

A.P.Suryaprakasam vs The Government Of Tamil Nadu on 1 March, 2019

Author: S.Manikumar

Bench: S.Manikumar, Subramonium Prasad

1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD
W.P.No.13717 of 2017
and
W.M.P.Nos.14905 & 17999 of 2017

A.P.Suryaprakasam .. Petitioner
Vs.

1. The Government of Tamil Nadu,
rep by Secretary to Government,
Animal Husbandry and Dairy Development Department,
Fort St.George, Chennai - 600 009.
2. The Director General of Police,
O/o The Director General of Police,
Chennai - 600 004.
3. The Director,
Central Bureau of Investigation,
Government of India,
New Delhi.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus directing the 1st respondent the Government of Tamil Nadu to take necessary steps to urgently to amend Section 272 of Indian Penal Code for enhancing the punishment for the adulterators of milk and milk products to life sentence as per the direction of the Hon'ble Supreme Court in Swami Achyutanand Tirth case and further

<http://www.judis.nic.in>

2

comply all other directions issued in that case on a war footing manner to curtail this menace of the milk adulterators who are playing with the life of the citizens health and safety particularly of the young children.

Petitioner-in-person : Mr.A.P.Suryaprakasam

For Respondents 1&2 : Mr.J.Pothiraj
Special Government Pleader

ORDER

(Order of the Court was made by S.MANIKUMAR, J.) Mr.A.P.Suryaprakasam a practicing Advocate of this Court has filed the instant public interest litigation seeking a Writ of Mandamus to direct the Secretary to the Government, Animal Husbandry and Dairy Development Department, Government of Tamil Nadu / first respondent herein, to take necessary steps to urgently amend Section 272 of Indian Penal Code for enhancing the punishment for the adulterators of milk and milk products to life sentence as per the directions of the Hon'ble Supreme Court in Swami Achyutanand Tirth Vs. Union of India reported in 2016 9 SCC 699 and further comply with all the other directions issued in that case on a war footing to curtail the menace of the milk adulterators who are playing with the life of the citizens <http://www.judis.nic.in> health and safety particularly of the young children.

2. Petitioner has submitted that he was shocked to read the statements of the State Dairy Development Minister alleging that private milk firms were using harmful chemicals in the milk they produced has caused cancer in many children. Petitioner further submits that, only after thorough check of the packaged milk of private firms for more than five months, the respondents seemed to have found out that the milk adulterators are using hydrogen peroxide and chlorine to prevent milk from getting spoiled. In this regard, petitioner has further submitted that instead of taking severe action by sincerely implementing the directions of the Hon'ble Supreme Court made in Swami Achyutanand Tirth Vs. Union of India reported in 2016 9 SCC 699 in curtailing this evil practice of milk adulteration, respondents 1 & 2 are playing blame game and wantonly and willfully failed to obey the orders of the Hon'ble Supreme Court. In this regard, petitioner has sent a representation dated 29.05.2017 to the respondents 2 and 3 respectively. As the respondents failed to act, petitioner has filed the instant writ petition.

3. Directions of the Hon'ble Supreme Court in Swami <http://www.judis.nic.in> Achyutanand Tirth Vs. Union of India reported in 2016 9 SCC 699, are as follows:

"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 the 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 <http://www.judis.nic.in> 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 <http://www.judis.nic.in> 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 <http://www.judis.nic.in> 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."

4. Representation of the petitioner dated 29.05.2017, addressed to the Director General of Police, Tamilnadu, and Director of Central Bureau of Investigation, Government of India, New Delhi, are extracted hereunder:-

"1. MR. A.P.Surya Prakasam, Advocate No.77, Addl Law Chambers, <http://www.judis.nic.in> High Court Buildings, Chennai-600 104.

Date: 29.05.2017 To, The Director General of Police, O/o. The Director General of Police, Mylapore, Chennai- 600 004.

Sir, Sub: Investigation requested regarding large scale adulteration of milk and milk products in Tamil Nadu.

You are aware that the Hon'ble state Dairy Development Minister Mr.K.T.Rajenthra Bhalaji himself has admitted in public that milk product producing companies are adding harmful chemicals in the milk they produced and willing to commit suicide by hanging if he is proved wrong. The Hon'ble Minister himself has on record has stated that he is in possession of solid evidence to prove his claim of adulteration of milk by private companies.

You are further aware that milk plays an very essential part in the food habit for millions of people in Tamil Nadu and since millions of childrens' life in Tamil Nadu who depend milk for the survival is at stake and since these adulterating companies operate not only in Tamil Nadu but also in neighbouring states I request you to entrust the investigation of the above said serious complaint to the CBI so that adulterous of milk can be dealt with an iron fist to save millions of innocent children.

Yours faithfully, A.P.SURYA PRAKASAM

2. MR. A.P.Surya Prakasam, Advocate No.77, Addl Law Chambers, High Court Buildings, Chennai-600 104.

Date: 29.05.2017 To, The Director, <http://www.judis.nic.in> Central Bureau of Investigation, Government of India, New Delhi.

Sir Sub: Investigation requested regarding large scale adulteration of milk and milk products in Tamil Nadu and other neighbouring states.

Please permit me to bring the following facts to your kind notice and necessary action.

I state that the Hon'ble state Dairy Development Minister of Tamil Nadu Mr.K.T.Rajenthra Bhalaji himself has admitted in public that milk product producing companies are adding harmful chemicals in the milk they produced and willing to commit suicide by hanging if he is proved wrong. The Hon'ble Minister himself has on record as stated that he is in possession solid evidence to prove his claim of adulteration of milk by private companies.

You are further aware that milk place an very essential part in the food habit for millions of people in Tamil Nadu and since millions of childrens' life in Tamil Nadu who depend milk for the survival is at stake and since these adulterating companies operate not only in Tamil Nadu but also in neighbouring states I request you to investigate the above said serious complaint of milk adulteration not only in Tamil Nadu but also neigbourirng states where majority of the Food Companies are operating particularly in Andhra Pradesh and Karnataka. In this regard I further state that the Hon'ble State Dairy Development Minister of Tamil Nadu stated that he himself will request to entrust the investigation of the above said serious complaint to the CBI so that adulterous of milk can be dealt with an iron fist to save millions of innocent children.

Please do the needful and save our children who are the wealth of our country.

Yours faithfully, A.P.SURYA PRAKASAM"

5. Petitioner has filed the instant writ petition purely on a News item, said to have reported the speech of the Hon'ble Minister. First of all let us address the issue as to whether a mere <http://www.judis.nic.in> news item, can be the basis of a public interest litigation.

Reference can be made to few decisions:

(i) A Hon'ble Division Bench of this Court in A.S.M.Kumar v.

State of Tamil Nadu reported in 2008 (5) MLJ 399, to which, one of us, is a party, has considered the following judgments, "8.The question of admissibility of the newspaper reports came up for consideration in Samant N.Balkrishna and another Vs.George Fernandez and other reported in 1969 (3) SCC 238 at paragraph 26, the Apex Court observed that "A newspaper item without any further proof of what had actually happened through witnesses is of no value. It is at best a second hand evidence. It is well known that reporters collect information and pass it on to the editor who edits the news item and then publish it. In this process truth might get perverted or garbled. Such news items cannot be said to prove themselves although they may be taken into account with other evidence if the other evidence is forcible."

<http://www.judis.nic.in> 9. As regards nature and admissibility of a newspaper report, the Supreme Court in Lakmi Raj Shetty and another Vs. State of Tamil Nadu reported in 1988 (3) SCC 319, opined that "...We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached under Section 81 of the Evidence Act to a newspaper report cannot be treated as proved of the facts reported therein."

10. In Quamarul Islam Vs. S.K.Kanta reported in 1994 (1) SCC 452, the question as to whether mere production of the copy of the newspaper be treated as proof of the report of the speech (news item) contained therein came up for consideration. The Apex Court at Paragraph 48 of the judgment held that, "48.Newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. These have to be proved and the manner of proving a newspaper report is well settled.

<http://www.judis.nic.in> Since, in this case, neither the reporter who heard the speech and sent the report was examined nor even his reports produced, the production of the newspaper by the Editor and publisher, PW4 by itself cannot amount to proving the contents of the newspaper reports. Newspaper, is at the best secondary evidence of its contents and is not admissible in evidence without proper proof of the contents under the Indian Evidence Act. The learned trial Judge could not treat the newspaper reports as duly 'proved' only by the production of the copies of the newspaper. The election petitioner also examined Abrar Razi, PW5, who was the polling agent of the election petitioner and a resident of the locality in support of the correctness of the reports including advertisements and messages as published in the said newspaper. We have carefully perused his testimony and find that his evidence also falls short of proving the contents of the reports of the alleged speeches or the messages and the advertisements, which appeared in different issues of the newspaper. Since, the maker of the report which formed basis of the publications, did not appear in the court to <http://www.judis.nic.in> depose about the facts as perceived by him, the facts contained in the published reports were clearly inadmissible. No evidence was led by the election petitioner to prove the contents of the messages and the advertisements as the original manuscript of the advertisements or the messages was not produced at the trial. No witness came forward to prove the receipt of the manuscript of any of the advertisements or the messages or the publication of the same in accordance with the manuscript. There is no satisfactory and reliable evidence on the record to even establish that the same were actually issued by IUML or MYL, ignoring for the time being, whether or not the appellant had any connection with IUML or MYL or that the same were published by him or with his consent by any other person or published by his election agent or by any other person with the consent of his election agent."

11. The Supreme Court dealing with a "pro bono publico" litigation in B.P.Singhal Vs.State of Tamil Nadu and others reported in 2004 (13) SCC 673, wherein the petitioner sought for a transfer of an investigation from Tamil Nadu State Police to the <http://www.judis.nic.in> Central Bureau of Investigation, opined that:

"the petition is lacking in material particulars. All the averments made in the petition are based, by and large, on news reports and not on personal knowledge. The petition does not state that the petitioner has taken any care to verify himself the correctness of the averments made."

12. In yet another decision in *Dr.B.Singh Vs. Union of India (UOI) and others* reported in 2004 (3) SCC 363 dealing with a public interest litigation, challenging the propriety of the third respondent therein for being considered for appointment as a Judge, the Supreme Court while expressing its anguish found that:

"the petitioner has nowhere stated that he has personal knowledge of the allegations made against R3. He does not even aver that he made any effort to find out whether the allegations have any basis. He only refers to the representation of Ram Sarup and some other paper cuttings of news items. It is too much to attribute authenticity or creditability to any information or fact merely because, it found publication in a newspaper or <http://www.judis.nic.in> journal or magazine or any other form of communication, as though it is gospel truth. It needs no reiteration that newspaper reports per se do not constitute legally acceptable evidence."

13. In matters relating to public interest litigation, the Supreme Court has time and again cautioned that the Court has to be satisfied about

(a) the credentials of the applicant; (b) the prima facie correctness or nature of information given by him; (c) the information being not vague and indefinite. The information should show gravity and seriousness involved. Court has to strike balance between two conflicting interests; i) nobody should be allowed to indulge in wild and reckless allegations besmirching the character of others; and (ii) avoidance of public mischief and to avoid mischievous petitions seeking to assail, for oblique motives, justifiable executive actions. In such case, however, the Court cannot afford to be liberal. It has to be extremely careful to see that under the guise of redressing a public grievance, it does not encroach upon the sphere reserved by the Constitution to the Executive and the Legislature. The Court has to act ruthlessly while dealing with imposters and busy bodies or meddlesome interlopers impersonating as public spirited holy men. They <http://www.judis.nic.in> masquerade as crusaders of justice. They pretend to act in the name of Pro Bono Publico, though they have no interest of the public or even of their own to protect. Reference can be made to the recent decision of the Apex Court in *Holicow Pictures Pvt., Ltd., Vs. Prem Chandra Mishra and others* reported in 2008 (1) CTC 711 (Para 20)."

After considering the decisions of the Hon'ble Apex Court, at Paragraph 16, the Hon'ble Division Bench has observed as follows:

"It is now well settled that a news item published in the newspaper are only hearsay and no judicial notice can be taken unless supported by further authentic evidence. Though the parameters of public interest litigation have been indicated by the Supreme Court in large number of cases, yet unmindful of the real intentions and

objectives, the petitioner, without verifying the authenticity or otherwise of the news items, has chosen to resort to the extra ordinary jurisdiction. The Public Interest Litigation intended to ameliorate the grievance of the poor, the ignorant, the oppressed and the needy whose fundamental rights are infringed and violated, should not be misused. Before maintaining a cause before the Court one should prove that there is concrete and credible basis, notwithstanding the credentials claimed of the person <http://www.judis.nic.in> moving the courts.."

(ii) Further, in *Vikas Vashishth v. Allahabad High Court* reported in 2004 (13) SCC 485, the Hon'ble Supreme Court held as follows:

"At the very outset, we put it to the petitioner that a bare perusal of the petition shows that it is based entirely on newspaper reports and asked him whether before filing the petition he has taken care to verify the facts personally. His answer is in the negative. In the writ petition all the 21 High Courts have been included as respondents and Union of India has also been impleaded as the 22nd respondent. We asked the petitioner what has provoked him to implead all the High Courts as respondents and he states that it is his apprehension that similar incidents may occur in other High Courts though there is no factual foundation for such appreciation.

5. After affording the full opportunity of hearing, we are satisfied that what purports to have been filed as a public interest litigation is nothing more than a "publicity interest litigation". It is writ large that it has been filed without any effort at verifying the facts by the petitioner personally."

6. In line with the judgments of the Hon'ble Supreme Court, High Court, Madras has issued notification in SRO C-

2/2010 dated 26.07.2010, which is extracted hereunder:-

<http://www.judis.nic.in> "No. SRO C-2/2010.

By virtue of Article 225 of the Constitution of India and of all other powers hereunto enabling, the High Court makes the following Rules to regulate Public Interest Litigations (PIL) filed under Article 226 of the Constitution of India:

Every Public Interest Litigation must be filed in accordance with the following rules:

1. Every PIL must indicate that the petitioner has no personal interest in the case. If he has any personal interest, he must disclose the same. In the event of the High Court finding the claim as frivolous or vexatious, the PIL shall be dismissed with exemplary cost.

2. If the PIL is filed on behalf of a class of persons, the details of the persons for whose benefit the PIL is filed, must be indicated. If it is a society or association of persons, the writ petitioner must enclose a resolution from such society or association of persons, authorising the petitioner to file the writ petition and if the body is duly registered with competent authority, a copy of the bye-laws of the said body authorising the petitioner to file the writ petition, shall be enclosed.

3. If the petitioner has filed any PIL earlier, the details of the petition, and the final order, if any, passed in that petition, the relief granted and costs, if any, awarded, shall be indicated. No Public Interest Litigation Petition will be entertained in respect of civil disputes between individuals or in service matters.

The petitioner shall give an undertaking that he will pay the costs, if any, if it is found to be intended for personal gain or oblique motive.

4. The petitioner must disclose whether he has filed the petition out of his own funds or from other sources. If it is the latter, the particulars should be given.

5. The petitioner must state in the affidavit that to his knowledge, no PIL arising on the same issue, has been filed anywhere.

6. The affidavit filed by the petitioner must contain the averments that he has filed the writ petition based on his information and his personal knowledge. If he has filed the writ petition based on an information received from any other source, he must clearly indicate the source. If it is a newspaper report, the affidavit shall clearly state as to whether the deponent has verified the facts by personally visiting the place or talking to any responsible person or Reporter or Editor of the newspaper concerned.

7. If the petitioner has given any representation to any authority, a copy of the same shall be filed in the typed set of papers along with reply, if any, received from the authority. He shall file the proof of service of representation before the Court.

<http://www.judis.nic.in> The above rules will not be applicable to the Public Interest Litigations taken on file by the High Court"

7. When the matter came up for hearing on 29.11.2018, this Court passed the following Order:

"The issue raised in the present writ petition is about manufacture and sale of adulterated milk in the State of Tamil Nadu.

2. The issue raised by the petitioner is of significance and it is not only about the illegal manufacture and sale of adulterated milk, but the sale of adulterated foodstuff

may also be there at a significant level and it may be absolutely unsafe for human consumption and it appears to be a larger problem, then it is indicated in this PIL writ petition. Therefore, this court will entertain this PIL writ petition on merits.

3. The status report filed by the Principal Secretary to Government of Health and Family Welfare Department, Chennai giving the position of samples of milk product for last six years from 5.8.2011 to 31.5.2017 does not give complete and recently <http://www.judis.nic.in> updated details of the action taken by the Departments concerned to check the said menace and information about sale of other adulterated foodstuff is not even available.

4. Therefore, we direct the Director of Health of the State Government, who will act as a Nodal Officer on behalf of the State for this case to file his Affidavit with requisite data and Action Taken Reports (ATRs) with regard to the said issues raised in the writ petition and as indicated above viz. as to how many surveys or raids have been conducted by the Authorities of concerned Departments and the details of the criminal proceedings and prosecutions launched under different laws against the offenders, in this regard.

5. A complete and comprehensive report in this regard shall be filed by the Director of Health before the next date of hearing. He should also remain present in the court on the next date. List the case on 12.12.2018."

8. Pursuant to the above order, the Commissioner of Food Safety, Chennai has filed a Status Report dated 12.12.2018, which is extracted hereunder:

<http://www.judis.nic.in> "I, P. Amudha, wife of Shambhu Kallollikar, aged 48 years and having office at Tamil Nadu Food Safety and Drug Administration Department, No: 359, Anna Salai, 5th Floor, DMS Building, Teynampet, Chennai - 600 006 do hereby solemnly affirm and sincerely state as follows:

1. It is submitted that the Food Safety and Standards Act 2006 and Rules 2011 is being implemented in the whole country with effect from 05.08.2011 after repealing the existing PFA Act and other seven (7) orders related to food. Tamil Nadu Food Safety and Drug Administration Department has been formed to implement the Food Safety and Standards Act as per G.O.(MS) No. 347, Health and Family Welfare Department dated 22.12.2011 in Tamil Nadu State.

2. I am the active respondent herein and as such I am well acquainted with the facts of the case and have filed this Status Report.

3. It is submitted that from 05.08.2011 onwards Milk and Milk Products sampling are routinely carried out in all 32 districts under Food Safety and Standards Act by the officials <http://www.judis.nic.in> of the food safety Department.

a) Milk:

The details of Milk samples (Act) analysed, result and cases launched are as follows, From all 32 Districts, a total of 1273 Milk samples (Act) lifted and analysed. Out of which no samples were found unsafe and 289 samples were found substandard and/or misbranded. Number of Criminal Cases launched seven (7) and convicted four (4), penalty imposed Rs.80000/- and number of Civil Cases launched 210 and convicted 177, penalty imposed Rs.

18,57,300/-.

Sub Standard - Dilution with water, addition of vegetable fats, lesser Fat/SNF content, etc.,
Misbranded - Labeling mistakes, ingredients not mentioned, best before/use by date not printed etc., ***

b) Milk Products:

The details of Milk Product samples (Act) analysed, results and cases launched are as follows, <http://www.judis.nic.in> From all 32 Districts, a total of 659 samples Milk product samples (Act) were lifted and analysed. Out of which 24 samples were found unsafe and 274 samples were found substandard and/or misbranded. Number of Criminal Cases launched 22 and convicted five (5), penalty imposed Rs. 107000/- and number of Civil Cases launched 158 and convicted 126, penalty imposed Rs.2129500/-.

Unsafe - Biological contamination like E.coli, Yeast, Mould, Synthetic colour, extraneous matter like hair etc., Sub Standard - Dilution with water, addition of vegetable fat, lesser Fat/SNF content ,etc.,
Misbranded - Labeling mistakes, ingredients not mentioned, best before date/ Use by date not printed etc., ***

4. It is further submitted that the FSSAI, New Delhi has supplied EMAT (Electronic Milk Adulteration Testing) for spot testing of Milk in the field. From 04.01.2017 onwards EMAT machine was sent to eight Districts for testing of Milk Samples and 3467 samples were <http://www.judis.nic.in> analysed, out of which four (4) samples found Unsafe and 499 samples found Substandard.

5. It is further submitted that as per FSSAI guidelines, M/s Vimta Labs Limited has been identified for conducting Nationwide Milk Quality Surveillance by using the Mobile Food Testing Laboratories (MFTL) provided by FSSAI for establishing a robust system for milk quality monitoring in Tamil Nadu State.

6. It is further submitted that apart from the above, as and when complaints are received from public, inspection is made and samples lifted by the Food Safety Officers.

The Food Safety Officers / Designated Officers are regularly monitoring the quality of Milk by lifting Surveillance and Act samples. In our State from the Lab Analysis, presence of detergent (or) urea, starch and formalin is not reported out of the samples tested.

ANNEXURES:

ANNEXURE - I: ACT - MILK & MILK PRODUCTS SAMPLES ANALYSED / RESULT / CASES LAUNCHED FROM 05.08.2011 TO 31.10.2018 <http://www.judis.nic.in>
ANNEXURE - II: ACT SAMPLES ANALYSED AND REPORTED FOR THE PERIOD FROM 05.08.2011 TO 31.10.2018
ANNEXURE - III: FSSA- LABORATORY TESTING REPORT OF THE TAMIL NADU STATE FROM 05.08.2011 TO 31.03.2012
ANNEXURE - IV: FSSA- LABORATORY TESTING REPORT OF THE TAMIL NADU STATE FROM APRIL 2012 TO MARCH 2013
ANNEXURE - V: ANNUAL REPORT OF THE TAMIL NADU STATE FOR THE YEAR 2013-2014
ANNEXURE - VI: ANNUAL REPORT OF THE TAMIL NADU STATE FOR THE YEAR 2014-2015
ANNEXUR -VII: LABORATORY TESTING REPORT OF STATE/UT TAMILNADU FOR THE YEAR 2015-16
ANNEXURE - VIII: FSSA CASE DETAILS FOR THE YEAR 2015-16
ANNEXURE- IX: LABORATORY TESTING REPORT OF STATE/UT TAMILNADU FOR THE <http://www.judis.nic.in> YEAR 2016-17
ANNEXURE - X: FSSA CASE DETAILS FOR THE YEAR 2016-17
ANNEXURE- XI: LABORATORY TESTING REPORT OF STATE/UT TAMILNADU FOR THE YEAR 2017-18
ANNEXURE - XII: FSSA CASE DETAILS FOR THE YEAR 2017-18
In view of the above submission, it is humbly prayed that this Hon'ble Court to record and accept the above submission and pass such order or further order as deem fit in proper and circumstances of the case and thus render justice."

9. When the matter came up for hearing on 12.12.2018, this Court after perusing the Status Report dated 12.12.2018, has further passed the following Order:

"Dr.Vanaja, Director and Additional Commissioner of Food Safety, Chennai is present in the court. She has filed a Status Report dated 12.12.2018, signed by one P.Amudha, Commissioner of Food Safety, <http://www.judis.nic.in> Chennai, through the learned Government Pleader (In charge), along with certain annexures, giving information about the Surveys carried out by the Authorities of the Department of Food Safety and Drug Administration of the State of Tamil Nadu in all the 32 Districts with the details of Unsafe (US), Sub-standard (SS), Misbranded (MB) and Conformity to Standards (CS) items found during such Surveys conducted by the Authorities of the Department.

2. Prima facie, we find that the Information and Statistics furnished in the Status Report are little sketchy and not with full contextual background. The aspects like

(i) how many Licensed Food Manufacturers and Vendors are operating in the State, (ii) how many prosecutions for serious offences have been launched by the Department, (iii) what are the punishments imposed in various convictions, etc. are to be separately highlighted in the form of the Status Report which may now be submitted on the next date of hearing with an advance copy to the learned counsel for the petitioner.

3. The report of convictions and the <http://www.judis.nic.in> imprisonments, prima facie, shows that most of the accused persons and convicts are going away with the payment of fine rather than the imprisonment for serious offences of Food Adulteration. That requires serious attention of this court as well as the learned Trial Courts and Prosecutors.

4. Therefore, we direct the respondents, represented by the Nodal Officer who is present in the court today, to step up the process of search and Surveys and investigation and launching of more such prosecution cases, so that those who indulge in such illegal and criminal acts of selling adulterated food and milk in the State are dealt with strongly. A more comprehensive and detailed report is, therefore, expected. We adjourn the hearing of this case after four weeks for the respondents to take such further pro-active steps and to produce the more comprehensive and detailed report before this court.

List the case again on 21.1.2019 ."

10. Pursuant to the above order directing the Commissioner of Food Safety, Chennai, to file a more comprehensive and <http://www.judis.nic.in> detailed report, the Director and Additional Commissioner of Food Safety and Drug Administration Department, Chennai has filed Status Report No.II, dated 22.01.2019, which is extracted hereunder:

"I, Dr.K.Vanaja , wife of Thangaraj, aged 56 years and having office at Tamil Nadu Food Safety and Drug Administration Department, No: 359, Anna Salai, 5th Floor, DMS Building, Teynampet, Chennai - 600 006 do hereby solemnly affirm and sincerely state as follows:

I am the Director and Additional
Commissioner of Food Safety and Drug

Administration Department, Chennai-600 006 as such I am filing this Status report on behalf of the Commissioner of Food Safety and Drug Administration Department.

In FSSA 2006 CHAPTER IX Deals with Offences and Penalties. Major offences are UNSAFE, SUBSTANDARD, MISBRANDED and CARRYING BUSINESS WITHOUT LICENCE.

1. Section 59 deals about Punishment for unsafe food <http://www.judis.nic.in> i. Imprisonment for a term which may extend to six months and also with fine which may extend to one lakh rupees for unsafe does not result in injury.

ii. Imprisonment for a term which may extend to one year and also with fine which may extend to three lakh rupees for unsafe results in a non-grievous injury.

iii. Imprisonment for a term which may extend to six years and also with fine which may extend to five lakh rupees for unsafe results in a grievous injury.

iv. Imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and also with fine which shall not be less than ten lakh Rupees for unsafe results in death.

2. Section 63 deal about Punishment for carrying out a business without licence:

imprisonment for a term which may extend to six months and also with a fine which may extend to five lakh rupees.

<http://www.judis.nic.in> 3. Whereas punishment for
SUBSTANDARD food (Section 51),

MISBRANDED food (Section 52) shall be liable to a penalty only. Penalty of maximum five lakh rupees for SUBSTANDARD food, Penalty of maximum three lakh rupees for MISBRANDED food.

4. All offences which cannot be tried by a Special Court, shall be tried in a summary way by a Judicial Magistrate of the first class or by a Metropolitan Magistrate (Section 73)

5. The trial of offences relating to grievous injury or death of the consumer for which punishment of imprisonment for more than three years has been prescribed under this Act, constitute, by notification in the Official Gazette, as many Special Courts with the concurrence of the Chief Justice of the High Court as may be necessary for such area or areas and for exercising such jurisdiction, as may be specified in the notification (Section 74). As per this provision government of Tamil Nadu published by notification in the Official Gazette. Vide R.No.4049/2018/Sl/FSSA dated 28.06.2018 of the Commissioner of Food Safety, Chennai <http://www.judis.nic.in> - 6.

6. The Adjudicating Officer shall have power to hold an inquiry for purpose of adjudicating offences punishable under sections 50, 51, 52, 53, 54, 55, 56, 57, 58, 64, 65, 66 and 67 of the Act (Rule 3.1.1:5 of FSS Rules 2011).

7. Offences punishable with imprisonment and fine shall be tried in the Court. Offences punishable with fine only shall be tried before Adjudicating Officer.

Food Safety Department activities on Sampling, Testing and Legal on Milk and Milk Products

1. Licensing and Registration
2. Special Drive report on Fresh milk samples on December 2018
3. Routine Milk and Milk Products Testing
4. Enforcement of the Act
5. Lab details
6. EMAT (Electronic Milk Adulteration Testing).
7. National Survey of testing Milk samples by M/s Vimta Labs Limited.
8. Action taken based on complaints <http://www.judis.nic.in> received on whatsapp.
9. Testing and awareness through Mobile Food Testing Laboratory (MFTL).
10. Awareness through DART Test (Detection Adulteration with Rapid Test).

1. Licensing and Registration :

With Food Safety and Standards (License Registration of Food Business) Rules 2011, all Food Business Operators should obtain License or Registration certificate. Food Business Operators with more than Rupees Twelve lakhs turn over per year should obtain License Certificate from Designated Officer. Food Business Operators with less than Rupees Twelve lakhs turn over per year should obtain Registration Certificate from Food Safety Officer. Food Safety and Standards Authority of India (FSSAI) from June 2013, has introduced online issue of License and Registration Certificate.

It is submitted that the total number of Food Business Operators are 5,99,430 out of which 87,369 have active license and 4,26,121 have active Registration as on 30.11.2018. (Page No.9 & 10) <http://www.judis.nic.in> It is further submitted that the total number of Milk vendors are 17,688 out of which 2,426 have active license and 9,712 have active Registration as on 30.11.2018.(Page No. 11) Type of Milk Vendors Licensing Status is shown in page No. 12 & 13 (Manufacturers, Chilling Units, Collection centers, Marketers, Distributors, Retailers and Booth cycle vendors and Transporters).

2. Special Drive report on Fresh milk samples on December 2018:

It is further submitted that during the month of December 2018, all the Designated Officers are instructed to lift fresh milk samples and tested in Food Lab as Special drive. 788 samples analysed, out of which 657 samples found Conform to Standard,

113 samples found Substandard and 16 samples found Misbranded and two (2) samples found Unsafe (Page No. 14 & 15).

3. Routine Milk and Milk Products Testing:

It is submitted that from 05.08.2011 onwards routine Milk and Milk Products <http://www.judis.nic.in> sample lifting were carried out in all 32 districts and tested in Food Analysis Laboratories. Based on the report under Food Safety and Standards Act, cases are filed in the Court.

a) Milk:

The details of Milk act samples analysed and result are detailed as follows, Milk samples (Act) were lifted from all 32 District, 449 samples analysed during 2017-2018 & 2018-19 (up to Nov'2018). Out of which unsafe is NIL and 120 samples were found substandard and misbranded.(Page No.16)

b) Milk Products:

The details of Milk Product act samples analysed, result and cases launched are detailed as follows, Milk product samples (Act) were lifted from all 32 Districts, 388 samples analysed during 2017-2018 & 2018-19 (upto Nov' 2018). Out of which 13 samples were found unsafe and 166 samples were found substandard and misbranded. (Page No.17)

4. Enforcement of the Act:

It is further submitted that regarding enforcement activities if sample is reported as <http://www.judis.nic.in> Sub-Standard, the case is filed before Adjudicating Officer (DRO), at District Level (Civil Cases). Section 51,52,53,54,55,56, 57,58 of Food Safety and Standards Act, provides penalty for manufacturing, selling, storing or import, etc., in respect of Sub- Standard, Misbranded, Misleading advertisement, extraneous matter, failure to comply with the directions of Food Safety Officer, unhygienic or unsanitary processing or manufacturing of food, processing adulterant food or human consumption and makes it liable to a fine which may extend upto ten lakh rupees.

Usually when the food is reported as Unsafe, Prosecution will be launched against the Accused as per the Food Safety and Standards Act, 2006 specifically relating to the sections 59(i), 59(ii), 59(iii), 59(iv) which gives imprisonment along with fine amount. Whereas Food Safety and Standards Act, 2006 section 79 clearly speaks about Magistrate's power to impose enhanced punishment upto ten lakhs. Regarding fine amount the Trial Judge mostly follow the section 29 Cr.P.C. usually they don't impose the fine amount not exceeding Rs.10,000. If <http://www.judis.nic.in> they

follow section 79 of Food Safety and Standards Act, 2006 then most of the Accused will get serious punishment and they will get fear to commit the offence of adulteration of food products again.

a) Milk:

During 2017-18 & 2018-19, number of Criminal Cases launched nine (9) and convicted four (4), penalty imposed Rs.80000/- and number of Civil Cases launched 125 and convicted 108, penalty imposed Rs.10,26,000/ (Page No. 18)

b) Milk Products:

During 2017-18 & 2018-19, number of Criminal Cases launched 19 and convicted seven (7), penalty imposed Rs. 186000/- and number of Civil Cases launched 97 and convicted 78, penalty imposed Rs. 1833500/- (Page No. 19)

5. Lab details:

Under Food Safety Department six(6) Laboratories are functioning, sanctioned post for Six (6) Food Analysis Laboratories is 233, out of which only 86 posts only in position whereas 147 posts are vacant. Hence, <http://www.judis.nic.in> Government has been addressed by the Food Safety Department regarding this, as the Service rules yet to be finalised by the Government. Due to lack of manpower in Food Analysis Laboratories, faced huge back log in testing of samples. Therefore, from the month of January 2018 upto March 2018 lifting of samples in all the districts by Food Safety Officers was temporarily stopped, as the pending samples to be tested in the Laboratories were in huge number. Subsequently, target for lifting of samples is fixed as six samples per month per Food Safety Officers in all 32 districts from the month of July 2018. (Page No. 20) Category of Food Item tested during 2017-18 in all six Food Analysis Laboratories, 7384 samples were analysed in all category of food item in all six Food Analysis Laboratories, out of which 2461 samples found Non-conforms to standard. (Page No. 21) Category of Food Item tested during 2018-19 in all six Food Analysis Laboratories, 2874 samples were analysed in all category of food item in all six Food Analysis Laboratories, out of which 1535 samples found Non-

<http://www.judis.nic.in> conforms to standard. (Page No.22)

6. EMAT(Electronic Milk Adulteration Testing):

It is further submitted that the FSSAI, New Delhi has supplied EMAT for spot testing of Milk in the field. From 04.01.2017 onwards EMAT machine was sent to eight Districts for testing of Milk Samples and 3467 samples were analysed, out of which four (4) samples found Unsafe and 499 samples found Substandard. (Page No. 23)

7. National Survey of testing Milk samples by M/s Vimta Labs Limited:

It is further submitted that as per FSSAI guidelines, M/s Vimta Labs Limited, Hyderabad has been identified for conducting Nationwide Milk Quality Surveillance by using the Mobile Food Testing Laboratory (MFTL) for establishing a robust system for milk quality monitoring in Tamil Nadu State. Report of Survey is enclosed. (Page No.24)

8. Action taken based on complaints received on whatsapp:

<http://www.judis.nic.in> It is further submitted that as and when public complaints are received, inspection made and samples lifted by the Food Safety Officers. Apart from the above through Whatsapp Complaint Number (9444042322), complaints are received regarding all food items and within 24 hours actions are being taken.

During 2017-18 total number of complaints received are 2106 out of which 46 complaints are Milk related.

During 2018-19 total number of complaints received are 4466 out of which & 26) The Food Safety Officers / Designated Officers are regularly monitoring to ensure the quality of Milk.

9. Testing and awareness through Mobile Food Testing Laboratory (MFTL):

One Mobile Lab has been allotted to Tamil Nadu to create awareness Training and testing of Food. Advanced Tour Programme (ATP) is arrived by the Designated Officers, <http://www.judis.nic.in> vehicle goes to residential areas as per action plan for three (3) days in a week. During Trade Fair, vehicle is parked there to create awareness among public. Through Mobile Food Testing Laboratory (MFTL) awareness has been created among the consumers (public) about adulteration in milk and milk products and milk adulteration is tested.

10. Awareness through DART Test (Detection Adulteration with Rapid Test):

It is further submitted that in all the Districts, awareness has been created by the Designated Officers and Food Safety Officers to prevent adulteration in Milk and Milk Products among the School Students, ICDS workers and the consumers through DART Test - (Detection Adulteration with Rapid Test). DART Test also carried out in Tourist Places to create awareness among the Public.

DART demonstration is regularly done in schools and colleges to create awareness.

11. General food samples lifted, tested, analysed and cases launched from 2017- 18 & 2018-19. (Page No.27& 28) Details of General cases, pending with DRO and Court (Page No. 29)

<http://www.judis.nic.in> Number of Pending Milk and Milk Product cases, pending with DRO and Court, from 2011 to 2018 (Page No. 30 &

31) Line List of Pending Criminal Cases for Milk and Milk Products pending at Court. (Page No.32)
In view of the above submission, it is humbly prayed that this Hon'ble Court to record and accept the above submission and pass such order or further order as deem fit in proper and circumstances of the case and thus render justice."

11. When the matter came up again for hearing on 22.01.2019, this Court upon perusing the Status Report dated 22.01.2019, has passed the following Order:

"Dr.K.Vanaja, Director and Additional Commissioner of Food Safety, Government of Tamil Nadu, Chennai, is present in the Court. She has filed a Compilation of some charts and details about the surveys conducted by the Food Safety Department, of the Milk Sellers in all 32 districts of the State.

<http://www.judis.nic.in>

2. Prima facie, we find that only after the Court has taken up the Public Interest Litigation and started monitoring the working of the Department, the Department appears to have undertaken a special drive in the month of December,2018, and the number of surveys conducted during the entire period of 2017-2018 up to November,2018, from 47 samples analysed, the number has gone up to 790 samples collected and analysed by the Department in the month of December,2018. But, however, on the aspect of further action taken on the basis of Laboratory Reports of these 790 samples, wherein 113 were found to be sub-

standard, vide Page No.7 of the Compilation, filed today, the said Director is unable to produce any further 'Action Taken Report' against these sellers of sub-standard milk.

3. We are also taken through certain statutory provisions of The Food Safety and Standards Act,2006, in short, 'the Act', and the Regulations framed in the year 2011 under the said Act and with reference to Section 11 of the Act, which provides for <http://www.judis.nic.in> 'Licensing and Registration of Food Business', it is submitted by the learned Government Special Government Pleader, appearing for the State/Department, that Regulation No.4 defines 'Petty Food Manufacturer' and it stipulates that the production capacity of food (other than milk and milk products and meat and meat products) does not exceed 100 kg/ltrs per day; or procurement or handling and collection of milk is up to 500 litres of milk per day; and such 'Petty Food Manufacturers' are not required to obtain Licence under the Act, but can get only themselves registered for such food business.

4. Thus, the Small or Petty Food Manufacturers appear to have been left out of the Regulations and supervisory control of the Department. We shall later on examine the validity of the said exclusion.

5. However, for the present, we direct the respondent-Department to submit before us, on the basis of the information to be collected through all the District Revenue Officers (DROs), about the action taken by <http://www.judis.nic.in> in them either on criminal side or on civil side with the case-wise details, as to the quantum of penalty or fine imposed on the erring sellers of milk in each district, and also the details of the criminal cases, launched against these accused persons, in the competent Magistrate Courts.

6. On perusal of the Chart produced before us, we see that even in criminal cases, launched about 6 to 10 months ago, the trials have not reached any final outcome.

7. We, prima facie, feel that the cases pertaining to food safety should have an urgent priority in the competent Courts dealing with such trials also, because, they directly affect the health and life of the citizens protected under Article 21 of the Constitution of India.

8. We, therefore, direct that the Courts concerned dealing with such criminal trials as well as the District Revenue Officers dealing with civil proceedings against such sellers under the Act to give urgent priority to such cases.

<http://www.judis.nic.in>

9. We, therefore, further direct the Registrar General of this Court to obtain reports from the Courts concerned of all the Districts through Principal District Judges about the said class of cases of food safety and the number of cases pending in their Courts, giving year-wise break-up of such cases, to ensure that the trial of such cases pertaining to food safety receive due and urgent priority at their hands.

10. Similar charts from District Revenue Officers concerned, who deal with the civil cases under the said Act, also should be procured by the Director, who is present in the Court, by the next date of hearing, besides submitting case-wise details, in the form of Chart.

11. Illustratively, we may examine a few of such cases dealt with on both sides, on the next date of hearing, to issue further appropriate directions to the concerned in this regard.

12. The Office is directed to issue a copy of this order to (i) the Registrar <http://www.judis.nic.in> General of this Court; (2) the learned Special Government Pleader, appearing for the State-Department; and (3) the Director, who is present in

this Court today, forthwith.

13. List the matter on 26.02.2019."

12. Pursuant to the above order directing the Additional Commissioner of Food Safety and Drug Administration Department, Chennai to file action taken report, the Director and Additional Commissioner of Food Safety and Drug Administration Department, Chennai has filed Status Report No.III, dated 25.02.2019, which is extracted hereunder:

"I, Dr.K.Vanaja , wife of Thangaraj, aged 56 years and having office at Tamil Nadu Food Safety and Drug Administration Department, No: 359, Anna Salai, 5th Floor, DMS Building, Teynampet, Chennai - 600 006 do hereby solemnly affirm and sincerely state as follows:

I am the Director and Additional
Commissioner of Food Safety and Dr

Administration Department, Chennai-600 006 as such I am filing this Status report on behalf <http://www.judis.nic.in> of the Commissioner of Food Safety and Drug Administration Department.

In FSSA 2006 CHAPTER IX Deals with Offences and Penalties. Major offences are UNSAFE, SUBSTANDARD, MISBRANDED and CARRYING BUSINESS WITHOUT LICENCE.

1. Section 59 deals about Punishment for unsafe food i. Imprisonment for a term which may extend to six months and also with fine which may extend to one lakh rupees for unsafe does not result in injury.

ii. Imprisonment for a term which may extend to one year and also with fine which may extend to three lakh rupees for unsafe results in a non-grievous injury.

iii. Imprisonment for a term which may extend to six years and also with fine which may extend to five lakh rupees for unsafe results in a grievous injury.

iv. Imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and also with <http://www.judis.nic.in> fine which shall not be less than ten lakh Rupees for unsafe results in death.

2. Section 63 deal about Punishment for carrying out a business without licence:

imprisonment for a term which may extend to six months and also with a fine which may extend to five lakh rupees.

3. Whereas punishment for SUBSTANDARD food (Section 51), MISBRANDED food (Section 52) shall be liable to a penalty only. Penalty of maximum five lakh rupees for SUBSTANDARD food, Penalty of maximum three lakh rupees for MISBRANDED food.

4. All offences which cannot be tried by a Special Court, shall be tried in a summary way by a Judicial Magistrate of the first class or by a Metropolitan Magistrate (Section 73)

5. The trial of offences relating to grievous injury or death of the consumer for which punishment of imprisonment for more than three years has been prescribed under this Act, constitute, by notification in the Official Gazette, as many Special Courts with <http://www.judis.nic.in> in the concurrence of the Chief Justice of the High Court as may be necessary for such area or areas and for exercising such jurisdiction, as may be specified in the notification (Section 74). As per per this provision government of Tamil Nadu published by notification in the Official Gazette. Vide R.No.4049/2018/S1/FSSA, dated 28.06.2018 of the Commissioner of Food Safety, Chennai

- 6.

6. The Adjudicating Officer shall have power to hold an inquiry for purpose of adjudicating offences punishable under sections 50, 51, 52, 53, 54, 55, 56, 57, 58, 64, 65, 66 and 67 of the Act (Rule 3.1.1:5 of FSS Rules 2011).

7. Offences punishable with imprisonment and fine shall be tried in the Court. Offences punishable with fine only shall be tried before Adjudicating Officer.

Food Safety Department activities on Sampling, Testing and Legal on Milk and Milk Products

1. Licensing and Registration

2. Special Drive report on Fresh milk <http://www.judis.nic.in> samples on December 2018

3. Routine Milk and Milk Products Testing

4. General food samples analysed, cases launched, pending with DRO and Court from 2017-18 85 2018-19

5. Line list of Milk and Milk Product cases pending with DRO as on 31.01.2019

6. Line list of Milk and Milk Product cases pending with Court as on 31.01.2019

7. Enforcement of the Act

8. Lab details

9. Action taken on pending Civil Cases with District Revenue Officer.

10. National Survey of testing Milk samples by M/s Vimta Labs Limited.

11. Action taken based on complaints received on whatsapp.

12. Testing and awareness through Mobile Food Testing Laboratory (MFTL).

13. Awareness through DART Test (Detection Adulteration with Rapid Test).

1. Licensing and Registration :

With Food Safety and Standards (License Registration of Food Business) Rules 2011, all Food Business Operators should obtain License or Registration certificate. Food <http://www.judis.nic.in> Business Operators with more than Rupees Twelve lakhs turn over per year should obtain License Certificate from Designated Officer. Food Business Operators with less than Rupees Twelve lakhs turn over per year should obtain Registration Certificate from Food Safety Officer. Food Safety and Standards Authority of India (FSSAI) from June 2013, has introduced online issue of License and Registration Certificate.

It is submitted that the total number of Food Business Operators are 5,99,771 out of which 83795 have active license, 3,95,278 have active Registration Certificate and totally 4,79,073 have active License / Registration as on 31.01.2019. (Page No.9 & 11).

It is further submitted that the total number of Milk vendors are 18,239 out of which 2649 have active license, 10,069 have active Registration certificate and totally 12,718 License/Registration as on 31.01.2019.(Page No. 9 & 13) Type of Milk Vendors Licensing Status is shown in page No. 15 (Manufacturers, Chilling Units, Collection centers, Marketers, <http://www.judis.nic.in> Distributors, Retailers, Booths, cycle vendors and Transporters).

2. Special Drive report on Fresh milk samples on December 2018:

It is further submitted that during the month of December 2018, all the Designated Officers are instructed to lift fresh milk samples and tested in Food Lab as Special drive.788 samples analysed, out of which 657 samples found Conform to Standard, 113 samples found Substandard and 16 samples found Misbranded and two (2) samples found Unsafe. (Page No. 17)

3. Routine Milk and Milk Products Testing:

It is submitted that from 05.08.2011 onwards routine Milk and Milk Products sample lifting were carried out in all 32 districts and tested in Food Analysis Laboratories.

Based on the report under Food Safety and Standards Act, cases are filed in the Court.

a) Milk:

The details of Milk act samples analysed and result are detailed as follows, Milk samples <http://www.judis.nic.in> (Act) were lifted from all 32 District, 1106 samples analysed during 2017-2018 86 2018- 19 (up to Jan'2019). Out of which unsafe is two (2) and 241 samples were found substandard and misbranded.(Page No. 19)

b) Milk Products:

The details of Milk Product act samples analysed, result and cases launched are detailed as follows, Milk product samples (Act) were lifted from all 32 Districts, 366 samples analysed during 2017-2018 & 2018-19 (upto Jan' 2019). Out of which 14 samples were found unsafe and 145 samples were found substandard and misbranded. (Page No.21)

4. General food samples analysed, cases launched, pending with DRO and Court from 2017-18 & 2018-19. (Page No.23)

5. Line list of Milk and Milk Product cases pending with DRO as on 31.01.2019 (Page No. 25 to 41)

6. Line list of Milk and Milk Product cases pending with Court as on 31.01.2019 (Page No. 43 to 49) <http://www.judis.nic.in> 7. Enforcement of the Act:

It is further submitted that regarding enforcement activities if sample is reported as Sub-Standard, the case is filed before Adjudicating Officer (DRO), at District Level (Civil Cases). Section 51, 52,53,54,55,56,57,58 of Food Safety and Standards Act, provides penalty for manufacturing, selling, storing or import, etc., in respect of Sub-Standard, Misbranded, Misleading advertisement, extraneous matter, failure to comply with the directions of Food Safety Officer, unhygienic or unsanitary processing or manufacturing of food, processing adulterant food or human consumption and makes it liable to a fine which may extend upto ten lakh rupees.

Usually when the food is reported as Unsafe, Prosecution will be launched against the Accused as per the Food Safety and Standards Act, 2006 specifically relating to the sections 59(i), 59(ii), 59(iii), 59(iv) which gives imprisonment along with fine amount. Whereas Food Safety and Standards Act, 2006 section 79 clearly speaks about Magistrate's power to impose enhanced punishment upto ten lakhs. Regarding fine <http://www.judis.nic.in> amount the Trial Judge mostly follow the section 29 Cr.P.C. usually they don't impose the fine amount not exceeding Rs. 10,000. If they follow section 79 of Food Safety and Standards Act, 2006 then most of the Accused will get serious punishment and they will get fear to commit the offence of

adulteration of food products again.

a) Milk:

During 2017-18 & 2018-19, number of Criminal Cases launched eight (8) and Judgement given three (3), penalty imposed Rs.60000/- and number of Civil Cases launched 82 and Judgement given 44, penalty imposed Rs.4,16,000/- (Page No.19).

b) Milk Products:

During 2017-18 & 2018-19, number of Criminal Cases launched 11 and Judgement given two (2), penalty imposed Rs.9000/- and number of Civil Cases launched 80 and Judgement given 38, penalty imposed Rs.7,95,000/- (Page No. 21)

8. Lab details:

Under Food Safety Department six(6) Laboratories are functioning, sanctioned post <http://www.judis.nic.in> for Six (6) Food Analysis Laboratories is 233, out of which only 86 posts only in position whereas 147 posts are vacant. Hence, Government has been addressed by the Food Safety Department regarding this, as the Service rules yet to be finalised by the Government. Due to lack of manpower in Food Analysis Laboratories, faced huge back log in testing of samples. Therefore, from the month of January 2018 upto March 2018 lifting of samples in all the districts by Food Safety Officers was temporarily stopped, as the pending samples to be tested in the Laboratories were in huge number. Subsequently, target for lifting of samples is fixed as six samples per month per Food Safety Officers in all 32 districts from the month of July 2018. (Page No. 51)

9. Action taken on pending Civil Cases with District Revenue Officer:

It is further submitted that the Hon'ble Court issued an order in W.P.No.13717 of 2017 filed by Thiru A.P.Suryaprakasam, dated 22.01.2019 stating to clear all the pending Civil Cases immediately including Milk cases by District Revenue Officer (Adjudicating Officer). As per the direction of the Hon'ble <http://www.judis.nic.in> Court, the Food Safety Department has addressed the District Collectors to issue necessary instructions to the District Revenue Officers to dispose all the pending cases under the Food Safety and Standards Act 2006. As on 31.02.2018, 1005 civil cases are pending with District Revenue Officers, out of which 201 cases are disposed between 01.01.2019 to 18.02.2019. In Milk, 40 cases pending out of which 12 cases gets disposed and in Milk Products, 50 cases pending out of which 11 cases gets disposed between 01.01.2019 to 18.02.2019. (Page No. 53)

10. National Survey of testing Milk samples by M/s Vimta Labs Limited:

It is further submitted that as per FSSAI guidelines, M/s Vimta Labs Limited, Hyderabad has been identified for conducting Nationwide Milk Quality Surveillance by using the Mobile Food Testing Laboratory (MFTL) for establishing a robust system for milk quality monitoring in Tamil Nadu State. Report of Survey is enclosed. (Page No. 55)

11. Action taken based on complaints received on whatsapp:

It is further submitted that as and when <http://www.judis.nic.in> public complaints are received, inspection made and samples lifted by the Food Safety Officers. Apart from the above through Whatsapp Complaint Number (9444042322), complaints are received regarding all food items and within 24 hours actions are being taken.

During 2017-18 total number of complaints received is 2106 out of which 49

59) During 2018-19 total number of complaints received is 5001 out of which 129

59) The Food Safety Officers / Designated Officers are regularly monitoring to ensure the quality of Milk.

12. Testing and awareness through Mobile Food Testing Laboratory (MFTL):

One Mobile Lab has been allotted to Tamil Nadu to create awareness Training and testing of Food. Advanced Tour Programme (ATP) is arrived by the Designated Officers, vehicle goes to residential areas as per action <http://www.judis.nic.in> plan for three (3) days in a week. During Trade Fair, vehicle is parked there to create awareness among public. Through Mobile Food Testing Laboratory (MFTL) awareness has been created among the consumers (public) about adulteration in milk and milk products and milk adulteration is tested.

13. Awareness through DART Test (Detection Adulteration with Rapid Test):

It is further submitted that in all the Districts, awareness has been created by the Designated Officers and Food Safety Officers to prevent adulteration in Milk and Milk Products among the School Students, ICDS workers and the consumers through DART Test - (Detection Adulteration with Rapid Test). DART Test also carried out in Tourist Places to create awareness among the Public.

DART demonstration is regularly done in schools and colleges to create awareness.

In view of the above submission, it is humbly prayed that this Hon'ble Court to Court to record and accept the above submission and pass such order or further order as deem fit in proper and circumstances of the case and thus render justice."

<http://www.judis.nic.in>

13. Today, Mr.A.P.Suryaprakasam, party-in-person, submitted that the directions of the Hon'ble Supreme Court to 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. has not been done by the State Government.

14. On the above submission made by the petitioner, we directed the learned Special Government Pleader to get instructions. On instructions from the Director of Food Safety, the learned Special Government Pleader submitted that Nodal Teachers have been trained at District Level in various districts from 2018 onwards covering many schools. School Children between 1st standard and 12th standard are also imparted training through a programme "Detection Adulteration with Rapid Test (DART)" and also booklets have been issued containing details to understand difference between safe and nutritious food and adulterated food. Learned Special Government Pleader appearing for respondents 1 and 2 further submitted that directions of the Hon'ble Supreme Court would be carried out <http://www.judis.nic.in> continuously. Submission is placed on record.

15. Health and education are the areas where the Government have to pay more attention. Having regard to the prevalence of adulteration in food and other eatables, the Hon'ble Supreme Court has issued guidelines. Based on the news paper report that milk is adulterated, petitioner has filed the instant writ petition.

16. We have gone through the materials on record, the directions issued by the the Hon'ble Supreme Court and the action taken report on the directions issued. Status report and the typed set of papers filed by the first respondent, containing the details of the particulars of operators, District Wise Statistics, type of milk business people, particulars of milk FBO District Wise, sample test conducted, Laboratory Report - December 2018, Manpower details of six laboratories, pending status of cases in Courts and the details submitted by the Registrar General, High Court, Madras, be part of the record.

17. A Hon'ble Division Bench of this Court in its order dated <http://www.judis.nic.in> 22.01.2019, in paragraph Nos. 5 to 12, has observed that civil and criminal cases registered under the Act have to be given urgent priority and accordingly directed the Registrar General, High Court, Madras to submit a report. Accordingly, a consolidated report of cases has been filed. A Hon'ble Division Bench of this Court in its order dated 22.01.2019, in paragraph No.8, has directed the Courts concerned dealing with criminal trials as well as the District Revenue Officers, dealing with civil proceedings against sellers of adulterated milk, under the Food Safety and Standards Act, 2006 to give urgent priority.

18. Registrar General, High Court, Madras is directed to communicate this order to all the Principal District Judges, with instructions to the concerned Courts to give urgent priority.

19. Additional Commissioner of Food Safety and Drug Administration Department, is directed to communicate this order to all the District Collectors for effective implementation of the provision of the Food Safety and Standards Act, 2006 and the directions of the Hon'ble Supreme Court in Swami Achyutanand Tirth Vs. Union of India, reported in 2016 9 SCC 699. <http://www.judis.nic.in>

20. Execution of the directions of the Hon'ble Supreme Court should be monitored periodically. Therefore, we hereby order as follows:

(i) The District Collectors of all the Districts should send a periodical report on the implementation of the directions of the Hon'ble Supreme Court to the Commissioner of Food Safety, Chennai, who shall consolidate the report and submit the same to the Secretary to the Government, Animal Husbandry and Dairy Development Department for review and appropriate instructions.

(ii) As regards criminal action / cases filed in Courts are concerned, District Superintendents of Police are directed to submit periodical reports to the Director General of Police, Chennai / second respondent herein, for appropriate action.

(iii) Director of School Education, Chennai is <http://www.judis.nic.in> directed to continue with the training to both Nodal teachers and children and create awareness through the Detect Adulteration with Rapid Test (DART) and submit a report to the Secretary to the Government, School Education Department, Government of Tamil Nadu.

(iv) The above said periodical reports should be sent once in two months by the authorities concerned.

21. Writ petition is disposed of in the above terms.

W.M.P.No.14905 of 2017, seeking an interim direction, directing the C.B.I. / 3rd respondent to investigate the allegation that milk being sold in Tamilnadu is adulterated and if found true, prosecute the adulterated milk producing companies according to law pending disposal of the writ petition is closed.

W.M.P.No.17999 of 2017, has been filed seeking to implead (1) Shri Rajendra Balaji, Hon'ble Minister for Dairy Development, Government of Tamil Nadu (2) Nestle Every Day and (3) Reliance Milk Products as proposed respondents 4 to 6 as necessary parties in this writ proceedings is dismissed. Hon'ble Minister and others <http://www.judis.nic.in> are sought to be impleaded based on a newspaper report.

Averements made on mere newspaper report cannot be a basis for impleadment. No costs.

Index : Yes
Internet : Yes
kk/skm

Note:

Copy of the order be furnished

to the Registrar General, High Court, Madras, for implementation of the directions.

To

1. The Secretary to Government, Animal Husbandry and Dairy Development Department, Fort St.George, Chennai - 600 009.

2. The Director General of Police, O/o The Director General of Police, Chennai - 600 004.

3. The Director, Central Bureau of Investigation, Government of India, New Delhi.

<http://www.judis.nic.in> S.MANIKUMAR, J.

AND SUBRAMONIUM PRASAD, J.

kk/skm W.P.No.13717 of 2017 and W.M.P.Nos.14905 & 17999 of 2017 01.03.2019
<http://www.judis.nic.in>