

# Umesh Kumar Bohare vs Iqbal Singh Bais (Deleted) on 9 November, 2023

**Author: Rohit Arya**

**Bench: Rohit Arya**

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IN THE HIGH COURT OF MADHYA PRADESH  
AT GWALIOR  
[Umesh Kumar Bohare Vs. Iqbal Singh Bais (Deleted) & Ors.]

Dated : 09/11/2023

Shri Pavan Kumar Dwivedi- Amicus Curiae is present.  
Shri M.P.S. Raghuvanshi- Senior Advocate with Shri Ankur  
Gupta-Advocate for respondents No.2, 18, 21, 22, 23 and 24/State.

\_\_\_\_\_ In compliance of  
order passed on 6.11.2023, Collectors of nine districts namely Gwalior Bhind, Morena, Guna,  
Sheopur, Shivpuri, Datia, Ashoknagar and Vidisha have filed affidavits.

2. Before commenting upon affidavits in respect of each districts, it is expedient to reiterate that adulteration in milk and milk products in particular amongst other kind of adulteration in food items is on the rise and is a constant menace across the country. Hon'ble Supreme court in the case of Swami Achyutanand Tirth and others Vs. UOI and others and other connected Writ Petitions has passed a detailed order as reported in 2016 (9) SCC 699, wherein after threadbare discussions on problems related to adulteration in milk and milk products in para 56, detailed directions have been given. It is indeed an unfortunate state of affairs that a "don't care" attitude appears to have been adopted in the State of Madhya Pradesh in the context of directions of Hon'ble the Supreme Court as contained in para 56.1 to 56.10. For ready reference and convenience, the aforesaid paras are reproduced below:

"56. Considering the seriousness of the matter and in the light of various orders passed by this Court, the writ petition is disposed of with the following directions and observations:

56.1 The Union of India and the State Governments shall take appropriate steps to implement Food Safety and Standards Act, 2006 in a more effective manner. 56.2 The States shall take appropriate steps to inform owners of dairy, dairy operators and retailers working in the State that if chemical adulterants like pesticides, caustic soda and other chemicals are found in the milk, then stringent action will be taken on the State dairy operators or retailers or all the persons involved in the same.

56.3 The State Food Safety Authority should also identify high risk areas (where there is greater presence of petty food manufacturer/business operator, etc.) and times (near festivals, etc.) when there is risk of ingesting adulterated milk or milk products due to environmental and other factors and greater number of food samples should be taken from those areas.

56.4 The State Food Safety Authorities should also ensure that there is adequate lab testing infrastructure and ensure that all labs have/obtain NABL accreditation to facilitate precise testing. The State Government to ensure that State food testing laboratories/district food laboratories are well- equipped with the technical persons and testing facilities. 56.5 Special measures should be undertaken by the State Food Safety Authorities (SFSA) and District Authorities for sampling of milk and milk products, including spot testing through Mobile Food Testing Vans equipped with primary testing kits for conducting qualitative test of adulteration in food.

56.6 Since the snap shot survey conducted in 2011 revealed adulteration of milk by hazardous substances including chemicals, such snap shot surveys to be conducted periodically both in the State as well as at the national level by FSSAI.

56.7 For curbing milk adulteration, an appropriate State level Committee headed by the Chief Secretary or the Secretary of Dairy Department and District-level Committee headed by the District Collector concerned shall be constituted as is done in the State of Maharashtra to take the review of the work done to curb the milk adulteration in the district and in the State by the authorities. 56.8 To prevent adulteration of milk, the State Department concerned shall set up a website thereby specifying the functioning and responsibilities of the food safety authorities and also creating awareness about complaint mechanisms. In the website, the contact details of the Joint Commissioners, including the Food Safety Commissioners, shall be made available for registering the complaints on the said website. All States should also have and maintain toll free telephonic and online complaint mechanism. 56.9 In order to increase consumer awareness about the ill effects of milk adulteration as stipulated in Section 18(1)(f) the States/Food Authority/Commissioner of Food Safety shall inform the general public of the nature of risk to health and create awareness of food safety and standards.

They should also educate school children by conducting workshops and teaching them easy methods for detection of common adulterants in food, keeping in mind indigenous technological innovations (such as milk adulteration detection strips, etc.) 56.10 The Union of India/State Governments to evolve a complaint mechanism for checking corruption and other unethical practices of the Food Authorities and their officers."

3. During the course of hearing, Shri Pawan Dwivdi amicus curiae appointed by this Court submitted that as per survey report quoted in para 48 of the said judgment, it is revealed that in the State of Rajasthan 76 % milk and Milk products are adulterated, in the State of U.P. 88%,

Chhattisgarh 100% and Madhya Pradesh 48%. He submits that there is a deadly nexus of milk and milk product producers of these States with established vendors and suppliers in Bhind and Morena where bulk supply of such adulterated milk and milk products is made in clandestine manner wherefrom the same adulterated milk and milk documents are supplied not only in different parts of Madhya Pradesh, but also in other parts of the country. Bhind and Morena districts are most vulnerable districts in the matter of clandestine activities of adulteration of milk and milk products. Both these districts in particular have become established Industries for such vulnerable activities.

Learned counsel also submits that it is surprising to note from the information supplied by District Food Safety Officer Morena and Bhind that during the period of 2020 to 2023 though more than 100 samples of milk and milk products have been taken from different places but none of them have been found to be "not fit for consumption", instead all of them were styled as 'sub standard'. According to him, the paper work done by these two districts after this Court has taken strict view of the matter, in fact, is mere lip service and no substantial effective steps have been taken to curb such illegal and immoral activities of adulteration in milk and milk products. Unabated and undeterred sale of such food items not only poses a serious threat to the health of public at large but also has seriously jeopardized life of the people as such. Persons responsible, either for inaction or being indifferent and complacent to such nefarious activities, are required to be dealt with firmly and strictly.

Learned counsel while referring to affidavits filed by Collector Gwalior, Morena, Bhind and Sheopur has made following submissions :-

That though in the affidavit related to Gwalior district it is stated that on 5th and 7th of November 2023, three vehicles were raided which contained milk and milk products belonging to six persons and all of them were from Bhind but no instant action was taken to checkmate the source of supply of those milk products at Bhind, instead the information in that behalf was sent to Bhind through post on 7th which according to Food Safety Officer of Bhind was received on 8th and thereafter today it is said that action is being taken. Thereby, giving sufficient time to such persons involved in milk adulteration to eliminate incriminating material and resort to white-wash to avoid any legal action. In other words, learned counsel submits that once this court has taken a serious view of the matter in this contempt matter against large scale adulteration in milk and milk products in vulnerable districts Morena, Bhind and Gwalior in particular at a time when Diwali festival is afoot, each collector and Food Safety Officer ought to have been not only prompt but with complete seriousness swiftly acted in compliance of directions of this Hon'ble Court issued on 6.11.2023, instead the Authorities, Food Safety Officer in particular of these three districts have not acted with expected promptness and sincerity. The recourse so adopted by the Food Safety Officers of Gwalior and Bhind in particular, in fact is uncanny.

Referring to the affidavit of Morena District, learned counsel submits that in the annexed documents it is reiterated that though licence of five dairy owners are shown to have been

suspended for five days issuing show cause notice to them and each one of them was called upon to reply to show cause notice within five days, but neither reply is filed within five days nor the suspension order is further extended. It is submitted that there is no provision under the Food Safety and Standards Act, 2006 (for short "the Act") to suspend the licence for specific days. Even otherwise, if there was no reply filed by the noticees within five days, in all fairness, the suspension of licence should have been further extended or license should have been canceled in absence of reply, as the document indicates that the seized items after chemical analysis from Bhopal were found to be of sub-standard. There is no explanation from Food Safety Officer for such strange course of action adopted by her.

While referring to affidavit in regard to Sheopur, learned counsel submits that though annexures attached indicate that 278 kgs of burfi and 199 kgs of paneer and again 99 kg of paneer were seized from Bus Stand Sheopur, but the officer present in court himself states that the items so seized are required to be secured and seal of department is put to avoid any manipulations. However, such seized items were simply handed over to the owners after taking samples. Such recourse adopted by the Food Safety Officer is contrary to the provisions of Section 5, 38 and Section 41 of Food Safety and Standards Act. This shows that the officer is not even aware of the basic requirement of law in the matter of seizure of food items under the said Act and the rules made thereunder.

Likewise, while referring to the affidavits of other districts, learned counsel submits that no strict action appears to have been taken in compliance of the order passed by this court on 06.11.2023 in terms of search, seizure, raid and checking at entry and exit point of districts. Mere lip service appear to have been done through affidavits in purported compliance of the order passed on 6.11.2023.

Besides, it is submitted that if the State Government in all seriousness had taken note of the mandatory order of Hon'ble Supreme Court particularly under Clause 56.4 and 56.5, then by now the State Government should have provided adequate number of mobile food testing vans equipped with primary testing kits for conducting qualitative test of adulterated food. As on date there are only four mobile food testing vans among nine districts, one each for Morena, Bhind and Gwalior and one for the remaining six districts with no diesel allocation. As a result, these mobile units are by and large stand-still except sporadic instances of checking, otherwise very purpose of such vans is frustrated.

Learned counsel submits that as Food Safety Authorities have provided eight Electronic Milk Adulteration Testing Machine on payment to the State of Tamil Nadu which is used for on-spot testing of milk and milk products with instant results, the State Government should have also procured for each of the Districts. If that was done, not only the testing results of milk and milk products should have been available instantly to Food Safety Officer but action as per the Act had been taken promptly. In long run such recourse would have yielded productive results in the matter of checkmating the menace of adulteration of milk products.

4. Shri M.P.S. Raghuvanshi, learned Additional Advocate General though submits that Collectors of 9 districts have filed affidavits in compliance of the order passed by this Court on 6/11/2023.

Number of teams have been constituted. Teams have visited different outlets of sale of milk and milk products in the district and have taken samples for testing in labs. Reports are awaited. In the event, adulteration is found, action as per law, shall be taken against each of the culprits. As this Court has taken strict view considering serious threat to public health and life of people at large, the State executive with full seriousness have galvanized its machinery for effective implementation of the order of this Court. Each district shall abide by the orders/directions of this Court as and when issued in due course of time. The directives of Hon'ble Supreme Court as contained in paragraph 56 are being adhered to by State Govt. Shortcomings, if any, in that behalf shall be corrected. Learned counsel also submits that lapses, if any, on the part of the Officers in conducting search and taking samples are bona fide mistakes and the same shall not be repeated. He assures this Court for corrective measures for better administration and implementation of the provisions of the Act.

5. Upon hearing learned counsel for parties, we express our displeasure and dissatisfaction as regards the manner in which the order of this court dated 6/11/2023 was implemented for the reasons as indicated in the preceding paragraphs pointed out by Shri Pawan Dwivedi, learned amicus curiae. Having perused the documents placed on record including the affidavits filed today, we are constrained to observe that mandatory directions of Hon'ble Supreme Court as contained in paragraph 56 particularly sub paragraphs 56.4 to 56.10 have not been either adhered to or implemented by the State Govt. in real sense.

We take exception thereto and expect the concerned Collectors to review the action of said Food Officers in compliance of the order dated 6/11/2023 and take corrective measures.

Secondly, the Collectors of remaining Districts shall also ensure that constant checking of transportation of milk and milk products supply at entry and exit points of the districts in border areas as a regular feature to checkmate the constant problem of food adulteration, particularly milk and milk products.

Thirdly, the Chief Secretary of the State of M.P. shall ensure that each district of the State is provided with adequate number of Mobile Van Testing Units well equipped with technical persons and testing facilities with testing kits, to meet the requirements of sample testing collected at district level. Further, each district should be provided with sufficient number of Electronic Milk Adulteration Testing Machines to be procured from FSSAI. That apart, State level Committee headed by Chief Secretary/Secretary of Food and Civil Supplies shall be constituted, if not already constituted, to review periodically the work of testing of food adulteration, particularly milk and milk products to curb or eradicate menace of food adulteration in different districts.

Fourthly, it has been brought to our notice that testing labs are located only at Jabalpur, Bhopal and Indore for the purposes of testing food for adulteration as against 53 districts in the entire M.P. Hence, it is directed that sufficient number of labs equipped with modern technologies with adequate lab testing infrastructure shall be provided keeping in mind the requirement of entire state district-wise.

Fifthly, mandatory directions shall be issued to Collector of each district to carry out awareness drive in all possible manner at public places, schools, colleges, meeting halls, prayer places, road side electronic and print media and social media. Visuals commercials shall also be prepared in animation or other formats for screening it in different parts of districts. Comprehensive guidelines in that behalf shall be prepared and notified to each of Collectors of districts of M.P. for strict compliance.

Sixthly, State Authorities to develop/revamp the mechanism in terms of clause 56.9 and 56.10 of the order of Hon'ble Apex Court (quoted above) for spreading awareness amongst general public, as well as, evolving complaint mechanism for checking corruption and other unethical practices of the Food Authorities and their officers with mandatory periodical review thereof.

Let the directions issued by this Court be complied with strict sense in right earnest and failure in that behalf by the State executive shall be viewed seriously.

List this case further orders on 7/12/2023 to consider the compliance of the order passed today by Chief Secretary and other concerned Executives.

[ROHIT ARYA]  
JUDGE

[AMAR NATH (KESHARWANI)]  
JUDGE

(Dubey)

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