

Mahesh Garg vs Food Safety And Standards Authority Of ... on 7 February, 2022

Author: Vivek Rusia

Bench: Vivek Rusia, Rajendra Kumar Verma

- : 1 :-

IN THE HIGH COURT OF MADHYA PRADESH AT INDORE
BEFORE
HON'BLE SHRI JUSTICE VIVEK RUSIA
&
HON'BLE SHRI JUSTICE RAJENDRA KUMAR (VERMA)

ON THE 7th OF FEBRUARY, 2022

WRIT PETITION No. 2937 of 2017

Between:-

MAHESH GARG S/O LATE SHRI
RAJKUMAR GARG 16, SANWAD NAGAR,
NAVALAKHA (MADHYA PRADESH)

.....PETITIONER

(BY SHRI PRATYUSH MISHRA, LEARNED COUNSEL)

AND

1.FOOD SAFETY AND STANDARDS
AUTHORITY OF INDIA CHIEF EXECUTIVE
OFFICER FDA BHAWAN NEAR BAL
BHAWAN, KOTLA ROAD, NEW DELHI
(DELHI)

2.PRINCIPAL SECRETARY PUBLIC HEALTH
AND FAMILY WELFARE DEPARTMENT
VALLABH BHAWAN, BHOPAL (MADHYA
PRADESH)

3.COMMISSIONER FOOD SAFETY AND
CONTROL, FOOD AND DRUG
ADMINISTRATION, IDGAH HILLS, BHOPAL
(MADHYA PRADESH)

4.COLLECTOR THE STATE OF MADHYA
PRADESH COLLECTORATE, MOTI
TABELA, INDORE (MADHYA PRADESH)

5. DEPUTY DIRECTOR FOOD AND DRUG
ADMINISTRATION OF DISTRICT INDORE
COLLECTORATE, MOTI TABELA, INDORE

(MADHYA PRADESH)

.RESPONDENTS

(RESPONDENT NO. 1 BY MS. KIRTI PATWARDHAN, LEARNED
COUNSEL.

(RESPONDENT NO. 2 TO 5 BY SHRI VIVEK DALAL, LEARNED ADDL. AG)

ORDER

The petitioner has filed the present petition like Public

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Interest Litigation seeking implementation of provision Food Safety and Standards Act, 2006 in the State of Madhya Pradesh especially mainly in respect of establishment of Food Testing Laboratories at Indore, Jabalpur, Ujjain and Gwalior and tools to Food safety officer for preliminary examination for the food articles in case of food adulteration.

2. According to the petitioner, he is a socially active person and Ex- Corporator of Municipal Corporation. He had filed a PIL raising issue in respect of the construction of "Treasure Island" and "Noise Pollution", therefore, he may kindly be permitted to file a petition in the nature of PIL. Looking at his public-spirited antecedent and the nature of the issue raised by him we are deciding this Public Interest Litigation on merit.

3. According to the petitioner, the Government of India has enacted the law in the name of "the Food Safety and Standards Act, 2006" (in short Act of 2006) to check the standard of the food and to ensure the safety of human life. Under the provision of the aforesaid Act, Manufacturing, storage, distribution, sale and import of the food articles are liable to be examined by officers and employees appointed by the appropriate Government from time to time under the Act, 2006. The Act of 2006 provides the establishment of different authorities at Central, State, also local areas for effective implementation of the provision of the Act.

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Under the aforesaid Act of 2006, the Food Safety and Standard Authority of India has been established under Section 4 of the Act which is the parent body and has control over the overall functioning and enforcement of the Act, 2006. In addition to the above, there is also a provision of the establishment of State Food Safety Authority in each State headed by "Designated Officer" and "Food Safety Officer" at local levels. Both the officers are having power under the Act of 2006 to take samples of food for testing, seize any food article, prohibit the sale of unauthorized food and filing of a criminal case before the competent Court. According to the petitioner, the chapter 8 deals with the procedure for the "Analysis of Food" and Chapter 9 provides deals with the "Offences and Penalties" on contravention of the provision of the Act of 2006.

4. According to the petitioner in the State of Madhya Pradesh three Food Testing Laboratories at Bhopal, Indore and Ujjain are sanctioned for scientific analysis and to check the standards of different food articles of the food articles but out of three, only one laboratory is functioning at Bhopal and the rest at Ujjain and Indore have not even constructed. The petitioner has obtained information under the Right to Information Act, 2005 that around 50% of samples were not found up to the mark and failed to satisfy the standards for want of a sufficient number of Food

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Testing Laboratories in the State of Madhya Pradesh. One laboratory of Bhopal is not able to handle the entire burden of the State in respect of checking the standards of seized or suspicious food articles. The seized food articles are required to be checked within a reasonable time before the expiry of the shelf period. Since there is a delay in testing, therefore, the offender gets the benefit of acquittal. Hence, present petition before this Court seeking direction to the respondents to provide tools to the Food Safety Officers for on the spot analysis of the food article and also direction to the respondents to make available Food Testing Laboratories at Indore and Ujjain as functional and provide the Food Testing Laboratories in at every District and Division of State of Madhya Pradesh to ensure the food safety and standards with adequate staff.

5. Respondent No.1 has filed a reply without disputing the provision of the Food Safety and Standards Act, 2006 and the Rules as described by the petitioner in the writ petition. It is further submitted that a scheme for strengthening the food safety norms has been approved by the Ministry of Health and Family Welfare and the same is being implemented throughout the country. The aforesaid schemes include the Capacity Building of Food Testing Laboratories including support for NABL accreditation of the State Food Testing Laboratories. It is further

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submitted that under the aforesaid scheme there is provision for the establishment of Mobile Food Testing Laboratories, for every State and Union Territory, one for every 20 districts in the State, with at least one lab in each State/Union Territory. The relevant part of the reply submitted by respondent no. 1 is as under:

"9. That it is submitted that a number of steps have been taken by the Food Safety and Standards Authority of India with regard to establishment/creation/upgradation of laboratories all over the country and such steps pertaining to the State of Madhya Pradesh are being detailed hereunder:

(I). It has been proposed that two food testing laboratories are to be strengthened and will be provided assistance in the State of Madhya Pradesh. State of Madhya Pradesh would be entitled to receive an approximate amount of Rupees Twelve Crore Only (12 Crore) to procure ICP-MS, GC-MSMS and LC-MSMS equipment,

professional services, consumables and contingencies as per requirement of the State Food Laboratory and also to set up a Microbiology Lab. Remittance of this amount depends on fulfillment of criteria of the scheme by State of Madhya Pradesh. Food Safety and Standards Authority of India has released an initial payment of Rs.50 Lakhs to the State Food Department of Madhya Pradesh for renovation of Infrastructure, in the State Food Testing Laboratory, Bhopal before procuring the laboratory equipment during the month of March, 2017. Amount has been released vide sanction order No.13012/07/2016-QA (Madhya Pradesh) dated 22.03.2017. A copy of the sanction order No .13012/07/2016-QA (Madhya Pradesh) dated 22.03.2017 is annexed herewith and marked as Annexure P/1. Depending upon the steps taken by the State of Madhya Pradesh further amounts will be released by the Food Safety and Standards Authority of India in accordance with plan scheme and policy and subject to availability of fund.

(II). Three mobile food laboratories are proposed to be established in the State of Madhya Pradesh. Initially one mobile food testing laboratory would be provided to the State Government approximately Rs.35 Lakhs (thirty Five Llakhs) subject to the availability of dedicated manpower required for its operation. However, a proposal from the State Government of Madhya Pradesh is still awaited. Mobile Food Laboratories would be operated by the State Government or its agency/NGO/Trusts / Society as decided by the State Government. A recurring grant of Rs. 5 Lakhs would be provided over a period of two years for petrol oil lubricants and consumables for the mobile Food Testing Laboratory. A copy of the SFC Memorandum in this regard is annexed herewith and marked as Annexure P/2.

(iii). The food Safety and Standards Authority of India also provided on Electronic Milk Adulteration Testing Machine (EMAT) to the State of Madhya Pradesh for analysis of milk parameters on the spot of differentiate between genuine and spurious milk. State Enforcement Agencies are to use this machine to carry out snap shot surveys in hotspot areas as per their area of jurisdiction.

6. It is further submitted by respondent no. 1 that the State of

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Madhya Pradesh has to ensure that there is a sufficient number of Food Testing Laboratories for analysis of the food products at different parts of the state and answering respondent has the limited role of granting funds under the scheme to the State of Madhya Pradesh. Respondent No.1 has given a list of Food Testing Laboratories which has been notified by the answering respondent and accredited by the National Accreditation Board for Testing and Calibration in Madhya Pradesh. The list as under:-

S.No. Name, Registration Number and Address of the Scope of accreditation
Laboratory 1 Choksi Laboratories Limited, Indore Reg. Chemical Biological

No.1/W/FSSAI/2014 6/3, Manoramaganj, Indore 452001 Madhya Pradesh 2
Cali-Labs Private Limited, Bhopal Reg. Chemical Biological No.12/WFSSAI/2014
HX-21, E-7, Arera Colony, Bhopal 462016, Madhya Pradesh.

3 SGS India Private Limited, Indore Reg. Chemical No.9/W/FSSAI/2014, 1-B Press
Complex, A.B. Road, Indore 452008, Madhya Pradesh.

4 QTTL Lab Private Limited, Indore Reg. Chemical Biological
No.28/W/FSSAI/2016, 301-302 Labbaig

Regency, 4/2 Old Palasia, Indore 452009, Madhya Pradesh.

5 Excellent Bio Research Solutions Pvt. Ltd. Reg. Chemical Biological
No.35/W/FSSAI/20171370, Napier Town,
Jabalpur-482001 Madhya Pradesh

6 Krishna Digital Material Testing Laboratory, Chemical
Bhopal, Madhya Pradesh Reg.
No.37/W/FSSAI/2017

Therefore, it is clear from the aforesaid, apart from 3 Food Testing Laboratories
established in the State of Madhya Pradesh, there are as many as six other Food
Testing Laboratories in Indore, Bhopal and Jabalpur having accreditation for
National Accreditation Board.

7. Respondents No.2 to 5 have also filed returns by submitting

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that the State Government is concerned about the health and life of people at large
and has taken all steps to curb the adulteration. During the Simhastha 2016 number
of mobile labs were established to collect the sample and conduct the preliminary
tests of the food products. These labs have also covered the interior areas of the State
during that period. Respondents have filed various reports collected during
Simhastha, 2016 along with the return. It is further submitted that the State
Authority has already created 51 posts of Designated Officer and Food Safety Officer
at the local level and these posts are being filled by following due process of law. The
Chief Executive Officer is already deputed in the state. The Food Testing Laboratory
at Bhopal is fully equipped and able to cope with the load of the sample analysis of
the entire State. The State Government has sent a proposal for funds to the State for
NABL Accreditation. The land to establish the lab in Indore city has been already
allotted vide order dated 30.01.2016 and the DPR for the construction of the lab
building is already under progress.

8. Thereafter, respondents no. 2 to 5 have filed an additional return by submitting that the State
Government has now allotted a sum of Rs.12,66,442/- for construction of boundary wall of the land
allotted for Food Testing Laboratory at Indore. The Food Testing Laboratory at Bhopal has also

been upgraded under the

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Scheme of strengthening of the Food Testing System. The Mobile Units are functioning since 16.04.2018 for performing primary tests and spot tests of milk and other food products. The State Government has also notified 3 Food Testing Laboratories situated at Indore by notifying in Gazette of India dated 06.12.2016. At present Food Testing Laboratory at Bhopal and 4 private Food Testing Laboratories under NABL accreditation are working efficiently. It is further submitted that Rs. 50,00,000/-

(Rupees Fifty Lakh) has been received from respondent No.1 for providing infrastructure in the State Food Testing Laboratories and thereafter further amount of Rs. 346.60 lakh, Rs. 196.60 has been sanctioned by the Central Government as well as State Government.

9. Thereafter, another return has been filed by the respondent No.2 to 5 by submitting that one civil suit has been filed by Rajendra Bithre in respect of land allotted for the construction of the Food Testing Laboratories. The Civil Court has granted a stay vide order dated 25.09.2018 in respect of said property, which is delaying the construction work of the boundary wall. Vide order dated 05.10.2018 the Ministry of Public Health and Family Welfare Department has sanctioned new posts for Indore Food Testing Laboratories. It has been decided to establish the Food Testing and Drugs Food Testing Laboratories at Indore, Jabalpur

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and Gwalior in step by step manner. It is further submitted that the establishment of Indore Food Testing Laboratories as well as Gwalior, Jabalpur Food Testing Laboratories has been expedited. The decision has been taken on 23.02.2019 by Project Screening Committee (P.S.C.) is reproduced below:

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10. Though the decision has been taken but it is not clear whether the council of Ministers has approved the decision or not? One fact is clear that there is a need for the establishment of Food

Testing Laboratories at Jabalpur, Indore, Ujjain and Gwalior apart from Bhopal for the health and safety of the citizen. The Central Government, as well as State Government, are not disputing the same. The petitioner has filed various figures to show that number of samples are pending for testing and one lab

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of Bhopal is not sufficient to handle such load.

11. Respondents No.2 to 5 have filed responses to the above material that several samples have been sent to agencies based in Mumbai and Anand (Gujrat). It is further submitted that vide letter dated 15.10.2019, a sanctioned has been granted to construct a Food Testing Laboratories on land survey No. 141 (4000 sqft) leaving 450 sqft area on which state has been granted by the Civil Court and thereafter the amount of Rs.433.43 lakh was sanctioned in the first phase for construction work. The Collector, Gwalior vide order dated 16.09.2019 has allotted land bearing survey No.861 area 0.408 hectares for the construction of Food and Drug Testing Food Testing Laboratory. The Collector Jabalpur vide letter dated 04.10.2019 has allotted 1 acre land of survey No.4/2, 4/3, 4/4 and 5/2 area 3.666 situated at Village Mahgawa, Tehsil Rani District Jabalpur. On 14.11.2019, this Court has directed to submit a progress report. On 06.01.2020, the Deputy Director Food, Food & Drugs Indore has submitted a progress report to the effect that State Government has allotted the fund for construction of the Food Testing Laboratories at Indore, Gwalior and Jabalpur and after which 1,50,00,000/- (Rupees One Crore Fifty Lakhs) has been released. The approval of the layout plan for the Lab at Indore has been submitted before the TNCP. Thereafter another affidavit has been filed on 16.10.2021 submitting that the Lay-out

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has been sanctioned on 3.02.2020 and thereafter NIT has been issued on 12.05.2020 followed by the issuance of Work order on 13.08.2020 and now the contractor has started the work from 16.08.2020 with the condition to complete up to 12.11.2021. It is submitted that because of Covid-19, the delay has been caused in the completion of work but now the contractor has been directed to complete the work on or before 12.02.2022. The contractor has been paid Rs. 3 crores for construction work. 80% of work has been completed.

12. Given the above, there is no dispute by the State Government for the establishment of three labs at Indore, Jabalpur and Gwalior and up-gradation of the lab at Bhopal. The land for the construction of the lab in all three places has been allotted. An administrative sanction, allotment of the fund has been done. Now the only implementation is to be done in a time frame manner. The construction work of the lab at Indore has already been started and as of December 2021, 80% of work has been completed, therefore, Food Testing Laboratories Indore can be started its functioning this year and we hope and trust the respondents shall make all efforts to complete this task by the end of this year 2022. So far as the construction of the Food Testing Laboratories at Jabalpur and Gwalior is concerned, there is no status report on record after allotment of the land. Since the

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Government has already taken a decision and process has already been initiated by allotment of land and sanctioning the fund, therefore, same can also be started and with the task to complete within a period of one year from today. The Collectors Indore, Jabalpur and Gwalior are directed to make all possible efforts all the three Food safety Laboratories at their respective places must start functioning within one year from today. We hereby direct respondents no. 2 to 5 to submit progress reports after 4 months in the office of Principal registrar of High Court of Madhya Pradesh Bench at Indore through the office of the Advocate General.

13. With the aforesaid directions the Public Interest Litigation is disposed of. the office is directed to list this writ petition for submitting the compliance report before the Principal Registrar. At the end, we would like to record our appreciation for the petitioner for raising this important issue by filling this Public Interest Litigation.

Certified copy as per Rules.

(VIVEK RUSIA)
JUDGE

(RAJENDRA KUMAR (VERMA)
JUDGE

praveen/-

Date: 2022.02.14 18:22:31 +05'30'