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IN THE HIGH COURT OF BOMBAY AT GOA
PIL WRIT PETITION NOS.26,29,31 OF 2018 & 8 of 2019
PIL WRIT PETITION NO.26 OF 2018

SHIVRAJ VINAYAK KAMAT
TARCAR ... PETITIONER

Versus

STATE OF GOA, THR. THE
CHIEF SECRETARY AND 2
ORS. ... RESPONDENTS

Ms Akshata Bhat, Additional Government Advocate for Respondent
Nos.1 and 2.

Mr D. Lawande with Mr P. Dangui, Advocates for Respondent No.4.

WITH
PIL WRIT PETITION NO.29 OF 2018

VITHAL NAIK ... PETITIONER

Versus

STATE OF GOA, THR.
THE CHIEF SECRETARY
AND 2 ORS. ... RESPONDENTS

Mr Nikhil Pai, Advocate for the Petitioner.

Mr Pravin Faldessai, Additional Government Advocate for Respondent
Nos.1 to 3.

Mr D. Lawande and Mr P. Dangui, Advocate for Respondent No.5.

WITH
PIL WRIT PETITION NO.31 OF 2018

VALMIKI NAIK ... PETITIONER

Versus

STATE OF GOA, THR.
THE CHIEF SECRETARY
AND 2 ORS. ... RESPONDENTS

Mr Nigel Da Costa Frias with Mr Vishal Sawant, Advocate for the Petitioner.

Mr Deep Shirodkar, Additional Government Advocate for Respondent Nos.1 and 2.

Mr D. Lawande with Mr P. Dangui, Advocates for Respondent No.3.

**AND
PIL WRIT PETITION NO.8 OF 2019**

GRENVILLE DIAS

... PETITIONER

Versus

CENTRAL BUREAU OF
INVESTIGATION, THR.
ITS HEAD SUP. OF POLICE
CBI DIVISION AND 3 ORS.

... RESPONDENTS

Mr Deep Shirodkar, Additional Government Advocate for Respondent No.2.

Mr D. Lawande with Mr P. Dangui, Advocates for Respondent No.3.

**CORAM: DEVENDRA KUMAR UPADHYAYA &
 M. S. SONAK, J.**

DATE: 9th JANUARY 2024

ORAL ORDER:

- 1.** Heard the learned Counsel representing the respective parties.
- 2.** These Public Interest Litigation petitions invoke our jurisdiction under Article 226 of the Constitution of India, expressing serious concerns regarding the high level of formalin or formaldehyde used as a preservative to preserve the fish.

3. The Food Safety and Standards Authority is a statutory body created under the Food Safety and Standards Act of 2006 and has been vested with certain functions and duties. Section 16 unequivocally provides, rather, mandates that it shall be the duty of the Authority to regulate and monitor the manufacture, processing, distribution, sale and import of food so as to ensure safe and wholesome food items. It also mandates that the Authority shall also provide scientific advice and technical support to the Central Government and the State Governments in matters of framing policy and rules in areas which have a direct or indirect bearing on food safety and nutrition. Section 16 also entrusts the Authority with the duty to make regulations specifying inter alia the limits for the use of food additives, crop contaminants, pesticide residues, residues of veterinary drugs, heavy metals, processing aids, mycotoxins, antibiotics and pharmacologically active substances and irradiation of food.

4. Chapter 7 of the Act of 2006 contains various provisions for enforcement of the Act. Section 29 provides that the Food Authority and the State Food Safety Authorities shall be responsible for the enforcement of the Act, and they shall also monitor and verify that those operating food businesses fulfil the relevant requirements of the law at all stages. It also mandates the Authorities to maintain a system of control and other activities which may be appropriate. Sub-section 4 of Section 29 specifically provides that the Food Safety Officers (who are the State Government Officials) shall enforce and execute within their area the provisions of the Act in respect of which the duty is not cast upon any other Authority expressly or impliedly. Thus,

the statutory mechanism available in the Act of 2006 while creating the Food Safety Authority fixes its responsibility to provide the necessary inputs to the State Governments as also to the Central Government to have effective Food Safety measures. It also makes adequate provisions for enforcing the Act, casting duty to administer the Act primarily on the Food Safety Officers.

5. A Notification dated 11.01.2023, issued by the Food Safety and Standards Authority of India, has been brought to our notice whereby Food Safety and Standards (Food Products Standards and Food Additives) First Amendment Regulations, 2023 have been promulgated. By the said amendment, certain provisions have been incorporated in the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011, including the provisions for regulating the limit of formaldehyde. In terms of Regulation 5 of the amending Regulation 2023, after sub-regulation 2.6.1 of the Regulations of 2011, Regulation 2.6.2 has been added, which reads as follows:

“2.6.2. Limit of Formaldehyde –

(1) The amount of naturally occurring formaldehyde shall not exceed the limit prescribed in the column (2) for different species of fish as mentioned in the table given below:-

Group & Species	mg/kg. Max.
Group - I (Marine)	
All finfishes (including Barracuda, Billfishes, Bombay Duck, Bullseyes, Catfishes, Croakers, Eels, Filefishes and Puffers, Flat fishes, Goatfishes, Groupers (Rock Cods), Half Beaks and Full Beaks, Horse Mackerel, Leather Jacket (Queen Fish),	

<i>Mackerel, Mulletts, Other Carangids, Other Clupeoids, Anchovies, Other Perches, Pigface Breams, Pomfrets, Ribbon Fish, Sardines, Seer Fishes/Spanish Mackerel, Silver Bellies/Biddies, Snappers, Tarpons, Threadfin Breams, Threadfins, Tuna and Bonitos, White Fish and any other commercial varieties), elasmobranchs, crustaceans and molluscs except those under Group III & IV</i>	4.0
Group — II (Freshwater Origin)	
<i>Finfishes (including Indian Major Carps, Minor Carps, Exotic Carps, Freshwater Catfishes, Snakeheads/Murrels, Tilapia, Trout and all other freshwater fin fishes), crustaceans and molluscs</i>	
Group – III (Marine)	8.0
<i>Lizard fishes and any other marine fishes not covered under Group I</i>	
Group — IV (Frozen Stored marine fish products)	100”;
<i>All frozen stored marine fish products</i>	

6. Thus, the Food Safety and Standards of naturally occurring formaldehyde in various kinds of fish is now provided. This implies that if formalin or formaldehyde is found to be in excess of these limits, then the same could be said to be a result of the addition of formalin or formaldehyde to such fish and not due to natural reasons. Formalin or formaldehyde is not permitted to be added to fish for its preservation or for any other reason.

7. Once the Authority has made the aforesaid prescription, it is for the enforcement Officers, especially the Director of Food and Safety in the State Governments and the Food Safety Officer, to ensure that the said limit of formaldehyde in fish is monitored strictly and effectively. The usual defence that the formalin or formaldehyde detected was naturally present or that there was no addition would no

longer be countenanced where the limit prescribed and determined above is exceeded.

8. Thus, having regard to the Notification dated 11.01.2023, promulgated by the Food Safety and Standard Authority of India, we dispose of this Writ Petition with a direction to the Director of Food Safety, State of Goa and also to the State Authority as well as the Food Safety Officers to strictly ensure that there is no addition of formaldehyde or formalin to the fish and where the limits exceed those prescribed above, strict action in accordance with the law is forthwith taken to prevent such harmful practices. We, further, direct that the authorities of the State Government shall take appropriate measures as may be permissible under the provisions of the Food Safety and Standards Act, 2006, and the rules made thereunder, including the penal provisions to ensure that the amount of formaldehyde in various kinds of fishes does not exceed the prescribed limit.

9. The Director of Food Safety, State of Goa, shall accordingly issue a circular to all concerned, including the Food Safety Officers, to take appropriate measures and evolve a mechanism to enforce the standards prescribed by the notification dated 11.01.2023. The Director of Food Safety shall issue a circular in this regard within three weeks. The circular must clarify that it is completely impermissible to add or use formalin or formaldehyde to fish and that the limits of naturally occurring formalin or formaldehyde do not exceed the standards prescribed above. The learned Additional Government Advocate is requested to appraise the authorities concerned of this order forthwith.

10. With the above observations and directions, PIL Writ Petition Nos.26, 29 and 31 of 2018 and PIL Writ Petition No.8/2019 are disposed of.

M. S. SONAK, J.

THE CHIEF JUSTICE

NITI K
HALDANKAR

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