

M/S ITC Limited vs Food Safety Inspector on 23 February, 2022

Author: V. Srishananda

Bench: V. Srishananda

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IN THE HIGH COURT OF KARNATAKA
KALABURAGI BENCH

DATED THIS THE 23RD DAY OF FEBRUARY, 2022

BEFORE

THE HON'BLE MR. JUSTICE V. SRISHANANDA

WRIT PETITION NO.59039/2015 (GM)

BETWEEN:

SRI IQBAL SYED SAB DAFEDHAR
S/O: SAYEDBASHA
AGED ABOUT: 45 YEARS,
PROPRIETOR OF
M/S DAFEDHAR DISTRIBUTORS
APMC YARD, GATE MARKET
VIJAYAPURA-586101.

...PETITIONER

(BY SRI.SAJJAN POOVAYYA AND
SRI. UDAY HOLLA, SENIOUR COUNSELS FOR
SRI.SHIVASHANKAR H.MANUR, ADVOCATE)

AND:

1. FOOD SAFETY INSPECTOR
DEPARTMENT OF THE FOOD SAFETY
AND STANDARDS, VIJAYAPURA
VIJAYAPURA DISTRICT-586 101.
2. DESIGNATED OFFICER
DEPARTMENT OF THE FOOD SAFETY
AND STANDARDS, VIJAYAPURA
VIJAYAPURA DISTRICT-586 101.

....RESPONDENTS

(BY SRI.Y.H.VIJAYA KUMAR, AAG A/W
SRI. SHARANABASAPPA M.PATIL, HCGP)

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THIS W.P. IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA R/W SECTION 482 OF CR.P.C., PRAYING TO CALL FOR THE RECORDS AND QUASH THE ORDER DATED 25.11.2015 PASSED IN C.C. NO. 307/037/225/2015-16 ON THE FILE OF ADDITIONAL DISTRICT MAGISTRATE CUM ADJUDICATING AUTHORITY, VIJAYAPURA (ANNEXURE-A) AND ETC.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, THE COURT MADE THE FOLLOWING :

ORDER

This petition is filed under Article 226 of the Constitution of India read with Section 482 of Cr.P.C with the following prayer :-

"Issue a writ of certiorari or any other appropriate writ or order or direction quashing the order dated 25.11.2015 passed in C.C.No.307/037/225/2015-16 on the file of Additional District Magistrate cum Adjudicating Authority, Vijayapura (Annexure-A)."

2. The brief facts of the case are as follows :-

The petitioner is a Proprietor of a Wholesale Distributing Agency operating from the premises in APMC Yard, Vijayapura and is engaged in the distribution of various products, including instant noodles manufactured by the ITC Limited under the brand name of "Sunfeast Yippee! Noodles". Sunfeast Yippee! noodles has got different flavours namely "Classic Masala", "Magic Masala"

and "Chinese Masala". Each pack of the instant noodles contain noodle pack with a sachet of masala mix with cooking instructions provided on the pack label. The noodle block is made from wheat flour and the sachet of masala mix is made of spices, herbs, dehydrated vegetables etc. The sample of the product label of "Sunfeast Yippee! Classic Masala" is also produced before the court as Annexure-B to the petition.

3. It is contended that on 11.06.2015 the Food Safety Inspector, picked up a sample of Sunfeast Yippee! Noodles Classic Masala packet from the premises of the petitioner and issued Form VA under Rule 2.4.1(3) of the Food Safety and Standards Rules, 2011. The collected sample has been sent to the Food Analyst, Belgaum for testing. On receipt of sample Food Analyst after analyzing the sample, gave a report on 23.06.2015 opining as under :-

"The sample conforms to the standards as per above parameters, but it is misbranded as per Rule 2.2.1(3) of rule 2.2 of Food Safety and Standards (Packaging and

Labelling) Regulations, 2011.

Note : Due to non-availability of the facility test for lead and flavour enhancers (MSG) could not be performed. It is suggested to get the sample analysed for the same, from NABL accredited or referral laboratory."

4. However, the sample was not tested for Mono Sodium Glutamate [hereinafter referred to as 'MSG' for short] as observed in the report itself. Despite, absence of any method to ascertain presence of MSG in the sample, Food Analyst arrives at a conclusion that the product is misbranded.

5. It is further contended that when the label mentioned that there is no added MSG, the question of misbranding product does not arise and therefore, the further action based on the report given by the Food Analyst is contrary to the Act and Rules.

6. It is also contended that there is no Laboratory established in Karnataka to find out the presence of MSG in a given sample. When such being the factual aspect, the report given by the Food Analyst as misbranded is per se illegal and therefore, no action should be initiated against the petitioner.

7. Further, the first respondent - Food Safety Inspector orally sought information from the petitioner about the manufacturers' details from whom he purchased the product. Thereafter, petitioner provided necessary information and he received the notice on 10.8.2015 from the Additional District Magistrate - cum - Adjudicating Authority, Vijayapura stating that action has been initiated against the petitioner under the Food Safety and Standards Act, 2006 [hereinafter referred to as 'FSSA' for short] and the petitioner was required to appear before the authority on 31.08.2015. Petitioner was also surprised to note that the Adjudicating Authority by order dated 11.8.2015, provided an opportunity to the petitioner to get the sample re-tested by Referral Laboratory. It is further contended that such an opportunity was extended to the petitioner only after the product has already been labeled as misbranded and the petitioner was not provided with a right to appeal the test report of the Food Analyst, before the Designated Officer as is provided under Section 46 (4) of the Food Safety and Standards Act, 2006 and in conformity with Rule 4.2 of the Food Safety and Standards Rules [hereinafter referred to as 'FSS Rules' for short]. Therefore, the petitioner approached this court with the aforesaid prayer.

8. Heard Sri Udaya Holla, learned Senior Counsel and Sri Sajjan Poovaiah, learned Senior Counsel on behalf of the petitioners. Heard learned High Court Government Pleader and Additional Advocate General attached to Kalaburagi Bench, High Court of Karnataka.

9. The principal ground on which the prayer is sought for, is that the presence of MSG cannot be determined with the laboratory facility available in Karnataka and further when the label of the product specifically mentions that there is no added MSG, in order to ascertain whether there was any presence of MSG which has been added to the product, a specific methodology has been prescribed and for which a laboratory report assumes great importance in arriving at a finding that there is a presence of MSG in a given product or not. Since the Food Analyst himself has clearly opined in the report that there is no facility available to ascertain the presence of MSG, launching of

prosecution under the unconfirmed report that the product is misbranded has affected the rights of the petitioner and therefore, the criminal prosecution launched against the petitioner needs to be quashed.

10. Per contra, learned High Court Government Pleader submits that based on the report given by the Food Analyst, the product has been mis-branded and an opportunity was provided to the petitioner to get the sample re-tested in any other referral laboratory and place evidence on record so as to ascertain the genuineness of the product. Therefore, the action initiated by the Addl. District Magistrate cum Adjudicating authority, Vijayapura is perfectly valid under the provisions of the Act and sought for dismissal of the petition.

11. In reply, the learned counsel for the petitioner relied on the judgment of the co-ordinate bench of this court passed in WP No.207484/2015 on 23.07.2021, wherein the court, almost on the similar set of facts, took note of the fact that there is no proper laboratory facility available to find out the presence of MSG in a given sample and quashed the further proceedings. Co ordinate bench fo this court while passing the said order followed the dictum of the judgment in ITC Ltd., Vs. State of Madhya Pradesh reported in 2018 (1) Crimes 150(MP) and also taking note of the dictum of law in following cases:

(1) State of Haryana & Others Vs. Bhajanlal and Others reported in (1992) SUPP (1) SCC 335 (2) Satish Mehra Vs. Delhi Administration and another - reported in (1996) 9 SCC 766 -

(3) Pepsi Foods Limited and another Vs. Special Judicial Magistrate and Others - reported in (1998) 5 SCC 749 -

(4) Mansukhlal Vithal Das Chauhan Vs. State of Gujarath reported in AIR 1997 SC 3400 (5) Jaswant Sing Vs. State of Punjab reported in AIR 1958 SC 124 (6) P.L. Tatwal Vs. State of Madhya Pradesh reported in AIR 2014 SC 2369 (7) C.B.I. Vs. Ashok Kumar Aggarwal reported in AIR 2014 sc 827.

12. In the light of the rival contentions, this court meticulously considered the provisions of the said Act and Rules, and the laboratory report which reads as under:

"Divisional Food Laboratory, Belagavi Division, Vaccine Institute Compound, Belagavi - 590 006.

FORM B
Report of the Food Analyst (Refer Regulation (ii) of 2.3.1) Report No.DFL/BGM/FSSA/442/2015 Certified that I SHRI B.LINGAPPA duly appointed under the Provisions of Food Safety and Standards Act, 2006 (34 of 2006), for Vijayapur-Dist received from F.S.O, Vijayapur Tq and sample of Classic masala bearing Code number and Serial Number : 307/037/225/2015, dtd : 11.06.2015 of Designated Officer of Vijayapura-Dist area* on 17.06.2015 for analysis.

The condition of seals on the container and the outer covering on receipt was as follows : Seals were intact and found correct.

I found the sample to be Noodles falling under Regulation No.2.12 of Food Safety and Standards (Food Products and Food Additives) Regulations, 2011. The sample ** was in a condition fit for analysis and has been analysed on 19.06.2015 to 23.06.2015 and the result of its analysis is given below/** was not in a condition fit for analysis for the reasons given below :

Reasons : Analysis report 1 Sample Description
Classic Masala 2 Physical Appearance Satisfactory 3 Label Sunfeast YiPee noodles
classic Masala

i) Pkd : 11 May 15, ii) B.No.BP 31,

iii) B.B : 9 months from manufacture

iv) No added MSG

v) Mfd by : ITC Limited, Plot No.D-1, MIDC, Ranjangoan, Taluka Shirur, Dist Pune -
412 220.

Sl. Quality Name of Result Results Prescribed No Characteristics the Standard as per (a) . Method
The Food Safety of the and Standards test (Food Products used Standards and Food Additive s)
Regulations, 2011

(b) As per label declaration for proprietary food © As per provisions of the Act, Rules and
Regulations for both the above.

1	Extraneous matter	DGHS	Not detected	Should not be present
2	Added colour	DGHS	Not detected	Should not be present
3	Presence of vegetable fat	DGHS	Not detected	Should not be present
4	Presence of animal fat	DGHS	Not detected	Should not be present
5	Total ash	DGHS	0.475	Not more than 1.0%
6	Ash insoluble in Dil.HCl	DGHS	0.028%	Not more than 0.1%
7.	Nitrogen	DGHS	2.08%	Not less than 1.7%

Opinion :- The sample conforms to the standards as per above parameters, but it is misbranded as per rule 2.2.1(3) of Rule 2.2 of FSSA (Packaging & Labeling) Rules 2011.

* Note : Due to non availability of the facility test for lead and flavor enhancers (MSG) could not be performed. It is suggested to get the sample analysed for the same, from NABL accredited or referral laboratory.

rd Signed this on 23 day of June 2015.

Sd/-

Chief Food Analyst Divisional Food Laboratory, Belgaum Division, Belgaum."

13. Further, the petitioners have placed reliance on the order dated 31.3.2016 issued by the Food Safety and Standards Authority of India to substantiate their contentions. In order to appreciate the case of the petitioners, it is necessary for this court to cull out the said order, which reads as under:

"File No:1 (105) Maggi Noodles/2015/FSSAI (Part-I) Food Safety and Standards Authority of India (A Statutory Authority established under Food Safety and Standards Act, 2006) (Enforcement Division) FDA Bhawan, Kotla Road, New Delhi-110 002 _____ Dated, the 31st March, 2016 ORDER Subject: Clarification on use of Monosodium Glutamate as flavour enhancer in seasoning for Noodles and Pastas.

Under Regulation 3.1.11 of the Food Safety and Standards (Food Product Standards and Food Additives), Regulations, 2011, Monosodium Glutamate (MSG), a flavour enhancer bearing INS number 621, may be added to specified foods as per the provisions of Appendix A, subject to Good Manufacturing Practice (GMP) level and under proper declaration as provided in 2.4.5 (18) of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011.

2. It is widely known that Glutamate is naturally found in several common foods such as milk, spices, wheat, vegetables, etc. MSG is the sodium salt of Glutamic acid and one of the many forms of glutamate. Presently, there is no analytical method to determine whether MSG was added to the product during its manufacture or was naturally present in the product. This can however be checked through inspection of the manufacturing premises.

3. To prevent, both, avoidable harassment/ prosecution of Food Business Operators (FBOs) as well as to ensure that consumers are facilitated to exercise informed choices in respect of what they eat, proceedings may be launched against FBOs only when the labels state "No MSG" or "No added MSG"

and MSG is actually found in the impugned foodstuff. Commissioners of Food Safety are advised that specific enforcement/ prosecution may not be launched against the manufacturers of Noodles/ Pasta on account of presence of MSG/Glutamic Acid unless it is ascertained by the department that Monosodium Glutamate flavour enhancer (INS E-

621) was deliberately added during the course of manufacture without required declaration on the label as indicated in Para 1 above.

4. This issues with the approval of the Competent Authority.

Sd/-

(Rakesh Chandra Sharma) Director (Enforcement) 011-23220994"

14. It is also relevant to note the instructions given by the Food Safety and Standards Authority of India dated 24.09.2018 to all the States and Union Territories Commissioner of Food Safety. The same reads as under:

"File No:13 (3) 2016/HUL/Enf./FSSAI Food Safety and Standards Authority of India (A Statutory Authority established under Food Safety and Standards Act, 2006) FDA B h a w a n , K o t l a R o a d , N e w D e l h i - 1 1 0 0 0 2

_____ Dated, the 24th September, 2018 To, Commissioners of Food Safety, All States/ UTs.

Subject- Adjudication proceedings against FBOs. in States/UTs for "Mis-branding" due to the presence of the claim of "No MSG" or "No added MSG" on the packaging of Noodles and Pastas- regarding Sir Madam,

1. This has come to the notice of the Food Safety and Standards Authority of India that there are pending adjudication proceedings against FBOs in States/ UTs for "mis-branding" due to the presence of the claim of "No MSG" or "No added MSG" on the packaging of Noodles and Pastas.

2 Attention is invited to FSSAI's Order F. No 1(105) Maggi Noodles/ 2015/ FSSAI (Part-1) dated 31st March, 2016 where it was mentioned that Glutamate was naturally found in several common foods and there was no analytical method to determine whether MSG was added to the product during its manufacturer or was naturally present and, therefore, could be checked only through inspection of the manufacturing premises. The State Authorities were advised that specific enforcement / prosecution processes might not be launched against the manufacturers of Noodles / Pasta on account of presence of MSG/ Glutamic Acid unless it was ascertained that Monosodium Glutamate flavor enhancer (INS E-621) was deliberately added during the course of manufacture without required declaration on the label. This Order directed the authorities to launch proceedings against FBOs only when the labels stated "No MSG" or "No added MSG", and it was ascertained by the department that MSG flavor enhancer (INS E- 621) was added during the course of manufacture without required declaration on the label under Regulation 2.4.5 (18) of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011.

3. Thus adjudication proceedings launched against any FBO for the offence of 'mis-branding' due to a claim of "No MSG"/"No added MSG", on the label without determining whether MSG was added during the manufacturing process would be inconsistent with the orders issued by the FSSAI.

4. Commissioners of Food Safety. States/ UTs are. therefore, advised that wherever adjudication proceedings have been initiated against FBOs. for the presence of the claim "No MSG/No added MSG" without ascertaining the stage at which the MSG was added to the product need to be examined and action taken in terms of FSSAI's Orders dated 31st March, 2016.

5. It is requested that the report on the action taken in this regard may please be communicated to this organization.

Yours faithfully, Sd/-

(Daya Shankar) Joint Director (RCD)"

15. As could be seen from the above, the order and the instructions given by the Food Safety and Standards Authority, the component sample 'MSG' can be of two types in any sample. One is of natural origin and the other is a synthetic product, popularly known as "aginomoto".

16. As the globalization is taking place a galloping pace, the food taste across the globe has also undergone a radical change since few decades. What was not even dreamt of few decades earlier is a daily routine food, practically in every nook and corner of the country. Even in remote villages, the Chinese food including noodle packets are available easily. The taste of a food product differs from person to person. Needless to emphasize that multinational companies have catered to the needs of the general public in the form of packaged food. Practically, every house today consumes noodles. May be because of the taste or because of its easy preparation and less time consumption. However, the after effects of consuming such 'fast foods' would not appear immediately and it may take some time for the people to understand the bad effects of fast foods. There are series of studies conducted by the researchers in the medical field in this regard. Thousands of research papers are published about the bad/ill effects of consuming fast food on regular basis.

17. In this background, the object of the said Act assumes great significance. The object of the Act is culled out hereunder which reads thus:

1. Multiplicity of food laws, standard setting and enforcement agencies pervades different sectors of food, which creates confusion in the minds of consumers, traders, manufacturers and investors. Detailed provisions under various laws regarding admissibility and levels of food additives, contaminants, food colours, preservatives, etc., and other related requirements have varied standards under these laws. The standards are often rigid and non-responsive to scientific advancements and modernisation. In view of multiplicity of laws, their enforcement and standard

setting as well as various implementing agencies are detrimental to the growth of the nascent food processing industry and is not conducive to effective fixation of food standards and their enforcement.

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

3. As an on going process, the then Member-

Secretary, Law Commission off India, was asked to make a comprehensive review of Food Laws of various developing and developed countries and other relevant international agreements and instruments on the subject. After making an in depth survey of the International scenario, the then Member-Secretary recommended that the new Food Law be seen in the overall prospective of promoting nascent food processing industry given its income, employment and export potential, It has been suggested that all acts and orders relating to food be subsumed within the proposed Integrated Food Law as the International trend is towards modernisation and convergence of regulations of Food Standards with the elimination of multi-level and multi-departmental control. Presently, the emphasis is on (a) responsibility with manufacturers, (b) recall, (c) Genetically Modified and Functional Foods, (d) emergency control, (e) risk analysis and communication and (f) Food Safety and Good Manufacturing Practices and Process Control viz., Hazard Analysis and Critical Control Point.

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

5. The Bill, Inter alia, incorporates the salient provisions of the Prevention of Food Adulteration Act, 1954 (37 of 1954) and is based on international legislations, instrumentalities and Codex Alimentaries Commission (which related to food safety norms). In a nutshell, the Bill takes care of

international practices and envisages on overarching policy framework and provision of single window to guide and regulate persons engaged in manufacture, marketing processing, handling, transportation, import and sale of food. The main features of the Bill are:

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

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

18. In view of the above, as a principle of State Policy, the State has onerous responsibility to ensure that the quality of the food items that would be manufactured/imported to our country, keeping in view the general health condition of the public at large. Under such circumstances, the provisions contained in the Act, assumes greater significance.

19. Likewise, it is necessary that while the need of the general public is to be satisfied by the manufacturer, importer, the menace of adding spurious/impermissible chemicals added into the food items needs to be curbed. In other words, taste and the health and safety of the human body is to be harmoniously balanced in meeting this requirement.

20. Franklin Delano Roosevelt, 32nd President of United States in the year 2000 in Gostin said as under:

"The success or failure of any Government in the final analysis measured by the well being of its citizens. Nothing can be more important to a State than its public health; the States paramount concern should be the health of its people."

21. Article 21 of the Constitution of India embraces in itself the general health of a citizen of India as integral part of right to life. Therefore, State is necessarily required to take steps to maintain the general health of all public at large and in that regard, the object of the Act is to be properly implemented at the manufacturing level itself and curb such menaces. For the purpose of gain of few people, the health of the general public cannot be compromised, more so, when such of the food materials are consumed by the children and young adults.

22. In this regard, gainfully, this court places reliance on the judgment of the Hon'ble Apex Court in the case of Vincent Vs. Union of India reported in AIR 1987 SC 990 wherein it is held as under:

"A healthy body is the very foundation for all human activities. That is why the adage "Sariramadyam Khaludharma Sadhanara". In a welfare State, therefore, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health. This Court in Band- hua Mukti Morcha v. Union of India, [1984] 3 SCC 161 aptly observed:-

"It is the fundamental right of everyone in this country, assured under the interpretation given to Article 21 by this Court in Francis Mullin's case--1981] 1 SCC 608 to live with human dignity, free from exploitation. This right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State Policy and particularly clauses (e) and (f) of Article 39 and Articles 41 and 42".

23. It is needless to emphasise that public at large, who consumes packaged food are entitled to know the contents of the same. Therefore, a duty is cast on the manufacturer to mention on the cover or the package as to the contents contained in it.

24. The manufacturers are required to disclose the information about the contents truly so that the consumer will have a choice to buy it or reject it. In other words, the consumer is made known about the contents of the packaged food so as to make him aware of consequences of consuming such a food and if he chooses to do so, he will be doing it so, with possible consequences.

25. In that regard, the Act prescribes a duty on the manufacturers for disclosure of the presence of artificial flavours or chemicals including MSG in a given product. As such, the Manufacturer/importer is duty bound to make a declaration about the presence of MSG in a given product.

26. In the background of the above requirements, when the case on hand is analysed, the sample collected by the first respondent (Food Safety Inspector) is sent to the laboratory for testing the quality of the product in conformity of the above requirements. The laboratory report marked as

Annexure-A referred to supra clearly indicate that the food analyst was unable to find out the presence of MSG in the sample. There is a clear declaration on the cover of the seized sample that "no added MSG". Without there being any proper laboratory facility to find out the presence of MSG, strangely and surprisingly, the food analyst branded the sample as mis-branded. How exactly the seized sample is mis-branded is not even forth coming in the report. Further, without affording an opportunity for the petitioner, straight away action is initiated by the Additional District Magistrate cum Adjudicating Authority, under the provisions of the Act, and a notice came to be issued for prosecution of the petitioner. After petitioner appeared before the authority, very strangely, the authority directs the petitioner to get the sample re-tested in a referral Laboratory and to file a report.

27. It is pertinent to note that the sample which is collected by the first respondent is sent to the laboratory and the Food Analyst was unable to find out the presence of MSG with the facilities available in the laboratory and has specifically opined that presence of MSG can be ascertained only by sending the sample to NABL. In the teeth of such a finding, how a prosecution came to be launched against the petitioner without even providing an opportunity of appeal regarding the mis-branding of the product and thereafter, providing an opportunity for the petitioner to prove contra, is a question that needs to be explained by the respondent-State. However, no such explanation is forthcoming from the respondent-State.

28. Admittedly, prosecution is launched by the Additional District Magistrate cum Adjudicating Authority and therefore, it is the duty of the department to establish the alleged offence by placing positive evidence on record. Per contra, expecting the petitioner to provide a report, contrary to the report issued by the Food Inspector cannot be countenanced under the criminal jurisprudence. Therefore, the order passed by the Additional District Magistrate cum Adjudicating Authority in pending case in case number CC No. 307/037/225/2015 cannot be continued and further proceedings needs to be quashed.

29. Having said thus, this court cannot turn blind eye in arresting menace of misbranded food items or substandard food items sold and consumed in the society day in and day out. In this regard, this court requested the learned Senior counsel Sri Udaya Holla and learned Senior counsel Sri Sajjan Poovaiah, who represents the petitioners in these cases to assist the court in framing proper guidelines for proper and effective implementation of provisions of Act by the Food Safety and Standard Department. Both the learned Senior counsels have promptly responded it and spent their time. They have analysed the interplay of different provisions of the Act and furnished a detailed flow chart for proper and effective implementation of the Act keeping in view of the safety of the general public at large and unnecessary hardship that would be caused to manufactures/importers as well.

30. The Flow chart is culled out hereunder:

MEMO ON EFFECTIVE ADJUDICATION OF CASES UNDER THE FOOD SAFETY AND STANDARDS ACT, 2006 Food Safety Officer ['FSO'] purchases samples of packaged food from a Food Business Operator ['FBO'] for testing analysis.

FSO gives Notice (in Form V-A) to the FBO, Manufacturer and Distributor Supplier, which also contains the testing parameters for the food sample.

If FBO does not acknowledge the purchase of sample, witnesses have to be requested to be present for taking of samples.

FSO ensures that four equal samples of packaged food are taken and sends one of the four samples to Food Analyst without opening the same by the immediate successive working day. The sample should be of the specified quantity.

FSO should ensure that the sample of food is sent for analysis in a Laboratory which is notified by the Food Safety & Standard Authority of India ['ESSAI'] and also accredited by the National Accreditation Board for Testing and Calibration Laboratories ["NABL"] Food Analyst has maximum 14 (fourteen) days to complete the analysis from date of receipt of sample.

Food Analyst sends his report in Form VII-A to the Designated Officer containing specified details like batch number, date of analysis etc. In the case of an adverse report by the Food Analyst, the Designated Officer ['DO'] gives an opportunity to the FBO to file an Appeal.

If the DO dismisses the Appeal filed by the FBO and if penalty is leviable for such contravention, then the DO authorizes the FSO to file an application before the Adjudicating Officer notified by the State Government.

Once the FSO has filed an application before the Adjudicating Officer, the Adjudicating Officer:

(i) Furnishes a copy of the complaint and all other documents/reports relied on by FSO to respondents.

(ii) Provides opportunity to file written response

(iii) Provides Oral hearing

(iv) Pronounces the order Legal Provisions:

1. A Food Safety Officer [FSO'] appointed under Section 37 of the Food Safety & Standards Act, 2006 [FSS Act'], can purchase samples of food from a Food Business Operator ['FBO'] under Section 38(1) read with Section 38(3) of the FSS Act for the purpose of sending such sample of food for analysis/testing to a Food Analyst.

2. Thereafter, as per Rule 2.4.1.3 of the Food Safety & Standards Rules 2011 ['FSS Rules'] read with Section 47(1)(a) of the FSS Act, the FSO has to give a Notice in

Form V-A to the FBO indicating the FSO's intention to have such sample of food analysed by a Food Analyst.

3. As per Rule 2.4.1.4 of the FSS Rules, the FSO should ensure that the Notice in Form V-A is also given to the Manufacturer and the Distributor or Supplier of such sample of food.

4. FSO should also ensure that Form V-A lists out the parameters on which such sample of food will be tested/analysed.

5. As per Rule 2.4.1.2 of the FSS Rules read with Section 38(7) of the FSS Act, the FSO should ensure that a sample of food must be taken in front of one or more witnesses and that the signature of such witnesses shall also be taken. As per the Proviso to Section 47(1)(b) of the FSS Act, this requirement of witnesses will only arise if the FBO from whom the sample of food is taken, refuses to sign the relevant documents.

6. While taking samples of food, the FSO should ensure that the FSO takes 4 (four) equal samples of food in accordance with Section 47(1)(b) of the FSS Act.

7. As per Rule 2.4.1.14 of the FSS Rules read with Regulation 2.3.1 of the Food Safety & Standards (Laboratory & Sample) Analysis Regulations 2011, the FSO should send the specified quantity of the sample of food to the Food Analyst for analysis. Regulation 2.3.1 of the Food Safety & Standards (Laboratory & Sample) Analysis Regulations 2011 gives the list of specified quantity for various types of foods which should be sent for analysis and testing.

8. If the sample of food which is sent for analysis is sold in a package, then such package should not be opened, and such sample of food should be sent by the FSO to the Food Analyst for analysis in its original condition without opening the package along with the original label. This is as per the Explanation to Rule 2.4.1.14 of the FSS Rules.

9. After the FSO collects the sample of food, then the FSO should send such sample of food to the Food Analyst by the immediate succeeding working day. This is in accordance with Section 47(2) of the FSS Act.

10. The FSO should ensure that the sample of food is sent for analysis in a Laboratory which is notified by the Food Safety & Standards Authority of India [FSSAI] and also accredited by the National Accreditation Board for Testing and Calibration Laboratories [NABL] for the purpose of carrying out analysis of samples by the Food Analyst under the FSS Act. This is in accordance with Section 43(1) of the FSS Act.

11. The Food Analyst appointed under Section 45 of the FSS Act, has to finish the analysis within 14 (fourteen) days from the date of receipt of such food sample from the FSO. This is in accordance with Section 46(3) read with Section 42(2) of the FSS Act.

12. As per Section 46(3)(i) of the FSS Act read with Rule 2.1.4.2(ii) & Rule 2.4.2.5 of the FSS Rules, the Food Analyst should send its Report in Form VII-A to the Designated Officer (DO). A Designated Officer is appointed under Section 36 of the FSS Act.

13. The Food Analyst in its Report in Form VII-A should mention the following important details: date of receipt of the sample of food; batch number, date of analysis; sample description; label declaration; method of test used/method of analysis. As per Rule 2.14.2(i) read with Rule 2.4.2.7 of FSS Rules, the methods listed therein or if FSSAI has passed an Order notifying a particular method of analysis to be used then such method of testing/analysis should only be used.

14. In the event, the Food Analyst's Report is adverse, the DO should give an opportunity to the FBO to file an Appeal against the Food Analyst's Report in accordance with Section 46(4) of the FSS Act read with Rule 2.4.6.1 of the FSS Rules.

15. As per Rule 3.1.1.1 of the FSS Rules read with Section 42(3) of the FSS Act, if the DO dismisses the Appeal filed by the FBO and if penalty can be levied for such contravention then as per Rule 3.1.1.2 of FSS Rules, the DO shall authorize the FSO to file with the Adjudicating Officer an application for adjudication of the alleged contravention.

16. Then, as per Rule 3.1.1.3 of the FSS Rules, the FSO should file an Application for Adjudication before the Adjudicating Officer. As per Section 68(1) of the FSS Act, the Adjudicating Officer is notified by the State Government who is not below the rank of an Additional District Magistrate.

17. After receipt of an application for adjudication from the FSO, the Adjudicating Officer in accordance with Section 68(2) of the FSS Act read with Rule 3.1.1.6 of the FSS Rules, issues notice to the FBO seeking its response at least by 30 days, with respect to the contravention alleged by the FSO. As per Rule 3.1.1.7 of the FSS Rules, every such notice shall indicate the nature of contravention committed by the FSO, the sections of the FSS Act alleged to have been contravened and the date of hearing as per Rule 3.1.1.9, the Adjudicating Officer has to give an opportunity to the FBO to produce such documents or evidence as the FBO may consider relevant. After hearing the matter, the Adjudication Officer may either dismiss the case or impose on the FBO, a penalty in accordance with the FSS Act.

Date: 31.01.2022 Kalaburagi Sd/-

Advocate for Petitioner"

31. The Copy of the memo along with flow chart is furnished to Sri S.K.Biradar, through learned High Court Government Pleader.

32. On perusal of the same Sri Biradar submits that the flow chart prepared by the petitioners would meet all requirements for effective implementation of the provisions of the Act. His submission is placed on record.

33. This court by order dated 16.2.2022 directed Sri. Biradar to place on record the difficulties faced by the department if any in effectively implementing the provisions of the Act. In pursuance thereof, a memo came to be filed by learned High Court Government Pleader with the letter dated 18.2.2022.

34. On perusal of the said letter, furnished by Sri S.K. Biradar, it is seen that basic requirement for effective implementation of the Act is the establishment of the NABL in the State of Karnataka. Many times, the delay occurs because of the want of proper laboratory facility. As an ad hoc arrangement, a Memorandum of Understanding (MOU) is entered into with a private laboratory by the department, where under, the samples would be sent to the private laboratory and reports would be obtained.

35. Acceptability/admissibility of a report given by a private laboratory for the purpose of adjudication of an offence under the Act is doubtful. It is the bounden duty of the Government to establish necessary laboratory for testing the samples under the Act. Such a responsibility cannot be outsourced by Government. Further, the opinion given by the laboratory is the basis for launching the prosecution under the said Act. When the very report itself is questionable, given by a private laboratory, it would open flood gates by practically challenging every report before this court and prosecutions being quashed by this court perhaps only on that ground eventually defeating the very purpose and object of enactment.

36. Further, it is also submitted by Sri Biradar that there is no proper men support to implement the provisions of the Act inasmuch as at least one person to be appointed as a Food Safety Officer in every Taluk and such an appointment has not at all taken place as per the Act and Rules. As of now, again an ad hoc arrangement is being made by deputing a person who is having necessary educational qualification from Health and Family Welfare Department in addition to discharge of work in his parent department.

37. Admittedly, such deputed staff is required to carry out the work of Health and Family Welfare Department as well as work under the Act. How far, such a person would be effectively discharging the duty is again doubtful and it acts as a hindrance in properly implementing the provisions of the Act.

38. Therefore, it is necessary for this court to issue few more guidelines to the Government for the purpose of effective implementation of the Act. Hence, following order is passed:

ORDER

(i) This Writ Petition is allowed.

(ii) Consequently, the initiation of the criminal proceedings which is now pending in CC No.307/037/225/2015-16 dated 25.11.2015 passed by the Additional District Magistrate-cum-Adjudicating Authority, Vijayapura, is hereby quashed. The deposit of money in terms of the interim order is ordered to be refunded to the petitioner.

(iii) For effective implementation of the provisions of the said Act and Rules, following guidelines have been issued:

x The State Government shall take necessary steps to establish proper laboratory in consultation with NABL to the Standards of NABL, to ascertain the presence of samples as per the Food, Safety standards prescribed under the Act.

x The laboratory should be equipped with proper and adequate staff.

x The State Government shall also Endeavour to appoint Food Safety Officer in each and every Taluka at the earliest.

x A proper training be imparted to all the Food and Safety Officers for effective implementation of the Act, in collection of the samples, preservation of the samples and sending it to the laboratory, obtaining report and place it before the Additional District Magistrate cum Adjudicating Authority at the earliest.

(iv) Let a copy of this order be sent to the learned Additional Advocate General under acknowledgement for compliance.

(v) The compliance report be filed in this regard in the first week of January, 2023, failing which, the matter be listed before the court for further directions.

Sd/-

JUDGE PL*