taken or about to be taken to prevent, reduce or eliminate that risk; and

(g) where any food which fails to comply with food safety requirements is part of a batch, lot or consignment of food of the same class or description, it shall be presumed until the contrary is proved, that all of the food in that

batch, lot or consignment fails to comply with those requirements.”

41. The general principles referred to above are to be followed in the administration of the Act, by the Central Government, the Food Authority, the State Governments and other agencies, while implementing the Regulations and specifying food safety standards or while enforcing or implementing the provisions of the FSS Act. The Food Authority, while discharging its functions, shall take into account the prevailing practices and conditions in the country, including agricultural practices and handling, storage and transport conditions, including international standards and practices. The Food Authority shall be guided by the general principles of food safety, such as, risk analysis, risk assessment, risk management, risk communication, transparent public consultation, protection of consumers' interest, etc.

42. As per the Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011, the dairy establishment in which dairy-based food is being handled, processed, manufactured, stored and distributed and ultimately sold by the food business operator should conform to the sanitary and hygienic requirements, food safety measures and other standards as laid down in Part III of the FSS Regulations, 2011. As per Part III of the said FSS Regulations, 2011, specific hygienic and basic sanitary measures are required to be followed by such food business operators. It is compulsory for the milk business operator to submit half yearly return for milk and milk products in Form D-2 as provided in Regulation 2.1.13 of the Food Safety and Standards (Licensing and Registration of Food Businesses) Regulations, 2011.”

(Emphasis supplied)

13.1. The High Court of Bombay in the case of **VITAL NUTRACEUTICALS PRIVATE LIMITED v. UNION OF INDIA**⁵

held as follows:-

"....

REASONS:

9. Before taking into consideration the rival submissions, it would be relevant if the provisions of FSS Act, 2006 are taken into consideration. By virtue of the FSS Act, 2006 the Acts mentioned in the Second Schedule were repealed and the FSS Act, 2006 came into force with effect from 24/08/2006. By this Act, the following Acts have been repealed.

- "1. The Prevention of Food Adulteration Act, 1954 (37 of 1954)
2. The Fruit Products Order, 1955.
3. The Meat Food Products Order, 1973
4. The Vegetable Oil Products (Control) Order, 1947
5. The Edible Oils Packaging (Regulation) Order, 1998.
6. The Solvent Extracted Oil, De oiled Meal, and Edible Flour (Control) Order, 1967.
7. The Milk and Milk Products Order, 1992
8. Any other order issued under the Essential Commodities Act, 1955 (10 of 1955)"

The reason why the said Acts were repealed can be seen from the preamble of the new Act and also Statement of Objects and Reasons, which read as under:—

"Statement of Objects and Reasons.- Multiplicity of food laws, standard setting and enforcement agencies pervades different sectors of food, which creates confusion in the minds of consumers, traders, manufacturers and investors. Detailed provisions under various laws regarding admissibility and levels of food additives, contaminants, food colours, preservatives, etc., and

⁵ 2014 SCC OnLine Bom 165

other related requirements have varied standards under these laws. The standards are often rigid and non-responsive to scientific advancements and modernisation. In view of multiplicity of laws, their enforcement and standard setting as well as various implementing agencies are detrimental to the growth of the nascent food processing industry and is not conducive to effective fixation of food standards and their enforcement.

2. In as early as in the year 1998, the Prime Minister's Council on Trade and Industry appointed a Subject Group on Food and Agro Industries, which had recommended for one comprehensive legislation on food with a Food Regulatory Authority concerning both domestic and export markets. Joint Parliamentary Committee on Pesticide Residues in its report in 2004 emphasised the need to coverage all present food laws and to have a single regulatory body. The Committee expressed its concern on public health and food safety in India. The Standing Committee of Parliament on Agriculture in its 12th Report submitted in April, 2005 desired that the much-needed legislation on Integrated Food Law should be expedited.

3. As an ongoing process, the then member-Secretary, Law Commission of India, was asked to make a comprehensive review of Food laws of various developing and developed countries and other relevant international agreements and instruments on the subject. After making an indepth survey of the International scenario, the then Member-Secretary recommended that the new Food Law be seen in the overall perspective of promoting nascent food processing industry given its income, employment and export potential. It has been suggested that all acts and orders relating to food be subsumed within the proposed Integrated Food Law as the international trend is towards modernisation and convergence of regulations of Food Standards with the elimination of multi-level and multi-departmental control. Presently, the emphasis is on (a) responsibility with

manufactures, (b) recall, (c) genetically modified and functional foods, (d) emergency control, (e) risk analysis and communication and (f) food safety and good manufacturing practices and process control, viz., Hazard Analysis and Critical Control Point.

4. In this background, the Group of Ministers constituted by the Government of India, held extensive deliberations and approved the proposed Integrated Food Law with certain modifications. The Integrated Food Law has been named as "The Food Safety and Standard Bill, 2005". The main objective of the Bill is to bring out a single statute relating to food and to provide for a systematic and scientific development of Food Processing Industries. It is proposed to establish the Food Safety and Standards Authority of India, which will fix food standards and regulate/monitor the manufacturing, import, processing, distribution and sale of food, so as to ensure safe and wholesome food for people. The Food Authority will be assisted by Scientific Committees and Panels in fixing standards and by a Central Advisory Committee in prioritization of the work. The enforcement of the legislation will be through the State Commissioner for Food Safety, his officers and Panchayati Raj/Municipal bodies.

5. The Bill, *inter alia*, incorporates the salient provisions of the Prevention of Food Adulteration Act, 1954 (37 of 1954) and is based on international legislations, instrumentalities and Codex Alimentaries Commission (which related to food safety norms). In a nutshell, the Bill takes care of International practices and envisages an overarching policy framework and provision of a single window to guide and regulate persons engaged in manufacture, marketing, processing, handling, transportation, import and sale of food. The main features of the Bill are:

- (a) movement from multi-level and multi-departmental control to integrated line of command;**

- (b) integrated response to strategic issues like noval/genetically modified foods, international trade;**
- (c) licensing for manufacture of food products, which is presently granted by the Central Agencies under various Acts and Orders, would stand decentralised to the Commissioner of Food Safety and his officer;**
- (d) single reference point for all matters relating to Food Safety and Standards, regulations and enforcement;**
- (e) shift from mere regulatory regime to self-compliance through Food Safety Management Systems;**
- (f) responsibility on food business operators to ensure that food processed, manufactured, imported or distributed is in compliance with the domestic food laws; and**
- (g) provision for graded penalties depending on the gravity of offence and accordingly, civil penalties for minor offences and punishment for serious violations.**

6. The abovesaid Bill is contemporary, comprehensive and intends to ensure better consumer safety through Food Safety Management Systems and setting standards based on science and transparency as also to meet the dynamic requirements of Indian Food Trade and Industry and International trade.

The Bill seeks to achieve the aforesaid objectives.”

10. Perusal of the said Statement of Objects and Reasons reveals that the intention of the legislature was to take care of International practices and also to provide for single window to guide and regulate persons engaged

in manufacture, marketing, processing, handling, transportation, import and sale of food. The Act, therefore, appears to have been brought into force to harmonize the interests of consumers and manufacturers to(1) ensure food safety; (2) protect the interest of the consumers; (3) ensure safe and wholesome food for the people and, at the same time to ensure the growth of the nascent food processing industry.

11. It will be necessary to consider the Scheme of the FSS Act, 2006. By virtue of the said Act, Food Safety and Standards Authority of India has been established. Chapter-II of the Act lays down the various authorities which have been established. It lays down the functions of the Food Authority as also the functions of Central Advisory Committee. Chapter-III of the Act lays down general principles of food safety in section 18 of the said Act. Chapter-IV lays down the general provisions as to articles of food. Section 22 is in respect of genetically modified food, organic foods, functional foods, proprietary foods, etc. and seeks to impose special responsibility on the food business operators. Section 27 also prescribes the liability of manufacturers, packers, wholesalers, distributors and sellers. Section 28 envisages the procedure which has to be followed by the manufacturers for the purpose of recalling food products. Chapter-V deals with provisions relating to import. Chapter VI deals with special responsibilities as to food safety. Chapter-VII deals with the enforcement of the Act and the authorities which are responsible for the said enforcement. By virtue of Section 30, the duties of Commissioner of Food Safety of the State has been prescribed and Section 31 deals with licensing and registration of food business. The said Chapter also envisages situations where emergency prohibition notices could be issued and the prohibition orders could be passed by the authorities under the Act for the purpose of enforcement of the provisions of the Act. It also gives power to the authorities of search, seizure, investigation and prosecution. The procedure for launching the prosecution is laid down under section 42 of the Act. Chapter-VIII deals with analysis of food and prescribes the procedure for recognition and accreditation of laboratories, research institutions and referral food laboratory, appointment of the food analyst and functions of the food analyst. Chapter-IX deals with offences and penalties. Chapter-X is in respect of adjudication and food safety appellate tribunal and the power

vested in the said appellate tribunal to adjudicate issues which are referred to it. Under section 76, appeal is provided to High Court. Chapter-XI deals with Finance Accounts, Audit and Reports and the last Chapter-XII deals with power of the Central Government to issue directions to the Food Authority and the procedure which is required to be followed in respect of taking approval from the Parliament in respect of Rules and Regulations which are framed either by the Central Government or by the Food Authority. Section 97 deals with repeal and savings.”

(Emphasis supplied)

13.2. Subsequently, the High Court of Bombay in the case of **SEAFOOD EXPORTERS ASSOCIATION v. STATE OF GOA**⁶ has held as follows:

“....”

65. Before we conclude, reference is required to be made to the provision of Section 18 of the FSS Act which relates to the general principles to be followed by the Central Government, State Government, Food Authority and other Agencies as the case may be, while implementing the provisions of FSS Act. All such authorities shall be guided by the following principles, namely:

- (a) *endeavour to achieve an appropriate level of protection of human life and health and the protection of consumers' interests, including fair practices in all kinds of food trade with reference to food safety standards and practices;*
- (b) ***carry out risk management which shall include taking into account the results of risk assessment, and other factors which in the***

⁶ 2019 SCC OnLine Bom 290

opinion of the Food Authority are relevant to the matter under consideration and where the conditions are relevant, in order to achieve the general objectives of regulations;

- (c) where in any specific circumstances, on the basis of assessment of available information, the possibility of harmful effects on health is identified but scientific uncertainty persists, provisional risk management measures necessary to ensure appropriate level of health protection may be adopted, pending further scientific information for a more comprehensive risk assessment;***
- (d) the measures adopted on the basis of clause (c) shall be proportionate and no more restrictive of trade than is required to achieve appropriate level of health protection, regard being had to technical and economic feasibility and other factors regarded as reasonable and proper in the matter under consideration;*
- (e) the measures adopted shall be reviewed within a reasonable period of time, depending on the nature of the risk to life or health being identified and the type of scientific information needed to clarify the scientific uncertainty and to conduct a more comprehensive risk assessment;*
- (f) in cases where there are reasonable grounds to suspect that a food may present a risk for human health, then, depending on the nature, seriousness and extent of that risk, the Food Authority and the Commissioner of Food Safety shall take appropriate steps to inform the general public of the nature of the risk to health, identifying to the fullest extent possible the food or type of food, the risk that it may present, and the measures which are taken or about to be taken to prevent, reduce or eliminate that risk; and*
- (g) where any food which fails to comply with food safety requirements is part of a batch, lot or consignment of*

food of the same class or description, it shall be presumed until the contrary is proved, that all of the food in that batch, lot or consignment fails to comply with those requirements.”

(emphasis supplied)

66. The FSS Act was in fact enacted to consolidate the laws relating to food and to establish the Food Safety and Standards Authority of India for laying down science-based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto. The statement of objects and reasons also makes it clear that the bill which ultimately became FSS Act is contemporary, comprehensive and intends to ensure better consumer safety through Food Safety Management Systems and setting standards based on science and transparency as also to meet the dynamic requirements of Indian Food Trade and Industry and International trade.

67. The authorities under the State are therefore required to be conscious about guiding principles set out in Section 18 of the FSS Act and the object and reasons for enactment of FSS Act. In cases where there are reasonable grounds to suspect that a food may present a risk for human health, then, depending on the nature, seriousness and extent of that risk, the Authorities under the FSS Act are duty bound to take appropriate steps to inform the general public of the nature of the risk to health, identifying to the fullest extent possible the food or type of food, the risk that it may present, and the measures which are taken or about to be taken to prevent, reduce or eliminate that risk.”

(Emphasis supplied)

14. At this juncture, it becomes apposite to refer to the judgment of the High Court of Bombay in the case of **THE ASSOCIATION OF TRADERS CARRYING THE FOOD BUSINESS**

v. UNION OF INDIA⁷, where the issue before the Court was a challenge to the constitutional validity of certain provisions of the Food Safety and Standards Act, 2006 and the Rules and Regulations framed thereunder. The petitioners in the aforementioned case pray for the following:

"2. This batch of petitions raise a common challenge. The challenge is to the constitutional validity of the provisions of Food Safety and Standard Act, 2006 as also to the rules and regulations framed thereunder.

3. Writ Petition No. 477 of 2012 has been filed by the Association of the Traders claiming to carry on business in various food. The petitioner describes itself to be a registered association, however, without specifying under which law, it is so registered. The challenge as raised in this petition is quite broad inasmuch as in prayer clause (a) the petitioners pray for quashing and setting aside the provisions of the Food Safety and Standards Act, 2006 (for short "the FSS Act") as violative of Article 14, 19 and 21 of the Constitution of India. In the alternative, a prayer is made seeking a writ of mandamus to quash and set aside the provisions of Section 31 and 36 and other connected sections of the FSS Act as violative of Article 14, 19 and 21 of the Constitution of India.

4. The second Writ Petition being Writ Petition No. 227 of 2012 has been filed by Mumbai Mewa Masala Merchants Association, a registered Association under the provisions of the Societies Registration Act, 1860. The prayers as made in the petition are appearing on pages 106 to 116 of the paper book which contain prayer clause (a) to (g) and the substantive prayers being prayer clause (a) to (c). **The challenge as raised in this Writ Petition is also too broad and verbose inasmuch as apart from the challenge to the substantive provisions of the FSS Act, there is also a challenge to the**

⁷ 2015 SCC OnLine Bom 4811

certain provisions under the Licensing Regulations. The challenge is basically to the legality of the provisions of Sections 31, 34, 38, 46, 65, 70 and 80 of the FSS Act.

5. The third Writ Petition is filed by one AHAR Indian Hotel and Restaurant Association. It claims to be an Association of restaurants and hotel owners in and around Mumbai and other parts of the State of Maharashtra, registered under the Societies Registration Act, 1860. The petitioners in this petition pray that **the FSS Act and the Rules and Regulations, 2011 framed thereunder be declared as illegal and unconstitutional, null and void, qua the food service providers i.e. hotels and restaurants, and, in the alternative that the FSS Act and Rules and Regulations framed thereunder are mainly framed and/or applicable to the manufacturing units/factories and not to the hotels and restaurants providing food services to its customers.** Prayer clause (e) has seven sub-heads wherein several other prayers are made and it would be appropriate that we reproduce those prayers which read as under:-

“(e) That this Hon'ble Court be pleased to issue a writ of Mandamus or a writ in the nature of certiorari or any other appropriate writ, order or direct the Respondents;

- (i) **Not to consider Hotels and Restaurants as manufacturers as defined u/s.3(zd) of FSS Act.**
- (ii) To direct the Respondent No. 5 to provide for representation from the Hotels and Restaurants in Central Advisory Committee.
- (iii) **To direct the Respondents to clarify whether the provisions of Section 16 are applicable to the Hotels and Restaurants.**
- (iv) **To direct the Respondents to create separate category of Hotels and Restaurants in FSS Act.**
- (v) **To direct the Respondents to modify the amount of penalty to be charged to Hotels & Restaurants (Food Service Provider).**
- (vi) **To direct the Respondents to frame separate & specify Rules and Regulation for Food Service Provides.**

- (vii) To direct the Respondents to exempt Hotels and Restaurants from process of filing returns as per regulations 2.1.13.”

(Emphasis supplied)

As can be seen from the afore-quoted extract, the prayer before the High Court of Bombay and in the present petition are very similar. Both the cases are filed challenging similar provisions of the Act and the Regulations. While upholding the constitutional validity of all the impugned provisions, the High Court of Bombay in the case of

ASSOCIATION OF TRADERS CARRYING THE FOOD BUSINESS

supra observes as follows:

“**30.** On the aforesaid legislative background FSS Act, 2006 was enacted and was brought into force at different dates as provided for in sub-section (3) of Section 1. A perusal of the scheme of the Act shows that Section 3 as contained in Chapter I is the definition clause. Section 3 has Sub-sections (a) upto subsection (zz). As the scope of legislation is extensive, it defines number of terms in relation to several aspects concerning food. Chapter II pertains to the Food Safety and Standards Authority of India, its establishment, composition, method of selection of the members, term of office, conditions of service, removal of Chairperson and members of Food Authority, functions of Chief Execution Officer, functions of Central Advisory Committee, constitution of Scientific Panels, constitution of Scientific Committee, procedure for Scientific Committee and Scientific Panel. One of the important provisions in this Chapter is Section 16 which pertains to the duties and functions of Food Authority. This provision assumes importance in the context of appreciating the other provisions of the Act, the

duties and functions of various Authorities under the Act as also the scope of duties and functions of such Authorities. Section 16 reads thus:-.....

31. Perusal of this provision indicates that it would be the duty of the Food Authority to 'regulate' and 'monitor' the manufacture, processing, distribution, sale and import of food so as to ensure safe and wholesome food. As also without prejudice to these basic parameters as contained in sub-section (1), the Food Authority is empowered to provide by regulations various aspects as enumerated in sub-clauses (a) to (i) in sub-section (2) of Section 16. The authority to frame regulations as contained in these clauses is on variety of issues touching every small aspect concerning the standard of food safety, enforcement of the standards, use of food additives, crop contaminants, pesticide residues, residues of veterinary drugs, heavy metals, processing aids, mycotoxins, antibiotics and pharmacological active substances and irradiation of food; the mechanisms and guidelines for accreditation of certification bodies engaged in certification of food safety management system for food business; the procedure and the enforcement of quality control in relation to any article of food imported into India; the procedure and guidelines for accreditation of laboratories and notification of the accredited laboratories; the method of sampling, analysis and exchange of information among enforcement authorities; conduct survey of enforcement and administration of the Act in the Country; food labelling standards including claims on health, nutrition, special dietary uses. Apart from these various aspects on which regulations can be framed, the Food Authority under sub-section (3) is also conferred a advisory role namely to provide scientific advice and technical support to the Central Government and the State Governments in matter of framing the policy and rules in areas which have a direct or indirect bearing on food safety and nutrition, and various other ancillary works as

enumerated in sub-sections (a) to (n) of sub-section (3) of Section 16 of the Act. Sub-section (5) of Section 16 casts a duty on the food Authority from time to time give directions in matters relating to food safety and standards, to the Commissioner of Food Safety who will be bound by the directions while exercising power under the FSS Act.

.....

33. A perusal of Section 18 reveals that the foundation is preservation of human life and health while protecting the consumer's interest and by having fair practices in all kinds of food and trade and maintenance of food safety and standards and practices. A significant feature to be noted in this provision is that the entire endeavour is to take care of the harmful effects of food on the basis of scientific studies and taking appropriate measures to ensure availability of safe food for human consumption.

39. A detailed examination of the scheme of the FSS Act as discussed above, reveals the legislative intent to include every possible aspect regarding manufacture, processing of foods, distribution of food articles, its ultimate sale and import to ensure safe and wholesome food. The statement of objects and reasons which we have referred hereinabove is of assistance to appreciate the legislative intent underlying each of these provisions in interpreting these provisions and to ascertain the object as sought to be achieved.

.....

40. It is quite clear that multiple laws on Food which were prevailing stand repealed by this enactment. The Parliament in exercise of its legislative powers as conferred in entry 18 of List III has enacted the FSS Act in the interest of Public Health and to safeguard the constitutional guarantee to the citizens as conferred under the provisions of Article 21 of the Constitution, from the perspective of human health and consumption of food being a necessary concomitant of this fundamental right. This Act is a successor to the provisions of the Prevention of Food

Adulteration Act which stood repealed by the FSS Act, which also held a regime from the time it was brought into force in the year 1954 till it was repealed by the FSS Act. It was a welfare legislation aimed at preventing health hazard which would be caused by consuming adulterated food. The legislative power of the Parliament in enacting Prevention of Food Adulteration Act was also in Entry 18 in List III of the Constitution. A challenge to this Act was considered by the Constitution Bench of the Supreme Court in the case of "*State of Uttar Pradesh v. Kartar Singh*, (AIR 1964 SC 1135)". The case concerned the prosecution faced by the respondent Kartar Singh of an offence under Section 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954. Mr. Kartar Singh was conducting a shop. The Food Inspector purchased some quantities of ghee. The sample of the Ghee was sent for analysis. The public analyst expressed an opinion that the sample contained small proportion of vegetable fat or oil foreign to pure ghee. The Medical Officer of Health sanctioned the prosecution against Kartar Singh and a complaint was lodged before the Magistrate First Class by the Food Inspector. Kartar Singh pleaded not guilty and entered a defence. The defence was that it was not adulterated and that he had obtained ghee which has sold from Jodhpur. The requirement of such additive in Jodhpur was different. The Magistrate, however, did not accept the defence and sentenced him to R.I. for a period of six months and fine of Rs. 500/-. In the appeal the Sessions Judge confirmed the findings of the Magistrate, however, while upholding the conviction reduced the sentence of imprisonment from six months to one month and fine of Rs. 200/-. In a criminal revision petition before the High Court under Section 435 and 439 of Cr.P.C. 1898, the learned Judge of the High Court disagreed with the Courts below on finding of facts based on the standards of ghee in Jodhpur Region. As different standards were prescribed at Jodhpur, the High Court held that the respondent was not guilty of adulteration and directed his acquittal. It was this decision of the High Court which was in appeal before the Supreme Court. A challenge was raised in regard to the standards prescribed under the Food Adulteration Act being violative of Article 14. The Supreme Court set aside the decision of the High Court and restored the sentence of conviction of one month as imposed by the Sessions Court. While examining the provisions of the Prevention of Food Adulteration Act, the Supreme Court in paragraphs 15 and 16 has observed thus:-

"15. The standards themselves, it would be noticed, have been prescribed by the Central Government on the advice of a Committee which included in its composition persons considered experts in the field of food technology and food analysis. In the circumstances, if the rule has to be struck down as imposing unreasonable or discriminatory standards, it could not be done merely on any a priori reasoning but only as a result of materials placed before the Court by way of scientific analysis. It is obvious that this can be done only when the party invoking the protection of Art. 14 makes averments with details to sustain such a plea and leads evidence to establish his allegations. **That where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the rules offend Art. 14 the burden is on him to plead and prove the infirmity is too well established to need elaboration. If, therefore, the respondent desired to challenge the validity of the rule on the ground either of its unreasonableness or its discriminatory nature, he had to lay a foundation for it by setting out the facts necessary to sustain such a plea and adduce cogent and convincing evidence to make out his case, for there is a presumption that every factor which is relevant or material has been taken into account in formulating the classification of the zones and the prescription of the minimum standards to each zone, and where we have a rule framed with the assistance of a committee containing experts such as the one constituted under Section 3 of the Act, that presumption is strong, if not overwhelming. We might in this connection add that the respondent cannot assert any fundamental right under Article 19(1) to carry on business in adulterated foodstuffs.**

16. Where the necessary facts have been pleaded and established, the Court would have materials before it on which it could base findings, as regards the reasonableness or otherwise or of the discriminatory nature of the rules. **In the absence of a pleading and proof of unreasonableness or arbitrariness the Court cannot accept the statement of a party as to the unreasonableness or unconstitutionality of a rule and refuse to enforce the rule as it stands merely because in its view the standards are too high and for this reason the rule is unreasonable. In the case before us there was neither pleading nor proof of any facts**

directed to that end. The only basis on which the contention regarding unreasonableness or discrimination was raised was on a priori argument addressed to the Court, that the division into the-zones was not rational, in that hilly and plain areas of the country were not differentiated for the prescription of the minimum Reichert values. That a distinction should exist between hilly regions and plains, was again based on a priori reasoning resting on the different minimum Reichert values prescribed for Himachal Pradesh and Uttar Pradesh and on no other. It was, however, not as if the entire State of Himachal Pradesh is of uniform elevation or even as if no part of that State is plain country but yet if the same minimum was prescribed for the entire area of Himachal Pradesh, that would clearly show that the elevation of a place is not the only factor to be taken into account. (emphasis supplied)

41. We may also usefully refer to the decision of the Supreme Court in the case of "*Andhra Pradesh Grain and Seed Merchants Association v. Union of India*, (AIR 1971 SC 2346)" wherein the Supreme Court considered a challenge to the validity of Section 7 read with Section 2(v) and 2(ix) and Section 19(2)(i) and Section 10 read with Section 13 of the Prevention of Food Adulteration Act, 1954 and the rules framed thereunder challenged on the ground that they are violative of fundamental rights guaranteed under Article 14, 19(1)(g) and 20(3) of the Constitution. **The Supreme Court held that the restriction imposed on the conduct of business by traders in foodstuffs by the provisions of the Prevention of Food Adulteration Act cannot be deemed unreasonable, as the Act was enacted to deal with the great social evil and for ensuring public welfare especially in the offences against public health. It was held that the scheme of the Act envisaged that compliance with the regulatory provisions will be promoted by imposing an absolute liability. It was held that adulteration and misbranding of foodstuffs is a rampant evil and a statute calculated to control that evil is indisputably in the interest of the general public. It was held that the statute imposing restrictions upon traders will not be deemed unreasonable merely because it makes a departure from the normal structure of statutes enunciating offences and prescribing punishments. In**

paragraphs 5, 6, 7, 8, 10, 11 and 13 the Supreme Court has observed thus:-

"5. In our judgment, the restrictions imposed upon the conduct of business by traders in foodstuffs cannot be deemed unreasonable. By Section 16(1) provision is made for imposing penalties, among other acts, for storage, sale or distribution of articles of food which are adulterated or misbranded, or sale of which is prohibited by the Food (Health) authority in the interest of the public health, or is in contravention of the Act or the rules. The Act, it is true, does not make some blame-worthy mental condition constituted by knowledge or intention relating to the nature of the article stored, sold or distributed, an ingredient of the offence. Unless the case falls within sub-section (2) of Section. 19, if sale, storage or distribution is established, intention to sell articles or knowledge that the articles are adulterated, misbranded, or prohibited need not be proved by the prosecutor to bring home the charge. Sub-section (1) of Section 19 provides that it is no defence in a charge, for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him, or that the purchaser having purchased any article for analysis was not prejudiced by the sale. By that clause a bare plea of ignorance by a trader about the nature, substance or quality of the food sold by him is not a defence in a prosecution for the offence pertaining to the sale of any adulterated food nor that the article was, purchased for analysis.

6. But in considering whether creation of absolute liability amounts to imposing unreasonable restrictions, the Court has to strike a balance between the individual right and public weal. The Courts will not strike down an Act as imposing unreasonable restrictions merely because it creates an absolute liability for infringement of the law which involves grave danger to public health. The Courts will undoubtedly consider whether without imposing absolute liability the object of the statute could be reasonably secured. For that purpose the Court will consider the object of, the Act, apprehended danger to, the public interest, arising out of the activity if not

controlled and the, possibility of achieving the intended results by less stringent provisions. The nature of the trade in foodstuffs, the channels of supply and the movement of goods from trader to trader and fertile sources of adulteration and misbranding make it extremely difficult in a large majority of cases to establish affirmatively that storage or sale of adulterated or misbranded foodstuff was with a guilty mind. Provisions in the statute book creating absolute liability for sale of adulterated food are 172 fairly common. Section 3(1) of the English "Foods & Drugs Act", 1938, imposes absolute duty on a dealer in foodstuff regardless of negligence: *Lindley v. George W. Horner & Co. Ltd.*; 1950-1 All ER 234 and *Lamb v. Sunderland and District Creamery Ltd.*; 1951-1 All ER 923. The same provision is repeated in Section 2 of the "Food and Drugs Act", 1955. In *Halsbury's Laws of England, Vol. 10 (3rd Edn.)* at p.273, Art. 508, it is stated:-

"A statutory crime may or may not contain an express definition of the necessary state of mind. A statute may require a specific intention, malice, knowledge, wilfulness, or recklessness. On the other hand, it may be silent as to any requirement of mens rea, and in such a case in order to determine whether or not mens rea is an essential element of the offence, it is necessary to look at the objects and terms of the statute. In some cases, the courts have concluded that despite the absence of express language the intention of the legislature was that mens rea was a necessary ingredient of the offence. In others, the statute has been interpreted as creating a strict liability irrespective of mens rea. Instances of this strict liability have arisen on the legislation concerning food and drugs, liquor licensing, and many other matters".

In *Mousell Brothers v. London and North Western Rail Co.* (1917) 2 KB 836 at P.845, *Atkin, J.*, observed:

"..... yet the legislature may prohibit an act or enforce a duty in such words to make the prohibitions or the duty absolute:..... To ascertain whether a particular Act of Parliament has that effect or not, regard must be had to the object of the statute, the words used, the nature of the duty laid down, the person whom it is imposed, the person by whom it would in ordinary circumstances be performed, and the person upon whom the penalty is imposed."

In 1952-1 All ER 380, the Court of Appeal held that Regulation-26(1) of the Milk and Dairies Regulation, 1949, requiring a distributor to ensure that every vessel used as a container for milk shall be in a state of thorough cleanliness, imposed an absolute liability.

7. It is true that for the protection of the liberty of the citizen, in the definition of offences, blameworthy mental condition is ordinarily an ingredient either by express enactment or clear implication: but in Acts enacted to deal with a grave social evil, or for ensuring public welfare, especially in offences against public health, e.g., statutes regulating storage or sale of articles of food and drink, sale of drugs, sale of controlled or scarce commodities, it is often found necessary in the larger public interest to provide for imposition of liability without proof of a guilty mind.

8. If from the scheme of the Act it appears that compliance with the regulatory provisions will be promoted by imposing an absolute liability, and that it cannot otherwise be reasonably ensured, the Court will be justified in holding that the restriction on the right of the trader is in the interest of the general public. Adulteration and misbranding of foodstuffs is a rampant evil and a statute calculated to control that evil is indisputably in the interest of the general public: The statute imposing restrictions upon traders will not be deemed unreasonable merely because it makes a departure from the normal structure of statutes enunciating offences and prescribing punishments. By sub-section. (2) of Section 19, even in respect of the absolute offence, the Parliament has enacted that on proof of certain facts, criminal liability will be excluded. Thereby a vendor is not deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves that he purchased the article of food from a duly licensed manufacturer, distributor or dealer in a case where a licence is prescribed for the sale thereof, and in any other case from any manufacturer, distributor or dealer with a written warranty in the prescribed form, provided the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it. The argument of counsel for the petitioners that the provision that a retail seller who opens a container of a branded article of food loses even the limited protection under section 19(2) is

without substance. Clause (b) of sub-section (2) of section 19 does not provide, nor does it imply, that if the container of a branded article is opened, the article of food ceases to be in them same state in which the vendor purchased it. If the article of food' is sold in the same condition in which it was purchased from a licensed manufacturer or dealer, or was purchased with a warranty, the vendor will not lose the protection of sub-section (2) of Section 19 merely because he opened the container. If the vendor has obtained the article from a licensed manufacturer, distributor or dealer or from a manufacturer, distributor or dealer with a warranty, he is protected, provided he has property stored the article and sells it in the same state as he purchased the article, even if it turns out that the article was adulterated or misbranded. The Act does not dispense with proof that the article of food is adulterated, misbranded or that its sale is prohibited: it enacts that a vendor selling articles of food adulterated or misbranded cannot plead merely that he was ignorant of the nature, substance or quality 174 of the goods. A statute enacted by the Parliament in the interest of public health (which is generally made in similar statutes elsewhere) imposing liability for an offence without proof of a guilty mind does not per se impose restrictions on the, freedom to carry on trade which are unreasonable.

13. In the petitions a plea was raised that by the Act and the Rules, the guarantee of Art. 14 was infringed, but no argument was presented before us independently of the argument relating to infringement of the guarantee under Art. 19(1)(g), in support of the contention that the Act infringed the guarantee of equality before the law or equal protection of the laws. The Act deals with the regulation of a class of traders, and in view of the widespread malpractices, and the practical difficulties of controlling those malpractices, stringent provisions have been made by the Act. The classification is founded on an intelligible differentia and the differentia has a rational relation to the object sought to be achieved. The provisions of the Act again do not invest arbitrary authority upon those who are to administer the Act. nor can it be said that the standards prescribed are arbitrary."

(emphasis supplied)

.....

.....

.....

43. We may also refer to the recent decision of the Supreme Court in the case of "*Centre for Public Interest Litigation v. Union of India*, (AIR 2014 SC 49)". In the context of an issue dealing with the harmful effect of soft drinks on human health and in considering the provisions of FSS Act on various principles of food safety as enshrined in Section 18 and other provisions of the Act, the Supreme Court has held that a paramount duty is cast on the States and its authorities to achieve an appropriate level of protection to human life and health which is a fundamental right guaranteed to the citizens under Article 21 read with Article 47 of the Constitution of India.

44. It is thus clear from the enunciation of the above legal principles as laid down by the Supreme Court that it is not only a statutory requirement for the food Authorities to have a regime of making available safe food products to the consumer but it is a constitutional requirement emanating from the provisions of Article 21 read with Article 39 and 47 of the Constitution of India.

45. Adverting to the above principles of law, we now consider the challenge as raised by the petitioners. In Writ Petition No. 477 of 2012 though the challenge as raised is quite broad to the provisions of the entire Act as the prayers would go and in the alternative to quash and set aside the provisions of Sections 31 and 36 of the FSS Act being violative of Articles 14, 19 and 21 of the Constitution, Mr. Anturkar has confined his submissions to the challenge as raised to the provisions of Section 31 and 36 of the FSS Act. The challenge is on the ground that the provisions are vague and ambiguous and therefore capable of their misuse and thus violative of Articles 14 and 19(1)(g) of the Constitution.

46. Section 31 provides for licencing and registration of food business and provides that no person shall commence or carry on any food business except under a licence. Sub-section 2 provides that the requirements of condition of licence shall not apply to 'petty manufacturer' who himself manufactures or sells any article of food or a petty retailer, hawker, itinerant vendor

or a temporary stall holder or small scale or cottage or such other industries relating to food business or tiny food business operator. However, there is a requirement that they shall register themselves with such authority and as specified in the regulations and this would be without prejudice to the availability of safe and wholesome food for human consumption or affecting the interests of the consumers. Mr. Anturkar in assailing this provision on the ground that it is vague and ambiguous has drawn our attention to certain terms in the definition of 'food business' as contained in Section 3(n) which reads thus:-

(n) "Food business" means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution of food, import and includes food services, catering services, sale of food or food ingredients; (emphasis supplied)

.....

50. We are afraid to accept these submissions of Mr. Anturkar. A perusal of Section 31 of the FSS Act reveals that it is a licensing provision which requires that no person shall commence or carry on any food business except under a licence. **"Food business" is defined under Section 3(n) to mean any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution of food, import and includes food services, catering services, sale of food or food ingredients. Similarly "unsafe food" is defined under Section 3(zz) to mean an article of food whose nature, substance or quality is so affected as to render it injurious to health. As to how it is rendered injurious to health has been explained in clauses (i) to (xii) as contained in sub-section (zz) of Section 3. A plain reading of Section 31 when seen in the context of grant of a licence or registration of food business, in our opinion, do not indicate that it creates any ambiguity. The meaning which is attributed to the various words used in Section 31 read with the words in the definition clause do not create any vagueness so as to render Section 31 vague or in-operational. This is for the reason that the words as used in the provision are required to be read in the**

context of the Act. The legislation as a whole is required to be considered to ascertain the meaning of the terms and expression as used in the legislation. Thus, the words contained in the definition clause are required to be understood in the light of the other provisions of the Act and with due regard to the ordinary connotation of the words defined and not in isolation as sought to be contended by the petitioners. We apply the principle of ordinary, popular and natural meaning to be attributed to the words in the above provisions and in doing so, we do not feel that there is any ambiguity or difficulty in understanding the meaning of these words and their implication nor there is any ambiguity or vagueness in the words used in the definition clause as contended by the petitioners. Moreover, to give effect to the licensing provision under Section 31 the Food Authority has framed regulations namely the Food Safety and Standards (Licensing and registration of food businesses) Regulations, 2011 (for short "the licensing regulations") in exercise of powers conferred under clause (o) of sub section (2) of Section 92 read with Section 31 of Food Safety Act. A perusal of these licensing regulations would demonstrate that submissions of Mr. Anturkar are not well founded. We thus refer to these regulations. Clause 1.2 of the Licensing Regulations is a definition clause under which sub-clause 4 defines "petty manufacturers" as under:-.....

51. The contention of Mr. Anturkar that "petty manufacturer" has not been defined under the Act and therefore, a vague situation is created in regard to a "petty manufacturer" is thus completely misconceived as seen from the definition of "petty manufacturer" in the licensing Regulations. The licensing Regulations are extensive. Chapter II of this regulation pertains to licensing and registration of food business under which Regulation 2.1 pertains to registration and licensing of food business; Regulation 2.1.1 pertains to registration of petty food business. This is a detailed provision and throws a complete light on the nature of a petty food business and every aspect concerning it and need for registration of such petty food business.....

.....

52. Perusal of the above provisions of the Licensing regulations show that the licensing/registering Authority would grant licence and registration only on the compliance by the applicant to the Safety Regulations as mentioned in Schedule 4. Schedule 4 pertains to General Hygienic and Sanitary practices to be followed by Food Business operators. The provisions of Schedule 4 are extensive which pertain to general hygienic and sanitary practices followed by the food business operators, food manufacturer, processor, handler, sanitary and hygienic requirements for street food vendors and units other than manufacturing/processing, general requirements on hygienic and sanitary practices to be followed by all Food Business Operators applying for a license, engaged in manufacture, processing, storing and selling of Milk and Milk Products, engaged in manufacture, processing, storing and selling of Meat and Meat Products, engaged in catering/food service establishments, personal hygiene, transportation and handling of food, storage, special requirements for high risk foods such as cut fruits/salads, fresh juices and beverages etc. A perusal of the extensive nature of these licensing regulations and intricate facets it takes into consideration, would show that there is no ambiguity or vagueness as being canvassed on behalf of the petitioners. Looking at these provisions we are not at all impressed with the submissions made on behalf of Mr. Anturkar. Mr. Anturkar's endeavour to point out the vagueness is wholly superficial without any foundation and overlooks settled norms of interpretation to ascertain the meaning of these words in the common parlance. Only because certain terms are not defined under the Act the legislative provisions become vague and are rendered unconstitutional, is too far fetched an argument and totally unacceptable. These submissions of Mr. Anturkar have no basis in facts much less in law. The provisions of the Act read with the Regulations completely nullify Mr. Anturkar's submissions.

53. Thus, Section 31 read with the licensing regulations, in our opinion, are absolutely clear without any ambiguity on any aspect and are legal and valid. The challenge to the vires of section 31 of the Food Safety Act

that the same is violative of Article 14 and 19(1)(g) of the Constitution as raised by the petitioners is thus wholly misconceived and cannot be sustained. The challenge to this provision on the ground that it is violative of Article 14 of the Constitution also ought to fail when tested on the touchstone of the decision of the Constitution Bench of the Supreme Court in the case "*Sakhawant Ali v. State of Orissa*, (AIR 1955 SC 166)" wherein in paragraph 10 the Supreme Court has observed thus:-

"The simple answer to this contention is that legislation enacted for the achievement of a particular object or purpose need not be all embracing. It is for the Legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left out would not render legislation which has been enacted in any manner discriminatory and violative of the fundamental right guaranteed by Article 14 of the Constitution."

.....

57. We now examine the challenge as raised in Writ Petition No. 227 of 2012. Mr. Bulchandani learned Counsel for the petitioners has made extensive submissions in assailing various provisions of the Act. The principal submissions are on sections 31(6), 34, 38, 46, 65, 70, 80. The contention is that these provisions are discriminatory, unreasonable and thus violative of the petitioner's right guaranteed under Articles 14, 19(1)(g) of the Constitution of India.

58. We now deal with the challenge to each of these provisions. The challenge to section 31(6) as urged by Mr. Bulchandani is on the nature of the powers conferred by this provision on the Officers/authorities lower in the hierarchy in the administration of the Act. Mr. Bulchandani would urge that section 31(6) provides for a single licence which may be issued by the Designated Officer for one or more articles of food and also for different establishments or premises in the same area. **This power under sub-section (6) of section 31 is required to be exercised in accordance with provisions of regulations 2.1.5 of the licencing regulations which prescribes a procedure for license in certain local areas. Sub-Regulation (1) provides that a single licence may be issued by the licencing authority for one or more articles**

of food and also for different establishment or premises in the same local area including collection and chilling units run by milk co-operatives or its members. The contention is that each article would require a licence as these provisions would read or a single licence may be issued by the Designated Officer for one or more articles as also for different establishments or premises in the same area. Such discretion as vested with the designated Officer is wholly arbitrary inasmuch as the provision would subject the applicant of a licence to an unfettered discretion of the Designated Officer either to seek a licence for each article or seek multiple licences. The contention is that this would bring about a "licence raj."

.....

63. Perusal of Section 32 along with provisions of Regulation 2.1.8 clearly indicate that the legislature intends to ensure compliance of the regulations by a food business operator and prevent violation of the provisions of the Act and the regulations, in the interest of food safety and standards as required to be maintained by those dealing in food. Though violation of the regulations or requirement of the compliance of different provisions of the FSS Act may be of a different degree, seriousness and consequences, however, a safeguard is provided in taking actions by the Designated Officer and that is by providing for an improvement notice to be issued as section 32 would postulate. The Designated Officer if reasonably believes that any food business operator has failed to comply with any regulation then the provision would require the Designated Officer to serve on the food business operator an improvement notice setting out the grounds for believing that the Food business operator has failed to comply with the regulations and law specifying the matter which constituted such a failure to comply and measures which in the opinion of the authority, the Food Business Operator must take. In order to secure compliance and thereby calling upon the Food Business Operator to take such measures or equivalent measures within a reasonable period which would not be less than 14 days and only after such period has lapsed on the failure on the part of the Food Business operator to comply with such improvement notice a power is

conferred to suspend a licence. If even thereafter the Food Business Operator fails to comply with the improvement notice a provision has been made under sub section (3) that the licensee may be given an opportunity to show cause as to why the licence granted to him shall not be cancelled. It is apparent that very consciously the legislature has added a proviso to sub-section 3 to deal with the situation of gross breach of the regulations and food safety norms by a food business operator conferring on the Designated Officer a power to suspend any licence forthwith in the interest of public health for reasons which the Designated Officer would record in writing. In regard to any action of either suspension or cancellation which the Designated Officer may take in a given situation, sub-section (4) provides for a remedy of an appeal to the Commissioner of Food Safety against the refusal of issuance of a certificate as to improvement by the Designated Officer or cancellation or suspension or revocation of a licence, whose decision the provision makes it to be final. The submission that regulation 2.1.8(4) is providing for a power to cancel a licence is contrary to the provisions of section 32 in our opinion is wholly misconceived and cannot be countenanced on examination of section 32 read with regulation 2.1.8. Section 32 postulates both powers, a power to suspend a licence and a power to cancel a licence in a given situation. All such powers are required to be exercised in the interest of public health and for reasons to be recorded in writing. These powers are not a *carte blanche* for the Designated Officer to abruptly use these powers as there is an obligation to record reasons in either issuing a improvement notice or an order of suspension of a licence or an order canceling a licence. Regulation 2.1.8(4) is nothing but, a reiteration of what section 32 would provide. This regulation only recognizes powers as are substantively conferred under section 32 on the Designated Officer. There is no paradox or incongruity between section 32 and regulation 2.1.8 and more particularly sub-regulation (4) of regulation 2.1.8 as urged by Mr. Bulchandani. In our opinion, in the administration of the FSS Act, unless the Designated Officer is provided with such powers the administration of the Act would become difficult when the Act intends to

achieve an object directly affecting human life. The object of these provisions is therefore, laudable. We strongly deprecate the approach of the petitioners in assailing the provision in such a cavalier manner and on superfluous issues.

.....

68. The next challenge is to the provisions as contained in Chapter 9 which pertains to offences and penalties. The provisions assailed are section 65(1) which pertains to compensation in case of an injury or death to a consumer. Section 65(1) provides that *'if any person whether by himself or by any person on his behalf manufacturers, distributes or sells or imports any article of food causing injury to a consumer or his death, it shall be lawful for the Adjudicating Officer or as the case may be, the court to direct him to pay to the victim or the legal representative to the victims as a compensation of the victim a sum of Rs. 5,00,000/- in case of death, and not exceeding Rs. 3,00,000/- in case of a grievous injury and an amount not exceeding Rs. 1,00,000/- in all other cases of injury to be paid at the earliest and no case later than six months from and date of occurrence of the incident.'* Mr. Bulchandani would submit that this provision is arbitrary as it excludes producer of food. A perusal of this provision clearly indicates that the provision begins by following words:- *"Without prejudice to other provisions of this Chapter, if any person whether by himself or by any other person on his behalf manufactures or distributes or sells or imports any article of food causing injury to the consumer or his death, it shall be lawful for the Adjudicating Officer or as the case may be, the Court to direct him to pay compensation."* **The provision is required to be read in its entirety and alongwith the other provisions of the FSS Act. The word 'manufacturer' as used in this provision in a given situation would take within its ambit any producer of a food item on whom there is an obligation to comply with the provisions of the Act, rules and regulations made under it. If it is found that such a producer or manufacturer is guilty of dealing with food which has caused death of a person, then only for the reason that the word 'producer' has not been used in the provision cannot be construed that such a person can escape the liability and consequences under this provision.** Thus, the contention of Mr. Bulchandani that as the

word 'producer' is not incorporated in Section 65(1), it would render Section 65(1) illegal or unconstitutional is without any merit. Even otherwise this submission of Mr. Bulchandani as urged on behalf of the petitioner is wholly imaginary and without any basis.

.....

71. A perusal of the Food Safety Standards Rules, 2011 reveals that Rule 3.3 provides for procedure for an appeal to the Appellate Tribunal. A perusal of the provisions of Section 68 read with rules 3.1.1. and 3.1.2 of the Food Safety and Standards Rules, 2011 clearly show that the Adjudicating Officer shall have power to hold inquiry for the purpose of adjudicating offences punishable under sections 50 to 58 and 64 to 67 of the Food Safety Act, 2006. Section 50 is as regards an offence for selling food not of the nature or substance or quality demanded. Section 51 pertains to dealing in sub-standard food. Section 52 pertains to dealing in misbranded food. Section 53 provides for misleading advertisement pertaining to food. Section 54 provides for offence in respect of food containing extraneous matters. Section 55 is as regards failure to comply with directions of the Food Safety Officer. Section 56 pertains to an offence for unhygienic or unsanitary processing or manufacturing of food. Section 57 pertains to offences relating to possessing adulterant and section 58 pertains for contravention for which no specific penalty is provided. Section 64 provides for punishment for subsequent offences. Section 66 provides for offences by companies and section 67 concerns offences for contravention of provisions of the Act in case of import of articles of food to be in addition to penalties provided under any other Act.

72. There are many facets which are covered under these penal provisions. Sections 50 to 58 and sections 64 to 67 provide for different offences under the FSS Act and the punishment thereof. Against an adjudication by the Adjudicating Officer, an appeal is provided before the Appellate Tribunal. In our opinion, it would not be appropriate for the petitioners to contend that the adjudicating mechanism as provided in section 68 read

with section 70 of the Food Safety Act, 2006 along with Food Safety and Standard Rules, 2011 does not effectively provide a redressal mechanism and thus an aggrieved person is rendered remediless. The argument of the petitioner militates against the basic principle of jurisprudence recognized in the maxim "*Ubi Jus ibi remedum* (there is no right without a remedy)". Further there can be no vested right in a person to contend that a particular procedure should be applied to deal with offences under the Act or for that reason another procedure is more suitable. The legislature has considered it appropriate to provide for an adjudication mechanism as contemplated by section 68 to confer power on the Adjudicating Officer, authority and jurisdiction to adjudicate offences as contemplated by sections 50 to 58 and section 64 to 67 of the Act, and an appeal against the order of the Adjudicating Officer is provided before the Tribunal. It therefore, cannot be said that this mechanism is insufficient. As regards the contention of Mr. Bulchandani that in respect of orders not falling within the provision of Sections 50 to 58 and 64 to 67, the same would be rendered final and without any remedy of an appeal is also unfounded. A perusal of the various provisions of the Act clearly demonstrate that appropriate safeguard has been provided by creating a mechanism before any rights vested in persons dealing in food are sought to be affected at the hands of any of the authorities under the FSS Act. The authorities are required to follow a procedure of issuing a notice or a show cause notice before taking up of any restrictive or prohibitive action. The example of such caution as incorporated in the legislation can be seen in the provisions of section 32 where the Designated Officer is empowered to issue improvement notice setting out grounds on the basis of which notice has been issued. Further safeguard has been provided that on the failure of the Food Business Operator to comply with improvement notice the licensee would be issued a show cause notice as to why licence granted to him should not be cancelled. Sub-section 4 of section 32 provides for an appeal to the Commissioner of Food Safety against any order passed or issuance of improvement notice, refusal to issue a certificate as to improvement, or cancellation or

suspension of Food Safety whose decision thereon shall be final. Another example of such safeguard is contained in section 34 which concerns emergency notices. Thus, the contention as urged on behalf of the petitioner that there is no remedy for the persons against whom orders are passed under the other provisions of the Act, is wholly misconceived and without any substance. In any case, it just cannot be contended by the petitioners that there is no remedy in law to an aggrieved persons if his legal and statutory rights are affected.

73. There is yet another reason as to why this contention cannot be accepted. It is inconceivable that where the statute is silent on a specific remedy being made available against the orders passed by the authorities under the Act, then in that case if any of the legal rights conferred on such persons are affected a right to seek enforcement of their rights under the civil laws or under the Constitution can never be said to be extinguished. Access to justice is the foundation of the rule of law and flowing from Article 21 of the Constitution of India. It is therefore, fallacious for the petitioners to contend that limited powers are conferred on the Adjudicating Officer and the tribunal and therefore, persons who are affected would have no legal remedy.

74. As regards the submission of Mr. Bulchandani that the definitions as contained in Section 3 are vague and ambiguous, we have already rejected this contention in the earlier part of our judgment on the ground that the words used in the definition clause are required to be understood in regard to its meaning in the context of the object the legislation intends to achieve. We find that the words which are used in the definition clause are clear and plain. **We do not find that there is any ambiguity in the meaning of the words the FSS Act intends to attribute to the words in the scheme of the legislation. If this be the position, then it would be the duty of the Court to give effect to that meaning irrespective of the consequences. It would not be permissible to adopt hyper-technical construction as sought to be contended by the petitioners and construction which furthers the policy of the Act is**

required to be considered. On a careful examination of the various provisions of the definition clause as asserted by the petitioner, we are of the opinion that there is nothing ambiguous or vague or unreasonable in the words used in the definition clause so as to render these provisions unworkable and incapable of implementation. This is not a case where the terms as used in the provision are so absurd and incoherent in the context in which they are used so as to lead to an absolute absurdity in the language used and it is impossible to resolve the ambiguity created in the cluster of words as used in the legislation. On a reading of the provisions as contained in the definition clause, we are not persuaded to come to the conclusion that the provisions are absolutely meaningless, incomprehensive or of an abnormal understanding. These observations as made by us are applicable to the various provisions as being assailed on behalf of the petitioners on the ground of vagueness and ambiguity as we find for the reasons set out above, as we have reached to a conclusion that the assertion of the petitioners is without any foundation.

75. Now we come to the third Writ Petition No. 115 of 2014 which is filed by the Association of hotel and restaurant business. Mr. Dhakephalkar, learned Senior Advocate has made submissions on behalf of the petitioners. The submissions as made by Mr. Dhakephalkar are limited in as much as there is no clarity as to which rules are applicable to hoteliers, manufacturer and for persons who are engaged in food processing. Mr. Dhakephalkar has drawn our attention to the provisions of section 50 which pertains to penalty for selling food not of the nature or substance or quality demanded. Mr. Dhakephalkar submits that this provision creates a vague province as to what would be the quality accepted by hoteliers in providing various edible items and what can be a breach of such quality, is vague. This would bring about an arbitrary regime and abuse of the powers at the hands of the authorities. In regard to the other challenges as raised in the Writ Petition, Mr. Dhakephalkar has adopted the challenges as made by Mr. Anturkar and Mr. Bulchandani. We are in total disagreement with the submissions as made by Mr. Dhakephalkar. The submissions are too general without any foundation. We have observed hereinabove that

legality of the legislative provisions cannot be assailed in abstract. Even otherwise, there is no substance in the challenge as being urged by Mr. Dhakephalkar. **The whole attempt on the part of the petitioners is to read the provisions in isolation. We have already observed that the provisions are required to be read and understood with other ancillary provisions as would become relevant. On a plain reading of the provisions of the Act, we do not find that there is any vagueness or absurdity or any discrimination and unreasonableness as is reflected in any of the provisions.** Mr. Dhakephalkar was unable to show any instances which could even remotely support the plea as made by the petitioners, of any action taken which would render such action vulnerable and not sustainable on the application of the provisions of the Act. **A deeper scrutiny of the submission as urged by Mr. Dhakephalkar also show that there is no vagueness or any prejudice which is being caused to the petitioners in any of the provisions as contained in the FSS Act. Moreover, as submissions by the petitioners in this Writ Petition are oblivious of the various rules and regulations framed under the FSS Act which clearly categories the dealing of the food by the category of these petitioners. The legislature has carefully incorporated various provisions providing for penalty with an object of securing safe food for human consumption and has attempted to establish standards for those who are dealing in business of food. These are provisions which are enshrined under Articles 21 and 47 of the Constitution of India as held by the Supreme Court. Each of the provisions which are assailed by the petitioners are intended to achieve these constitutional objects. Thus, an imaginary challenge is sought to be raised which in any case ought to fail.**

76. Mr. Anturkar learned Senior Counsel for the petitioners has placed reliance on the decisions of the Supreme Court in the case of "*Academy of Nutrition Improvement v. Union of India*, ((2011) 8 SCC 274)." in support of his submissions that the terms like processing, storage, distribution, food service, catering, food ingredients which are not defined under the Act have created an ambiguity and vagueness in the implementation of the provisions of the Act. The reliance is on the observations

of the Supreme Court in paragraph 55 of the Judgment in which the Supreme Court has observed that ***“where an item of food (used in the composition or preparation of human food and used as a flavouring) is in its natural form and is unadulterated and is not injurious to health, a rule cannot be made under the provisions of the Act to ban the manufacture for sale, storage or sale of such food item on the ground that such ban will ensure that the populace will use a medicated form of such food, which will benefit a section of the populace.*** The Supreme Court has made these observations in the context of the challenge to the validity of Rule 44-I of the provisions of Food Adulteration Rules 1955 which banned use of common iodised common salt for human consumption. The case of the petitioners was that compulsory iodization regime ought to be replaced by voluntary need-based iodization regime so that only those having iodine deficiency could use iodized salt and that it was unfair and unjust to deny them the right to choose between iodized and common iodized salt. It was thus urged that Rule 44-I was violative of Articles 14 and 21 of the Constitution of India. The Supreme Court held that the issue that there should be an universal salt iodization is much debated technical issue relating to medical science and that decisions in these matters can only be taken by an expert. It was held that the Courts are not equipped nor can be expected to decide about the need or absence of need for such universal salt iodization on the basis of some articles and reports placed before it. That the Court should not rush in where even scientists and medical experts are careful to tread nor the Court substitute their own views as to what is wise, safe, prudent or proper relating to technical issues relating to public health. It is in this context the above observations were made by the Supreme Court and in paragraph 55. In our view, these observations are of no avail to the petitioners in the context to the challenge as raised in this petition. There can be no quarrel about what the Supreme Court has held in this decision. In the facts of the present case, whether any item is being used in its natural form and whether the same is injurious to health or not are all matters which are required to be taken into consideration by the Food Safety Authority when such items are being used in the preparation of items of food. The same would depend on the facts of each case. The petitioners have not come out with any case that the respondents in any manner have restricted the use of any food item in its natural form which is unadulterated not

injurious to health and have made a rule prohibitive of such use. Reliance on the observations of the Supreme Court in paragraph 55 therefore, are squarely inapplicable to the facts of the present case.

.....

78. Mr. Anturkar has relied on the above observations to submit that if the statute is silent in respect of one of such conditions precedent, it undoubtedly constitutes a serious infirmity which would inevitably take it out of the provisions of Article 19(5) and that a result of such infirmity is that it has left to the unguided and unfettered discretion of the authority to treat any citizen as a goonda. We are of the opinion that these observations of the Supreme Court in no manner are of any assistance to the petitioners, the reason being that the context in which the Supreme Court had come to a conclusion simply cannot be made applicable to the facts of the present case. **We have observed above that the terms as used in Food Safety Act are required to be read in the context to which they are used and these terms cannot be read in isolation and are required to be read along with the other provisions of the Act. They are required to be given a ordinary and natural meaning and in the context in which they are placed in the scheme of the Act. The petitioners cannot in abstract place reliance on the observations of the Supreme Court.**

79. Mr. Anturkar's reliance on the decision of the Supreme Court in "*Kartar Singh v. State of Punjab*, ((1994) 3 SCC 569)" is also of no avail to the petitioners as the same is wholly inapplicable in the facts of the present case. In paragraph 130 of this judgment the Supreme Court has categorically held that basic principle of legal jurisprudence is that an enactment is void for vagueness if its prohibitions are not clearly defined. A perusal of the detailed provisions which the petitioners have assailed read with the licensing regulations, leave no manner of doubt that they are clear, plain and unambiguous.

80. Before we conclude, we may observe that the FSS Act has been enacted for the benefit and welfare of the citizens and has direct nexus to the right to life as enshrined under Article 21 of the Constitution. This is a

social legislation and provides for solution to the problems which would be a creation of nobody else but the members of the society. In upholding the validity of the provisions of the FSS Act, we have adopted the principles of interpretation which would further the social interest and the object of the legislation. As a Constitution Court, we cannot lose sight of the evil which is sought to be remedied by this enactment. The mischief which is sought to be remedied is nothing but sheer creation of we humans who have the tendency to indulge and deal in food products which would not be safe for human consumption and/or likely to cause a grave impact on human health. Every person even the person dealing in such unsafe food is likely to be the victims. We may observe that it would be the fundamental duty of every citizen to nurture such morals, ideals, qualities, habits and discipline so as to bring about a situation that the indulgence and dealing in hazardous and unsafe food is eliminated in totality as a matter of social responsibility of every citizen and bring about a situation that penal actions under these social legislation are minimized sheerly by inculcating these virtues of honesty and morality in dealing with food as a duty towards every citizen and this Country. These are the principles which are enshrined as one of the fundamental duties in Article 51A sub-clauses (h) and (j) of the Constitution which read as under:-

51A. Fundamental duties It shall be the duty of every citizen of India

(a)

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i);

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement."

81. It is for these reasons that we have construed the provisions of the FSS Act to make it effective and operative on the principles of *ut res majis valeat quam*

periat. It may not be out of place to observe that nobody can be oblivious of the evils that are caused to the Society at large on account of unsafe food being traded. The Court is required to take into consideration matters of common knowledge, the history of recent times in considering the importance of legislation and more particularly when it is required to decide the constitutional validity of the provisions. The Legislature in its wisdom understands and correctly appreciates the need of its own people and its laws which are directed to resolve the problems made manifest by sheer experience. If the object of the Act is to achieve science based standards for articles of food and to regulate, manufacture and storage, distribution, sale and import so as to ensure availability of safe and wholesome food for human consumption, in that case it would be the duty of the Court to further the object of the Act in interpreting the provisions. We may observe that the legislation which pertains to food safety serves a pivotal role in securing the citizens a minimum degree of purity in the articles of food and to protect and preserve the public health. It is aimed at preventing fraud on the consumers and those who are guilty of endangering human life by indulging and dealing with the unsafe food are required to be dealt with iron hands. If the provisions intend to curb such social evil, we are of the considered opinion that the challenge as raised by the petitioners on every count ought to fail. We may also observe that those who are entrusted with the solemn duty of enforcing the provisions of the Act are equally under an obligation to discharge the duties in the method and manner as the FSS Act, rules and regulations framed thereunder would provide. As on discharge of these duties the health of the citizens at all levels of life would rest. The persons who are dealing in foods as also the authorities responsible for implementing the provisions of this Act, therefore, have an onerous responsibility to the welfare of the citizens and directly affecting the valuable constitutional guarantee as enshrined under Article 21 of the Constitution. In no circumstance the standard of safety as would be laid down under the Act, the Rules and Regulations can be compromised by not adhering to, implementing the same by all the stakeholders. In this

context we may usefully refer to the recent decision of the Supreme Court in the case of "*Centre for Public Interest Litigation v. Union of India*, (AIR 2014 SC 49)" wherein the Supreme Court in dealing with the issue arising under the FSS Act has held that any food article which is hazardous or injurious to public health is a potential danger to the fundamental right to life guaranteed under Article 21 read with Article 47 of the Constitution of India. It is held that the provisions of FSS Act and the Rules and Regulations framed thereunder are required to be interpreted and applied in the light of the Constitutional principles and an endeavour has to be made to achieve appropriate level of protection of human life and health. It is held that considerable responsibility is cast on the Authorities as well as other officers functioning under the Act to achieve the desired results. It is also held that the parties are also obliged to maintain a system of control and other activities as appropriate to the circumstances, including public communication on food safety and risk, food safety surveillance and other monitoring activities covering all stages of food business. It would be profitable to reproduce the relevant paragraphs of the said judgment of the Supreme Court in the present context:-

"19. Article 21 of the Constitution of India guarantees the right to live with dignity. The right to live with human dignity denies the life breach from the Directive Principles of the State Policy, particularly clauses (3) and (f) of Article 39 read with Article 47 of the Constitution of India.

Article 47 reads as follows:-

"47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

20. Article 12 of the International Covenant on Economics, Social and Cultural Rights, 1966 reads as follows:-

"12-(1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

(2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the still birth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to a medical service and medical attention in the event of sickness."

21. We may emphasize that any food article which is hazardous or injurious to public health is a potential danger to the fundamental right to life guaranteed under Article 21 of the Constitution of India. A paramount duty is cast on the States and its authorities to achieve an appropriate level of protection to human life and health which is a fundamental right guaranteed to the citizens under Article 21 read with Article 47 of the Constitution of India.

22. We are, therefore, of the view that the provisions of the FSS Act and PFA Act and the rules and regulations framed thereunder have to be interpreted and applied in the light of the Constitutional Principles, discussed above and endeavour has to be made to achieve an appropriate level of protection of human life and health. Considerable responsibility is cast on the Authorities as well as the other officers functioning under the above-mentioned Acts to achieve the desired results. Authorities are also obliged to maintain a system of control and other activities as appropriate to the circumstances, including public communication on food safety and risk, food safety surveillance and other

monitoring activities covering all stages of food business.

23. Enjoyment of life and its attainment, including right to life and human dignity encompasses, within its ambit availability of articles of food, without insecticides or pesticides residues, veterinary drugs residues, antibiotic residues, solvent residues, etc..."

(emphasis supplied)

82. The above observations of the Supreme Court thus leaves no manner of doubt that dealing in food articles which are hazardous and injurious to public health is a potential danger to the fundamental right to life guaranteed under Article 21 of the Constitution. In our above discussion, we have observed that the Legislature was mindful of the importance of the subject and in its wisdom taking into consideration all the parameters on the subject has enacted the FSS Act. As also the rule making authorities have framed the rules and regulations concerning different aspects pertaining to food and to achieve the objects of the enactment. We have considered the scope of the Rules under challenge and as assailed and we have noted that none of these rules and regulations in any manner go contrary to the provisions of the Act or are rendered illegal for any other reasons. This is definitely not a case where the rule making authority has exceeded its power under the FSS Act in framing these rules and regulations.

83. We may also usefully refer to the decision of the Division Bench of this Court in the case "*Dhariwal Industries Ltd. v. State of Maharashtra*, ((2013) 1 Mah LJ 461)". In this case the Court was considering the challenge to the validity of the Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011 and Regulation 3.1.7 of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 and the order passed by the Commissioner of Food Safety passed under Section 30(2)(a) of the FSS Act in the interest of public health prohibiting manufacturing, storing, distributing or selling

of Gutkha or Pan Masala. The Division Bench while considering the provisions of the Act has succinctly made the following observations:-

"23.These provisions require all the above authorities which include the other agencies implementing the provisions of the Act to identify the possibility of harmful effects on health on the basis of assessment of available information. If the possibility of harmful effects on health is identified but scientific uncertainty persists, provisional risk management measures necessary to ensure appropriate level of health may be adopted. In cases where there are reasonable grounds to suspect that a food may present a risk for human health, the Food Authority and the Commissioner of Food Supply shall inform the general public about the food, risk to health and measures being taken to prevent or eliminate that risk. Section 18(2)(a) also requires that the Food Authority shall, while framing regulations and specifying standards under the Act, ensure prevention of unsafe or contaminated or substandard food. It is, thus, clear that the authorities entrusted with the duty of implementing the Food Safety Act, 2006 are not merely to perform the negative duty of preventing food adulteration, but are required to play a very pro-active role for ensuring safe and wholesome food and to prevent and eliminate risk to health caused by unsafe food. It is, therefore, clear that Food Safety and Standards Act, 2006 is the comprehensive single special leg-islation for all food products on the subject of safety and standards.

55. The impugned statutory regulations as well as the impugned statutory order dated 19 July, 2012 are in furtherance of Article 47 of the Constitution which reads as under:—

"47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health. - The State shall re-gard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

(emphasis supplied)

84. The Constitution Bench of the Supreme Court in the case of "*Municipal Corporation Ahmedabad v. Jan Mohammed*, (AIR 1986 SC 1205)", in laying down the principles of interpretation which would be applicable in testing a challenge to a legislation on the ground that it violates the fundamental rights guaranteed under Article 19(1)(g) to practice any profession, or to carry on any occupation, trade or business and the rights guaranteed under Article 14 which enjoins that the State shall not deny to any person equality before the law or the equal protection of law within the territory of India, has observed thus:-.....

85. We may observe that our above discussion and conclusion is confined to the submissions as canvassed by the learned Counsel for the parties.

86. In the result of the above deliberation, we are of the considered opinion that the provisions as impugned in these writ petitions are legal, valid and intra vires Articles 14 and 19(1)(g) of the Constitution of India and thus the challenge as raised in these Writ Petitions fails. The Writ Petitions are accordingly dismissed. In the facts and circumstances of the case, there shall be no order as to costs."

(Emphasis supplied)

The High Court of Bombay in the afore-quoted case holds, that the Act, was enacted for the benefit and welfare of the citizens and has a direct nexus to the right to life enshrined under Article 21 of the Constitution of India and is a social legislation, providing solutions to the problems which are a

creation of the members of the society. The food authorities under the Act are responsible for implementing the provisions of the act and are also responsible for the welfare of the citizens. Section 31 of the Act read with the Licensing Regulations, 2011 are absolutely clear without any ambiguity on any aspect and are legal and valid. The legislations are required to be considered as a whole to ascertain, the meaning of the terms and expressions used in the legislation. The Act and the Regulations pertain to food safety and serve a pivotal role in securing the citizens a minimum degree of purity in the articles of food, and to protect and preserve the public health. They are aimed at preventing fraud on the consumers and those who are guilty of endangering human life by indulging and dealing with the unsafe food are required to be dealt with iron hands. Therefore, the impugned provisions which intend to curb such social evil cannot be struck down. In no circumstances can the standards of safety laid down in the act and rules and regulations be compromised with.

15. This Court in the case of **LOCHAMESH B. HUGAR v. UNION OF INDIA**⁸ considers the power of the Commissioner of Food Safety and the designated officer to compound the offence of petty manufacturers who sell articles of food, retailers and hawkers. However, by holding that basic hygiene and safety requirements are necessary to be followed, this Court has held as follows:

“....

29. Section 3(j) of FSS Act, 'FOOD' has been defined to include packaged drinking water; Section 3(zc) defines 'manufacture' to mean a process or adoption or any treatment of conversion of ingredients into an article of food which includes any sub-process; Section 3(zh) package has been defined to mean pre-packed box, bottle, cascade, tin, barrel, case, pouch, receptacle, sack, bag, wrapper, or such other things in which article of food is packed. A food operator as defined under Section 3(o) would mean a person by whom the business is carried on or owned and would be responsible for compliance of provisions of the Act, Rules and Regulations made thereunder. In order to ensure that the 'Food' so manufactured complies with the statutory provisions and to ascertain as to whether there is such compliance they are tested at the 'Food Laboratory' established by the Central Government, State Government or any other agency and accredited by National Accreditation Board for Testing and Calibration Laboratories or an equivalent accreditation agency recognised by the Food Authority under Section 43. Section 23 prohibits Manufacture, distribution and sale of any packaged Food Products which are not packed and labelled in the manner specified under regulations. Section 31 restricts carrying on any food business except under licence. Thus, the licence as defined under Section

⁸ 2012 SCC OnLine Kar 8763

3(za) is required to be obtained by any person commencing or carrying on food business. Chapter VIII namely Sections 43 to 47 provides for recognition and accreditation of laboratories, Research Institutions and Referral Food Laboratory, agency for Food Safety Audit, Food analysts and their functions which also includes sampling and analysis of the food. Chapter X of the FSS Act provides for adjudication of disputes by the authority not below the rank of Additional District Magistrate to be notified by the State Government as the adjudicating officer who will have the powers of a Civil Court and would be deemed to be Court for the purposes of Section 345 and 346 of Code of Criminal Procedure. Section 69 provides for the Commissioner of Food Safety to empower the designated officer to compound the offence by petty manufacturers who sell any article of food, retailers, hawkers etc., on payment of such sum of money, having due regard to Section 49 which relates to adjudging the quantum of penalty. Section 97 of the Food Act, 2006 is the repeal and savings clause whereunder the enactment and orders specified in Schedule II thereunder has stood repealed from such date as the Central Government may appoint in this behalf.

... ..

44. In exercise of the power conferred by Clause (o) of sub-Section(2) of Section 92 read with Section 31 of the FSS Act as already noticed herein above various regulations have been brought into force and under Regulation 2.1.2 of Registration of Food Business Regulation, 2011, every food business operator has to register themselves with the registering authority by submitting an application for registration and the petty food manufacturer is required to follow the basic hygiene and safety requirements provided in Part I of Schedule IV of the said regulation. Under regulation 2.3.14(17) of Restrictions on Sales Regulations, 2011 no person shall manufacture, sell or exhibit for sale packaged drinking water except under BIS certification which regulation is has come into force with effect from 05.08.2011 made in exercise of the power conferred by Clause (1) of sub-Section (2) of Section 92 read with Section 26 of the FSS Act. Likewise under Food Product and Additives Regulations, 2011 the standards given under these regulations if they are at variance with any of the

provisions of the licences already granted, such food business operator is required to comply with the provisions of these regulations within six months from the date of commencement of the said regulations, which admittedly has come into force with effect from 05.08.2011. Under Chapter II of the said Regulation the Food Product Standards have been prescribed for various products which include mineral water as well as Packaged drinking water (other than mineral water) vide Regulation 2.10.8. Thus it is seen from these Regulations that manufacture, sale, labeling, meeting the standards prescribed with regard to Packaged drinking water would fall within the purview of the FSS Act, 2006. Hence, it does not lie in the mouth of the manufacturers to contend that they would not be covered under the provisions of the FSS Act, 2006 or to contend that they can manufacture, sell or exhibit sale of packaged drinking water except under the certification mark issued by the Bureau of Indian Standards.”

(Emphasis supplied)

16. The Apex Court in the case of **RAM NATH v. STATE OF UTTAR PRADESH**⁹, while considering penal provisions under the Act, holds that Section 89 of the Act has overriding effect over all the legislations including IPC and Cr.P.C., and not just food related laws. It holds as under:

“

13. Thus, the concept of unsafe food is more comprehensive than the concept of adulterated food. Unsafe food means an article of food whose nature, substance or quality is so affected as to render it injurious to health.

14. The word substandard has been defined under clause (zx) of Section 3, which reads thus:

⁹ (2024) 3 SCC 502

"3. (1)(zx) "substandard", an article of food shall be deemed to be substandard if it does not meet the specified standards but not so as to render the article of food unsafe;"

Therefore, substandard food cannot be unsafe food.

15. Another important definition is of adulterant under clause (a) of Section 3, which reads thus:

"3. (1)(a) "adulterant" means any material which is or could be employed for making the food unsafe or substandard or misbranded or containing extraneous matter;"

16. Coming back to the definition of unsafe food, sub-clause (v) of clause (zz) of Section 3 provides that by adding a substance directly or as an ingredient which is not permitted makes an article of food unsafe food. The presence of any harmful substance in the article of food makes it unsafe food. Therefore, if any adulterant is added to an article of food, which renders the article of food injurious to health, the food article becomes unsafe food.

... ..

Conclusion

26. Thus, there are very exhaustive substantive and procedural provisions in FSSA for dealing with offences concerning unsafe food.

27. In this context, we must consider the effect of Section 89 FSSA. Section 89 reads thus:

"89. Overriding effect of this Act over all other food related laws.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect of virtue of any law other than this Act."

The title of the Section indeed indicates that the intention is to give an overriding effect to FSSA over all "food-

related laws". However, in the main section, there is no such restriction confined to "food-related laws", and it is provided that provisions of FSSA shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. So, the section indicates that an overriding effect is given to the provisions of FSSA over any other law.

28. The settled law is that if the main section is unambiguous, the aid of the title of the section or its marginal note cannot be taken to interpret the same. Only if it is ambiguous, the title of the section or the marginal note can be looked into to understand the intention of the legislature.

29. Therefore, the main Section clearly gives overriding effect to the provisions of FSSA over any other law insofar as the law applies to the aspects of food in the field covered by FSSA. In this case, we are concerned only with Sections 272 and 273IPC. When the offences under Sections 272 and 273IPC are made out, even the offence under Section 59 FSSA will be attracted. In fact, the offence under Section 59 FSSA is more stringent.

30. The decision of this Court in *Swami Achyutanand Tirth* [*Swami Achyutanand Tirth v. Union of India*, (2014) 13 SCC 314 : (2014) 5 SCC (Cri) 647] does not deal with this contingency at all. In *State of Maharashtra* [*State of Maharashtra v. Sayyed Hassan Sayyed Subhan*, (2019) 18 SCC 145 : (2020) 3 SCC (Cri) 592] , the question of the effect of Section 97 FSSA did not arise for consideration of this Court. The Court dealt with simultaneous prosecutions and concluded that there could be simultaneous prosecutions, but conviction and sentence can be only in one. This proposition is based on what is incorporated in Section 26 of the GC Act. We have no manner of doubt that by virtue of Section 89 FSSA, Section 59 will override the provisions of Sections 272 and 273IPC. Therefore, there will not be any question of simultaneous prosecution under both the statutes."

(Emphasis supplied)

17. The Allahabad High Court, in the case of **PIYUSH GUPTA v. STATE OF U.P.**¹⁰, holds that if any food business operator like a restaurant purchased any raw material or ingredient of food from a registered manufacturer in a sealed packet with a proper invoice, then it would be deemed that the raw material or ingredient of food is of standard quality. If the ingredient of food in the sealed packet is found to be unsafe, then prima facie liability will be of its registered manufacturer or its distributor and not of the restaurant, unless the seal of packet or its invoice is disputed or doubted. The court observes as follows:

“....”

21. So far as the other question, regarding the liability of applicant No. 2 being food business operator merely on storing the turmeric powder, purchased from a branded company is concerned, for that purpose Section 3(1)(o) of Act, 2006 itself provides that food business operator is responsible for ensuring compliance of this Act, rules and regulations. Therefore, a further question arises whether a restaurant, while storing the sealed turmeric powder, purchased from a branded company with its warranty regarding its quality, will be under the compliance of the Act, rules or regulations for ensuring proper ingredients of turmeric powder so that it does not fall within the definition of “unsafe food”. Responsibility of the food business operator has been prescribed in Section 26 of the Act, 2006 which includes against storing of unsafe food. Section 26 of the Act, 2006 is quoted as under:—

¹⁰ **2025 SCC OnLine All 599**

"26. Responsibilities of the food business operator.—(1) Every food business operator shall ensure that the articles of food satisfy the requirements of this Act and the rules and regulations made thereunder at all stages of production, processing, import, distribution and sale within the businesses under his control.

(2) No food business operator shall himself or by any person on his behalf manufacture, **store**, sell or distribute any article of food—

- (i) which is unsafe; or
- (ii) which is misbranded or sub-standard or contains extraneous matter; or
- (iii) for which a licence is required, except in accordance with the conditions of the licence; or
- (iv) which is for the time being prohibited by the Food Authority or the Central Government or the State Government in the interest of public health; or
- (v) in contravention of any other provision of this Act or of any rule or regulation made thereunder.

(3) No food business operator shall employ any person who is suffering from infectious, contagious or loathsome disease.

(4) No food business operator shall sell or offer for sale any article of food to any vendor unless he also gives a guarantee in writing in the form specified by regulations about the nature and quality of such article to the vendor:

Provided that a bill, cash memo, or invoice in respect of the sale of any article of food given by a food business operator to the vendor shall be deemed to be a guarantee under this section, even if a guarantee in the specified form is not included in the bill, cash memo or invoice.

(5) Where any food which is unsafe is part of a batch, lot or consignment of food of the same class or description, it shall be presumed that all the food in that batch, lot or consignment is also unsafe, unless following a detailed assessment within a specified time, it is found that there is no evidence that the rest of the batch, lot or consignment is unsafe:

Provided that any conformity of a food with specific provisions applicable to that food shall be without prejudice

to the competent authorities taking appropriate measures to impose restrictions on that food being placed on the market or to require its withdrawal from the market for the reasons to be recorded in writing where such authorities suspect that, despite the conformity, the food is unsafe."

22. From the perusal of Section 26 of the Act, 2006, it is clear that the responsibility of food business operator is to comply with the requirement of the Act, rules and regulations made therein at all stages of production, distribution or sale and he will not store any article of food which is unsafe. Section 26(4) of the Act, 2006 further provides that the food business operator will not sell any article of food without giving a guarantee in writing for its nature and quality and bill, cash memo, or invoice in respect of the sale of any article of food shall be deemed to be guaranteed under this Act.

23. Several cases cited by the counsel for the applicant relates to Section 19 of Prevention of Food Adulteration Act which has been repealed as on date by the Act, 2006, but the defence, available under Section 19 against the sale of adulterated food if same was purchased from a duly licensed manufacturer, is also available to some extent under Section 80 of the Act, 2006. Section 80 of the Act, 2006 is quoted as under:—

"80. Defences which may or may not be allowed in prosecution under this Act.—(A) Defence relating to publication of advertisements—

(1) In any proceeding for an offence under this Act in relation to the publication of an advertisement, it is a defence for a person to prove that the person carried on the business of publishing or arranging for the publication of advertisements and that the person published or arranged for the publication of the advertisement in question in the ordinary course of that business.

(2) Clause (1) does not apply if the person—

(a) should reasonably have known that the publication of the advertisement was an offence; or

- (b) *had previously been informed in writing by the relevant authority that publication of such an advertisement would constitute an offence; or*
- (c) *is the food business operator or is otherwise engaged in the conduct of a food business for which the advertisements concerned were published.*

(B) Defence of due diligence—

(1) In any proceedings for an offence, it is a defence if it is proved that the person took all reasonable precautions and exercised all due diligence to prevent the commission of the offence by such person or by another person under the person's control.

(2) Without limiting the ways in which a person may satisfy the requirements of clause (1), a person satisfies those requirements if it is proved—

- (a) *that the commission of the offence was due to—*
 - (i) *an act or default of another person; or*
 - (ii) *reliance on information supplied by another person; and*
- (b) (i) *the person carried out all such checks of the food concerned as were reasonable in all the circumstances; or*
 (ii) *it was reasonable in all the circumstances to rely on checks carried out by the person who supplied such food to the person; and*
- (c) *that the person did not import the food into the jurisdiction from another country; and*
- (d) *in the case of an offence involving the sale of food, that—*
 - (i) *the person sold the food in the same condition as and when the person purchased it; or*
 - (ii) *the person sold the food in a different condition to that in which the person purchased it, but that the difference did not*

result in any contravention of this Act or the rules and regulations made thereunder; and

- (e) that the person did not know and had no reason to suspect at the time of commission of the alleged offence that the person's act or omission would constitute an offence under the relevant section.*

(3) In sub-clause (a) of clause (2), another person does not include a person who was—

- (a) an employee or agent of the defendant; or*
- (b) in the case of a defendant which is a company, a director, employee or agent of that company.*

(4) Without limiting the ways in which a person may satisfy the requirements of clause (1) and item (i) of sub-clause (b) of clause (2), a person may satisfy those requirements by proving that—

- (a) in the case of an offence relating to a food business for which a food safety programme is required to be prepared in accordance with the regulations, the person complied with a food safety programme for the food business that complies with the requirements of the regulations, or*
- (b) in any other case, the person complied with a scheme (for example, a quality assurance programme or an industry code of practice) that was—*
 - (i) designated to manage food safety hazards and based on national or international standards, codes or guidelines designed for that purpose, and*
 - (ii) documented in some manner.*

(C) Defence of mistaken and reasonable belief not available—

In any proceedings for an offence under the provisions of this Act, it is no defence that the defendant had a mistaken but reasonable belief as to the facts that constituted the offence.

(D) Defence in respect of handling food—

In proceedings for an offence under Section 56, it is a defence if it is proved that the person caused the food to which the offence relates to be destroyed or otherwise disposed of immediately after the food was handled in the manner that was likely to render it unsafe.

(E) Defences of significance of the nature, substance or quality of food—

It shall be no defence in a prosecution for an offence pertaining to the sale of any unsafe or misbranded article of food to allege merely that the food business operator was ignorant of the nature, substance or quality of the food sold by him or that the purchaser having purchased any article for analysis was not prejudiced by the sale."

24. From the perusal of the Section 80 of the Act, 2006, it is explicit that the defence of due diligence and reasonable protection to prevent the commission of the offence as well as act or default of another person or reliance on the information supplied by another person is still available during trial, being subject matter of evidence, but when it is not in dispute, even at the time of filing the complaint, that the food business operator has taken due diligence and reasonable precaution by complying all the conditions mentioned in the Act, 2006 as well as regulations framed therein, then such a plea can be considered even at the time of exercising the power under Section 482 Cr. P.C./528 B.N.S.S. to quash the proceeding.

25. **Therefore, from the above analysis, it is clear that if any food business operator like a restaurant purchased any raw material or ingredient of food from a registered manufacturer in a sealed packet with a proper invoice, then it would be deemed that the raw material or ingredient of food is of standard quality. If the ingredient of food in sealed packet is found to be unsafe, then *prima facie* liability will be of its registered manufacturer or its distributor and not of the restaurant unless the seal of packet or its invoice is disputed or doubted."**

(Emphasis supplied)

18. The afore-cited judgments of the Apex Court and the various High Courts across the country, rendered while interpreting the provisions of the Act and the Regulations framed there under, have uniformly upheld their validity, necessity and constitutional propriety. **Each of these judgments delivered subsequent to the filing of the present petition, reaffirms in resounding unanimity, the vital public purpose that the Act serves – the preservation of food safety. In the light of such judicial exposition, the standards impugned cannot now be diluted upon a mere challenge to the Regulations. The Regulations do not, by any stretch of judicial imagination brood over unconstitutionality, rather they stand as lawful instruments of a benevolent legislative will. The Apex Court, in its wisdom, has time and again declared that right to life under Article 21 of the Constitution of India encompasses not merely right to exist, but right to safe and wholesome food. Thus, the Regulations in question, merely institute a regulatory regime founded upon reason and necessity. To impugn such a regime that too at the instance of restaurant associations, whose establishments have multiplied manifold**

in modern urban life, would be to imperil the very health of the citizenry, the law is known to protect. Therefore, the Regulations are valid and must be strictly complied with.

GLOBAL FOOD AND SAFETY REGULATORY REGIME:

19. Much emphasis has been laid by the petitioners upon the impracticability of the Regulations contending that they are alien to Indian realities inspired by standards prevailing beyond the shores of the nation. This submission though rhetorically appearing, cannot withstand close scrutiny. Therefore, this Court deems it appropriate to take note of certain internationally recognized norms of food safety and preparation acknowledged across the globe as benchmarks of public health and hygiene.

INTERNATIONAL STANDARDS FOR FOOD SAFETY:

19.1. The Codex Alimentarius is a set of internationally recognized regulations and standards developed by FAO/WHO, Codex sets international food standards to protect consumer health

and ensure fair food trade. It is voluntary but widely adopted globally. It establishes Good Hygiene Practices (GHPs) and introduces Hazard Analysis & Critical Control Points (HACCP) as the core system for food safety. It also covers food labeling, contaminants, additives, and traceability and provides the foundation for most national and international food safety laws. The Food Safety and Standards Act, 2006 of India and the Regulations framed under it are based on the Codex.

19.2. The HACCP (Hazard Analysis & Critical Control Points) concept originated in the 1960s, which developed in the United States of America to ensure a system for microbiological safety of foods for space travel. HACCP is a management tool for ensuring food safety. It is based on prevention identifying possible hazards before they occur and defining control measures to maximize food safety at every step of the food production and handling processes. HACCP acts as a preventive tool allowing food businesses to develop systematic controls of hazards beyond the control achieved through GHP. As an internationally recognized tool

for controlling food operations, HACCP is promoted by national and regional authorities across the world.

19.3. The ISO 22000:2018(E) (Food Safety Management Systems) specifies requirements for a food safety management system (FSMS) to enable an organization that is directly or indirectly involved in the food chain. The ISO 22000 sets out specific food safety requirements for organizations in the food chain. One such requirement is that organizations establish, implement, and maintain prerequisite programmes (PRPs) to assist in controlling food safety hazards

20. Though most countries across the world like India, do not have any specific legislations exclusively for the restaurant industry and street vendors, restaurants in most countries come within the definition of food establishments, food business operators, food premises, etc. provided in their respective food safety laws and hence come within the ambit of their food safety laws. In most countries, there are no specific legislations exclusively for street vendors too, however they come within the definition of food

establishments, food business operators, food premises, etc. and hence the same regulations which are provided for restaurants apply to them as well. **It therefore becomes necessary to notice the food safety practices and legislations followed by various countries across the world.**

UNITED STATES OF AMERICA:

20.1. In the United States of America the food industry is regulated under the FDA Food Code, which was last amended in the year 2022. Restaurants are included within the definition of Food Establishments therefore coming within the purview of the Food Code. The gist of the important provisions and the manner of enforcement of these regulations is as follows:

- The Food Code addresses controls for risk factors and further establishes five key public health interventions to protect consumer health. Specifically, these interventions are: demonstration of knowledge, employee health controls, controlling hands as a vehicle of contamination, time and temperature parameters for controlling pathogens, and the consumer advisory.
- The definitions section of the FDA Food Code defines a Food Establishment as one including a restaurants and mobile vendors and institutions which serve food to the consumer directly.

- The Food and Drug Administration (FDA) is primarily responsible for preventing foodborne illness and for licensing and inspecting establishments within the retail segment of the food industry.
- FDA fully recognizes the diversity of restaurants and retail and food service establishments and their varying in-house resources to implement Hazard Analysis Critical Control Points.
- Local health departments enforce the food code and are responsible for inspecting the premises and issuing permits.
- Street Vendors require mobile food permits and are also required to comply with similar hygiene standards.

CANADA:

20.2. In Canada has the Safe Food for Canadians Act and Regulations, 2012 and the Food and Drugs Act and Regulations for regulation of the food industry. The gist of the important provisions is as follows:

- The Safe Food for Canadians Act defines an establishment as any place, including a conveyance, where a food commodity is manufactured, prepared, stored, packaged or labelled. Thus restaurants come within the definition of the said Act.
- The Safe Food for Canadians Regulations, 2012 and the Consumer Packaging and Labelling Act prescribe detailed rules for labeling, packaging, etc. of food for providing appropriate food safety standards for all food businesses in Canada, to ensure that food is safe for consumers.

- The Consumer Packaging and Labelling Act works in conjunction with the FDA to ensure that prepackaged consumer goods, including food, are labelled with accurate and meaningful information, enabling consumers to make informed choices.
- Restaurant and food service inspection across Canada is generally carried out by the following organizations:
 - provincial governments
 - municipalities
 - regional health authorities
- The Canadian Food Inspection Agency (CFIA) enforces the food safety regulations. The CFIA's mandate also includes administering non-health and safety regulations regarding packaging, labelling, and advertising, managing food recalls, and providing businesses with resources and guidance to comply with regulatory requirements.
- Street Vendors are governed under the Provincial health and municipal by-laws. They require temporary/mobile food licenses and are required to be regularly inspected.

UNITED KINGDOM:

20.3. United Kingdom has the Food Safety Act, 1990 which governs the food industry. The gist of the important provisions is as follows:

- Under the Food Safety Act, 1990:

- "food business" means any business in the course of which commercial operations with respect to food or food sources are carried out;
 - "food premises" means any premises used for the purposes of a food business;
 - "premises" includes any place, any vehicle, stall or moveable structure and, for such purposes as may be specified in an order made by the Secretary of State, any ship or aircraft of a description so specified
 - "commercial operation", in relation to any food or contact material includes selling, possessing for sale and offering, exposing or advertising for sale; consigning, delivering or serving by way of sale; preparing for sale or presenting, labelling or wrapping for the purpose of sale; storing or transporting for the purpose of sale; importing and exporting;
- Under the Food Hygiene (England) Regulations 2013,
 - "premises" includes any establishment, any place, vehicle, stall or moveable structure and any ship or aircraft.
 - Thus restaurants come within the purview of Food Safety Act and Hygiene Regulations.
 - The Food Safety Act mandates the implementation of systematic food safety practices, including a comprehensive Hazard Analysis Critical Control Point (HACCP) system covering everything from ingredient storage to final service.
 - Food businesses are required to register themselves with the local authority. The local environmental health departments inspect the restaurants/food businesses before they can legally serve food to customers.

EUROPEAN UNION:

20.4. The European Union has several regulations dealing with the food industry out of which Reg. (EC) 852/2004, Reg. (EC) 853/2004 , Reg. (EC) 2017/625 and Reg. (EC) 178/2002 primarily deal with food safety. The gist of the said regulations is as follows:

- Reg (EC) 178/2002 lays down the general principles and requirements of food safety establishing the European Food Safety Authority and laying down procedures in matters of food safety.
- Reg (EC) 178/2002 defines the following as:
 - 'food law' means the laws, regulations and administrative provisions governing food in general, and food safety in particular, whether at Community or national level; it covers any stage of production, processing and distribution of food, and also of feed produced for, or fed to, food-producing animals;
 - 'food business' means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of production, processing and distribution of food;
 - 'food business operator' means the natural or legal persons responsible for ensuring that the requirements of food law are met within the food business under their control;

- 'retail' means the handling and/or processing of food and its storage at the point of sale or delivery to the final consumer, and includes distribution terminals, catering operations, factory canteens, institutional catering, restaurants and other similar food service operations, shops, supermarket distribution centres and wholesale outlets;
 - 'placing on the market' means the holding of food or feed for the purpose of sale, including offering for sale or any other form of transfer, whether free of charge or not, and the sale, distribution, and other forms of transfer themselves;
 - 'final consumer' means the ultimate consumer of a foodstuff who will not use the food as part of any food business operation or activity.
- Reg (EC) 852/2004 provides for hygiene standards for all food stuffs.
 - Reg (EC) 853/2004 provides for hygiene standards for raw meat and animal products, however certain amount of flexibility is provided to small businesses and to enable use of traditional methods.
 - Where small quantities of primary products or of certain types of meat are supplied directly by the food business operator producing them to the final consumer or to a local retail establishment flexibility is provided in adapting to the regulations.
 - The regulations provide for a certain level of flexibility to enable the continued use of traditional methods at any of the stages of production, processing or distribution of food and in relation to structural requirements for establishments. Flexibility is particularly important for regions that are subject to special geographical constraints, including the outermost regions referred to in Article 299(2) of the Treaty..”

- These regulations are enforced by the member states through the competent national authorities.

AUSTRALIA:

20.5. Australia has the Food Act, 2003; Australia New Zealand Food Standards (FSANZ) Code; and several state-specific food regulations for regulation of the food industry and maintenance of food safety and standards. The gist is as follows:

- The FSANZ Code sets national standards for food handling, temperature control, allergen management, storage and hygiene.
- Local Councils enforce these requirements at a local level, to ensure that operating procedures, training and records are inspection-ready at all times. They also provide the licenses and regularly inspect the premises of different food businesses including restaurants.
- The FSANZ Code defines a "caterer" as a person, establishment or institution (for example, a catering establishment, a restaurant, a canteen, a school, or a hospital) which handles or offers food for immediate consumption.
- The Code mandates the labeling of food products but the same is not mandatory for food which is intended for immediate consumption; and which is prepared and sold from food premises and vending vehicles, including restaurants, take away outlets, caterers, or self-catering institutions."
- Restaurants are required to have documented Food Safety Programs, a qualified Food Safety Supervisor on staff, and

systems to ensure hygiene, temperature control, allergen management, and staff training. Non-compliance can attract serious penalties or business shutdowns.

- Mobile street food vendors are required to obtain permits from the local councils. Same hygiene rules apply to the street vendors too.

NEW ZEALAND:

20.6. New Zealand has the Food Act, 2014 and Animal Products Act, 1999 for regulation of the food industry. The Ministry for Primary Industries (MPI) is responsible for implementing the same. The gist of the said acts and the functions of the MPI is as follows:

- Under the Food Act, 2014 the term food business means a business, activity, or undertaking that trades in food (whether in whole or in part); and includes a business, activity, or undertaking that sells food on the Internet; or is declared by the Governor-General, by Order in Council made under section 393, to be a food business for the purposes of this Act.
- Further 'sale' of food includes supply of food in exchange for payment or in relation to which payment is to be made in a shop, hotel, or restaurant, at a stall, in or on a craft or vehicle, or in any other place.
- The Food Act, 2014 also provides for detailed food control plans which cover food businesses that prepare or manufacture and serve meals, snacks, or beverages for

consumers' immediate consumption including restaurants and mobile or vehicle-based businesses.

- Regulations under the Animal Products Act (APA) include a number of regulated control schemes (RCSs) and regulations which cover processing, food safety hazards, and levies.
- The MPI develops, regulates, and implements food standards; provides official assurances and other certification for wine, animal, and plant food products for exporters to governments in overseas markets; tightly controls the products that can be used in agriculture and responds to food safety incidents and suspected breaches of legislation.
- MPI develops the standards that food businesses must meet. This includes setting thresholds for contaminants and residues, including those left by pesticides and veterinary medicines used in growing plants and animals for food.

JAPAN:

20.7. Japan has the Food Sanitation Act which was enacted in the year 1947 for regulation of the food industry. The gist of the said act is as follows:

- The Food Sanitation Act (Act) establishes necessary regulations and measures to prevent health risks arising from food consumption, ensuring that food is safe for consumption.
- The Act provides a framework for the regulation of food production, processing, distribution, and sale. It includes

provisions for inspections, compliance checks, and the establishment of food safety standards.

- It also encompasses regulations related to food labeling and the safety of food additives, ensuring that consumers are well-informed about the products they consume.
- Article 3(1) of the Act defines a 'food business operator' as a person or corporation who is engaged in collecting, producing, importing, processing, cooking, storing, transporting, or selling food or additives, or producing, importing, or selling apparatus, or containers and packaging, or a person or corporation who continuously provides food to many and unspecified persons at schools, hospitals or other facilities; the same applies hereinafter.
- Such food business operators are required to ensure the safety of the food, additives, apparatus, or containers and packaging which they collect, produce, import, process, cook, store, transport, sell, provide to many and unspecified persons, or use in business, and for that purpose, they must endeavor to obtain the knowledge and skills necessary to ensure the safety of food for sale, etc., ensure the safety of raw materials of food for sale, etc., conduct voluntary inspections of food for sale, etc., and take other necessary measures.
- Article 67(3) of the Act provides for a 'food sanitation promotion leader' who is required to cooperate and provide consultation to food business operators, and perform other activities such as giving advice to them, with regard to sanitation management methods for facilities for restaurant businesses and other matters concerning food sanitation.
- Restaurants are required to obtain food business licenses from the public health center within the jurisdiction of the restaurant, in accordance with the Food Sanitation Act. There are specific conditions that must be met to obtain a business license for a restaurant, including having at least one food hygiene supervisor and establishing a facility that meets the specified standards.

These instances drawn from various nations are illustrations of how food safety has become an inescapable pillar of public governance. Likewise, India also now has a regime under the Act and the Regulations. If a similar food safety regime is followed all over the world, it cannot be said that the petitioners or their members would not follow the same. Yet, there remains a solitary fly in the ointment – the absence of an effective and meaningful bifurcation between restaurants, street vendors, food trucks and hawkers. **It is a cultural truth that the street food in India is a cherished norm. Therefore, from humble roadside stalls, to the modern food trucks or uber restaurants, the spirit of Indian cuisine thrives. However, the Licensing and Registration of Food Businesses Regulations, 2011 draw their lines of demarcation upon annual turnover, distinguishing the petty business from the large restaurant, merely one economic scales.**

21. **The only direction that can be issued while sustaining the Act and the Regulations is that Government of India should now enact law or guidelines as the case would**

be, specifically and separately for restaurant businesses bifurcating them to small, medium and large businesses, clearly indicating the hygiene, cooking processes, procurement of raw material etc., to be in conformity with traditional Indian standards of cooking and cooking processes. While the Act does not indicate any arbitrariness or unreasonableness nor the Regulations would indicate any unreasonableness or arbitrariness, it does create certain impracticability to the three hierarchy of restaurants, small medium and large. Today, even the food trucks are to be regulated, as long as there is human consumption of food; the food that is consumed should be healthy. Maintenance of standards of food, for health reasons, for every citizen is the duty of the State by bringing in a regulatory regime that is far from obfuscation. The Court finds no ground to strike down the impugned provisions as unconstitutional. However, the concerns of the petitioners and the like, must merit consideration at the hands of the Regulatory Authority, particularly in relation to rationalization of penalties; classification of establishments based on scale and capacity.

Therefore, bifurcation must ensue, so that the standards of food and health are maintained at every rung of consumption; consumption be it in a large restaurant, small restaurant, food trucks or even vending in the street.

22. In view of the preceding analysis and for the aforesaid reasons, the following:

ORDER

- (i) The challenge to the Act and the Regulations fails and the petition stands disposed of upholding the constitutionality of the Act and the Regulations.
- (ii) *Mandamus issues* to the 1st respondent/Union of India to tripartite the guidelines of all nuances under the Regulations into small, medium and large restaurants *qua* the implementation of the Regulations, owing to the necessity of health standards and apprehension of health hazards by bringing in appropriate Regulations or guidelines.
- (iii) The State shall also bring in Health and Safety Standard Regulations for all street vendors, food trucks and

create a mechanism for vigil over its strict implementation.

Pending applications, if any, also stand disposed.

This Court places its appreciation to the able assistance rendered by Miss. Sai Suvedhya R., Law Clerk cum Research Assistant attached to this Court.

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

bkp
CT:MJ