

Academy Of Nutrition Improvement & Ors vs Union Of India on 4 July, 2011

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Bench: B Sudershan Reddy, R V Raveendran

Report

IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

WRIT PETITION [C] NO.80 OF 2006

Academy of Nutrition Improvement and Others

... Petitioners

v.

Union of India

... Respondent

With TC (C) No. 54 of 2011 (@ TP (C) No.92/2009),

TC (C) No. 55 of 2011 (@ TP (C) No.152/2009),

TC (C) No. 56 of 2011 (@ TP (C) No.168/2009),

TC (C) No. 57 of 2011 (@ TP (C) No.185/2009),

TC (C) No. 58 of 2011 (@ TP (C) No.218/2009).

J U D G M E N T

R.V.RAVEENDRAN, J.

The petitioners have sought a declaration that the Prevention of Food Adulteration (Eighth Amendment) Rules, 2005 [vide Notification No.GSR 670(E) dated 17.11.2005 of the Ministry of Health and Family Welfare, Government of India] is unconstitutional and invalid. The grievance is primarily in regard to Rule 44-I inserted in the Prevention of Food Adulteration Rules 1955 by the said Amendment Rules. The said Rule reads as follows :

"44 I. Restriction on sale of common salt - No person shall sell or offer to expose for sale or have in his premises for the purpose of sale, the common salt, for direct human consumption unless the same is iodized :

Provided that common salt may be sold or exposed for sale or stores for sale for iodization, iron fortification, animal use, preservation, manufacturing medicines, and industrial use, under proper label declarations, as specified under clause (22) of sub-rule (zzz) of rule 42."

The incidental challenge is to consequential amendments to the Rules by insertion of Rule 43(zzz)(22) which reads as under :

"Rule 43(zzz)(22). Every container or package of common salt shall bear the following label, namely :

COMMON SALT FOR IODISATION/IRON FORTIFICATION/ * ANIMAL
USE/PRESERVATION/MEDICINE/INDUSTRIAL USE *Strike out whichever is not
applicable

2. The Government of India has been promoting the use of iodised salt in place of common salt, for human consumption, since 1962 by launching a centrally assisted programme for supplying iodised salt in place of common salt with the object of controlling and reducing various Iodine Deficiency Disorders including Goitre (for short 'IDDs'). In April, 1992, the Central Committee for Food Standards (CCFS), a statutory body providing technical advice to the Government on food-related matters, approved the proposal for mandatory iodisation of salt, provided such mandatory iodisation was done only in respect of edible salt for direct human consumption and not in regard to salt meant for commercial use by the food industry. In pursuance of it, Government of India took a decision to iodise the entire edible salt for direct human consumption in the country. As a consequence, the state governments were advised to implement the compulsory iodization of salt within their own territories by placing suitable restrictions on the marketing and sale of non-iodised salt for direct human consumption by invoking the provisions of section 7(iv) of the Prevention of Food Adulteration Act, 1954 ('Act' for short). Based on such advice, various States took action by issuing notifications prohibiting/restricting the sale of non-iodised salt.

Subsequently, with the object of uniformly applying the ban throughout the country, the Central Government inserted Rule 44-H in the Prevention of Food Adulteration Rules, 1955 ('Rules' for short), by the Prevention of Food Adulteration (Tenth Amendment) Rules 1997 (vide notification dated 27.11.1997), banning the sale of non-iodised common salt for direct human consumption. The said Rule 44-H came into effect on 27.5.1998. It is stated that by then, almost all the States (except Kerala, Maharashtra and parts of Andhra Pradesh) had imposed ban or restrictions on sale of non-iodised salt for human consumption.

3. The said amendment inserting Rule 44-H prohibiting the sale of non-

iodised salt for direct human consumption was reviewed by the Central Government. On such review, it came to the conclusion that such a restriction could be more effectively exercised by the State Governments in regard to the respective areas within their jurisdiction, keeping in view the nutritional profiles of the populace in different parts of the respective state, whereas such a flexibility was not available as a result of the Central Government making the rule (Rule 44H) mandating the use of iodised salt in the entire country, without any option or choice. In view of it, the Central Government omitted Rule 44H from the Rules with effect from 30.9.2000, by the Prevention of Food Adulteration (Fifth Amendment) Rules 2000 (vide notification dated 13.9.2000), so that more informed decisions could be taken by the respective State Governments on the question whether a provision should be made for sale of only iodised salt for direct human consumption. It was felt that by providing such option to the state governments, there would be no unnecessary compulsion to use iodised salt in areas where iodine deficiency disorders were not prevalent. The Central Government also proposed to play a greater role in enhancing the awareness about the benefits of iodised salt and monitor the impact of the salt iodisation programme in the country.

4. The said omission of Rule 44-H was challenged by 'Common Cause', an NGO, in Writ Petition (C) No.525 of 2000 in this Court. During the pendency of W.P. (C) No.525 of 2000, a Core Advisory Group on Public Health & Human Rights, National Human Rights Commission, was required to critically appraise the evidence available on the public health consequences arising from consumption of non-iodized salt by the populace. The said Core Advisory Group submitted a report dated 6.2.2004 advising that universal iodisation of salt is a public health need which should be implemented throughout the country without any relaxation in the ban on sale of non-iodised salt. On a survey of 324 districts in 28 States and 7 Union Territories, 263 districts were found to be endemic for IDD, (that is, where prevalence of IDD was found in more than 10% of the population) and no state or Union Territory was free from IDDs. It was also found that iodine deficiency caused a wide spectrum of disorders, ranging from Goitre to Cretinism, apart from causing disorders like still-

birth, abortion, dwarfism, eye-squint, mental retardation, lower IQ, deaf-

mutism and neuromotor defects. It was found that the simplest and most effective and inexpensive method of preventing and controlling IDDs was to make up the iodine deficiency by iodising the common salt to ensure that through consumption of iodised salt, not less than 150 micro grams of

iodine is made available to each person per day. In view of the said report, the Central Government again introduced a ban on sale of non-iodised common salt for human consumption by inserting Rule 44-I, by way of amendment to the Rules, vide notification dated 17.11.2005. On such re-

introduction of the ban, WP [C] No.525 of 2000 challenging the omission of Rule 44H was disposed of, as having become infructuous.

5. The petitioners in these writ petitions are non-governmental organisations representing consumers, salt producers, medical experts, academics, etc. They oppose compulsory iodisation of salt for human consumption. According to them, goitre and other IDD's occur not only in areas deficient in iodine but also in areas where (i) water supply is contaminated, (ii) water is hard, (iii) poor hygiene prevails on account of poverty, (iv) foods contain iodine inhibitory (goitrogenic) substances; (v) functioning of thyroid gland is improper; and (vi) consumption of processed and preserved food is excessive. According to them, even after two decades of use of iodised salt in several areas, incidence of goitre had increased sharply. It is submitted that the international experience, particularly in western countries, is to move from compulsory iodisation regime to voluntary need-based iodisation regime, so that only those having iodine deficiency could use iodised salt. It is submitted that when people who do not suffer from iodine deficiency are forced to take iodised salt regularly, there is risk of many of them developing complications induced by higher intake of iodine and increase in iodine levels. According to the petitioners, constant use of iodised salt on account of compulsory iodisation, would lead to iodine-induced hyper-thyroidism with increased chances of death. It is contended that while iodised salt would help to make up the iodine deficiency in about 10% of the populace, it would adversely affect the health of remaining 90% of the populace who have no deficiency in iodine levels.

5.1) The petitioners submit that when the entire populace do not need iodised salt, it is unfair and unjust to deny them the right to choose between iodised salt and non-iodised salt. It is submitted that Rule 44-I violates Articles 14 and 21 of the Constitution, which entitle every person to have free choice in regard to consumption of food.

5.2) The petitioners submit that the cost of iodised salt being several times more than the cost of non-iodised salt, the majority of the populace were adversely affected by the rule requiring compulsory iodisation. It is contended that the compulsory use of iodised salt only helped a few multi-

national companies (MNCs) which had the monopoly in the manufacture of iodised salt. It is submitted that many small scale and local producers of salt were adversely affected by creation of such monopoly. The petitioners therefore contend that Rule 44-I is violative of Article 19(1)(g) of the Constitution, as it affects the fundamental right of small and medium scale manufacturers to carry on their business in salt.

5.3) It was lastly contended by the petitioners that non-iodised salt was not injurious to public health and consequently, the provisions of the Act do not enable the Central Government to make a rule banning the sale of common salt (non-iodised salt) for human consumption. The petitioners

submit that common salt is an unadulterated article used as an ingredient in food and Rule 44-I imposing a ban on its sale for human consumption does not conform to, and is inconsistent with the object of the statute under which it is made.

6. Respondent has resisted the petitions by referring to the circumstances (mentioned in para 4 above) which necessitated the insertion of Rule 44-I by way of amendment to the Rules. It was contended that the ban on sale of common salt for human consumption was imposed in the interest of public health, and does not violate either Article 14 or 21 of the Constitution. It is submitted that IDD's are caused by lack of iodine in diet;

that majority of iodine deficiency disorders are permanent and incurable, but each one of them is completely preventable by ensuring a iodine supplementation of 100-150 ug (micrograms) of iodine per day and the simplest and most effective way of ensuring such iodine intake is through iodising the common salt used for human consumption; and that iodine, when taken in excess of what is required is easily excreted through urine and therefore consumption of iodated salt is safe for everyone. It is submitted that if the resistance to the ban was on account of small scale manufacturers of salt not being able to produce iodised salt in an economically viable manner or compete with large scale manufacturers (multinational companies), appropriate steps would be taken by the central and state governments to enable them to produce iodised salt by using simple production techniques. It is stated that by 2006 itself more than 800 private units were licensed and more than 500 units have started production of iodised salt. Respondent contends that Rule 44-I is neither inconsistent with the provisions of the Act nor beyond its rule making power. The power to make such a rule is traced to section 7(iv), and section 23(1) and 23(1A)(f) of the Act.

7. Therefore, the following two questions arise for our consideration:

- (i) Whether Rule 44-I is unconstitutional?
- (ii) Whether Rule 44-I is inconsistent with the Act and beyond the rule making power of the Central Government?

Re : Question (i)

8. The question whether iodised salt is beneficial to the public or whether it causes harm to the majority of the populace, is a highly disputed and debated issue, on which there is strong divergence of opinion in the scientific community and among the experts on medicine, nutrition and public health. The petitioners have produced some medical and scientific literature which according to them demonstrates that Universal Salt Iodisation (for short 'USI') is not completely effective in

attaining its object of elimination of Iodine Deficiency Disorders and at the same time injurious to the majority of populace who do not suffer from iodine deficiency.

Respondent has countered the said claim by relying upon some material to show that compulsory salt iodisation has shown marked results and is required in the interest of public health.

Material against ban on non iodised salt for human consumption :

9. Reliance was placed upon the resolution dated 29.12.1989 passed at a meeting of group of distinguished scientists and experts including Dr. B.D.Agarwal, President, Indian Medical Association (NB) DBA, Dr. Ajai Lanjewar, President, Academy of Medical Sciences; Dr. (Mrs.) Memuha Haque, President, Nutrition Society of India, Dr. P.K.Sengupta, Past President IMA, and several others. The relevant portions of the said resolution are extracted below:

"The available data about availability of iodine to the people from daily diet clearly indicates that it is more than adequate (Annual Report 1986- 87, National Institute of Nutrition, I.C.M.R. Hyderabad, Page 4). Also common salt (Not iodised) provides iodine upto 5 micrograms per grams of salt which it self is adequate to meet daily requirement of iodine of poor people involved in hard work (Salt Commissioner of India, Letter No. 11(4)/Goiter/89/6373 dated 18.10.89 and Analytical Report of the Iodine Content of Common Salt, Biochemistry Department, Nagpur University of PGTD/BC dated 9th February, 1989 and Dr. M.S.Swaminathan). As such it is concluded and resolved that there is no need of promoting of compulsion of iodised salt all over the country. However, the medical profession can prescribe iodised salt or alike preparations for those who really need iodine for their good health.

Available reports indicates regular excess intake of iodine or iodised salt is injurious to the health of the people and more so for pregnant, neonatal conditions and over the age of 40 years. On the basis of these informations, use of radiographic dyes, antiseptic lotions and medication with high iodine content are prohibited for clinical use in pregnant mothers even in western countries.

It is also known that people are sensitive to iodine and as such it is routine practice to carry out iodine sensitivity test before iodine is used for diagnostic or therapeutic purpose. It is noted that people suffering from asthma are very sensitive to iodine and as such may prove health hazard upto sudden death when universal use of iodised salt is made (Preventive and control of Iodine Deficiency Disorders by Basil & Hetzel, United Nations Publication, March 1988 Page 76-77 and N. Kouchupillai & M.M.Godbole, N.F.I. bulletin October 1986 page 343)."

10. In an open letter dated 9.9.2005 addressed to the Minister for Health & Family Welfare, Government of India, 235 eminent doctors and medical experts pointed out that adverse side-affects to a large number would outweigh benefits to a few and raised the following issues for the consideration of the Ministry :

"The studies available in the public domain provide only weak evidence in support of the universal ban.

7 The prevalence and seriousness of the problem both appear to have been overestimated, especially given that some qualified analysts have pointed out methodological flaws. For instance, goiter is known to be difficult to assess, and it can exist as a physiological (normal) condition as well as a disease condition, but the studies do not account for this. 7 The studies assessing impact of salt iodisation programmes appear to have assumed effectiveness of the programme approach, even though findings of several studies demonstrate varying impact. Some studies show little impact despite high use of iodised salt in such areas, thus pointing to the multifactorial origin of IDD. In other areas goiter has declined despite little use of iodised salt.

7 The potential negative consequence of compulsory use of iodised salt have been demonstrated by other studies, gaining importance when applied on a mass scale."

In some locations and sub-populations, iodine deficiency disorders (IDD) do constitute a public health problem. Local measures to deal with the problem are known, for instance, subsidizing the iodised salt so that it becomes available at lower prices than non-iodised salt, promoting small-

scale production in the endemic pockets and encouraging its use there.

Therefore, there is no rationale for instituting a universal ban on non-iodised salt."

11. Reliance was placed on the following passage from Text Book of Medical Physiology (By Author C. Guyton & John E. Hall - 1996 Edition) :

"Because iodides in high concentrations decrease all phases of thyroid activity, they slightly decrease the size of the thyroid gland and especially decrease its blood supply, in contradistinction to the oppose effects caused by most of the other anti-thyroid agents."

The following observations from the Article "Common Salt vs. Iodised Salt"

(by Dr. PVR Bhaskar Rao, Chairman, People for Economical and Effective Medicare) are also relied on :

"The advice for consumption of iodised salt without correction of total nutritional deficiency is unscientific and results in waste of money. If iodine is consumed in the form of iodised salt the aim is to see that the iodine gets converted into thyroid hormone, there should be sufficient amounts of the essential amino acid tyrosine

(protein) and the enzyme peroxidase for the manufacture of which sufficient quantities of iron in the body are necessary. It means that if there is protein deficiency or iron deficiency or both, whatever iodine is given to an individual in any form it would be completely excreted in the urine. Therefore, it is utterly futile to advise consumption of iodised salt without correcting total nutrition deficiency including anaemia. It is worth while to note that even in urban population 60% are anaemia and in rural population it would be around 80% with this degree of anaemia iodine deficiency cannot be corrected by any means if anaemia is not corrected.

Conclusion :

(c) By addition of potassium iodate which may be harmful to some, iodised salt is the adulterated salt.

(d) Iodised salt is known to cause hyperthyroidism and also severe allergic reactions to some and its universal consumption leads to health hazards.

(e) Without correcting iron and protein deficiencies, advising people to consume iodised salt amounts to putting cart before the horse.

(f) People who are deficient in iodine, are deficient in all nutrients.

For them total nutrition correction and not iodised salt is the answer."

Material in support of the compulsory use of iodised salt

12. On the other hand the respondent submitted that the decision to ban non-iodised salt for human consumption was taken on detailed studies and on the advice of the Core Advisory Group on Public Health and Human Rights (NHRC). Reliance is placed on the following passages from the report dated 6.2.2004 of the Core Advisory Group :

"The Core Advisory Group reviewed the documents which were sent to it by the NHRC and the members also drew upon their expertise and several scientific publications, to critically appraise the evidence available on the public health consequences arising from consumption of non-iodised salt by sections of our population.

Iodine deficiency disorders have been recognized as a public health problem in India since the 1920s. Unlike other micronutrient deficiencies, iodine deficiency disorders are due to deficiency of iodine in water, soil and foodstuffs and affect all socio-economic groups living in defined geographic areas. Initially, Iodine deficiency disorders were thought to be a problem in sub-Himalayan region. However, surveys carried out subsequently showed that iodine deficiency disorders exist even in riverine and coastal areas. No State in India is completely free from iodine deficiency

disorders. Universal use of iodised salt is a simple, inexpensive method of preventing iodine deficiency disorders.

x x x The Tenth Five Year Plan has recommended that it is essential to ensure that only iodised salt is made available for human consumption in order to enable the children of the 21st century to attain their full intellectual potential and take their rightful place in a knowledge based-society. x x x The plea that there should not be any ban on the sale of non iodised salt and that the people should be allowed to make an informed choice between use of iodised salt and non iodised salt is not tenable. An apparently normal mother in a family with no over signs of iodine deficiency disorders (IDD) can deliver a child with cretinism. In view of this there is a need to ensure universal access only to good quality powdered iodised salt.....

The Core Advisory Group was of the opinion that universal iodisation of salt is a public health need which should be met, without any relaxation in the ban on sale of non-iodised salt. If part of the opposition to a ban on the sale of non-iodised salt arises from the apprehensions of small-scale manufacturers of salt that they would be unable to produce iodised salt in an economically viable manner and compete with large commercial manufacturers of iodised salt, appropriate steps may be taken by relevant government agencies to enable them to produce iodised salt close to the sites of salt extraction, using simple production techniques."

13. Support for compulsory iodisation of salt for human consumption is also found in the opinion of several experts. We may refer to some of them.

The World Health Organisation, in its publication on "Vitamin and Mineral Requirements in Human Nutrition" [2004 Edition, p.314] states:

"Excess iodine intake in healthy adults in iodine replete areas is difficult to define. Many people are regularly exposed to huge amounts of iodine- in the range of 10-200 mg/daily - without apparent adverse effects... This tolerance to huge doses of iodine in healthy iodine- replete adults is the reason why WHO stated in 1994 that, "Daily iodine intake of upto 1 mg i.e. 1000 ug appears to be entirely safe.... In conclusion, it appears clearly that the benefits of correcting iodine deficiency far outweigh the risks of iodine supplementation."

Report of a WHO Expert Consultation: "Salt as a Vehicle for Fortification", (2007), at p. 7 states:

Salt is the most widely used food vehicle for iodine fortification. USI, that is iodization of all salt for human (food industry and household) and livestock consumption, is the strategy recommended by WHO for the control of iodine deficiency (WHO, 1999). Salt iodization programmes are currently implemented in over 70 countries around the world where IDD is a public health problem (Delange F, et al, 1999).

Lewis E Braverman in his article "Adequate iodine intake - the good far outweighs the bad", [European Journal of Endocrinology, 1998, Vol. 139 pages 14-15] says:

"Over the past few years, small outbreaks of thyrotoxicosis in adults have been reported following iodine prophylaxis with iodized oil or iodized salt in severely iodine-deficient regions, probably due to excess iodination of these severely iodine-deficient populations (3-6). However, it must be emphasized that the eradication of iodine deficiency far outweighs this minor risk, which is almost always self-limited and disappears over many years as the iodine-deficient population achieves iodine repletion. Prevention of iodine-deficiency goiter, mental and growth retardation, poor productivity, and cretinism must be achieved through joint efforts of international, national, and local agencies."

Rajan Shankar and C.S.Panday, in "Ban on Sale of Non-iodized Salt for Human Consumption: A step in the right direction" (The National Medical Journal of India, Vol. 18, No.4, 2005 p. 169 at p.170) state :

"Why is there a need for legislation and compulsory salt iodisation? Can people have a choice? There are situations in which, in the absence of proper education, 'the freedom to choose' may not offer the right choice and salt iodization is one of them. Individuals often need to be convinced to make good choices when the benefits are preventive in nature.... Public health experts who see iodine deficiency as a critical problem should lead the fight against the ideological arguments tilted in the direction of doing nothing."

In "Modern Nutrition in Health and Development" edited by M.Shike and others [Lippincott, Williams, & Wilknis Publishers, 2006, p.310] it is observed:

"Iodine is a necessary component of the thyroid hormones, which are required for life and health. Iodine is distributed unequally over the earth, and half of the world's population lives in countries with significant deficiency. The worst consequence of the deficiency occur during pregnancy and included fetal and infant deaths, irreversible brain damage, and maternal complications. Additional problems of the rest of the community are hypothyroidism, goiter, and socio-economic stagnisation. Iodisation of salt is the best and most effective way of correcting iodine deficiency. Excess iodine intake occasionally occurs but can be avoided : its consequences are minor compared with those of deficiency."

(emphasis supplied)

14. There is thus some material to support the contention of the petitioners that around 90% of the populace do not need iodised salt and that consumption of excess iodine may have some adverse effects. On the other hand there is also considerable material for the view that compulsory iodisation is also necessary to prevent IDD's in about 10% (or more) of the populace and the consumption of

iodised salt by the remaining 90% who do not require it, may not be injurious to their health as excess iodine is easily excreted. The question whether there should be universal salt iodisation is a much debated technical issue relating to medical science. An informed decision in such matters can only be taken by experts after carrying out exhaustive surveys, trials, tests, scientific investigations and research. Courts are neither equipped, nor can be expected to decide about the need or absence of need for such universal salt iodisation on the basis of some articles and reports placed before it. This Court in a series of decisions has reiterated that courts should not rush in where even scientists and medical experts are careful to tread. The rule of prudence is that courts will be reluctant to interfere with policy decisions taken by the Government, in matters of public health, after collecting and analysing inputs from surveys and research. Nor will courts attempt to substitute their own views as to what is wise, safe, prudent or proper, in relation to technical issues relating to public health in preference to those formulated by persons said to possess technical expertise and rich experience. This Court in *Directorate of Film Festivals vs. Gaurav Ashwin Jain* - 2007 (4) SCC 737, pointed out :

"The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy. Nor are courts Advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review."

15. The limited question that can therefore be examined by this Court is whether the policy underlying Rule 44-I based on opinion of experts and national survey can be said to be wholly arbitrary and unreasonable so as to be violative of Article 14. The further question is whether forcing the majority of populace who are not having iodine deficiency to use iodised salt to ensure that those with iodine deficiency get their needed dosage of iodine would affect their right to life under Article 21. The last question is whether the rule violates the fundamental right of small scale and medium scale manufacturers of salt and traders to carry on trade or business and thereby violates Article 19(1)(g).

16. In our considered opinion the petitioners' challenge to constitutionality of the impugned amendment is bound to fail. Courts are not equipped to decide the medical issue relating to public health, as to whether compulsory iodisation should be replaced by voluntary iodisation as has been done in some developed countries, so that both common salt and iodised salt are available in the market and only those 10% who are deficient in iodine can opt for iodised salt. The Government of India has taken note of scientific and medical inputs, research results and survey data to conclude that compulsory iodisation is the most effective and accepted method for elimination of iodine deficiency disorders and that consumption of iodised salt by persons not suffering from iodine deficiency will not adversely affect them. Rule 44-I is stated to be in implementation of a policy

decision regarding public health. The material placed by the petitioners is not sufficient to hold that the reason for the ban is erroneous and that Rule 44-I is unreasonable and arbitrary. We therefore reject the contention that the provision placing a ban on sale of non-iodised salt for human consumption resulting in compulsory intake of iodised salt, is arbitrary and violative of Article 14 or injurious to the health of general populace and therefore violative of Article 21. The use of common salt (non-iodised salt) for industrial and commercial use has not prohibited. The ban operates only in regard to use of common salt for human consumption. There is also no material to show that any monopoly is sought to be created in favour of a chosen few companies or MNCs. In the circumstances, the contention that Article 19(1)(g) is violated is liable to be rejected.

Re : Question (ii)

17. The petitioners next contend that Rule 44-I apart from being contrary to the objects and provisions of the Act, travels beyond the scope of the Act.

It is also contended that the Act does not empower the central government to make a rule banning the manufacture, sale or distribution of an article unless it is adulterated or injurious to health. The respondent on the other hand contends that section 7(iv) and sub-sections (1) and (1A) (f) of section 23 of the Act empower and enable the central government to make Rule 44-I and the rule does not travel beyond the scope of the Act. To consider this question, it is necessary to refer to the relevant provisions of the Act which was enacted to make provision for prevention of food adulteration.

18. The Act contemplates prohibition of manufacture, storing, sale or distribution of any adulterated and mis-branded food, measures to prevent adulteration, and also provides for laying down food standards and prohibiting import of certain objectionable articles of food items. Section 7 of the Act relates to prohibition of manufacture, sale etc. of certain articles of food. It is extracted below :

"7. Prohibition of manufacture, sale, etc., of certain articles of food.-- No person shall himself or by any person on his behalf manufacture for sale, or store, sell or distribute--

(i) any adulterated food;

(ii) any misbranded food;

(iii) any article of food for the sale of which a li

except in accordance with the conditions of the licence;

(iv) any article of food the sale of which is for the time being prohibited by the Food (Health) Authority in the interest of public health;

(v) any article of food in contravention of any other provision of thi

Act or of any rule made thereunder; or

(vi) any adulterant."

The term 'food' is defined in section 2(v) as under :

"(v) "food" means any article use

drink for human consumption other than drugs and water and includes--

- (a) any article which ordinarily enters into, or is u
composition or preparation of, human food,
- (b) any flavouring matter or condiments, and
- (c) any other article which the Central Government may,

regard to its use, nature, substance or quality, declare, by notification in the Official Gazette, as food for the purposes of this Act;"

'Food (Health) Authority' is defined in section 2(vi) as under :

"Food (Health) Authority" means the Director of Medical and Health Services or the Chief Officer in-charge of Health administration in a State, by whatever designation he is known, and includes any officer empowered by the Central Government or the State Government, by notification in the Official Gazette, to exercise the powers and perform the duties of the Food (Health) Authority under this Act with respect to such local area as may be specified in the notification;"

Section 23 of the Act relates to the power of the central government to make rules, relevant portions of which are extracted below :

"23. Power of the Central Government to make rules.--(1) The Central Government may, after consultation with the Committee and after previous publication by notification in the Official Gazette, make rules to carry out the provisions of this Act:
x x x (1A) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--

x x x x x x

(f) prohibiting the sale of defining the conditions of sale of any substance which may be injurious to health when used as food or restricting in any manner its use as an ingredient in the manufacture of any article of food or regulating by the issue of licences the manufacture or sale of any article of food;

xxx xxx

19. The object of the Act is to prevent supply of adulterated food-stuff as a part of business activity, in the interests of health of the community. In *Municipal Corporation of Delhi. v. Kacheroo Mal* [1976 (1) SCC 412], this court described the object of the Act thus:

"The Act has been enacted to curb and remedy the widespread evil of food-adulteration, and to ensure the sale of wholesome food to the people. It is well settled that wherever possible, without unreasonable stretching or straining the language of such a statute, should be construed in a manner which would suppress the mischief, advance the remedy, promote its object, prevent its subtle evasion and foil its artful circumvention... In *Dinesh Chandra Jamnadas Gandhi vs. State of Gujarat - 1989 (1) SCC 420*, this Court described the object of the Act thus :

"The object and the purpose of the Act are to eliminate the danger to human life from the sale of unwholesome articles of food The legislation is on the Topic 'Adulteration of Food Stuffs and other Goods' (Entry 18 list III Seventh Schedule). It is enacted to curb the wide spread evil of food adulteration and is a legislative measure for social-defence. It is intended to suppress a social and economic mischief-----an evil which attempts to poison, for monetary pains the very sources of sustenance of life and the well-being of the community. The evil of adulteration of food and its effects on the health of the community are assuming alarming proportions. The offence of adulteration is a socio-economic offence.....The construction appropriate to a social defence legislation is, therefore, one which would suppress the mischief aimed at by the legislation and advance the remedy."

(emphasis supplied)

20. The grounds on which a sub-ordinate legislation can be challenged are well settled. In *State of Karnataka vs. H. Ganesh Kamath - 1983 (2) SCC 402*, this Court held :

".....It is a well-settled principle of interpretation of statutes that the conferment of rule-making power by an Act does not enable the rule making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto."

(emphasis supplied) In *Indian Express Newspapers (Bombay) Pvt. Ltd vs. Union of India - 1985 (1) SCC 641*, this Court held :

"A piece of subordinate legislation does not carry the same degree of immunity which is enjoyed by a statute passed by a competent legislature. Subordinate legislation may be questioned on any of the grounds on which plenary legislation is questioned. In addition, it may also be questioned on the ground that it does not conform to the statute under which it is made. It may further be questioned on the ground that it is contrary to some other statute. That is because sub-ordinate legislation must yield to plenary legislation."

(emphasis supplied) In General Officer Commanding-in-Chief vs. Dr. Subhash Chandra Yadav

- 1988 (2) SCC 351, this Court held :

"Rules have statutory force. But before a rule can have the effect of a statutory provision, two conditions must be fulfilled, namely, (1) it must conform to the provisions of the statute under which it is framed; and (2) it must also come within the scope and purview of the rule making power of the authority framing the rule. If either of these two conditions is not fulfilled, the rule so framed would be void."

(emphasis supplied) In Supreme Court Employees' Welfare Association vs. Union of India -

1989 (4) SCC 187, this Court held :

"Thus as delegated legislation, a subordinate legislation must conform exactly to the power granted.

Rules whether made under the Constitution or a Statute, must be intra vires the parent law under which power has been delegated. They must also be in harmony with the provisions of the Constitution and other laws. If they do not tend in some degree to the accomplishment of the objects for which power has been delegated to the authority, courts will declare them to be unreasonable and therefore void."

(emphasis supplied) In Addl. District Magistrate (Rev.) Delhi Administration vs. Siri Ram - 2000 (5) SCC 451, this Court reiterated :

"It is a well-recognised principle of interpretation of a statute that conferment of rule making power by an Act does not enable the rule making authority to make a rule which travels beyond the scope of the enabling Act or which is inconsistent therewith or repugnant thereto."

(emphasis supplied) In Dr. Mahachandra Prasad Singh vs. Chairman, Bihar Legislative Council & Ors. [2004 (8) SCC 747], this court explained the concept of delegated legislation thus :

"Underlying the concept of delegated legislation is the basic principle that the legislature delegates because it cannot directly exert its will in every detail. All it can

in practice do is to lay down the outline. This means that the intention of the legislature, as indicated in the outline (that is the enabling Act), must be the prime guide to the meaning of delegated legislation and the extent of the power to make it. The true extent of the power governs the legal meaning of the delegated legislation. The delegate is not intended to travel wider than the object of the legislature. The delegate's function is to serve and promote that object, while at all times remaining true to it. That is the rule of primary intention. Power delegated by an enactment does not enable the authority by regulations to extend the scope or general operation of the enactment but is strictly ancillary. It will authorise the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provision. But such a power will not support attempts to widen the purposes of the Act, to add new and different means of carrying them out or to depart from or vary its ends. (See Section 59 in chapter "Delegated Legislation" in Francis Bennion's Statutory Interpretation, 3rd Edn.)"

(emphasis supplied) In *J. K. Industries vs. Union of India* - 2007 (13) SCC 673, this Court reiterated the grounds on which a sub-ordinate legislation can be challenged as follows :

"That, any inquiry into its vires must be confined to the grounds on which plenary legislation may be questioned, to the grounds that it is contrary to the statute under which it is made, to the grounds that it is contrary to other statutory provisions or on the ground that it is so patently arbitrary that it cannot be said to be in conformity with the statute. It can also be challenged on the ground that it violates Article 14 of the Constitution."

21. We will now examine whether the rule is valid in the light of the aforesaid principles, that is (a) whether the rule making authority in making the rule has travelled beyond the scope of the Act; (b) whether the rule does not conform to the provisions of the Act; and (c) whether the rule falls within the scope and purview of the rule making power of the Central Government under section 23 of the Act.

22. As noticed above, the object and purpose of the Act is to eliminate the danger to human life from the sale of adulterated food and to ensure that what is sold is wholesome food. In other words, if an item of food is adulterated, or is itself an adulterant (used for adulteration), or unwholesome or injurious to health, a rule to prevent or prohibit the manufacture for sale, storage, sale or distribution of such objectionable food item will be within the scope of the Act. Such prohibition will be valid even in regard to incidental items such as misbranded food items and unlicensed food items (where licence is required).

But 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 such ban will ensure that the populace will use a medicated form of such food, which will benefit a section of the populace. Making available medicines or medicinal preparations

to improve public health is not the object of the Act. If the object sought to be achieved is to persuade the people to use iodised salt or to ensure that people use iodised salt, recourse cannot be by making a rule banning sale of common salt for human consumption under the Act. The Act cannot be used to make a rule intended to achieve an object wholly unrelated to the Act. The good intention of the rule making authority is not therefore sufficient to save the rule. We are of the view that the Rule 44-I is wholly outside the scope of the Act.

23. We may next consider whether section 7(iv) of the Act enables or empowers the Central Government to make Rule 44-I. Section 7 does not relate to rule making. It relates to prohibition of manufacture for sale, storage, sale or distribution of 'objectionable' food, that is adulterated food, misbranded food, unlicensed food, food injurious to public health. Section 7(iv) provides that no person shall manufacture for sale, store, sell or distribute any article of food, the sale of which is for the time being prohibited by the Food (Health) Authority in the interest of public health.

Rule 44-I is not a prohibition by the Food (Health) Authority in the interest of public health. The Food (Health) Authority refers to the Director of Medical and Health Services or the Chief Officer in-charge of the health administration in a state as also any officer empowered by the central government or the state government by notification in the official gazette to exercise the power and perform the duties of the Food (Health) Authority with respect to such local area as may be specified in such notification. We are not concerned with either any notification by the central government constituting the Food (Health) Authority nor the exercise of power by any Food (Health) Authority in the interest of public health. Therefore, section 7(iv) is of no assistance to decide upon the validity of rule 44-I, nor can it be a source of power to make rule 44-I, nor can it be a source of power to make rule 44-I.

24. If the Act vests the power of prohibiting the manufacture for sale, storage or distribution of any article of food in the interests of public health, in the Food (Health) Authority, the Central Government cannot under its power to make rules for carrying out the purposes of the Act, take upon itself the power to prohibit the manufacture for sale, storage, sale and distribution of any article of food. In *Godde Venkateswara Rao vs. Government of Andhra Pradesh* [1966 (2) SCR 172] this court considered a similar question. Under section 18 of the Andhra Pradesh Panchayat Samitis and Zilla Parishads Act, 1959, the power of establishing primary health centres was vested in the Panchayat Samitis. The question was whether the State Government in purported exercise of its power under section 69 of the said Act to make rules for carrying out the purposes of the Act, take upon itself the power to establish a primary health centre at a particular centre. This court held that that was impermissible, observing as follows :

"It is manifest that under the Act the statutory power to establish and maintain Primary Health Centres is vested in the Panchayat Samithi. There is no provision vesting the said power in the Government. Under s. 69 of the Act, the Government can only make rules for carrying out the purposes of the Act; it cannot, under the guise of the said rules, convert an authority with power to establish a Primary Health Centre into only a recommendatory body. It cannot, by any rule, vest in itself a power which under the Act vests in another body. The rules, therefore, in so far as they

transfer the power of the Panchayat Samithi to the Government, being inconsistent with the provisions of the Act, must yield to s. 18 of the Act."

25. We may next consider whether clause (f) of section 23(1A) empowers the Central Government to make Rule 44-I. The said clause enables the central government to make rules prohibiting the sale or defining the conditions of sale of any substance "which may be injurious to health when used as food" or restricting in any manner its use as an ingredient in the manufacture of any article of food or regulating by the issue of licence the manufacture or sale of any article of food. It is the specific case of the respondent that the use of non-iodized salt is not injurious to health. The Government of India has filed two counter affidavits in WP(C) No.80/2006.

In para 3 of the first affidavit filed on 3.4.2006, the respondent specifically admits as follows :

"...the respondent has never stated that the use of any non-iodised salt is injurious to health. the restriction on sale of non- iodised salt have been issued in view of the fact that regular consumption of iodised salt ensures prevention and control of Iodine Deficiency Disorder."

(emphasis supplied) In the additional counter affidavit filed by the respondent on 30.3.2009, the respondent has again reiterated as follows :

"That the respondent has never stated that the use of non- iodised salt is injurious to health..... That there is no blanket ban on sale of common salt. The ban on sale of common salt has been imposed (by Rule 44-I)only for direct human consumption. Thus the ban on sale of direct salt for human consumption has been imposed in the interest of public health."

(emphasis supplied) Section 23(1A)(f) empowers making a rule to prohibit sale only if the substance is injurious to health when used as food. If use of common salt is not injurious to health, the question of making a rule prohibiting the sale of such a substance would not arise under clause (f) of section 23(1A) of the Act.

26. We will next consider whether section 23(1) of the Act provides the source of authority to make rule 44-I. Sub-section (1) of section 23 provides that the central government may after consultation with the Central Committee for Food Standards (constituted under section 3 of the Act) and after previous publication by notification in the public gazette make rules to carry out the provisions of the Act. Statutes delegating the power to make rules follow a standard pattern. The relevant section would first contain a provision granting the power to make rules to the delegate in general terms, by using the words `to carry out the provisions of this Act' or `to carry out the purposes of this Act'. This is usually followed by another sub-section enumerating the matters/areas in regard to which specific power is delegated by using the words `in particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters." Interpreting such provisions, this Court in a number of decisions has held that where power is conferred to make subordinate legislation in general terms, the subsequent particularisation of the matters/topics has

to be construed as merely illustrative and not limiting the scope of the general power. Consequently, even if the specific enumerated topics in section 23(1A) may not empower the Central Government to make the impugned rule (Rule 44-I), making of the Rule can be justified with reference to the general power conferred on the central government under section 23(1), provided the rule does not travel beyond the scope of the Act. But even a general power to make rules or regulations for carrying out or giving effect to the Act, is strictly ancillary in nature and cannot enable the authority on whom the power is conferred to extend the scope of general operation of the Act. Therefore, such a power "will not support attempts to widen the purposes of the Act, to add new and different means to carrying them out, to depart from or vary its terms. (See: Principles of Statutory Interpretation by Justice G. P. Singh - 12th Edition page 1009) referring to *Shanahan v. Scott*

- 1957 (96) CLR 245 and *Utah Construction v. Pataky* - [1965 (3) All ER 650]. Rule 44-I is not a rule made or required to be made to carry out the provisions of the Act, having regard to its object and scheme. It has nothing to do with curbing of food adulteration or to suppress any social or economic mischief.

What Relief?

27. We have already noticed that as at present there is no material to show that universal salt iodisation will be injurious to public health (that is to the majority of populace who do not suffer from iodine deficiency). But we are constrained to hold that rule 44-I is ultra vires the Act and therefore, not valid. The result would be that the ban on sale of non-iodised salt for human consumption will be raised, which may not be in the interest of public health. We are therefore, of the view that the central government should have at least six months time to thoroughly review the compulsory iodisation policy (universal salt iodisation for human consumption) with reference to latest inputs and research data and if after such review, is of the view that universal iodisation scheme requires to be continued, bring appropriate legislation or other measures in accordance with law to continue the compulsory iodisation programme.

28. The question is having held that Rule 44-I to be invalid, whether we can permit the continuation of the ban on sale of non-iodised salt for human consumption for any period. Article 142 of the Constitution vests unfettered independent jurisdiction to pass any order in public interest to do complete justice, if exercise of such jurisdiction is not be contrary to any express provision of law. In *Supreme Court Bar Association vs. Union of India* -

1998 (4) SCC 409, this Court observed:

"The Supreme Court in exercise of its jurisdiction under Article 142 has the power to make such order as is necessary for doing complete justice "between the parties in any cause or matter pending before it". The very nature of the power must lead the court to set limits for itself within which to exercise those powers and ordinarily it cannot disregard a statutory provision governing a subject, except perhaps to balance the equities between the conflicting claims of the litigating parties by "ironing out the creases" in a cause or matter before it. Indeed this Court is not a court of restricted

jurisdiction of only dispute settling. It is well recognised and established that this court has always been a law maker and its role travels beyond merely dispute settling. It is a "problem solver in the nebulous areas". (See. K. Veeraswami v. Union of India - 1991 (3) SCC 655, but the substantive statutory provisions dealing with the subject matter of a given case, cannot be altogether ignored by this court, while making an order under Article 142. Indeed, these constitutional powers can not, in any way, be controlled by any statutory provisions but at the same time these powers are not meant to be exercised when their exercise may come directly in conflict with what has been expressly provided for in statute dealing expressly with the subject."

In Kalyan Chandra Sarkar vs. Rajesh Ranjan - 2005 (3) SCC 284, this Court after reiterating that this Court in exercise of its jurisdiction under Article 142 of the Constitution would not pass any order which would amount to supplanting substantive law applicable to the case or ignoring express statutory provisions dealing with the subject, observed as follows:

"It may therefore be understood that the plenary powers of this Court under Article 142 of the Constitution are inherent in the Court and are complementary to those powers which are specifically conferred on the Court by various statutes though are not limited by those statutes. These powers also exist independent of the statutes with a view to do complete justice between the parties...and are in the nature of supplementary powers...[and] may be put on a different and perhaps even wider footing than ordinary inherent powers of a court to prevent injustice. The advantage that is derived from a constitutional provision couched in such a wide compass is that it prevents 'clogging or obstruction of the stream of justice. [See : Supreme Court Bar Association (supra)]"

29. In view of the above and to do complete justice between the parties in the interest of public health, in exercise of our jurisdiction under Article 142 of the Constitution, we direct the continuation of the ban contained in Rule 44-I for a period of six months. The central government may within that period review the compulsory iodisation programme and if it decides to continue, may introduce appropriate legislative or other measures. It is needless to say that if it fails to take any action within the expiry of six months from today, Rule 44-I shall cease to operate.

30. We therefore allow this writ petition in part and declare that Rule 44-I of the Prevention of Food Adulteration Rules, 1955 (inserted by Prevention of Food Adulteration (Eighth Amendment) Rules 2005) is beyond the rule-

making power of the Central Government and ultra vires the Act subject to the continuation of the ban contained in Rule 44-I for a period of six months in terms of the previous paragraph. The Transferred Cases are also disposed of in terms of the decision in the writ petition.

.....J. (R V Raveendran) New Delhi;J. July 4, 2011. (B Sudershan Reddy) IN THE SUPREME COURT OF INDIA CIVIL ORIGINAL JURISDICTION Transfer Case (Civil) No.11/2002 Swadesi Jagram Manch and others ... Petitioners vs. State of

Orissa and another ... Respondents WITH WP(C) No.80/2006 and WP (C) No.175/2006 Transfer Petition (Civil) Nos.92, 152, 168, 185 and 218 of 2009 O R D E R Transfer Petition (C) Nos.92/2009, 152/2009, 168/2009, 185/2009 and 218/2009 are allowed and the following writ petitions are transferred from the respective High Court to this Court :

(1) WP(C) No.4204/2006 on the file of the Madras High Court (2) WP(C) No.341/2006 on the file of the Bombay High Court (3) WP(C) No.13082/2006 on the file of the Andhra Pradesh High Court (4) WP(C) No.13354/2006 on the file of the Karnataka High Court (5) PIL No. 61/2006 on the file of the Bombay High Court

2. Judgment is pronounced in WP(C) No.80 of 2006 and the aforesaid five transferred cases, allowing them in terms of the Judgement.

3. Writ Petition (Civil) No.175/2006 and Transfer Case (Civil) No.11/2002 are delinked from the aforesaid cases which are disposed of, as they do not relate to challenge to Rule 44-I of Prevention of Food Adulteration Rules 1955. Transfer Case (Civil) No.11/2002 seeks quashing of a notification dated 15.10.2001 issued by the Director of Health Services, Orissa prohibiting sale and manufacture of common salt other than iodised salt for human consumption, issued in exercise of power under the relevant state Rules. Writ Petition (Civil) No.175/2006 is filed seeking a direction to the central government to frame a uniform policy for the control of goitre and a direction regarding imposing ban on the manufacture of non-iodised salt all over the country.

4. While disposing of Writ Petition (Civil) No.80/2006, we have granted six months time to review the position regarding universal iodisation. In view of the above, list these two matters for further orders, after six months.

.....J. (R V Raveendran) New Delhi;J. July 4, 2011. (B Sudershan Reddy)