

Bombay High Court

The Association Of The Traders And ... vs Union Of India And 3 Ors on 16 September, 2015

Bench: S.C. Dharmadhikari

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.477 OF 2012

The Association of the Traders carrying the Food)
Business of various Food items being an registered)
Association having its office at 956/71, Katrak Road,)
Vadala, Mumbai - 400031 through, Authorised)

Signatory Shri.Kiran Varshi Gada, Adult,)
Occ: Business, Sadashiv Wadi, Katrak Road,)
Wadala, Mumbai 400031.).. Petitioner.

Vs.

1.Union of India, (Summons to be served on the)
Learned Government Pleader appearing for Union)
of India under Order XXVII, Rule 4, of the Code)
of Civil Procedure,1908) ig)

2. The Secretary, Ministry of Law and Justice,)

Government of India, New Delhi, (Summons to be)
served on the Learned Government Pleader appearing)
for Union of India under Order XXVII, Rule 4, of the)
Code of Civil Procedure,1908.))

3. State of Maharashtra, (Summons to be served on)

the learned Government Pleader appearing for Union)
of India under Order XXVII, Rule 4, of the Code of)
Civil Procedure,1908))
)

4. The Principal Secretary, Ministry of Food, Civil)
Supplies and Consumers, State of Maharashtra,)
Mantralaya, Mumbai-400032. (summons to be)
served on the Learned Government Pleader appearing)
for State of Maharashtra under Order XXVII, Rule 4,)
of the Code of Civil Procedure,1908.)).. Respondents.

AND

WRIT PETITION NO.227 OF 2012

Mumbai Mewa Masala Merchants' Association, a)
registered Association under the provisions of the)
Societies Registration Act,1860, having its registered)
office at 47/49, Yusuf Maherali Road, Mandvi,)
Mumbai - 400 003.)

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)
2. Shri.Raichand Poonshi Dedhia, President of)
Petitioner No.1 Association, having its office at)

M/s.Maruti Masala Mart, 262/70, Narshi Natha)
Street, Bhat Bazar, Mumbai - 400 009.).. Petitioner

Vs.

1. Union of India, represented by its Secretary to the)
Government, Ministry of Health and Family Welfare,)

Nirman Bhavan, New Delhi - 110011.)
)

2. The Secretary, Ministry of Law and Justice, Government)
of India, Shastri Bhavan, 'A' Wing, Dr. Rajendra Prasad Road)

New Delhi - 110 001, through Ministry of Law, Justice)
and Company Affairs, Aaykar Bhavan, New Marine Lines,)
Mumbai-400020. ig)

3. The Principal Secretary, The State of Maharashtra, through)
Ministry of Food and Civil Supplies, Mantralaya, Mumbai)

400032, through Office of Government Pleader, PWD Bldg.)
High Court, Mumbai.)

4. Food Safety and Standards Authority of India, having its)

office at 3rd /4th Floor, Food and Drug Administration Bhavan)
Next to Rashtriya Bal Bhavan, Kotla Road,)

New Delhi - 110 002.)

5. Commissioner of Food Safety of the State of Maharashtra)
having his office at Survey No.341, Bandra Kurla Complex,)

Madhusudan Kalelkar Marg, Bandra (E), Mumbai-400051.).. Respondents.

AND

WRIT PETITION NO.115 OF 2014

1.AHAR, Indian Hotel & Restaurant Association, B-2,)
Wadala Shri.Ram Industrial Estate, Ground Floor,)
G.D.Ambekar Marg, Near Wadala Telephone Exchange,)
Wadala, Mumbai-400031.)
)
2. Mr.Shashikant Shetty, Secretary/Authorized Signatory,)
H-2, Wadala Shri Ram Industrial Estate, Ground Floor,)
G.D.Ambekar Marg, Near Wadala Telephone Exchange,)
Wadala, Mumbai-400031.)..Petitioners.

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vs.

1.Union of India represented by its Secretary to the)

Government, Ministry of Health and Family Welfare,)
Nirman Bhavan, New Delhi - 110 011.)

2. The Secretary, Ministry of Law and Justice, Government)
of India, New Delhi.)

3. The Secretary, The State of Maharashtra, through)

Ministry of MED & FDA Supplies, Mantralaya,)
Mumbai - 400032.)

4. Food Safety and Standards Authority of India constituted)

under the Food Safety and Standards Act,2006 having its)
Office at FDA Bhavan, Near Bal Bhavan, Kotala Road,)
New Delhi - 110 002. ig)

5. Commissioner of Food Safety of the State of Maharashtra)
having its office at S.No.341, Bandra Kurla Complex,)
Bandra (East), Mumbai-400051.)

Mr.A.V.Anturkar, Senior Advocate i/b. Mr.Sugandh Deshmukh, for t
Petitioner in Writ Petition No.477/12.

Mr.Kamal Bhulchandani i/b. Mr Kamal & Co., for the Petitioner in Writ Petition
No.227/12.

Ms.Anjali Purav, for the Petitioner in Writ Petition No.115/14.

Mr.Mehmood Pracha with Mr.Anil Singh, A.S.G., with Dr.G.R.Sharma, Mr.Rui
Rodrigues, Mr.G.Hariharan, Mr.N.R.Prajapati, Mr.T.N.Pathan, Mr.Dhanesh Shah
i/b. Mr.Niraj Kumar, the Respondents - Union of India.

CORAM : S.C.DHARMADHIKARI &
G.S.KULKARNI, JJ.
RESERVED ON : 18th JUNE, 2015.
PRONOUNCED ON : 16th SEPTEMBER, 2015

JUDGMENT : (PER G.S.KULKARNI, J.)

1. Admit. Respondents waive service. By consent of the learned Counsel for the parties and at their request taken up for final hearing.

2. This batch of petitions raise a common challenge. The challenge is to the constitutional validity of the provisions of Food Safety and Standard Act,2006 as also to the rules and regulations framed thereunder.

3. Writ Petition No.477 of 2012 has been filed by the Association of the Traders claiming to carry on business in various food. The petitioner describes itself to be a registered association, however, without specifying under which law, it is so registered. The challenge as raised in this petition is quite broad inasmuch as in prayer clause (a) the petitioners pray for quashing and setting aside the provisions of the Food Safety and Standards Act, 2006 (for short "the FSS Act") as violative of Article 14, 19 and 21 of the Constitution of India. In the alternative, a prayer is made seeking a writ of mandamus to quash and set aside the provisions of Section 31 and 36 and other connected sections of the FSS Act as violative of Article 14, 19 and 21 of the Constitution of India.

4. The second Writ Petition being Writ Petition No.227 of 2012 has been filed by Mumbai Mewa Masala Merchants Association, a registered PVR 5 wp477-227-12=115-13-ghntefinal.doc Association under the provisions of the Societies Registration Act,1860. The prayers as made in the petition are appearing on pages 106 to 116 of the paper book which contain prayer clause (a) to (g) and the substantive prayers being prayer clause (a) to (c). The challenge as raised in this Writ Petition is also too broad and verbose inasmuch as apart from the challenge to the substantive provisions of the FSS Act, there is also a challenge to the certain provisions under the Licensing Regulations. The challenge is basically to the legality of the provisions of Sections 31, 34, 38, 46, 65, 70 and 80 of the FSS Act.

5. The third Writ Petition is filed by one AHAR Indian Hotel and Restaurant Association. It claims to be an Association of restaurants and hotel owners in and around Mumbai and other parts of the State of Maharashtra, registered under the Societies Registration Act,1860. The petitioners in this petition pray that the FSS Act and the Rules and Regulations,2011 framed thereunder be declared as illegal and unconstitutional, null and void, qua the food service providers i.e. hotels and restaurants, and, in the alternative that the FSS Act and Rules and Regulations framed thereunder are mainly framed and/or applicable to the manufacturing units / factories and not to the hotels and restaurants providing food services to its customers. Prayer clause (e) has seven sub-heads wherein several other prayers are made and it would be appropriate that we reproduce those prayers which read as under:-

"(e) That this Hon'ble Court be pleased to issue a writ of Mandamus or a writ in the nature of certiorari or any other PVR 6 wp477-227-12=115-13-ghntefinal.doc appropriate writ, order or direct the Respondents;

(i) Not to consider Hotels and Restaurants as manufacturers as defined u/s.3(zd) of FSS Act.

(ii) To direct the Respondent No.5 to provide for representation from the Hotels and Restaurants in Central Advisory Committee.

(iii) To direct the Respondents to clarify whether the provisions of Section 16 are applicable to the Hotels and Restaurants.

(iv) To direct the Respondents to create separate category of Hotels and Restaurants in FSS Act.

(v) To direct the Respondents to modify the amount of penalty to be charged to Hotels & Restaurants (Food Service Provider).

(vi) To direct the Respondents to frame separate & specify Rules and Regulation for Food Service Provides.

(vii) To direct the Respondents to exempt Hotels and Restaurants from process of filing returns as per regulations 2.1.13."

6. Before we examine the challenge as raised in all these Writ Petitions, we may at the outset observe that though these Writ Petitions challenge the constitutional validity of the provisions of the FSS Act and the Rules and Regulations framed thereunder, none of these petitions aver the foundation for such a challenge. The foundation necessarily has to be from a bundle of facts which would show that the implementation of the Act in a given set of facts has violated any of the Constitutional and other legal rights as guaranteed to the petitioners. It is well settled that the challenge to the PVR 7 wp477-227-12=115-13-ghntefinal.doc Constitutional validity of the Act must be on the basis of a certain and definite set of facts and not on an apprehension. In other words a challenge to the Constitutionality of statute cannot be raised in abstract or in a vacuum. The essential facts are the foundation and become necessary to examine the validity of the Act. The position in this regard can very well be traced to the decision of the Supreme Court in the case of "Sant Lal Bharti Vs. State of Punjab, ((1988) 1 SCC 366)". The Supreme Court in the case of " Kusum Ingots & Alloys Ltd.

Vs. Union of India & Anr. ((2004)6 SCC 254)" has reiterated this position that a Writ Court would not determine the Constitutional question in vacuum and that passing of a legislation would give rise to cause of action, however, only when the provisions of the legislation which were implemented, would give rise to civil or evil consequences to the petitioner. In all these three petitions, the petitioners have failed to set out on facts as to how the provisions of the impugned enactment have adversely affected the petitioners. We categorically asked the learned Counsel

appearing for each of these petitioners as to whether any notices or any adverse action has been taken against any of their members by the Authorities implementing the provisions of the Act, the learned counsel for the petitioners, however, conceded that no adverse action is taken by the Authorities implementing the FSS Act and much less entailing any apprehended consequence of the manner as averred in the petitions. Nonetheless as the issues are of a recurring nature and the petitioners representing a cross section of the trade and food supply business, we proceed to decide the same. We have accordingly heard the learned Counsel for the parties at length, so as to examine PVR 8 wp477-227-12=115-13-ghntefinal.doc the merits of the representative challenge as raised.

FACTS:-

7. Writ Petition No.477 of 2012 is filed by the Association of Traders carrying Food business. Writ Petition No.227 of 2012 is filed by the Mumbai Mewa Masala Merchants Association claiming to be a registered Association of the retailers - wholesalers of dry fruits and spices, and are claiming to have a membership of 49 retailers and wholesalers. The challenge in these two Writ Petitions though couched in different words is quite similar. We, therefore, in common set out the case of the petitioners. The challenge is on the ground of extensive powers, conferred by the FSS Act on the various authorities, vagueness of the provisions violating the rights of the petitioner under Article 14, 19(1)(g), 21 and 300A of the Constitution of India. It is the petitioners' case that its members who are in the business of food items would be adversely affected by implementation of the FSS Act. The petitioners have averred that by virtue of the Act, earlier laws relating to food and adulteration stand repealed which are the Prevention of Food Adulteration Act, 1954, the Food Products Order 1955, the Meat Foods Products Order 1973, the Vegetable oil Products (Control) Order, 1947, the Edible Oil Packaging (Regulation) order, 1998, the Solvent Extracted Oil Mill and De oiled Meal and Edible Flour (Control) Order 1967, the Milk and Milk Products Order 1992, and other orders issued under the provisions of Essential Commodities Act, 1955 relating to food. It is stated that these laws have been repealed by virtue of Section 97 of the Act. The petitioners state that the Central Government under the FSS Act has been given a power to PVR 9 wp477-227-12=115-13-ghntefinal.doc frame statutory Rules by virtue of Section 91 of the FSS Act. As also the Food Authority has been given power to make regulations under Section 92 of the Act.

Under Section 94 of the Act, the State Government has an authority to make Rules. The petitioners state that they are aggrieved by the implementation of the FSS Act, apart from the broad challenge raised to the entire FSS Act. The principal grievance as averred in the petition is on the licensing provision which is contained in Section 31 of the FSS Act. The contention is that Section 31 provides that no person shall commence or carry on any food business "except under a licence", and for this purpose sub-section (3) of Section 31 provides that any person desirous to commence or carry on any food business shall make an application for grant of a licence to "the Designated Officer", in such manner as may be specified in the Regulations. The petitioners aver that the expression "Designated Officer" as defined under Section 36 of the FSS Act provides that the Commissioner of Food Authority, shall by an order appoint, a Designated Officer who shall be not below the rank of Sub-Divisional Officer, to be in-

charge of Food Safety Administration in such a manner as may be specified by Regulations. It is the petitioners' case that the Sub-Divisional Officer is an Officer who is appointed under the provisions of the Maharashtra Land Revenue Code and who is entrusted purely with the duties as a Revenue Officer. The contention is that in exercising the functions of granting a licence, such Officer is required to be satisfied on various aspects pertaining to public health in either accepting or rejecting the application for a licence. It is the petitioners' contention that a conjoint reading of the provisions of Section 31 read with PVR 10 wp477-227-12=115-13-ghntefinal.doc Section 36 of the FSS Act confers powers on the Sub-Divisional Officer to take a decision on the licence application and the Sub-Divisional Officer, if satisfied that "it is necessary so to do in the interest of public health", the Sub-

Divisional Officer may reject an application. It is the petitioners' case that conferment of such powers on a Sub-Divisional Officer as a 'designated officer' to issue a licence for carrying food business, is arbitrary. The reason being that the Sub-Divisional Officer is merely a Revenue Officer. Neither he is a technical officer nor he has knowledge or a technical know-how about the food business or about food industries. The Sub-Divisional Officer is merely entrusted with the work of revenue collection under the provisions of the Revenue law, and who has no technical qualification, and such a person is entrusted with the job of either accepting or rejecting the application for licence.

8. The next issue the petitioners' raise is that Section 31 (2) of the FSS Act contain vague words which are not defined which would render the provision illegal. The FSS Act does not define as to what is meant by "petty manufacturer". It does not define as to what is meant by "petty retailer" or "hawker" or "itinerant vendor", "temporary stall holder" or "small scale or cottage or other industries relating to food business", or "tiny food business operator". Unless these words are defined, they are incapable of being implemented and thus, Section 31(2) is rendered vague and impracticable.

9. The next contention as urged by the petitioners is pertaining to PVR 11 wp477-227-12=115-13-ghntefinal.doc exercise of powers by the Designated Officer. The petitioners contend that under Section 31(4) of the Act, the Designated Officer, if satisfied that it is necessary to do so in the interest of public health, may reject a licence application, and for such rejection neither there are any guidelines laid down in the Statute as to what is meant by the words "in the interest of public health", nor there are any guidelines which have been laid down in the rule making power of the Central Government. Also no guidelines are found in the rule making power conferred on the State Government or in the Regulation making power of the Food Authority under the provisions of the FSS Act.

ig The contention is that as to what would be in the interest of public health in rejecting an application is a grey area unsupported by any rules or regulations and, thus, the Designated Officer who is a Sub-Divisional Officer is required to exercise such unguided and undefined powers using his own discretion. The exercise of power by the designated officer is purely discretionary and thus, would lead to a discrimination violating the mandate of Article 14 of the Constitution. If by such exercise of power a licence is rejected to the members of the petitioners Association, then, this is

imposing an unreasonable restriction on the right to carry on an occupation and profession by the members of the petitioners and would violate the fundamental rights guaranteed under Article 19(1)(g) of the Constitution of India. The restriction is not a reasonable restriction and on the permissible grounds as envisaged under Article 19(6) of the Constitution.

10. The second limb of the challenge is to the provisions of Section 32, PVR 12 wp477-227-12=115-13-ghntefinal.doc 33, 34 35 and 36 of the FSS Act, on the ground that very wide powers are conferred upon the "Designated Officer" appointed under the FSS Act. The powers as conferred on this officer is the power to issue improvement notices, prohibition orders, emergency prohibition notices and orders to be passed under Section 32, 33, 34, 35 and 36 of the Act without issuing a show cause notice before such a drastic action and that the Designated Officer can take a direct action against the shopkeepers, which is against the principles of natural justice.

By this provision no opportunity is made available to the shopkeepers / owners to satisfy the Authorities that there is no wrong committed by them in respect of food safety. The Designated officer is conferred wide powers of cancellation of food business licence and prohibiting sale of any articles of food description of which is found to be in contravention of the Rules and Regulations. The Designated Officer is also conferred with the powers of prosecution. The conferment of such powers on the Designated Officer will render it difficult for any shop owner to conduct business and earn his livelihood.

11. Further it is the petitioners' case that the powers conferred on the Food Safety Officer under Section 38 of the Act to take, to enter and inspect any place where the articles of foods are manufactured or stored for sale or stored for manufacture and if it is found that there is a contravention of the provisions of the FSS Act, take action against such shop or shop owners on the spot, without giving any opportunity to call for any explanation as also exercise powers under the Code of Criminal Procedure relating to search, inspection of the place, is PVR 13 wp477-227-12=115-13-ghntefinal.doc illegal, contrary to the principles of natural justice and equity rendering the provision illegal and unconstitutional.

12. Then the grievance is in respect of Section 39 of the Act which provides for liability of Food Safety Officer in certain cases. The grievance of the petitioners is that if any complaint is made against any Food Safety Officer and if the complainant fails to prove the complaint then fine of Rs.50,000/- to Rs.1,00,000/- can be imposed on the complainant, which itself is illegal as it will be very difficult to prove malpractice adopted by the Food Safety Officer. Such provision in fact protects the illegalities and/ or the malpractices / corruption of a Food Safety Officer as there is deterrent to file a complaint against such an officer. The next grievance is pertaining to provisions of Sections 41 and 42 conferring wide power of search, seizure, investigation and prosecution, and that conferring of such wide powers is arbitrary. Further, Section 41 would render that no search would be deemed to be irregular by reason of the fact that the witnesses for the search are not inhabitants of the locality, in which locality, the place searched is situated. These are wide powers without any restrictions. The next challenge is to the provisions of Sections 50, 51, 52 and 53. The contention is that the penalty of about Rs.5,00,000/- has been proposed to be imposed for selling food which is not of a nature or substance or quality demanded. Thus, a penalty can be imposed on the basis of the

report prepared by the Food Safety Officer without giving a show cause notice to the shop owner concerned.

Similarly, Section 54 provides penalty of Rs.5,00,000/- if the food contains PVR 14 wp477-227-12=115-13-ghntefinal.doc extraneous matters and Section 55 imposes penalty of Rs.2,00,000/- for failure to comply with the directions of the Food Safety Officer. Section 56 also imposes penalty for unhygienic or insanitary processing or manufacturing of food. Section 57 provides for penalty for possessing adulterant and Food Safety Officer can take action by imposing a fine upto Rs.10,00,000/-. All these provisions are totally illegal and arbitrary.

13. Then the assail is to the provisions of Section 61 and 64 which provide for punishment for false information and punishment for subsequent offence. The petitioners contend that these provisions are contrary to the well settled principles of law, requiring compliance of principles of natural justice and, therefore, required to be struck down. Also Section 65 which proposes to pay compensation to the victim in case of injury or death of consumer, of not less than Rs.5,00,000/- in case of death, and not exceeding Rs.3,00,000/- in case of grievous injury, and not exceeding Rs.1,00,000/- in all other cases of injury.

The challenge is that the compensation is far on the higher side and if such compensation is imposed, it would be difficult for the shopkeepers to do business. Further Section 69 which deals with the power to compound an offence, does not allow compounding of minor offences, the provision is, therefore, illegal. Section 69 of the Act provides no guidelines as to when it can be said that a reasonable plea exists that a person has committed an offence as also it is not clear what is meant by the words "contravention against this Act". It is also not clear as to "when such persons are suspected to have committed PVR 15 wp477-227-12=115-13-ghntefinal.doc offence".

14. Then, the challenge is to the provision of Section 72 of the Act which provides that a Civil Court shall have no jurisdiction to entertain any suit or proceedings in respect of any matter which an Adjudicating Officer or Tribunal is empowered by or under the Act to determine and no injunction shall be granted by any Court or other Authority in respect of any action taken or to be taken in pursuance of any powers exercised under the Act. The contention is that the provision is contrary to the Civil law applicable in the entire country since the Government is not able to establish the Tribunal as contemplated under Act at each and every place, and, therefore, Civil Courts become necessary and a proper remedy to the shop owners. Thus, Section 72 deserves to be quashed and set aside.

15. The petitioners aver that the above several provisions of the Act are violative of Articles 19(1) (g) and 21 of the Constitution on the ground that they suffer from excessive delegation. The submission on Article 21 is that the procedure which has been contemplated under the various provisions of the Act is almost unworkable and highly subjective, completely impracticable and on this count it is not "procedure established by law within the meaning of Article 21 of the Constitution."

16. It is, then, averred that the Regulations framed under the Act PVR 16 wp477-227-12=115-13-ghntefinal.doc namely Food Safety and Standard (Licencing and Registration

of Food Business) Regulations, 2011 (for short "the Licencing Regulation) and more particularly, regulation 1.2.4 is vague and impracticable. The registration procedure contemplated by Regulation 2.1.1.(1)(2)(4) alongwith the requirement of Schedule IV is also vague and impracticable. Further in the case of Non Petty Food Operator, the provisions of Section 3(n), 3(zd) and Section 3(o) and the requirement of Section 27 and Schedule IV Part 2 of the Licencing Regulations, alongwith the Regulation 2.1.2 and Section 58 are vague and results in making the said sections vagarious and impracticable and thus, the provisions are illegal and bad-in-law. It is the contention of the petitioners that the guidelines are to be mentioned in the statute itself and not in the delegated legislations WRIT PETITION NO.115 OF 2014

17. This Writ Petition is by the Association of Restaurants and Hotels which is a society registered under the Societies Registration Act and claiming to have a membership of about 3000 members. The challenge is similar to the one as raised in the earlier two Writ Petitions and challenge to the provisions of the Act, Rules and Regulations framed thereunder on the basis that the provisions are ambiguous, impracticable to be complied with by the members of the petitioners and which take away the fundamental and constitutional rights of its members. The provisions if allowed to remain in the statute book, the same will not only confer arbitrary powers in the officers appointed under the Act, but also abuse of the fundamental and constitutional rights vested in the citizens PVR 17 wp477-227-12=115-13-ghntefinal.doc leading to corruption. That each and every provision as challenged in the petition is ambiguous and is not at all clear and whether the same is applicable to the Hotels and Restaurants. The penal sections provide for huge penalties, prosecution and imprisonment without being heard and the provisions would operate on overall whims and fancies of the officers appointed under the Act and thus, the provisions are violative of the provisions of Articles 14, 19(1)(g) and 300A of the Constitution of India.

18. After having discussed about the nature of the challenge as raised in these petitions, we now proceed to record the submissions as made on behalf of the learned Counsel for the petitioners. Mr. Anturkar, learned Senior Counsel appearing for the petitioners in Writ Petition No.477 of 2012 submits that the provisions of the Act are vague and extremely ambiguous and are left to be exploited by the officers. Apart from the broad challenge as raised in the Writ Petition, Mr. Anturkar has confined his submissions on the challenge to Section 31 and Section 36 of the FSS Act. Mr. Anturkar has drawn our attention to the provisions of Section 31 of the Act which pertains to Licencing and Registration of food business. Our attention is invited to certain expressions which are used in Section 31 namely the expression "Food business" as defined under Section 2(n), "Unsafe Food" as defined under Section 2(zz), "sale" as defined under Section 2(zr), "manufacturer" as defined under Section 2(zd). The submission of Mr. Anturkar is that there are number of words as appearing in these provisions which are not defined. These words being "processing", "Storage", "distribution", "food services", "catering", "food ingredients". It is submitted that the Act does not define many of the items as contained in Section 31 and thus the consequence is that the provisions are subject to abuse on account of their vagueness. It is submitted that the definitions are required to be precise and the scope of activities sought to be governed by the provisions of Section 31 cannot be left vague subjecting it to the absolute discretion of the Officer who would act under the provisions. Mr. Anturkar has then drawn our attention to the provisions of the Licencing Regulation and more particularly, to clauses 2.1.2,

Schedule IV Part I, Clauses 14, 15, 16 and 18 to submit that the aspects which are covered by these clauses are vague and hence are rendered arbitrary.

19. Mr. Bulchandani, learned Counsel appearing on behalf of the petitioners in Writ Petition No. 227 of 2012 submits that the grievance of the petitioners for striking down the provisions of the FSS Act is principally on account of vast discretionary powers being conferred on the Officers in the lower hierarchy empowering them to grant different licences. Mr. Bulchandani submits that Section 31 (6) of the FSS Act would require licence for each food article to be sold and would also require different licences. It is submitted that Section 31(8) of the FSS Act would show that it is hardly a remedy if the licence application is rejected, as the same is the remedy to file an appeal before the Commissioner of Food Safety under whose orders the Designated Officers are appointed. Mr. Bulchandani submits that the provisions of the Act contemplate a "licencing Raj" being established, with wide discretion to the officers on every PVR 19 wp477-227-12=115-13-ghntefinal.doc possible aspect concerning manufacture, sale, distribution and consumption of food articles. By drawing our attention to the provisions of Sections 23, 34, 38, 46, 80, 65, 77 and the provisions of the definition clauses, it is submitted that the provisions of the FSS Act are vague, conferring an unwarranted discretion with the officer which is impracticable and unworkable and thereby would render to be unconstitutional, violating the fundamental rights.

20. Mr. Dhakephalkar, learned Senior Counsel appearing on behalf of the petitioners in Writ Petition No. 115 of 2014 would submit that the provisions of the FSS Act lacks absolute clarity as to which rules would be applicable to the manufacturers, the hoteliers and the processing units. He submits that the rules which are applicable to the manufacturers cannot be made applicable to the hotels and restaurants. In support of his submission, Mr. Dhakephalkar has invited our attention to the provisions of Section 50 of the Act which provides for penalty for selling foods not of a nature or substance of the quality demanded. He submits that a bare reading of this provision in its applicability to the hoteliers would instantly show that the same would subject the members of the petitioners to harassment and abuse inasmuch as the food which is prepared in the hotel cannot be left to the compliance of the provisions of the Act and Regulations, and violation thereof liable to a penalty. Mr. Dhakephalkar has drawn our attention to the licensing regulations and more particularly Annexure-

3 which provides for conditions of licence to be complied by the Food Business Operators at all times during the course of food business. He has drawn our PVR 20 wp477-227-12=115-13-ghntefinal.doc attention to Clause 4 which is a condition that the food business operator shall employ at least one technical person to supervise production process and who shall possess degree in science with chemistry/ bio chemistry/ food and nutrition/ microbiology or a degree or diploma in food technology/ dairy technology/ dairy microbiology/ dairy chemistry/ dairy engineering/ oil technology/ veterinary science/ hotel management & catering technology or any degree or diploma in any other discipline related to the specific requirements of the business from a recognized university or institute or equivalent. His submission is restaurants and more particularly for small restaurants such condition is impossible of compliance. Also it is difficult for such restaurants to get qualified under clause 4 and comply with this clause. Mr. Dhakephalkar would submit that the provisions which are actually meant to be applicable to the

manufacturers cannot be made applicable to the restaurants and thus, the provisions in its application to the restaurants are violative of Articles 14, 19(1)

(g) and 21 of the Constitution and, therefore, are required to be struck down.

21. Mr.Kapadia, learned Counsel appearing for the intervener in the Writ Petition No.227 of 2012 submits that his clients are the Bombay Mudibazar Kirana Merchants Association who are seeking to implead themselves in the Writ Petition filed by the Mumbai Mewa Masala Association. The contention is that they are also equally prejudiced by the provisions of the Act and the Rules and Regulations in their application to his clients who are dealing with the food items at the APMC and who would also be subjected to various norms and the PVR 21 wp477-227-12=115-13-ghntefinal.doc provisions of the Act. The intervention application is in the nature of Chamber summons. The affidavit supporting the Chamber Summons, does not disclose anything except certain bald averments. These interveners were not precluded from filing their independent proceedings if at all they are having any grievances. It appears that these applicants have adopted an approach to sit on the fence. Further no specific instance of a nature infringing any legal rights of the applicant has been demonstrated in the intervention application or during the course of the arguments. We are therefore certain that these applicants are not aggrieved in any manner. Normally we would have rejected such intervention at the outset, however, we permitted Mr.Kapadia to make submissions. We may observe that the applicants had no material much less of any substance except to mostly explain to the Court as to how his clients operate in APMCs and how hypothetically these provisions would operate in the imagination of the applicants. We do not countenance such intervention application, suffice it to say that such applications are misconceived and amounting to colossal waste of judicial time and leading such parties nowhere.

22. On the other hand, we have heard Mr.Pracha, learned Counsel appearing for Food Safety and Standard Authority of India who has defended these Writ Petitions on behalf of the respondents. Mr.Pracha submits that the FSS Act is concerned with one of the most important aspect concerning human health namely 'the food'. Mr.Pracha submits that the Parliament has thought it imperative to control every aspect concerning the availability of safe food for PVR 22 wp477-227-12=115-13-ghntefinal.doc human consumption in this extensive legislation. Mr.Pracha has taken us through the provisions of the Acts, Rules and Regulations to submit that the object of the Act is to regulate, manufacture, storage, distribution, sell and import of food so that safe and wholesome food is available for human consumption. He submits that the provisions are intended to achieve these objects and that any dereliction or violation of the provisions would directly affect the human health and life. Mr.Pracha would submit that the Act intends to establish a new regime to bring about availability of wholesome and safe food in the larger public interest so as to protect human life. He submits that the Regulations which are framed under the Act are intended to curb mischiefs, malpractices, so as to regulate the manufacture, storage, sale and distribution of the food items. It is submitted that the consumption of food is now held to be a necessary concomitant flowing from Article 21 of the Constitution of India. It is submitted that the petitioners have failed to make out any case inasmuch as none of the petitioners have come with a specific cause of action affecting any of their legal rights. It is submitted that the challenges as raised are abstract, vague and too general warranting any attention of this Court in these proceedings.

Mr.Pracha would submit that the arguments of the petitioners in its entirety would show that the petitioners intend to construe the provisions as per need and convenience of the parties and with an intention to avoid the rigours of providing safe food for human consumption.

23. Mr.Pracha has taken us through the reply affidavit filed on behalf PVR 23 wp477-227-12=115-13-ghntefinal.doc of respondent no.1 by Mr.Deba Prasad Guha, Joint Director , Western Region Mumbai, Food Safety and Standards Authority of India (for short 'FSSAI'). The affidavit has set out that the objective behind the formation of the 'Food Safety and Standards Authority of India (FSSAI) which is to lay down science based standards for articles of food and for regulating manufacturing, processing, storage, distribution, sale and import of food so as to ensure availability of safe and wholesome food for human consumption in India. It is stated that the FSSAI proposes to support research projects and related innovative research and development proposals pertaining to food safety and quality control by extending financial assistance to various Institutions/Universities, public funded organizations and recognized Research and Development Laboratories both in public and private sectors and non-Governmental organizations across the country. The object of the scheme is that the outcome and findings of research and development will ensure food safety and promotion of safety standards in the food sector in the country. It is stated that consequent to the setting up of FSSAI, there are major developments taking place globally on inculcating quality approach in the regulatory bodies and therefore, the objectives of FSSAI are not purely to act as a regulatory or enforcement body but to act as a facilitator to promote the production and supply of safe and healthy food to the diverse Indian population. It is stated that to achieve a modern, flexible regulatory regime, FSSAI is scheduled to build a foundation of strong systems within dynamic service quality standards which aim for the best and would have continuous scope for improvement. It is stated that the FSS Act is the single PVR 24 wp477-227-12=115-13-ghntefinal.doc reference point for all matters relating to food safety and standards, regulation and enforcement; transparent and accountable regulatory framework; investors friendly regulatory mechanism; empowerment of consumers' with dissemination of adequate information; spread of food safety concept to grass root level by involving local panchayats and municipalities. The reply avers that the grounds of challenge as raised by the petitioners are without any substance and in the detailed affidavit the Authority has justified the provisions of the Act and to contend that the arguments of the petitioners are ambiguous, vague and non inclusion of definition of certain terms as alleged on the part of the petitioner is of no consequence. It is contented that the provisions of the Act are unambiguous and the provisions are required to be understood by giving an ordinary meaning to the words which are used in the provisions and in the context of the subject matter of the legislation.

24. The State of Maharashtra and the Principal Secretary which have been arrayed as respondents have also filed an affidavit of Shri.Kamlesh V.Sankhe, Joint Commissioner (Food). These respondents have opposed the Writ Petitions and have relied on the affidavit in reply filed in the companion Writ Petition no.227 of 2012. It is contended that the arguments of the petitioners on the 'Designated Officer" being conferred power as Licensing Authority under Section 31 read with Section 36 of the Act are patently misconceived inasmuch as the petitioners had failed to appreciate the meaning of the word "rank" as used in Section 36 of the Act. It is stated that in the State of PVR 25 wp477-227-12=115-13-ghntefinal.doc Maharashtra, the officers designated as the Supervisors

(Food) in the Food and Drugs Administration who were working with Local (Health) Authorities and were having prescribed qualification are being appointed and notified as Designated Officer. Our attention is drawn to the fact that the qualification and duties of the Commissioner of Food Safety, Designated Officer are defined in Rule 2.1 of Food Safety and Standards Rules, 2011. Rule 2.1.1 of the Rules provides for qualification of the Commissioner of Food Safety and the powers and duties of the Commissioner. Rule 2.1.2 provides for qualification of a Designated Officer. It is submitted that a perusal of these rules clearly indicate that the submissions as made on behalf of the petitioners on the qualifications of the Designated Officer are completely misconceived. Similarly, the Counter as filed on behalf of the respondents has dealt with each and every contention and the allegations as made on behalf of the petitioners.

25. With the assistance of the learned Counsel appearing for the parties, we have gone through the paper books in these proceedings, we have also perused the provisions of the Act and the Regulations framed thereunder.

26. As the challenge in these petitions is very broad, it would be appropriate to consider the legislative background as also the Scheme of the FSS Act in some detail. This would enable us to effectively appreciate the scope of challenge as raised by the petitioners.

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Legislative Background

27. The Parliament enacted the Food Safety and Standards Act,2006 (hereinafter referred to as "FSS Act,2006") repealing the Prevention of Food Adulteration Act,1954, the Fruit Products Order,1955, the Meat Food Products Order,1973, the Vegetable Oil Products (Control) Order,1947, the Edible Oils Packaging (Regulation) Order,1998, the Solvent Extracted Oil, De oiled Meal, and Edible Flour (Control) Order,1967, the Milk and Milk Products Order,1992, any other orders issued under the Essential Commodities Act,1955 relating food.

The repealed Acts and Orders are enumerated in the Second Schedule of the FSS Act forming part of the repeal provision being Section 97 of the FSS Act.

We may make a reference to the preamble and the statement of objects and reasons. It is well settled that such reference is permissible for understanding the background, antecedent, state of affairs in relation to the Statute and the evil which the statute has sought to remedy. The preamble and the statement of objects and reasons appended to any legislation are evidence of the legislative judgment, indicating the thought process of the elected representatives of the people and their recognition of the prevalent state of affairs, impelling them to enact the law. The preamble and the statement of objects and reasons hence constitutes an important factor which amongst others will be taken into consideration by the Court in judging the reasonableness of any restriction imposed on the fundamental rights of the individuals.

The preamble of the FSS Act recites that it is an Act to consolidate the laws relating to food and to establish the Food Safety and Standards PVR 27 wp477-227-12=115-13-ghntefinal.doc Authority of India for laying down science-based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto. The Statement of Objects and Reasons of the FSS Act inter-alia sets out in detail that the then Member-

Secretary, Law Commission of 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 indepth survey of the International scenario, the then Member-Secretary recommended that the new Food Law be seen in the overall perspective 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 modernization and convergence of regulations of Food Standards with the elimination of multi-level and multi-departmental control. The current emphasis being on responsibility with manufacturers, recall, genetically modified and functional foods, emergency control, risk analysis and communication and food safety and good manufacturing practices and process control, viz. Hazard Analysis and Critical Control Point. It is stated that 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 was named as "The Food Safety and Standards Bill,2005". The main object of the Bill was to bring out a PVR 28 wp477-227-12=115-13-ghntefinal.doc single statute relating to food and to provide for a systematic and scientific development of Food Processing Industries. It was proposed to establish the FSSAI 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 would be assisted by Scientific Committees and Panels in fixing standards and by a Central Advisory Committee in prioritization of the work. Thus, the main features of the Bill as enumerated in paragraph (5) and (6) of the Statement of Objects and Reasons are as follows:-

"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 noval/ 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 PVR 29 wp477-227-12=115-13-ghntefinal.doc 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.

The abovesaid 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."

Scheme of the FSS Act,2006.

28. On the aforesaid legislative background FSS Act,2006 was enacted and was brought into force at different dates as provided for in sub-section (3) of Section 1. A perusal of the scheme of the Act shows that Section 3 as contained in Chapter I is the definition clause. Section 3 has Sub-sections (a) upto sub-

section (zz). As the scope of legislation is extensive, it defines number of terms in relation to several aspects concerning food. Chapter II pertains to the Food Safety and Standards Authority of India, its establishment, composition, method of selection of the members, term of office, conditions of service, removal of Chairperson and members of Food Authority, functions of Chief Execution Officer, functions of Central Advisory Committee, constitution of Scientific Panels, constitution of Scientific Committee, procedure for Scientific Committee and Scientific Panel. One of the important provisions in this Chapter is Section 16 which pertains to the duties and functions of Food Authority. This provision assumes importance in the context of appreciating the other provisions of the Act, the duties and functions of various Authorities under the Act as also the scope of duties and functions of such Authorities. Section 16 reads thus:-

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"16. Duties and functions of Food Authority.

(1) It shall be the duty of the Food Authority to regulate and

monitor the manufacture, processing, distribution, sale and import of food so as to ensure safe and wholesome food.

(2) Without prejudice to the provisions of sub-section (1), the Food Authority may by regulations specify -

(a) the standards and guidelines in relation to articles of food and specifying an appropriate system for enforcing various standards notified under this Act;

(b) the limits for use of food additives, crop contaminants, pesticide residues, residues of veterinary drugs, heavy metals, processing aids, myco-toxins, antibiotics and pharmacological active substances and irradiation of food;

(c) the mechanisms and guidelines for accreditation of certification bodies engaged in certification of food safety management systems for food businesses;

(d) the procedure and the enforcement of quality control in relation to any article of food imported into India;

(e) the procedure and guidelines for accreditation of laboratories and notification of the accredited laboratories;

(f) the method of sampling, analysis and exchange of information among enforcement authorities;

(g) conduct survey of enforcement and administration of this Act in the country;

(h) food labelling standards including claims on health, nutrition, special dietary uses and food category systems for foods; and

(i) the manner in which and the procedure subject to which risk analysis, risk assessment, risk communication and risk management shall be undertaken.

(3) The Food Authority shall also -

(a) provide scientific advice and technical support to the Central Government and the State Governments in matters of framing the policy and rules in areas which have a direct or indirect bearing on food safety and nutrition;

(b) search, collect, collate, analyse and summarise relevant scientific and technical data particularly relating to -

(i) food consumption and the exposure of individuals to risks related to the consumption of food;

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(ii) incidence and prevalence of biological risk;

(iii) contaminants in food;

(iv) residues of various contaminants;

(v) identification of emerging risks; and

(vi) introduction of rapid alert system;

(c) promote, co-ordinate and issue guidelines for the development of risk assessment methodologies and monitor and conduct and forward messages on the health and nutritional risks of food to the Central Government, State Governments and Commissioners of Food Safety;

(d) provide scientific and technical advice and assistance to the Central Government and the State Governments in implementation of crisis management procedures with regard to food safety and to draw up a general plan for crisis management and work in close co- operation with the crisis unit set up by the Central Government in this regard;

(e) establish a system of network of organisations with the aim to facilitate a scientific co-operation framework by the co-ordination of activities, the exchange of information, the development and implementation of joint projects, the exchange of expertise and best practices in the fields within the Food Authority's responsibility;

(f) provide scientific and technical assistance to the Central Government and the State Governments for improving co-operation with international organisations;

(g) take all such steps to ensure that the public, consumers, interested parties and all levels of panchayats receive rapid, reliable, objective and comprehensive information through appropriate methods and means;

(h) provide, whether within or outside their area, training programmes in food safety and standards for persons who are or intend to become involved in food businesses, whether as food business operators or employees or otherwise;

(i) undertake any other task assigned to it by the Central Government to carry out the objects of this Act;

(j) contribute to the development of international technical standards for food, sanitary and phyto-sanitary standards;

(k) contribute, where relevant and appropriate to the development of agreement on recognition of the equivalence of specific food related measures;

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(l) promote co-ordination of work on food standards undertaken by international governmental and nongovernmental organisations;

(m) promote consistency between international technical standards and domestic food standards while ensuring that the level of protection adopted in the country is not reduced; and

(n) promote general awareness as to food safety and food standards.

(4) The Food Authority shall make it public without undue delay -

(a) the opinions of the Scientific Committee and the Scientific Panel immediately after adoption;

(b) the annual declarations of interest made by members of the Food Authority, the Chief Executive Officer, members of the Advisory Committee and members of the Scientific Committee and Scientific Panel, as well as the declarations of interest if any, made in relation to items on the agendas of meetings;

(c) the results of its scientific studies; and

(d) the annual report of its activities;

(5) The Food Authority may from time to time give such directions, on matters relating to food safety and standards, to the Commissioner of Food Safety, who shall be bound by such directions while exercising his powers under this Act;

(6) The Food Authority shall not disclose or cause to be disclosed to third parties confidential information that it receives for which confidential treatment has been requested and has been acceded, except for information which must be made public if circumstances so require, in order to protect public health. "

(emphasis supplied.) Perusal of this provision indicates that it would be the duty of the Food Authority to 'regulate' and 'monitor' the manufacture, processing, distribution, sale and import of food so as to ensure safe and wholesome food.

As also without prejudice to these basic parameters as contained in sub-section (1), the Food Authority is empowered to provide by regulations various aspects as enumerated in sub-clauses (a)

to (i) in sub-section (2) of Section 16. The PVR 33 wp477-227-12=115-13-ghntefinal.doc authority to frame regulations as contained in these clauses is on variety of issues touching every small aspect concerning the standard of food safety, enforcement of the standards, use of food additives, crop contaminants, pesticide residues, residues of veterinary drugs, heavy metals, processing aids, mycotoxins, antibiotics and pharmacological active substances and irradiation of food; the mechanisms and guidelines for accreditation of certification bodies engaged in certification of food safety management system for food business;

the procedure and the enforcement of quality control in relation to any article of food imported into India; the procedure and guidelines for accreditation of laboratories and notification of the accredited laboratories; the method of sampling, analysis and exchange of information among enforcement authorities;

conduct survey of enforcement and administration of the Act in the Country;

food labelling standards including claims on health, nutrition, special dietary uses. Apart from these various aspects on which regulations can be framed, the Food Authority under sub-section (3) is also conferred a advisory role namely to provide scientific advice and technical support to the Central Government and the State Governments in matter of framing the policy and rules in areas which have a direct or indirect bearing on food safety and nutrition, and various other ancillary works as enumerated in sub-sections (a) to (n) of sub-section (3) of Section 16 of the Act. Sub-section (5) of Section 16 casts a duty on the food Authority from time to time give directions in matters relating to food safety and standards, to the Commissioner of Food Safety who will be bound by the directions while exercising power under the FSS Act.

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29. Chapter III which contains Section 18 pertains to "general principles" to be followed in the administration of the FSS Act. This provision is also of significance and reflects the legislative intent and the object which is sought to be achieved at the hands of the Central Government and the State Government and the other agencies under the Act. The principles are laid down in sub-sections (1) and (2) of Section 18. This provision plays pivotal role in the implementation of the Provisions of the Act, Rules and Regulations, and we, therefore, deem it appropriate to extract the same. Section 18 reads thus:-

"18. General principles to be followed in Administration of Act.

The Central Government, the State Governments, the Food Authority and other agencies, as the case may be, while implementing the provisions of this Act shall be guided by the following principles namely:-

(1) (a) endeavour to achieve an appropriate level of protection of human life and health and the protection of consumer's interests, including fair practices in all kinds of food trade with reference to food safety standards and practices;

(b) carry out risk management which shall include taking into account the results of risk assessment and other factors which in the opinion of the Food Authority are relevant to the matter under consideration and where the conditions are relevant, in order to achieve the general objectives of regulations;

(c) where in any specific circumstances, on the basis of assessment of available information, the possibility of harmful effects on health is identified but scientific uncertainty persists, provisional risk management measures necessary to ensure appropriate level of health protection may be adopted, pending further scientific information for a more comprehensive risk assessment;

(d) the measures adopted on the basis of clause (c) shall be proportionate and no more restrictive of trade than is required to achieve appropriate level of health protection, regard being had to technical and economic feasibility and other factors regarded as reasonable and proper in the matter under consideration;

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(e) The measures adopted shall be reviewed within a reasonable period of time, depending on the nature of the risk to life or health being identified and the type of scientific information needed to clarify the scientific uncertainty and to conduct a more comprehensive risk assessment;

(f) in cases where there are reasonable grounds to suspect that a food may present a risk for human health, then, depending on the nature, seriousness and extent of that risk, the Food Authority and the Commissioner of Food Safety shall take appropriate steps to inform the general public of the nature of the risk to health, identifying to the fullest extent possible the food or type of food, the risk that it may present, and the measures which are taken or about to be taken to prevent, reduce or eliminate that risk; and

(g) where any food which fails to comply with food safety requirements is part of a batch, lot or consignment of food of the same class or description, it shall be presumed until the contrary is proved, that all of the food in that batch, lot or consignment fails to comply with those requirements.

(2) The Food Authority shall, while framing regulations or specifying standards under this Act-

(a) take into account -

(i) prevalent practices and conditions in the country including agricultural practices and handling, storage and transport conditions; and

(ii) international standards and practices, where international standards or practices exist or are in the process of being formulated, unless it is of opinion that taking into account of such prevalent practices and conditions or international standards or practices or any particular part thereof would not be an effective or appropriate means for securing the objectives of such regulations or where there is a scientific justification or where they would result in a different level of protection from the one determined as appropriate in the country;

(b) determine food standards on the basis of risk analysis except where it is of opinion that such analysis is not appropriate to the circumstances or the nature of the case;

(c) undertake risk assessment based on the available scientific evidence and in an independent, objective and transparent manner;

(d) ensure that there is open and transparent public consultation, directly or through representative bodies including all levels of panchayats, during the preparation, evaluation and revision of PVR 36 wp477-227-12=115-13-ghntefinal.doc regulations, except where it is of opinion that there is an urgency concerning food safety or public health to make or amend the regulations in which case such consultation may be dispensed with :

Provided that such regulations shall be in force for not more than six months;

(e) ensure protection of the interests of consumers and shall provide a basis for consumers to make informed choices in relation to the foods they consume;

(f) ensure prevention of -

(i) fraudulent, deceptive or unfair trade practices which may mislead or harm the consumer; and

(ii) unsafe or contaminated or sub-standard food.

(3) The provisions of this Act shall not apply to any farmer or fisherman or farming operations or crops or livestock or aquaculture, and supplies used or produced in farming or products of crops produced by a farmer at farm level or a fisherman in his operations. "

(emphasis supplied) A perusal of Section 18 reveals that the foundation is preservation of human life and health while protecting the consumer's interest and by having fair practices in all kinds of food and trade and maintenance of food safety and standards and practices. A significant feature to be noted in this provision is that the entire endeavour is to take care of the harmful effects of food on the basis of scientific studies and taking appropriate measures to ensure availability of safe food for human consumption.

30. Chapter IV of the FSS Act pertains to general provisions as to articles of food. This chapter contains provisions from Section 19 to 24. Section 19 pertains to use of food additives or processing aid unless the same is in PVR 37 wp477-227-12=115-13-ghntefinal.doc accordance with the provisions of the Act and regulations. Section 20 provides for contaminants, naturally occurring toxic substances, heavy metals etc. which if contained in excess quantities are likely to affect human health. Section 21 provides for pesticides, veterinary drugs residues, antibiotic residues and microbiological counts and the control of such ingredients in the food articles.

Section 22 provides for genetically modified foods, organic foods, functional foods, proprietary foods, etc. Section 23 pertains to packaging and labelling of foods which is also an important ingredient by which a consumer would be guided in respect of the contents of the food articles as being notified on the packaging and the labels on food products available in the market. Section 24 provides for restriction on advertisement and prohibition as to unfair trade practices. Chapter V of the FSS Act pertains to the provisions relating to import and that the imports are required to conform to the various rules and regulations and the provisions of the FSS Act. Chapter VI of the FSS Act deals with the special responsibilities as to food safety and contains Sections 26 to 28. Section 26 provides for responsibility of food business operator. This provision is of some significance as it provides for the different obligations a food business operator would be required to undertake while engaging himself in the business in food. Section 26 reads thus:-

26. Responsibilities of the Food business operator .

(1) Every food business operator shall ensure that the articles of food satisfy the requirements of this Act and the rules and regulations made thereunder at all stages of production, processing, import, distribution and sale within the businesses under his control.

(2) No food business operator shall himself or by any person on his behalf manufacture, store, sell or distribute any article of food -

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(i) which is unsafe; or

(ii) which is misbranded or sub-standard or contains extraneous matter; or

(iii) for which a licence is required, except in accordance with the conditions of the licence; or

(iv) which is for the time being prohibited by the Food Authority or the Central Government or the State Government in the interest of public health; or

(v) in contravention of any other provision of this Act or of any rule or regulation made thereunder.

(3) No food business operator shall employ any person who is suffering from infectious, contagious or loathsome disease.

(4) No food business operator shall sell or offer for sale any article of food to any vendor unless he also gives a guarantee in writing in the form specified by regulations about the nature and quality of such article to the vendor:

Provided that a bill, cash memo, or invoice in respect of the sale of any article of food given by a food business operator to the vendor shall be deemed to be a guarantee under this section, even if a guarantee in the specified form is not included in the bill, cash memo or invoice.

(5) Where any food which is unsafe is part of a batch, lot or consignment of food of the same class or description, it shall be presumed that all the food in that batch, lot or consignment is also unsafe, unless following a detailed assessment within a specified time, it is found that there is no evidence that the rest of the batch, lot or consignment is unsafe:

Provided that any conformity of a food with specific provisions applicable to that food shall be without prejudice to the competent authorities taking appropriate measures to impose restrictions on that food being placed on the market or to require its withdrawal from the market for the reasons to be recorded in writing where such authorities suspect that, despite the conformity, the food is unsafe."

31. Section 27 of the FSS Act is an equally important provision and provides for liability of manufacturers, packers, wholesalers, distributors and sellers. Section 27 reads thus:-

PVR 39 wp477-227-12=115-13-ghntefinal.doc "27. Liability of the manufacturers, packers, wholesalers, distributors and sellers (1) The manufacturer or packer of an article of food shall be liable for such article of food if it does not meet the requirements of this Act and the rules and regulations made thereunder.

(2) The wholesaler or distributor shall be liable under this Act for any article of food which is-

(a) Supplied after the date of its expiry; or

(b) Stored or supplied in violation of the safety instructions of the manufacturer; or

- (c) Unsafe or misbranded; or
 - (d) Unidentifiable of manufacturer from whom the article of food have been received; or
 - (e) Stored or handled or kept in violation of the provisions of this Act, the rules and regulations made thereunder; or
 - (f) received by him with knowledge of being unsafe.
- (2) The seller shall be liable under this Act for any article of food which is -
- (a) sold after the date of its expiry; or
 - (b) handled or kept in unhygienic conditions; or
 - (c) misbranded; or
 - (d) unidentifiable of the manufacturer or the distributors from whom such articles of food were received; or
 - (e) received by him with knowledge of being unsafe. "

32. A cumulative reading of the provisions of Sections 26 and 27 would show a variety of obligations, duties, precautions and methods which are required to be taken by the Food Business Operators, manufacturers, packers, wholesalers, distributors and sellers, all dealings in the food items affecting human life. These provisions, therefore, are significant to appreciate the PVR 40 wp477-227-12=115-13-ghntefinal.doc contentions as being canvassed on behalf of the petitioner.

33. Chapter VII pertains to enforcement of the FSS Act. This Chapter concerns the various authorities responsible for enforcement of the Act and contains some provisions which are being assailed on behalf of the petitioners.

The span of this chapter is from Section 29 to Section 42. Section 29 pertains to the authorities who are responsible for enforcement of Act. Section 30 provides for Commissioner of Food Safety of the State. Section 31 provides for licensing and registration of food business with which the petitioners have a quarrel.

Section 32 is a provision for issuance of improvement notices. The other provisions of this Chapter pertains to prohibition orders, emergency prohibition notices and orders, notification of food poisoning. Section 36 provides for the appointment of a Designated Officer on which the petitioners have a quarrel.

Section 37 pertains to the Food Safety Officer. Section 38 provides for powers of Food Safety Officer. Section 39 provides for liability of Food Safety Officer in certain cases. Section 40 provides that

purchaser may have food analysed.

Section 41 pertains to power of search, seizure, investigation, prosecution and procedure thereof. Section 42 provides for procedure for launching prosecution.

This Chapter, therefore, indicates as to how the provisions of the Act would be implemented so as to confer different powers and duties on the various functionaries under the Act and the scope of such powers. Chapter VIII deals with the analysis of food. The petitioners have an issue about certain provisions as contained in this Chapter. The provisions in this Chapter are from Sections 43 PVR 41 wp477-227-12=115-13-ghntefinal.doc to 47 providing for various aspects pertaining to recognition and accreditation of laboratories, research institutions and referral food laboratory, recognition of organisation or agency for food safety audit, functions of food analysts and sampling and analysis. Chapter IX pertains to penal provision being offences and penalties under the Act. The petitioners have a grievance in respect of some of the provisions of this Chapter. Chapter X pertains to adjudication and food safety appellate Tribunal which contains different facets of adjudication, power to compound offence, establishment of Food Safety Appellate tribunal.

34. The next Chapter which is relevant is Chapter XII which contains miscellaneous provisions from Sections 85 to Section 101 providing for facets like powers of Central Government to issue directions to Food Authority and obtain reports and returns, power of Central Government to give directions to State Governments, overriding effect of the Act over all other food related laws, power of the Central Government to make rules, power of Food Authority to make regulations, power of the State Government to make rules, transitory provisions etc.

35. A detailed examination of the scheme of the FSS Act as discussed above, reveals the legislative intent to include every possible aspect regarding manufacture, processing of foods, distribution of food articles, its ultimate sale and import to ensure safe and wholesome food. The statement of objects and reasons which we have referred hereinabove is of assistance to appreciate the PVR 42 wp477-227-12=115-13-ghntefinal.doc legislative intent underlying each of these provisions in interpreting these provisions and to ascertain the object as sought to be achieved.

36. It is quite clear that multiple laws on Food which were prevailing stand repealed by this enactment. The Parliament in exercise of its legislative powers as conferred in entry 18 of List III has enacted the FSS Act in the interest of Public Health and to safeguard the constitutional guarantee to the citizens as conferred under the provisions of Article 21 of the Constitution, from the perspective of human health and consumption of food being a necessary concomitant of this fundamental right. This Act is a successor to the provisions of the Prevention of Food Adulteration Act which stood repealed by the FSS Act, which also held a regime from the time it was brought into force in the year 1954 till it was repealed by the FSS Act. It was a welfare legislation aimed at preventing health hazard which would be caused by consuming adulterated food.

The legislative power of the Parliament in enacting Prevention of Food Adulteration Act was also in Entry 18 in List III of the Constitution. A challenge to this Act was considered by the Constitution Bench of the Supreme Court in the case of "State of Uttar Pradesh Vs. Kartar Singh, (AIR 1964 SC

1135)". The case concerned the prosecution faced by the respondent Kartar Singh of an offence under Section 7 read with Section 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954. Mr. Kartar Singh was conducting a shop. The Food Inspector purchased some quantities of ghee. The sample of the Ghee was sent for analysis. The public analyst expressed an opinion that the PVR 43 wp477-227-12=115-13-ghntefinal.doc sample contained small proportion of vegetable fat or oil foreign to pure ghee.

The Medical Officer of Health sanctioned the prosecution against Kartar Singh and a complaint was lodged before the Magistrate First Class by the Food Inspector. Kartar Singh pleaded not guilty and entered a defence. The defence was that it was not adulterated and that he had obtained ghee which has sold from Jodhpur. The requirement of such additive in Jodhpur was different. The Magistrate, however, did not accept the defence and sentenced him to R.I. for a period of six months and fine of Rs.500/-. In the appeal the Sessions Judge confirmed the findings of the Magistrate, however, while upholding the conviction reduced the sentence of imprisonment from six months to one month and fine of Rs.200/-. In a criminal revision petition before the High Court under Section 435 and 439 of Cr.P.C. 1898, the learned Judge of the High Court disagreed with the Courts below on finding of facts based on the standards of ghee in Jodhpur Region. As different standards were prescribed at Jodhpur, the High Court held that the respondent was not guilty of adulteration and directed his acquittal. It was this decision of the High Court which was in appeal before the Supreme Court. A challenge was raised in regard to the standards prescribed under the Food Adulteration Act being violative of Article 14. The Supreme Court set aside the decision of the High Court and restored the sentence of conviction of one month as imposed by the Sessions Court. While examining the provisions of the Prevention of Food Adulteration Act, the Supreme Court in paragraphs 15 and 16 has observed thus:-

"15. The standards themselves, it would be noticed, have been prescribed by the Central Government on the advice of a PVR 44 wp477-227-12=115-13-ghntefinal.doc Committee which included in its composition persons considered experts in the field of food technology and food analysis. In the circumstances, if the rule has to be struck down as imposing unreasonable or discriminatory standards, it could not be done merely on any a priori reasoning but only as a result of materials placed before the Court by way of scientific analysis. It is obvious that this can be done only when the party invoking the protection of Art. 14 makes averments with details to sustain such a plea and leads evidence to establish his allegations. That where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the rules offend Art. 14 the burden is on him to plead and prove the infirmity is too well established to need elaboration. If, therefore, the respondent desired to challenge the validity of the rule on the ground either of its unreasonableness or its discriminatory nature, he had to lay a foundation for it by setting out the facts necessary to sustain such a plea and adduce cogent and convincing evidence to make out his case, for there is a presumption that every factor which is relevant or material has been taken into account in formulating the classification of the zones and the prescription of the minimum standards to each zone, and where we have a rule framed with the assistance of a committee containing experts such as the one constituted under Section 3 of the Act, that presumption is strong, if not overwhelming. We might in this connection add that the respondent cannot assert any fundamental right under Article 19(1) to carry on business in adulterated foodstuffs.

16. Where the necessary facts have been pleaded and established, the Court would have materials before it on which it could base findings, as regards the reasonableness or otherwise or of the discriminatory nature of the rules. In the absence of a pleading and proof of unreasonableness or arbitrariness the Court cannot accept the statement of a party as to the unreasonableness or unconstitutionality of a rule and refuse to enforce the rule as it stands merely because in its view the standards are too high and for this reason the rule is unreasonable. In the case before us there was neither pleading nor proof of any facts directed to that end. The only basis on which the contention regarding unreasonableness or discrimination was raised was on a priori argument addressed to the Court, that the division into the- zones was not rational, in that hilly and plain areas of the country were not differentiated for the prescription of the minimum Reichert values. That a distinction should exist between hilly regions and plains, was again based on a priori reasoning resting on the different minimum Reichert values prescribed for Himachal Pradesh and Uttar Pradesh and on no other. It was, however, not as if the entire State of Himachal Pradesh is of uniform elevation or even as if no part of that State is plain country but yet if the same minimum was prescribed for the entire area of Himachal PVR 45 wp477-227-12=115-13-ghntefinal.doc Pradesh, that would clearly show that the elevation of a place is not the only factor to be taken into account. (emphasis supplied)

37. We may also usefully refer to the decision of the Supreme Court in the case of "Andhra Pradesh Grain and Seed Merchants Association Vs. Union of India, (AIR 1971 SC 2346)" wherein the Supreme Court considered a challenge to the validity of Section 7 read with Section 2(v) and 2(ix) and Section 19(2)(i) and Section 10 read with Section 13 of the Prevention of Food Adulteration Act, 1954 and the rules framed thereunder challenged on the ground that they are violative of fundamental rights guaranteed under Article 14, 19(1)

(g) and 20(3) of the Constitution. The Supreme Court held that the restriction imposed on the conduct of business by traders in foodstuffs by the provisions of the Prevention of Food Adulteration Act cannot be deemed unreasonable, as the Act was enacted to deal with the great social evil and for ensuring public welfare especially in the offences against public health. It was held that the scheme of the Act envisaged that compliance with the regulatory provisions will be promoted by imposing an absolute liability. It was held that adulteration and misbranding of foodstuffs is a rampant evil and a statute calculated to control that evil is indisputably in the interest of the general public. It was held that the statute imposing restrictions upon traders will not be deemed unreasonable merely because it makes a departure from the normal structure of statutes enunciating offences and prescribing punishments. In paragraphs 5, 6, 7, 8, 10, 11 and 13 the Supreme Court has observed thus:-

"5. In our judgment, the restrictions imposed upon the conduct of business by traders in foodstuffs cannot be deemed PVR 46 wp477-227-12=115-13-ghntefinal.doc unreasonable. By Section 16(1) provision is made for imposing penalties, among other acts, for storage, sale or distribution of articles of food which are adulterated or misbranded, or sale of which is prohibited by the Food (Health) authority in the interest of the public health, or is in contravention of the Act or the rules. The Act, it is true, does not make some blame-worthy mental condition constituted by knowledge or intention relating to the nature of the article stored, sold or distributed, an ingredient of the offence. Unless the case falls within sub-section (2) of Section. 19, if sale, storage or distribution is

established, intention to sell articles or knowledge that the articles are adulterated, misbranded, or prohibited need not be proved by the prosecutor to bring home the charge. Sub-section (1) of Section 19 provides that it is no defence in a charge, for an offence pertaining to the sale of any adulterated or misbranded article of food to allege merely that the vendor was ignorant of the nature, substance or quality of the food sold by him, or that the purchaser having purchased any article for analysis was not prejudiced by the sale. By that clause a bare plea of ignorance by a trader about the nature, substance or quality of the food sold by him is not a defence in a prosecution for the offence pertaining to the sale of any adulterated food nor that the article was, purchased for analysis.

6. But in considering whether creation of absolute liability amounts to imposing unreasonable restrictions, the Court has to strike a balance between the individual right and public weal. The Courts will not strike down an Act as imposing unreasonable restrictions merely because it creates an absolute liability for infringement of the law which involves grave danger to public health. The Courts will undoubtedly consider whether without imposing absolute liability the object of the statute could be reasonably secured. For that purpose the Court will consider the object of the Act, apprehended danger to the public interest, arising out of the activity if not controlled and the possibility of achieving the intended results by less stringent provisions. The nature of the trade in foodstuffs, the channels of supply and the movement of goods from trader to trader and fertile sources of adulteration and misbranding make it extremely difficult in a large majority of cases to establish affirmatively that storage or sale of adulterated or misbranded foodstuff was with a guilty mind. Provisions in the statute book creating absolute liability for sale of adulterated food are fairly common. Section 3(1) of the English "Foods & Drugs Act", 1938, imposes absolute duty on a dealer in foodstuff regardless of negligence : Lindley v. George W. Horner & Co. Ltd.; 1950-1 All ER 234 and Lamb v. Sunderland and District Creamery Ltd.; 1951-1 All ER 923. The same provision is repeated in Section 2 of the "Food and Drugs Act", 1955. In Halsbury's Laws of England, Vol. 10 (3rd Edn.) at p.273, Art. 508, it is stated :-

"A statutory crime may or may not contain an express definition of the necessary state of mind. A statute may require a specific intention, malice, knowledge, wilfulness, or recklessness. On the other hand, it may be silent as to any requirement of mens rea, and in such a case in order to determine whether or not mens rea is an essential element of the offence, it is necessary to look at the objects and terms of the statute. In some cases, the courts have concluded that despite the absence of express language the intention of the legislature was that mens rea was a necessary ingredient of the offence. In others, the statute has been interpreted as creating a strict liability irrespective of mens rea. Instances of this strict liability have arisen on the legislation concerning food and drugs, liquor licensing, and many other matters".

In Mousell Brothers v. London and North Western Rail Co. (1917)2 KB 836 at P.845, Atkin, J., observed :

"..... yet the legislature may prohibit an act or enforce a duty in such words to make the prohibitions or the duty absolute :..... To ascertain whether a particular Act of Parliament has that effect or not, regard must be had to the object of the statute, the

words used, the nature of the duty laid down, the person whom it is imposed, the person by whom it would in ordinary circumstances be performed, and the person upon whom the penalty is imposed."

In 1952-1 All ER 380, the Court of Appeal held that Regulation-26(1) of the Mill and Dairies Regulation, 1949, requiring a distributor to ensure that every vessel used as a container for milk shall be in a state of thorough cleanliness, imposed an absolute liability.

7. It is true that for the protection of the liberty of the citizen, in the definition of offences, blameworthy mental condition is ordinarily an ingredient either by express enactment or clear implication : but in Acts enacted to deal with a grave social evil, or for ensuring public welfare, especially in offences against public health, e.g., statutes regulating storage or sale of articles of food and drink, sale of drugs, sale of controlled or scarce commodities, it is often found necessary in the larger public interest to provide for imposition of liability without proof of a guilty mind.

8. If from the scheme of the Act it appears that compliance with the regulatory provisions will be promoted by imposing an absolute liability, and that it cannot otherwise be reasonably ensured, the Court will be justified in holding that the restriction on the right of the trader is in the interest of the general public.

PVR 48 wp477-227-12=115-13-ghntefinal.doc Adulteration and misbranding of foodstuffs is a rampant evil and a statute calculated to control that evil is indisputably in the interest of the general public : The statute imposing restrictions upon traders will not be deemed unreasonable merely because it makes a departure from the normal structure of statutes enunciating offences and prescribing punishments. By sub-section. (2) of Section 19, even in respect of the absolute offence, the Parliament has enacted that on proof of certain facts, criminal liability will be excluded. Thereby a vendor is not deemed to have committed an offence pertaining to the sale of any adulterated or misbranded article of food if he proves that he purchased the article of food from a duly licensed manufacturer, distributor or dealer in a case where a licence is prescribed for the sale thereof, and in any other case from any manufacturer, distributor or dealer with a written warranty in the prescribed form, provided the article of food while in his possession was properly stored and that he sold it in the same state as he purchased it. The argument of counsel for the petitioners that the provision that a retail seller who opens a container of a branded article of food loses even the limited protection under section 19(2) is without substance. Clause (b) of sub-section (2) of section 19 does not provide, nor does it imply, that if the container of a branded article is opened, the article of food ceases to be in the same state in which the vendor purchased it. If the article of food is sold in the same condition in which it was purchased from a licensed manufacturer or dealer, or was purchased with a warranty, the vendor will not lose the protection of sub-section (2) of Section 19 merely because he opened the container. If the vendor has obtained the article from a licensed manufacturer, distributor or dealer or from a manufacturer, distributor or dealer with a warranty, he is protected, provided he has properly stored the article and sells it in the same state as he purchased the article, even if it turns out that the article was adulterated or misbranded. The Act does not dispense with proof that the article of food is adulterated, misbranded or that its sale is prohibited: it enacts that a vendor selling articles of food adulterated or misbranded cannot plead

merely that he was ignorant of the nature, substance or quality 174 of the goods. A statute enacted by the Parliament in the interest of public health (which is generally made in similar statutes elsewhere) imposing liability for an offence without proof of a guilty mind does not per se impose restrictions on the, freedom to carry on trade which are unreasonable.

13. In the petitions a plea was raised that by the Act and the Rules, the guarantee of Art. 14 was infringed, but no argument was presented before us independently of the argument relating to infringement of the guarantee under Art. 19(1)(g), in support of the contention that the Act infringed the guarantee of equality before the law or equal protection of the laws. The Act deals with the regulation of a class of traders, and in view of the widespread PVR 49 wp477-227-12=115-13-ghntefinal.doc malpractices, and the practical difficulties of controlling those malpractices, stringent provisions have been made by the Act. The classification is founded on an intelligible differentia and the differentia has a rational relation to the object sought to be achieved. The provisions of the Act again do not invest arbitrary authority upon those who are to administer the Act. nor can it be said that the standards prescribed are arbitrary. "

(emphasis supplied)

38. In "Saghir Ahmad and another Vs. State of U.P. and others, (AIR 1954 SC 728)" the Constitution Bench of the Supreme Court was considering the case of the appellants who were carrying on business of plying motor vehicle as "stage carriages" who were being regulated by the Motor Vehicles Act, 1939, inter alia for grant of a driving licence, registration of vehicles and control over transport vehicles through permits granted by Regional Transport Authorities. In considering the correctness of the decision of the Full Bench of Allahabad High Court in the context of the assertion that the rights of the appellant under Articles 14 and 19(1)(g) of the Constitution were violated, the Constitution Bench of the Supreme Court in paragraph 22 observed thus:-

"As has been held by this Court in the case of AIR 1954 S.C. 220(I) whether the restrictions are reasonable or not would depend to a large extent on the nature of the trade and the conditions prevalent in it."

39. We may also refer to the recent decision of the Supreme Court in the case of "Centre for Public Interest Litigation Vs. Union of India & Ors., (AIR 2014 SC 49)". In the context of an issue dealing with the harmful effect of soft drinks on human health and in considering the provisions of FSS Act on various principles of food safety as enshrined in Section 18 and other provisions PVR 50 wp477-227-12=115-13-ghntefinal.doc of the Act, the Supreme Court has held that a paramount duty is cast on the States and its authorities to achieve an appropriate level of protection to human life and health which is a fundamental right guaranteed to the citizens under Article 21 read with Article 47 of the Constitution of India.

It is thus clear from the enunciation of the above legal principles as laid down by the Supreme Court that it is not only a statutory requirement for the food Authorities to have a regime of making available safe food products to the consumer but it is a constitutional requirement emanating from the provisions of Article 21 read with Article 39 and 47 of the Constitution of India.

40. Adverting to the above principles of law, we now consider the challenge as raised by the petitioners. In Writ Petition No.477 of 2012 though the challenge as raised is quite broad to the provisions of the entire Act as the prayers would go and in the alternative to quash and set aside the provisions of Sections 31 and 36 of the FSS Act being violative of Articles 14, 19 and 21 of the Constitution, Mr.Anturkar has confined his submissions to the challenge as raised to the provisions of Section 31 and 36 of the FSS Act. The challenge is on the ground that the provisions are vague and ambiguous and therefore capable of their misuse and thus violative of Articles 14 and 19(1)(g) of the Constitution.

41. Section 31 provides for licencing and registration of food business and provides that no person shall commence or carry on any food business PVR 51 wp477-227-12=115-13-ghntefinal.doc except under a licence. Sub-section 2 provides that the requirements of condition of licence shall not apply to 'petty manufacturer' who himself manufactures or sells any article of food or a petty retailer, hawker, itinerant vendor or a temporary stall holder or small scale or cottage or such other industries relating to food business or tiny food business operator. However, there is a requirement that they shall register themselves with such authority and as specified in the regulations and this would be without prejudice to the availability of safe and wholesome food for human consumption or affecting the interests of the consumers. Mr.Anturkar in assailing this provision on the ground that it is vague and ambiguous has drawn our attention to certain terms in the definition of 'food business' as contained in Section 3(n) which reads thus:-

(n) "Food business" means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution of food, import and includes food services, catering services, sale of food or food ingredients; (emphasis supplied) The contention is that many words as used in the definition of 'food business' which have relevance and a direct relation for issuance of a License for a food business and/ or a registration of food business are not defined by the FSS Act.

It is pointed out that words "processing", "packaging", "storage", "transportation", "distribution of food", "import" and "food services", "catering services", "sale of food or food ingredients" as used in Section 3(1)(n) are not defined. Mr.Anturkar, therefore, submits that this creates a situation of an ambiguity and vagueness in the matter of obtaining licence and registration as PVR 52 wp477-227-12=115-13-ghntefinal.doc per the Licensing Regulations as also under Section 31 of the FSS Act.

Mr.Anturkar has further drawn our attention to the provisions of Section 3(1)(n), (zd), (zr) and (zz) which defines 'food business', 'manufacturer', 'sale' and 'unsafe food'. The provisions read thus:-

"3. Definitions.

(1) In this Act, unless the context otherwise requires, -

(n) "Food business" means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution of food, import and includes food services, catering services, sale of food or food ingredients;

(zd) "manufacturer" means a person engaged in the business of manufacturing any article of food for sale and includes any person who obtains such article from another person and packs and labels it for sale or only labels it for such purposes;

(zr) "sale" with its grammatical variations and cognate expressions, means the sale of any article of food, whether for cash or on credit or by way of exchange and whether by wholesale or retail, for human consumption or use, or for analysis, and includes an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale of any such article, and includes also an attempt to sell any such article;

(zz) "unsafe food" means an article of food whose nature, substance or quality is so affected as to render it injurious to health :--

(i) by the article itself, or its package thereof, which is composed, whether wholly or in part, of poisonous or deleterious substance; or

(ii) by the article consisting, wholly or in part, of any filthy, putrid, rotten, decomposed or diseased animal substance or vegetable substance; or PVR 53 wp477-227-12=115-13-ghntefinal.doc

(iii) by virtue of its unhygienic processing or the presence in that article of any harmful substance; or

(iv) by the substitution of any inferior or cheaper substance whether wholly or in part; or

(v) by addition of a substance directly or as an ingredient which is not permitted; or

(vi) by the abstraction, wholly or in part, of any of its constituents; or

(vii) by the article being so coloured, flavoured or coated, powdered or polished, as to damage or conceal the article or to make it appear better or of greater value than it really is; or

(viii) by the presence of any colouring matter or preservatives other than that specified in respect thereof; or

(ix) by the article having been infected or infested with worms, weevils, or insects; or

(x) by virtue of its being prepared, packed or kept under insanitary conditions; or

(xi) by virtue of its being mis-branded or sub-standard or food containing extraneous matter; or

(xii) by virtue of containing pesticides and other contaminants in excess of quantities specified by regulations."

The contention is that the term "manufacturer" does not include 'petty manufacturer' which has been included in the provisions under sub-section (2) of Section 31 of the FSS Act. The submission is that as these terms are not defined, there is lack of clarity resulting into vagueness in the definitions as contained in the definition clause more particularly, section 3(1)(n), 3(1)(zd), 3(1)(zr) and 3(1)(zz). Section 31 which is the licensing and registration provision is thus, PVR 54 wp477-227-12=115-13-ghntefinal.doc rendered ambiguous and subject to abuse at the hands of the authorities and is thus unconstitutional. It is submitted that the definition is required to be precise and cannot be left to the discretion of the officers who are supposed to implement the provisions. Mr.Anturkar submits that therefore, a serious prejudice is being caused to the members of the petitioner on account of these vague terms as used in the FSS Act having its impact on Section 31 of the FSS Act. This vagueness and ambiguity is a tool in the hands of the Officers to exploit the situation leading to a consequence of abuse of these provisions. In support of this arguments, Mr.Anturkar, in this context has drawn our attention to the provisions of Section 31 which reads thus :

"31. Licensing and registration of food business. (1) No person shall commence or carry on any food business except under a licence.

(2) Nothing contained in sub-section (1) shall apply to a petty manufacturer who himself manufactures or sells any article of food or a petty retailer, hawker, itinerant vendor or a temporary stall holder or small scale or cottage or such other industries relating to food business or tiny food business operator; but they shall register themselves with such authority and in such manner as may be specified by regulations, without prejudice to the availability of safe and wholesome food for human consumption or affecting the interests of the consumers.

(3) Any person desirous to commence or carry on any food business shall make an application for grant of a licence to the Designated Officer in such manner containing such particulars and fees as may be specified by regulations.

PVR 55 wp477-227-12=115-13-ghntefinal.doc (4) The Designated Officer on receipt of an application under sub-section (3), may either grant the licence or after giving the applicant an opportunity of being heard and for reasons to be recorded in writing, refuse to grant a licence to any applicant, if he is satisfied that it is necessary so to do in the interest of public health and shall make available to the applicant a copy of the order: Provided that if a licence is not issued within two months from the date of making the application or his application is not rejected, the applicant may start his food business after expiry of the said period and in such a case, the Designated Officer shall not refuse to issue a licence but may, if he considers necessary, issue an improvement notice, under section 32 and follow procedures in that regard.

(5) Every licence shall be in such form and subject to such conditions as may be specified by regulations.

(6) A single licence may be issued by the Designated Officer for one or more articles of food and also for different establishments or premises in the same area. (7) If the articles of food are manufactured, stored, sold or exhibited for sale at different premises situated in more than one area, separate applications shall be made and separate licence shall be issued in respect of such premises not falling within the same area.

(8) An appeal against the order of rejection for the grant of licence shall lie to the Commissioner of Food Safety.

(9) A licence unless suspended or cancelled earlier shall be in force for such period as may be specified by regulations: Provided that if an application for a renewal of licence is made before the expiry of the period of validity of the licence, the licence shall continue to be in force until orders are passed on the application.

(10) The licence shall subsist for the benefit of the deceased's personal representative or any other member of his family, until the expiry of -

(a) the period of three months beginning with his death; or

(b) such longer period as the Designated Officer may allow." (emphasis supplied) Thus, referring to the above provisions the contention of Mr.Anturkar is that as the words "processing", "packaging", "storage", "transportation", "distribution of food", "food services", "catering services", "food ingredients", "petty manufacturer" are not defined under the FSS Act and these terms as used in the Act have a direct bearing in the application of Section 31 of the Food Safety Act which pertains to licensing and registration of food business. In the absence of any definition and certainty to these words as used in the Act, according to Mr.Anturkar, the licensing provisions under Section 31 is rendered vulnerable for its arbitrary implementation.

42. We are afraid to accept these submissions of Mr.Anturkar. A perusal of Section 31 of the FSS Act reveals that it is a licensing provision which requires that no person shall commence or carry on any food business except under a licence. "Food business" is defined under Section 3(n) to mean any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution of food, import and includes food services, catering services, sale of food or food ingredients. Similarly "unsafe food" is defined under Section 3(zz) to mean an article of food whose nature, substance or quality is so affected as to render it injurious to health. As to how it is rendered injurious to health has been explained in clauses (i) to (xii) as contained in sub-section (zz) of Section 3. A plain reading of Section 31 when seen in the context of grant of a licence or registration of food business, in our opinion, do not indicate that it creates any ambiguity. The meaning which is attributed to the various words used in Section 31 read

with the words in the definition clause do not create any vagueness so as to render Section 31 vague or in-operational.

This is for the reason that the words as used in the provision are required to be read in the context of the Act. The legislation as a whole is required to be considered to ascertain the meaning of the terms and expression as used in the legislation. Thus, the words contained in the definition clause are required to be understood in the light of the other provisions of the Act and with due regard to the ordinary connotation of the words defined and not in isolation as sought to be contended by the petitioners. We apply the principle of ordinary, popular and natural meaning to be attributed to the words in the above provisions and in doing so, we do not feel that there is any ambiguity or difficulty in understanding the meaning of these words and their implication nor there is any ambiguity or vagueness in the words used in the definition clause as contended by the petitioners. Moreover, to give effect to the licensing provision under Section 31 the Food Authority has framed regulations namely the Food Safety and Standards (Licensing and registration of food businesses) Regulations, 2011 PVR 58 wp477-227-12=115-13-ghntefinal.doc (for short "the licensing regulations") in exercise of powers conferred under clause (o) of sub section (2) of Section 92 read with Section 31 of Food Safety Act. A perusal of these licensing regulations would demonstrate that submissions of Mr. Anturkar are not well founded. We thus refer to these regulations. Clause 1.2 of the Licensing Regulations is a definition clause under which sub-clause 4 defines "petty manufacturers" as under:-

1.2: Definitions-

1.2.1: In these regulations unless the context otherwise requires:

1.ig

4. "Petty Food Manufacturer" means any food manufacturer, who

(a) manufactures or sells any article of food himself or a petty retailer, hawker, itinerant vendor or temporary stall holder; or distributes foods including in any religious or social gathering except a caterer; or

(b) such other food businesses including small scale or cottage or such other industries relating to food business or tiny food businesses with an annual turnover not exceeding Rs 12 lakhs and/or whose

(i) production capacity of food (other than milk and milk products and meat and meat products) does not exceed 100 kg/ltr per day or

(ii) procurement or handling and collection of milk is up to 500 litres of milk per day or

(iii) slaughtering capacity is 2 large animals or 10 small animals or 50 poultry birds per day or less."

The contention of Mr. Anturkar that "petty manufacturer" has not been defined under the Act and therefore, a vague situation is created in regard to a "petty PVR 59 wp477-227-12=115-13-ghntefinal.doc manufacturer" is thus completely misconceived as seen from the definition of "petty manufacturer" in the licensing Regulations. The licensing Regulations are extensive. Chapter II of this regulation pertains to licensing and registration of food business under which Regulation 2.1 pertains to registration and licensing of food business; Regulation 2.1.1 pertains to registration of petty food business. This is a detailed provision and throws a complete light on the nature of a petty food business and every aspect concerning it and need for registration of such petty food business. It would be useful to refer to this regulation which reads thus:-

"2.1.1 Registration of Petty Food Business (1) Every petty Food Business Operator shall register themselves with the Registering Authority by submitting an application for registration in Form A under Schedule 2 of these Regulations along with a fee as provided in Schedule (2) The petty food manufacturer shall follow the basic hygiene and safety requirements provided in Part I of Schedule 4 of these Regulations and provide a self attested declaration of adherence to these requirements with the application in the format provided in Annexure-1 under Schedule 2.

(3) The Registering Authority shall consider the application and may either grant registration or reject it with reasons to be recorded in writing or issue notice for inspection, within 7 days of receipt of an application for registration.

(4) In the event of an inspection being ordered, the registration shall be granted by the Registering Authority after being satisfied with the safety, hygiene and sanitary conditions of the premises as contained in Part II of Schedule 4 within a period of 30 days. If registration is not granted, or denied, or inspection not ordered within 7 days as provided in above sub regulation (3) or no decision is communicated within 30 days as provided in above sub regulation (4), the PVR 60 wp477-227-12=115-13-ghntefinal.doc petty food manufacturer may start its business, provided that it will be incumbent on the Food Business Operator to comply with any improvement suggested by the Registering Authority even later.

Provided that registration shall not be refused without giving the applicant an opportunity of being heard and for reasons to be recorded in writing.

(5) The Registering Authority shall issue a registration certificate and a photo identity card, which shall be displayed at a prominent place at all times within the premises or vehicle or cart or any other place where the person carries on sale/manufacture of food in case of Petty Food Business.

(6) The Registering Authority or any officer or agency specifically authorized for this purpose shall carry out food safety inspection of the registered establishments at least once in a year.

Provided that a producer of milk who is a registered member of a dairy Cooperative Society registered under Cooperative Societies Act and supplies or sells the entire milk to the Society shall be exempted from this provision for registration."

Regulation 2.1.2 pertains to licence for food business which reads thus:-

2.1.2 License for food business (1) Subject to Regulation 2.1.1, no person shall commence any food business unless he possesses a valid license.

Provided that any person or Food Business Operator carrying on food business on the date of notification of these Regulations, under a license, registration or permission, as the case may be, under the Acts or Orders mentioned in the Second Schedule of the Act shall get their existing license converted into the license/registration under these regulations by making an application to the Licensing/Registering Authority after complying with the safety requirements mentioned in the Schedule 4 contained under different Parts dependent on nature of business, within PVR 61 wp477-227-12=115-13-ghntefinal.doc one year of notification of these Regulations. In case of difficulty, the licensing authority with the approval of the Food Safety Commissioner in the State will determine the advisability of applying any specific condition keeping in view the need to ensure safety of food and public interest. No license fee will have to be paid for the remaining period of the validity of the earlier license or registration granted under any of the said Acts or Orders. Non-compliance with this provision by a Food Business Operator will attract penalty under section 55 of the Act.

Provided further that any food business operator holding Registration/License under any other Act/Order as specified under schedule 2 of the FSS Act, 2006 with no specific validity or expiry date, and other wise entitled to obtain a license under these regulations, shall have to apply and obtain a Registration/License under these Regulations within one year from the date of notification by paying the applicable fees.

(2) Notwithstanding the provisions contained in Regulation 2.1.2(1) above or in any of the registration or license certificates issued under existing Acts or Orders mentioned in the second schedule of the Act, the Licensing Authority, if it has reason to believe that the Food Business Operator has failed to comply with all or any of the conditions of the existing registration or license or the safety requirements given in Schedule 4, may give appropriate direction to the Food Business Operator to comply with.

(3) License for commencing or carrying on food business, which falls under Schedule 1, shall be granted by the Central Licensing Authority, provided that Food Authority may through notification make such changes or modify the list given in the Schedule I as considered necessary.

(4) License for commencing or carrying on food business, which are not covered under Schedule 1, shall be granted by the concerned State/UT's Licensing Authority.

(5) The Food Business Operator shall ensure that all conditions of license as provided in Annexure 2 of Form B in Schedule 2 and safety, sanitary and hygienic requirements provided in the Schedule 4 contained under different Parts depending on nature of business are complied with at all times .

PVR 62 wp477-227-12=115-13-ghntefinal.doc Provided that the Licensing Authority shall ensure periodical food safety audit and inspection of the licensed establishments through its own or agencies authorized for this purpose by the FSSAI.

Provided further that no person shall manufacture, import, sell, stock, exhibit for distribution or sale any article of food which has been subjected to the treatment of irradiation, except under a license obtained from Department of Atomic Energy under the Atomic Energy (Control of Irradiation of Food) Regulations, 1996."

Perusal of the above provisions of the Licensing regulations show that the licensing / registering Authority would grant licence and registration only on the compliance by the applicant to the Safety Regulations as mentioned in Schedule 4. Schedule 4 pertains to General Hygienic and Sanitary practices to be followed by Food Business operators. The provisions of Schedule 4 are extensive which pertain to general hygienic and sanitary practices followed by the food business operators, food manufacturer, processor, handler, sanitary and hygienic requirements for street food vendors and units other than manufacturing/processing, general requirements on hygienic and sanitary practices to be followed by all Food Business Operators applying for a license, engaged in manufacture, processing, storing and selling of Milk and Milk Products, engaged in manufacture, processing, storing and selling of Meat and Meat Products, engaged in catering / food service establishments, personal hygiene, transportation and handling of food, storage, special requirements for high risk foods such as cut fruits/salads, fresh juices and beverages etc. A perusal of the extensive nature of these licensing regulations and intricate facets PVR 63 wp477-227-12=115-13-ghntefinal.doc it takes into consideration, would show that there is no ambiguity or vagueness as being canvassed on behalf of the petitioners. Looking at these provisions we are not at all impressed with the submissions made on behalf of Mr.Anturkar.

Mr.Anturkar's endeavour to point out the vagueness is wholly superficial without any foundation and overlooks settled norms of interpretation to ascertain the meaning of these words in the common parlance. Only because certain terms are not defined under the Act the legislative provisions become vague and are rendered unconstitutional, is too far fetched an argument and totally unacceptable. These submissions of Mr.Anturkar have no basis in facts much less in law. The provisions of the Act read with the Regulations completely nullify Mr.Anturkar's submissions.

43. Thus, Section 31 read with the licensing regulations, in our opinion, are absolutely clear without any ambiguity on any aspect and are legal and valid. The challenge to the vires of section 31 of the Food Safety Act that the same is violative of Article 14 and 19(1) (g) of the Constitution as raised by the petitioners is thus wholly misconceived and cannot be sustained. The challenge to this provision on the ground that it is violative of Article 14 of the Constitution also ought to fail when tested on the touchstone of the decision of the Constitution Bench of the Supreme Court in the case "Sakhawant Ali Vs. State of Orissa, (AIR 1955 SC 166)" wherein in paragraph 10 the Supreme Court has observed thus:-

"The simple answer to this contention is that legislation enacted for the achievement of a particular object or purpose need not be PVR 64 wp477-227-12=115-13-ghntefinal.doc all embracing. It is for

the Legislature to determine what categories it would embrace within the scope of legislation and merely because certain categories which would stand on the same footing as those which are covered by the legislation are left out would not render legislation which has been enacted in any manner discriminatory and violative of the fundamental right guaranteed by Article 14 of the Constitution."

44. The next challenge as urged by Mr. Anturkar is to the provisions of section 36 of the Food Safety Act. Section 36 provides for the appointment of a Designated Officer. It provides that the Commissioner of Food Safety shall by an order appoint a Designated Officer who shall not be below the rank of a Sub-

Divisional Officer to be in-charge of food safety administration in such area as may be specified by regulations. Sub-section (2) of section 2 provides that there shall be a Designated Officer for each district. Sub-section 3 provides for following functions to be performed by the Designated Officer:

"(a) to issue or cancel license of food business operators;

(b) to prohibit the sale of any article of food which is in contravention of the provisions of this Act and rules and regulations made thereunder ;

(c) to receive report and samples of article of foods from Food Safety Officer under his jurisdiction and get them analysed;

(d) to make recommendations to the Commissioner of Food Safety for sanction to launch prosecutions in case of contraventions punishable with imprisonment;

(e) to sanction or launch prosecutions in cases of contraventions punishable with fine;

(f) to maintain record of all inspections made by Food Safety Officers and action taken by them in the performance of their duties;

(g) to get investigated any complaint which may be made in writing in respect of any contravention of the provisions of this Act and the rules and regulations made thereunder ;

(h) to investigate any complaint which may be made in writing against the Food Safety Officer; and

(i) to perform such other duties as may be entrusted by the PVR 65 wp477-227-12=115-13-ghntefinal.doc Commissioner of Food Safety."

The submission of Mr. Anturkar is that the provision contemplates that the Designated Officer is merely a Revenue Officer. He is not a technical Officer nor he has any technical know how about the food industry. A Revenue Officer is supposed to work under the revenue law and is concerned with the work of collection of revenue. Under the provisions of sub-section 3 (a) of section 36 a

Designated Officer is empowered to issue licence of a food business operator.

Section 31 (4) empowers the Designated Officer to reject an application for a licence on the ground of public health. Thus, wide powers are conferred on a Sub-divisional officer who has no qualifications so as to exercise such jurisdiction and functions conferred on him. Section 36 is, therefore, violative of Article 14 of the Constitution of India being unreasonable. Mr. Anturkar's submissions are unfounded and without any merit, in view of the plain language of section 36 (1). The submission that the Designated Officer is a Revenue Officer cannot be accepted. Section 36 (1) provides that the Designated Officer shall not be below the rank of a Sub-Divisional Officer. It does not provide that the Designated Officer shall be a Sub-Divisional officer or a Revenue Officer. It only refers to a rank of a Sub-Divisional Officer. Mr. Anturkar's submissions also cannot be accepted in view of the provisions of Food Safety and Standard Rules as framed by the Central Government in exercise of the powers conferred under clause (a) of Food Safety Act. Rule 1.2 pertains to the Designated Officer and provides for minimum qualifications with a bachelor's degree of Science with Chemistry with one of the special subject as at least one of the PVR 66 wp477-227-12=115-13-ghntefinal.doc qualifications prescribed for Food Safety Officer. Apart from this, there are other requirements which are prescribed. It would be useful to refer to Rule 2.1.2 which reads thus:

"2.1.2: Designated Officer

1. Qualification (i) The Designated Officer shall be a whole time Officer, not below the rank of Sub-Divisional Officer or equivalent and shall possess a minimum of bachelors' degree in Science with chemistry as one of the subjects or at least one of the educational qualifications prescribed for the Food Safety Officer under these rules.

(ii) He shall undergo training as may be specified by the Food Authority within a period of six months from the date of his appointment as Designated Officer.

(iii) (a) Persons having been appointed as Food Inspector having qualification prescribed under the Prevention of Food Adulteration Rules 1955 or as Local Health Authority shall be eligible for appointment as Designated Officer, subject to fulfilling such other conditions as maybe prescribed for the post of Designated Officer by the State Government.

(b) At the time of commencement of these rules, the post of Designated Officer is held by any other Officer of equivalent rank as additional charge basis such other Officer shall continue to hold such additional charge till such time a whole time Designated Officer is appointed or for a period of one year whichever is earlier."

45. A perusal of Section 31 read with Rule 2.1.2 of the Food Safety and Standards Regulations, 2011 clearly indicate that the Designated Officer is not a Revenue Officer as urged by the petitioners. Furthermore, the Act and Rules appropriately provide for all the safeguards as necessary for the

Designated Officer to perform various duties and powers conferred on him. The challenge by the petitioner is thus, wholly unfounded and accordingly deserves PVR 67 wp477-227-12=115-13-ghntefinal.doc to be rejected.

46. We now examine the challenge as raised in Writ Petition No.227 of 2012. Mr.Bulchandani learned Counsel for the petitioners has made extensive submissions in assailing various provisions of the Act. The principal submissions are on sections 31(6), 34, 38, 46, 65,70, 80. The contention is that these provisions are discriminatory, unreasonable and thus violative of the petitioner's right guaranteed under Articles 14, 19 (1) (g) of the Constitution of India.

47. We now deal with the challenge to each of these provisions. The challenge to section 31 (6) as urged by Mr.Bulchandani is on the nature of the powers conferred by this provision on the Officers/authorities lower in the hierarchy in the administration of the Act. Mr.Bulchandani would urge that section 31 (6) provides for a single licence which may be issued by the Designated Officer for one or more articles of food and also for different establishments or premises in the same area. This power under sub-section (6) of section 31 is required to be exercised in accordance with provisions of regulations 2.1.5 of the licencing regulations which prescribes a procedure for license in certain local areas. Sub-Regulation (1) provides that a single licence may be issued by the licencing authority for one or more articles of food and also for different establishment or premises in the same local area including collection and chilling units run by milk co-operatives or its members. The PVR 68 wp477-227-12=115-13-ghntefinal.doc contention is that each article would require a licence as these provisions would read or a single licence may be issued by the Designated Officer for one or more articles as also for different establishments or premises in the same area. Such discretion as vested with the designated Officer is wholly arbitrary inasmuch as the provision would subject the applicant of a licence to an unfettered discretion of the Designated Officer either to seek a licence for each article or seek multiple licences. The contention is that this would bring about a "licence raj."

48. Mr.Bulchandani's further submission is that sub-section 8 of section 31 provides for an appeal only against an order of rejection of a licence to the Commissioner of Food Safety, however, it does not provide for a remedy if application for separate licences are rejected. Mr.Bulchandani would urge that in para 8 of the reply - affidavit at page 142 of the Paper Book, the authority has urged that the intention of the legislature is that the Designated Officer would issue a single licence if necessary for one or more articles of food when the establishment of the manufacturer or the food business activity is situated in the same area. It is submitted that this clearly shows that understanding of the provisions by the Food Authority is completely different from what these provisions would contemplate. This contention as urged by Mr.Bulchandani, in our opinion, is wholly untenable. Section 31 provides for licencing and registration of food business. Sub-section 6 of section 31 provides that a single licence may be issued by the Designated Officer for one or more articles of food and also for different establishments or premises in the same area. Sub-section 7 PVR 69 wp477-227-12=115-13-ghntefinal.doc provides that if articles of food are manufactured, stored, sold or exhibited for sale at different premises situated in more than one area, separate applications shall be made and separate licence may be issued in respect of such premises not falling within the same area. A plain reading of these provisions in our opinion, does not create any unreasonableness. The

intention of the legislature is quite clear that a person who intends to deal with one or more articles of food, however in different establishments or premises in the same area could become eligible for a single licence. In other words, such a person is not required to apply for multiple licences for different premises being used in 'same area'. The legislative intent which can be derived is that a person who seeks to deal with one or more articles of food from different premises in the same area need not be subjected to multiple applications so as to make it convenient both for the person seeking such a licence as also for the authorities. Sub-section 6 cannot be read in isolation as sought to be urged on behalf of the petitioner. Sub-section 6 is required to be read along with sub-section 7 which throws a complete light as to how the requirement of sub-section 6 which pertains to a person who would deal in one or more articles of food in the same area is different from a person who would deal in articles of food, manufactured, sold, or exhibited for sale at different premises situated in more than one area, where separate applications for licence are required to be made, in respect of premises not falling within the same area. Sub-section 7 therefore, covers a province different from what is contemplated under sub-section 6. Sub-section 7 in fact is more extensive and postulates that a separate licence could be necessary for dealing in articles of PVR 70 wp477-227-12=115-13-ghntefinal.doc food when manufactured, stored, sold or exhibited for sale at different premises situated in more than one area and/or premises not falling within the same area.

We thus have no hesitation to reject the above contention of Mr.Bulchandani.

49. The next submission of Mr.Bulchandani is that there is no appeal provided if an application for separate licences is rejected. This submission is also without merit. Sub-section 8 provides for an appeal against an order of rejection for grant of a licence to lie before the Commissioner of Food Safety.

This would contemplate a rejection of an application either for a single licence under sub-section 6 or for different licences under sub-section 7. The contention that there is no appeal under sub-section 8, if the application for separate licences is rejected is thus, wholly untenable as clear from a plain reading of the provisions of sub-section 8 of section. We therefore, find that there is nothing unreasonable or arbitrary in the provisions of sub-section 6 and sub-section 8 of Section 31 so as to render the same unconstitutional and violative of the petitioner's right under Articles 14,19 (12) (g) and 21 of the Constitution of India. We thus reject this challenge as raised by the petitioners.

50. The next challenge as urged by Mr.Bulchandani is to the provisions of section 32 which provide for 'improvement notices' to be issued by the Designated Officer. It provides that if the Designated Officer has a reasonable ground for believing that any food business operator has failed to comply with the regulations, he may by a notice served on the food business operator, termed PVR 71 wp477-227-12=115-13-ghntefinal.doc as an improvement notice seek compliance of the requirement of the Act and regulations. Sub-section (2) provides for a power to suspend a licence if the food business operator fails to comply with the improvement notices. Sub-

section (3) provides for a power to cancel a licence after issuance of a show cause notice as also by a proviso to sub-section (3) a power to suspend a licence forthwith in the interest of public health for reasons to be recorded in writing as conferred on the Designated Officer. The contention is that

these powers are permitted to be exercised by the Designated Officer in the interest of public health as the proviso to sub-section (3) would indicate. Mr. Bulchandani would urge that the licencing regulations 2011 in regulation 2.1.8 more particularly 2.1.8(4) however would provide for something which is not provided under section 32. It is urged that sub-regulation (4) of regulation 2.1.8 confers an absolute power on the licencing authority to suspend or cancel a licence forthwith in the interest of public health for reasons to be recorded in writing.

Mr. Bulchandani's submission is that section 32 does not contemplate a forthwith cancellation of the licence and therefore, Section 32 read with provisions of regulation 2.1.8 (4) of the licencing regulation are absolutely unworkable, creating an absurdity and bring about a consequence of abuse of power at the hands of Designated Officer and thus are rendered illegal and unconstitutional.

We are not impressed with these submissions. We note that section 32 is a comprehensive provision. This provision as it pertains to suspension and cancellation of licence is undoubtedly required to be read with the Licencing Regulations, 2011 which is clear from a reading of Section 32. It would be PVR 72 wp477-227-12=115-13-ghntefinal.doc beneficial to extract this provision so as to render clarity to what is being urged and our observations. Section 32 reads thus:

32. Improvement notices (1) " If the Designated Officer has reasonable ground for believing that any food business operator has failed to comply with any regulations to which this section applies, he may, by a notice served on that food business operator (in this Act referred to as an "improvement notice")-

(a) state the grounds for believing that the food business operator has failed to comply with the regulations;

(b) specify the matters which constitute the food business operator's failure so to comply;

(c) specify the measures which in the opinion of the said Authority, the food business operator must take, in order to secure compliance; and

(d) require the food business operator to take those measures, or measures which are at least equivalent to them, within a reasonable period (not being less than fourteen days) as may be specified in the notice.

(2) If the food business operator fails to comply with an improvement notice, his licence may be suspended.

(3) If the food business operator still fails to comply with the improvement notice, the Designated Officer may, after giving the licensee an opportunity to show cause, cancel the licence granted to him.

PROVIDED that the Designated Officer may suspend any licence forthwith in the interest of public health for reasons to be recorded in writing.

(4) Any person who is aggrieved by-

(a) an improvement notice; or

(b) refusal to issue a certificate as to improvement; or

(c) cancellation or suspension or revocation of licence under this Act, may appeal to the Commissioner of Food Safety whose decision thereon, shall be final.

(5) The period within which such an appeal may be brought shall PVR 73 wp477-227-12=115-13-ghntefinal.doc be -

(a) fifteen days from the date on which notice of the decision was served on the person desiring to appeal; or

(b) in the case of an appeal under sub-section (1) the said period, or the period specified in the improvement notice, whichever expires earlier."

It would also be beneficial to extract Regulation 2.1.2 of the Food Safety & Standard Rules, 2011 and Regulation 2.1.8 of the licencing regulations, 2011 which read as under:-

2.1.2. Designated Officer

1. Qualification

(2) Powers and duties

(i) The powers and duties of the Designated officer shall be as mentioned in section 36 (3) of FSS Act, 2006.

(ii) The Designated Officer shall function under over all supervision of Collector/District Magistrate of the District.

(iii) The Designated Officer shall in addition to the powers specified in section 36 (3) of FSS Act, 2006 also ensure the refund of fee for analysis paid by the purchaser as per the provisions of section 40 (1) besides the cost of the sample.

(iv) The Designated Officer shall ensure timely disposal of redundant samples in the manner notified for the seized materials, by the Commissioner of Food Safety.

(v) Without prejudice to anything contained in the aforesaid rules, the Designated Officer shall have all administrative powers which may include suspension, cancellation or revocation of the licence of the Food Business Operator in case any threat or grave injury to public has been noticed in the report of the Food Analyst.

PROVIDED that while taking such administrative action the described in the Act and Regulations shall be followed."

2.1.8: Suspension or cancellation of Registration Certificate or license, (1) The Registering or Licensing Authority in accordance with the provisions of section 32 of the Act may, after giving the concerned Food Business Operator a reasonable opportunity of being heard, suspend any registration or license in respect of all or any of the activities for which the registration/license has been granted under these Regulations, after recording a brief statement PVR 74 wp477-227-12=115-13-ghntefinal.doc of the reasons for such suspension, if there is reason to believe that the Food Business Operator has failed to comply with the conditions within the period mentioned in any Improvement Notice served under section 32 of the Act. A copy of such statement shall be furnished to the concerned Food Business Operator whose Registration or license has been suspended.

(2) The Registering or Licensing Authority as the case may direct an inspection of the Food Business Operators premise (e) within a reasonable period which shall not be less than 14 days from the date of order of suspension.

(3) In the event that the Registering or Licensing Authority is of the opinion, on a review of the inspection report that the Food Business Operator has still failed to rectify the defects or omissions or comply with the conditions of the Improvement notice causing the suspension, such authority may cancel the license/registration of the Food Business Operator after giving him an opportunity to show cause as provided under Section 32 (3) of the Act.

(4) Notwithstanding anything contained in these Regulations the Registering or Licensing Authority may suspend or cancel any registration or license forthwith in the interest of public health for reasons to be recorded in writing.

(5) A suspension or cancellation of registration or license under these regulations shall not entitled the Food Business Operator for any compensation or refund of fee (s) paid in respect of the registration certificate or licence or renewal thereof.

(6) After a period of 3 months from the date of cancellation under Regulation 2.1.8 (3) above, the Food Business Operator may make fresh application for Registration or license to the concerned authority, if all observations made in the improvement notice have been complied with."

51. Perusal of Section 32 along with provisions of Regulation 2.1.8 clearly indicate that the legislature intends to ensure compliance of the regulations by a food business operator and prevent violation of the provisions of the Act and the regulations, in the interest of food safety and standards

as required to be maintained by those dealing in food. Though violation of the regulations or requirement of the compliance of different provisions of the FSS PVR 75 wp477-227-12=115-13-ghntefinal.doc Act may be of a different degree, seriousness and consequences, however, a safeguard is provided in taking actions by the Designated Officer and that is by providing for an improvement notice to be issued as section 32 would postulate.

The Designated Officer if reasonably believes that any food business operator has failed to comply with any regulation then the provision would require the Designated Officer to serve on the food business operator an improvement notice setting out the grounds for believing that the Food business operator has failed to comply with the regulations and law specifying the matter which constituted such a failure to comply and measures which in the opinion of the authority, the Food Business Operator must take. In order to secure compliance and thereby calling upon the Food Business Operator to take such measures or equivalent measures within a reasonable period which would not be less than 14 days and only after such period has lapsed on the failure on the part of the Food Business operator to comply with such improvement notice a power is conferred to suspend a licence. If even thereafter the Food Business Operator fails to comply with the improvement notice a provision has been made under sub section (3) that the licensee may be given an opportunity to show cause as to why the licence granted to him shall not be cancelled. It is apparent that very consciously the legislature has added a proviso to sub-section 3 to deal with the situation of gross breach of the regulations and food safety norms by a food business operator conferring on the Designated Officer a power to suspend any licence forthwith in the interest of public health for reasons which the Designated Officer would record in writing. In regard to any action of either PVR 76 wp477-227-12=115-13-ghntefinal.doc suspension or cancellation which the Designated Officer may take in a given situation, sub-section (4) provides for a remedy of an appeal to the Commissioner of Food Safety against the refusal of issuance of a certificate as to improvement by the Designated Officer or cancellation or suspension or revocation of a licence, whose decision the provision makes it to be final. The submission that regulation 2.1.8 (4) is providing for a power to cancel a licence is contrary to the provisions of section 32 in our opinion is wholly misconceived and cannot be countenanced on examination of section 32 read with regulation 2.1.8. Section 32 postulates both powers, a power to suspend a licence and a power to cancel a licence in a given situation. All such powers are required to be exercised in the interest of public health and for reasons to be recorded in writing. These powers are not a carte blanche for the Designated Officer to abruptly use these powers as there is an obligation to record reasons in either issuing a improvement notice or an order of suspension of a licence or an order canceling a licence. Regulation 2.1.8 (4) is nothing but, a reiteration of what section 32 would provide. This regulation only recognizes powers as are substantively conferred under section 32 on the Designated Officer. There is no paradox or incongruity between section 32 and regulation 2.1.8 and more particularly sub-regulation (4) of regulation 2.1.8 as urged by Mr.Bulchandani.

In our opinion, in the administration of the FSS Act, unless the Designated Officer is provided with such powers the administration of the Act would become difficult when the Act intends to achieve an object directly affecting human life. The object of these provisions is therefore, laudable. We strongly PVR 77 wp477-227-12=115-13-ghntefinal.doc deprecate the approach of the petitioners in assailing the provision in such a cavalier manner and on superfluous issues.

52. The next challenge as urged by Mr. Bulchandani is to the provisions of section 34 which contemplate issuance of emergency prohibitory notices and orders. Section 34 reads thus:

34. "Emergency prohibition notices and orders (1) If the Designated Officer is satisfied that the health risk condition exists with respect to any food business, he may, after a notice served on the food business operator (in this Act referred to as an "emergency prohibition notice") apply to the Commissioner of Food Safety for imposing the prohibition.

(2) If the Commissioner of Food Safety is satisfied, on the application of such an Officer, that the health risk condition exists with respect to any food business, he shall by an order, impose the prohibition.

(3) The Designated officer shall not apply for an emergency prohibition order unless at least one day before the date of the application, he has served notice on the food business operator of the business of his intention to apply for the order.

(4) As soon as practicable after the making of an emergency prohibition order, the Designated Officer shall require the Food Safety Officer to-

(a) serve a copy of the order on the food business operator of the business ; or

(b) affix a copy of the order at a conspicuous place on such premises used for the purposes of that business.

And any person who knowingly contravenes such an order shall be guilty of an offence and shall be punishable with imprisonment for a term which may extend to two years and with fine which may extend to two lakh rupees.

(5) An emergency prohibition order shall cease to have effect on the issue by the Designated Officer of a certificate to PVR 78 wp477-227-12=115-13-ghntefinal.doc the effect that he is satisfied that the food business operator has taken sufficient measure for justifying the lifting of such order.

(6) The Designated Officer shall issue a certificate under sub-section (5) within seven days of an application by the food business operator for such a certificate and on his being not satisfied, the said officer shall give notice to the food business operator within a period of ten days indicating the reasons for such decision."

53. The challenge is to the provisions of sub-section 3 of section 34 which provides that the Designated Officer shall not apply to the Commissioner of Food Safety for emergency or prohibitory orders unless one day before such application, the Designated officer has served a notice on the Food business operator of his intention to apply for emergency prohibition notice.

Mr. Bulchandani has drawn our attention to schedule 4 of the Licensing Regulation, 2011 which in its different clauses provide for a variety of sanitary and hygienic requirements to be followed by the Food business operator, a manufacture, processors, handlers, petty food business operators vendors etc. Our attention is drawn to a provision pertaining to water supply in clause 4 of this schedule. Clause 4.1 provides that only potable water with appropriate facilities for its storage and distribution shall be used as an ingredient in processing and cooking. A grievance is made that section 34 of the FSS Act is rendered unreasonable and unconstitutional as the provision is subjected to the requirements of the Licencing Regulations, 2011 to be read with Schedule 4 pertaining to various compliances to be made by persons dealing in food. By giving an illustration of regulation 4.1, it is contended that the requirement of PVR 79 wp477-227-12=115-13-ghntefinal.doc potable water cannot be complied in villages and therefore, it would be impossible to carry on business in food and thus the provisions of section 34 along with Licencing Regulation read along with Schedule 4 of the Licencing Regulation renders the provisions of section 34 arbitrary, unreasonable and illegal.

54. Section 34 enables the Designated Officer to issue emergency prohibition notice if the Designated Officer is satisfied that a situation exists which would bring about a health risk by any food business. The Designated Officer in such a situation is required to apply to the Commissioner of Food Safety for imposing prohibition notice. The Commissioner of Food Safety on being satisfied on the application of the Designated Officer that 'health risk condition' exists in regard to any food business the Commissioner by an order would impose a prohibition. A safeguard has been provided in sub-section 3 that the Designated Officer shall not apply for an emergency prohibition order unless at least one day before the date of application the Designated Officer has served notice on the Food Business Operator of his intention to apply for an order of prohibition. The importance of this provision can be gathered from the language of sub-section 4 which provides that as soon as practicable after making of an emergency prohibition order the Designated officer shall require the Food Safety Officer to serve a copy of the order on the Food Business Operator or affix a copy of the order at a conspicuous place on the premises used for the purpose of conducting business. It further provides that any person who intentionally PVR 80 wp477-227-12=115-13-ghntefinal.doc contravenes such an order shall be held guilty for an offence and which shall be punishable with imprisonment for two years and fine of Rs.2,00,000/-. Sub-

section 5 provides that an emergency prohibition order shall cease to have effect on the issuance by the Designated Officer, a certificate that he is satisfied that the Food Business Operator has taken sufficient measures for justifying lifting of such an order. Such a certificate would be issued by the Designated Officer within 7 days of the application as would be made by the Food Business Operator for such certificate and the Designated Officer being satisfied and by giving reason in support of such satisfaction. The object of this provision is to overcome an emergency situation in the interest of public health, nevertheless a safeguard firstly the Designated Officer issuing a emergency prohibition notice so that an opportunity is given to the Food Business Operator to himself remedy a situation of the breach of the food safety norms and breach of the regulations and on failure to act as such by the Food Business Operator to approach the Commissioner of Food Safety for an order of prohibition. The petitioners' contention is that such a provision would be subject to misuse as it is impossible to have a compliance of the requirement of Schedule 4 and more particularly when a provision like requirement of potable water is provided for, which becomes impossible of

compliance in villages and many parts of the country.

This submission cannot be countenanced. The object which is sought to be achieved is to see that food which is manufactured or food which is dealt by the food business operator, which is ultimately for human consumption, satisfies the necessary norms which are stipulated under the Act and the Regulations and PVR 81 wp477-227-12=115-13-ghntefinal.doc which are in the interest of providing safe and standard food for human consumption are required to be strictly complied by the food business operators.

The petitioners' contention that the requirement of these norms cannot be fulfilled and as such food manufactured in breach of the norms shall be permitted to be sold and in such a situation section 34 shall not be made applicable. We fail to understand as to how such contention would be tenable. It is well settled that there is no fundamental right to do business in adulterated or unsafe food. There cannot be any complaint on the part of the petitioners that they have a legal right to deal in food which is not safe or which is manufactured or dealt with or is made available for human consumption contrary to the norms which are set down under rules and regulation as framed under the Food Safety Act. Such argument cannot be countenanced. If an interpretation as being canvassed on behalf of the petitioner is accepted, the consequences is nothing but a grave violence to the salutary provisions and norms which are sought to be brought about and implemented by the authorities under the FSS Act for the betterment of human life. We have therefore, not the remotest doubt in our mind, but to reject such a challenge as raised on behalf of the petitioners. We are completely in agreement with the contention as urged on behalf of the food authority in para 12 of the reply that section 34 would be applicable in an emergency which would require immediate solution of a problem where there is a danger of health risk, such as food poisoning or danger of death of the consumers by consumption of adulterated or unsafe food. These provisions are absolutely essential and in such an emergent situation, without these provisions PVR 82 wp477-227-12=115-13-ghntefinal.doc the effective implementation of the legislation cannot be achieved.

55. The next challenge as urged by Mr.Bulchandani is to the provisions of section 46 (4) which provides for an appeal against the report of the Food Analyst to be filed before the Designated Officer who, in turn, if situation so requires, refer the matter to a referral Food Laboratory as notified by the Food Authority for its opinion. The contention is that the Designated Officer is conferred with unfettered discretion under section 46 to exercise the appellate powers conferred on him under sub-section 4 of section 46. We do not find that there is any merit in this submission. Section 46 postulates that on receipt of a package of food, containing a sample for analysis from the Food Safety Officer or any other person, the Food Analyst shall compare the seal on the container and the outer cover with specimen impression received separately and shall note the conditions of the seal thereon. If the sample container received by the Food Analyst is in a broken condition or unfit for analysis, he shall within a period of seven days from the date of receipt of such sample inform the Designated Officer about the same and send a requisition to him for sending second part of the sample. The Food Analyst within a period of 14 days from the date of receipt of sample for analysis, where such sample is received under Section 38 or Section 47 to the Designated Officer, send four copies of the report indicating the method of sampling analysis. Where such a sample is

received under section 40 a copy of the report indicating the method of sampling and analysis, the Food Analyst would send a copy of the analysis to the person who had PVR 83 wp477-227-12=115-13-ghntefinal.doc purchased the food article as also copy to the Designated Officer. In case the sample cannot be analyzed within 14 days from its receipt then in that case the Food Analyst is required to inform the Designated Officer and the Commissioner of Food Safety and giving reasons and specifying the time taken for such analysis. Under sub-section 4 of Section 46 an appeal lies against the report of the Food Analyst before the Designated Officer who is empowered in a given case to refer the matter to the notified Food Laboratory for its opinion. On examining these provisions, we are not impressed by the submissions of Mr. Bulchandani that there is unfettered discretion conferred on the Designated Officer in taking a decision to refer food to the Food Laboratory and Designated Officer in a given case. The Designated Officer in a situation, where he decides that there is requirement of a referral of such food item to the Food Laboratory, as Designated Officer would be guided by the report of the Food Analyst. It is not a case that the Designated Officer in acting so has no material before him.

The Designated Officer would exercise powers only on the consideration of the report of the Food Analyst. All this would be for reasons which are ultimately necessary in public interest. Only because the provision confers such a discretion and a power that the Designated Officer in his discretion can refer food to the notified Food Laboratory cannot render the provision unconstitutional. The decision taken by the Designated Officer has to be on reasonable grounds and in accordance with the requirements of Section 46 of the FSS Act as is clear from a plain reading of the provision. The petitioner's contention that the Designated Officer is conferred with unfettered power therefore, clearly cannot be sustained PVR 84 wp477-227-12=115-13-ghntefinal.doc on a deeper examination of Section 46.

56. The next challenge is to the provisions as contained in Chapter 9 which pertains to offences and penalties. The provisions assailed are section 65 (1) which pertains to compensation in case of an injury or death to a consumer.

Section 65 (1) provides that 'if any person whether by himself or by any person on his behalf manufacturers, distributes or sells or imports any article of food causing injury to a consumer or his death, it shall be lawful for the Adjudicating Officer or as the case may be, the court to direct him to pay to the victim or the legal representative to the victims as a compensation of the victim a sum of Rs.5,00,000/- in case of death, and not exceeding Rs.3,00,000/- in case of a grievous injury and an amount not exceeding Rs.1,00,000/- in all other cases of injury to be paid at the earliest and no case later than six months from and date of occurrence of the incident.' Mr. Bulchandani would submit that this provision is arbitrary as it excludes producer of food. A perusal of this provision clearly indicates that the provision begins by following words:- "Without prejudice to other provisions of this Chapter, if any person whether by himself or by any other person on his behalf manufactures or distributes or sells or imports any article of food causing injury to the consumer or his death, it shall be lawful for the Adjudicating Officer or as the case may be, the Court to direct him to pay compensation." The provision is required to be read in its entirety and alongwith the other provisions of the FSS Act. The word 'manufacturer' as used in this provision in a given situation would take within its ambit any producer of PVR 85 wp477-227-12=115-13-ghntefinal.doc a food

item on whom there is an obligation to comply with the provisions of the Act, rules and regulations made under it. If it is found that such a producer or manufacturer is guilty of dealing with food which has caused death of a person, then only for the reason that the word 'producer' has not been used in the provision cannot be construed that such a person can escape the liability and consequences under this provision. Thus, the contention of Mr. Bulchandani that as the word 'producer' is not incorporated in Section 65 (1), it would render Section 65(1) illegal or unconstitutional is without any merit. Even otherwise this submission of Mr. Bulchandani as urged on behalf of the petitioner is wholly imaginary and without any basis.

57. The next challenge is to the provisions of Section 68 read with Rule 3.1.1. (3) and 5 of the Food Safety and Standard Rules, 2011 and section 70 (1) of the FSS Act. Section 70 as contained in Chapter X of the FSS Act pertains to adjudication and Food Safety Appellate Tribunal. Section 68 provides for adjudication which reads thus:

"Section 68:- Adjudication (1) "For the purposes of adjudication under this Chapter, an officer not below the rank of Additional District Magistrate of the district where the alleged offence is committed shall be notified by the State Government as the Adjudicating Officer for adjudicating in the manner as may be prescribed by the Central Government.

(2) The Adjudicating Officer shall after giving the person a reasonable opportunity for making representation in the matter and if on such inquiry he is satisfied that the person has committed the contravention of provisions of this Act or the rules or the regulations made thereunder impose such penalty as he thinks fit in accordance with the provisions relating to that offence.

(3) The Adjudicating Officer shall have the powers of a civil court and-

(a) all proceedings before him shall be deemed to be judicial

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proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860)

(b) shall be deemed to be a court for the purposes of sections 345 and 346 of the Code of Criminal procedure, 1973 (2 of 1974) (4) while adjudicating the quantum of penalty under this Chapters, the Adjudicating Officer shall have due regard to the guidelines specified in section 49."

58. The above provision postulates that an Officer not below the rank of an Additional District Magistrate of the District where the offence is committed shall be notified by the State Government as Adjudicating Officer for adjudication. The Adjudicating Officer after giving reasons and an opportunity to the person concerned of making a representation conduct an inquiry and on being satisfied that the person has acted in contravention of the Act and Rules and regulations impose such penalty as he thinks fit, in accordance with the provisions relating to that offence. The contention is that the power of the Adjudicating Officer as conferred under rule 3.1 of the Food Safety and Standard Rules, 2011 is limited to only adjudicate on the applications filed by the Food Safety Officer. The contention is that the Designated Officer is conferred an unbridled and arbitrary power to refer matters to the Adjudicating Officer.

The power to hold an inquiry for the purpose of adjudication are also limited to certain offences as set out in rule 3.1.1 (5) of the Food Safety and Standards Rules, 2011. Sub-rule 5 of rule 3.1.1. empowers the Adjudicating officer to hold inquiry for the purpose of adjudicating the offence punishable under sections 41 to 58 and 64 to 67 of the Act. It is next submitted that section 70 (1) of the Food Safety Act the Central Government or State Government is empowered to establish one or more Tribunals to be known as Food Safety Appellate Tribunal PVR 87 wp477-227-12=115-13-ghntefinal.doc to hear appeals from the decisions of the Adjudicating Officer passed under Section 68 of the FSS Act. It is submitted that the power of both authorities under sections 68 and 70 are restrictive and limited to the orders and directions of the Food Safety Officer, Designated Officer and orders passed under the other provisions of the Act and regulations and therefore, these orders would attain finality without any remedy to the Food Business Operator. As also the Constitution of the Food Safety Appellate Tribunal is defective inasmuch as sub-

section (3) of Section 70 prescribes only one person (Presiding Officer) to be appointed, without any technical member. It is submitted that this would result in miscarriage of justice as no technical expertise would be available in the adjudication by the Tribunal. This leads to illegality and arbitrariness. A situation is created that administrative authorities under the Act would pass orders to which there is no judicial remedy which is available and thus those orders would be rendered final and therefore, this situation is against the rule of law. A procedural reasonableness is to be satisfied by providing an administrative appeal to a higher adjudicating authority or to the Government.

Further, the powers conferred on the Adjudicating Officer and Food Safety Appellate Tribunal are limited and are unreasonably restricted. Certain offences though punishable with prosecution and imprisonment like non-compliance of improvement notices and emergency prohibition notices and orders though take away liberty or freedom of an individual there is no remedy of an appeal or even an inquiry or investigation. In the absence of an appeal, the fundamental rights of a person guaranteed under Article 21 of the Constitution of India stand PVR 88 wp477-227-12=115-13-ghntefinal.doc infringed. The limited powers conferred on the Adjudicating Officer under Rule 3.1.1. (3) and sub rule 5 of the Food Safety and Standard Rules, 2011 and under section 70 (1) of the Act thus, are unreasonable and are therefore, required to be declared as unconstitutional.

59. A perusal of the Food Safety Standards Rules, 2011 reveals that Rule 3.3 provides for procedure for an appeal to the Appellate Tribunal. A perusal of the provisions of Section 68 read with rules 3.1.1. and 3.1.2 of the Food Safety and Standards Rules, 2011 clearly show that the Adjudicating Officer shall have power to hold inquiry for the purpose of adjudicating offences punishable under sections 50 to 58 and 64 to 67 of the Food Safety Act, 2006.

Section 50 is as regards an offence for selling food not of the nature or substance or quality demanded. Section 51 pertains to dealing in sub-standard food. Section 52 pertains to dealing in misbranded food. Section 53 provides for misleading advertisement pertaining to food. Section 54 provides for offence in respect of food containing extraneous matters. Section 55 is as regards failure to comply with directions of the Food Safety Officer. Section 56 pertains to an offence for unhygienic or unsanitary processing or manufacturing of food.

Section 57 pertains to offences relating to possessing adulterant and section 58 pertains for contravention for which no specific penalty is provided. Section 64 provides for punishment for subsequent offences. Section 66 provides for offences by companies and section 67 concerns offences for contravention of provisions of the Act in case of import of articles of food to be in addition to PVR 89 wp477-227-12=115-13-ghntefinal.doc penalties provided under any other Act.

60. There are many facets which are covered under these penal provisions. Sections 50 to 58 and sections 64 to 67 provide for different offences under the FSS Act and the punishment thereof. Against an adjudication by the Adjudicating Officer, an appeal is provided before the Appellate Tribunal.

In our opinion, it would not be appropriate for the petitioners to contend that the adjudicating mechanism as provided in section 68 read with section 70 of the Food Safety Act, 2006 along with Food Safety and Standard Rules, 2011 does not effectively provide a redressal mechanism and thus an aggrieved person is rendered remediless. The argument of the petitioner militates against the basic principle of jurisprudence recognized in the maxim "Ubi Jus ibi remedium (there is no right without a remedy)". Further there can be no vested right in a person to contend that a particular procedure should be applied to deal with offences under the Act or for that reason another procedure is more suitable. The legislature has considered it appropriate to provide for an adjudication mechanism as contemplated by section 68 to confer power on the Adjudicating Officer, authority and jurisdiction to adjudicate offences as contemplated by sections 50 to 58 and section 64 to 67 of the Act, and an appeal against the order of the Adjudicating Officer is provided before the Tribunal. It therefore, cannot be said that this mechanism is insufficient. As regards the contention of Mr. Bulchandani that in respect of orders not falling within the provision of Sections 50 to 58 and 64 to 67, the same would be rendered final and without PVR 90 wp477-227-12=115-13-ghntefinal.doc any remedy of an appeal is also unfounded. A perusal of the various provisions of the Act clearly demonstrate that appropriate safeguard has been provided by creating a mechanism before any rights vested in persons dealing in food are sought to be affected at the hands of any of the authorities under the FSS Act.

The authorities are required to follow a procedure of issuing a notice or a show cause notice before taking up of any restrictive or prohibitive action. The example of such caution as incorporated in the legislation can be seen in the provisions of section 32 where the Designated Officer is empowered to issue improvement notice setting out grounds on the basis of which notice has been issued. Further safeguard has been provided that on the failure of the Food Business Operator to comply with improvement notice the licensee would be issued a show cause notice as to why licence granted to him should not be cancelled. Sub-section 4 of section 32 provides for an appeal to the Commissioner of Food Safety against any order passed or issuance of improvement notice, refusal to issue a certificate as to improvement, or cancellation or suspension of Food Safety whose decision thereon shall be final.

Another example of such safeguard is contained in section 34 which concerns emergency notices. Thus, the contention as urged on behalf of the petitioner that there is no remedy for the persons against whom orders are passed under the other provisions of the Act, is wholly misconceived and without any substance.

In any case, it just cannot be contended by the petitioners that there is no remedy in law to an aggrieved persons if his legal and statutory rights are affected.

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61. There is yet another reason as to why this contention cannot be accepted. It is inconceivable that where the statute is silent on a specific remedy being made available against the orders passed by the authorities under the Act, then in that case if any of the legal rights conferred on such persons are affected a right to seek enforcement of their rights under the civil laws or under the Constitution can never be said to be extinguished. Access to justice is the foundation of the rule of law and flowing from Article 21 of the Constitution of India. It is therefore, fallacious for the petitioners to contend that limited powers are conferred on the Adjudicating Officer and the tribunal and therefore, persons who are affected would have no legal remedy.

62. As regards the submission of Mr. Bulchandani that the definitions as contained in Section 3 are vague and ambiguous, we have already rejected this contention in the earlier part of our judgment on the ground that the words used in the definition clause are required to be understood in regard to its meaning in the context of the object the legislation intends to achieve. We find that the words which are used in the definition clause are clear and plain. We do not find that there is any ambiguity in the meaning of the words the FSS Act intends to attribute to the words in the scheme of the legislation. If this be the position, then it would be the duty of the Court to give effect to that meaning irrespective of the consequences. It would not be permissible to adopt hyper-

technical construction as sought to be contended by the petitioners and construction which furthers the policy of the Act is required to be considered.

PVR 92 wp477-227-12=115-13-ghntefinal.doc On a careful examination of the various provisions of the definition clause as asserted by the petitioner, we are of the opinion that there is nothing

ambiguous or vague or unreasonable in the words used in the definition clause so as to render these provisions unworkable and incapable of implementation. This is not a case where the terms as used in the provision are so absurd and incoherent in the context in which they are used so as to lead to an absolute absurdity in the language used and it is impossible to resolve the ambiguity created in the cluster of words as used in the legislation. On a reading of the provisions as contained in the definition clause, we are not persuaded to come to the conclusion that the provisions are absolutely meaningless, incomprehensive or of an abnormal understanding. These observations as made by us are applicable to the various provisions as being assailed on behalf of the petitioners on the ground of vagueness and ambiguity as we find for the reasons set out above, as we have reached to a conclusion that the assertion of the petitioners is without any foundation.

63. Now we come to the third Writ Petition No.115 of 2014 which is filed by the Association of hotel and restaurant business. Mr.Dhakephalkar, learned Senior Advocate has made submissions on behalf of the petitioners. The submissions as made by Mr.Dhakephalkar are limited in as much as there is no clarity as to which rules are applicable to hoteliers, manufacturer and for persons who are engaged in food processing. Mr.Dhakephalkar has drawn our attention to the provisions of section 50 which pertains to penalty for selling PVR 93 wp477-227-12=115-13-ghntefinal.doc food not of the nature or substance or quality demanded. Mr.Dhakephalkar submits that this provision creates a vague province as to what would be the quality accepted by hoteliers in providing various edible items and what can be a breach of such quality, is vague. This would bring about an arbitrary regime and abuse of the powers at the hands of the authorities. In regard to the other challenges as raised in the Writ Petition, Mr. Dhakephalkar has adopted the challenges as made by Mr.Anturkar and Mr.Bulchandani. We are in total disagreement with the submissions as made by Mr.Dhakephalkar. The submissions are too general without any foundation.

ig We have observed hereinabove that legality of the legislative provisions cannot be assailed in abstract. Even otherwise, there is no substance in the challenge as being urged by Mr.Dhakephalkar. The whole attempt on the part of the petitioners is to read the provisions in isolation. We have already observed that the provisions are required to be read and understood with other ancillary provisions as would become relevant. On a plain reading of the provisions of the Act, we do not find that there is any vagueness or absurdity or any discrimination and unreasonableness as is reflected in any of the provisions. Mr.Dhakephalkar was unable to show any instances which could even remotely support the plea as made by the petitioners, of any action taken which would render such action vulnerable and not sustainable on the application of the provisions of the Act. A deeper scrutiny of the submission as urged by Mr.Dhakephalkar also show that there is no vagueness or any prejudice which is being caused to the petitioners in any of the provisions as contained in the FSS Act. Moreover, as submissions PVR 94 wp477-227-12=115-13-ghntefinal.doc by the petitioners in this Writ Petition are oblivious of the various rules and regulations framed under the FSS Act which clearly categories the dealing of the food by the category of these petitioners. The legislature has carefully incorporated various provisions providing for penalty with an object of securing safe food for human consumption and has attempted to establish standards for those who are dealing in business of food. These are provisions which are enshrined under Articles 21 and 47 of the Constitution of India as held by the Supreme Court. Each of the provisions which are assailed by the petitioners are intended to achieve these constitutional objects. Thus, an imaginary challenge is

sought to be raised which in any case ought to fail.

64. Mr. Anturkar learned Senior Counsel for the petitioners has placed reliance on the decisions of the Supreme Court in the case of "Academy of Nutrition Improvement & ors vs Union of India, (2011 (8) SCC 274)." in support of his submissions that the terms like processing, storage, distribution, food service, catering, food ingredients which are not defined under the Act have created an ambiguity and vagueness in the implementation of the provisions of the Act. The reliance is on the observations of the Supreme Court in paragraph 55 of the Judgment in which the Supreme Court has observed that "where an item of food (used in the composition or preparation of human food and used as a flavouring) is in its natural form and is unadulterated and is not injurious to health, a rule cannot be made under the provisions of the Act to ban the manufacture for sale, storage or sale of such food item on the ground that such PVR 95 wp477-227-12=115-13-ghntefinal.doc ban will ensure that the populace will use a medicated form of such food, which will benefit a section of the populace. The Supreme Court has made these observations in the context of the challenge to the validity of Rule 44-I of the provisions of Food Adulteration Rules 1955 which banned use of common iodised common salt for human consumption. The case of the petitioners was that compulsory iodization regime ought to be replaced by voluntary need-based iodization regime so that only those having iodine deficiency could use iodized salt and that it was unfair and unjust to deny them the right to choose between iodized and common iodized salt. It was thus urged that Rule 44-I was violative of Articles 14 and 21 of the Constitution of India. The Supreme Court held that the issue that there should be an universal salt iodization is much debated technical issue relating to medical science and that decisions in these matters can only be taken by an expert. It was held that the Courts are not equipped nor can be expected to decide about the need or absence of need for such universal salt iodization on the basis of some articles and reports placed before it. That the Court should not rush in where even scientists and medical experts are careful to tread nor the Court substitute their own views as to what is wise, safe, prudent or proper relating to technical issues relating to public health. It is in this context the above observations were made by the Supreme Court and in paragraph 55.

In our view, these observations are of no avail to the petitioners in the context to the challenge as raised in this petition. There can be no quarrel about what the Supreme Court has held in this decision. In the facts of the present case, whether any item is being used in its natural form and whether the same is injurious to PVR 96 wp477-227-12=115-13-ghntefinal.doc health or not are all matters which are required to be taken into consideration by the Food Safety Authority when such items are being used in the preparation of items of food. The same would depend on the facts of each case. The petitioners have not come out with any case that the respondents in any manner have restricted the use of any food item in its natural form which is unadulterated not injurious to health and have made a rule prohibitive of such use. Reliance on the observations of the Supreme Court in paragraph 55 therefore, are squarely inapplicable to the facts of the present case.

65. Mr. Anturkar has then placed reliance on the decision of the Supreme Court in the case of State of Madhya Pradesh vs. Baldev Prasad, (AIR 1961 Supreme Court 293), again on the proposition of vagueness of the provisions of the Food Safety Act. In this case, the Supreme Court was dealing with the question about the validity of the Central Provinces and Berar Goondas Act, 10 of 1946 as

amended by the Madhya Pradesh Act 49 of 1950. The State of Madhya Pradesh had passed an order against respondent Baldev Prasad on 16 th June 1955 under section 4-A of the Act. The District Magistrate, Chhindwara had passed another order dated 22nd June 1955 communicating Baldev Prasad the first externment order passed against him. A writ petition was filed by Baldev Prasad before the High Court challenging the validity of the said order on the ground that the grounds on which the order was passed was itself ultra vires. The plea of Baldev Prasad was upheld by the High Court by holding that section 4 and section 4-A of the Act were invalid. The correctness of this PVR 97 wp477-227-12=115-13-ghntefinal.doc decision of the High Court was challenged by the State of Madhya Pradesh before the Supreme Court. While dismissing the appeal the Supreme Court upheld the decision of the High Court. Analyzing the provisions of the Act it was observed that the validity of the Act was challenged on one serious infirmity in section 4 and 4-A. The infirmity being that section 4 contemplates preventive action being taken provided two conditions are satisfied; first the presence, movements or act of any person sought to be proceeded against should appear to the District Magistrate to be prejudicial to the interests of general public, or that a reasonable suspicion should exist that such a person is committing or is likely to commit acts calculated to disturb public peace or tranquility and second that the person concerned must be a goonda. Thus, where prejudicial acts can be attributed to a goonda that section 4 would come into operation and that the satisfaction of the first condition alone would not be enough; both the conditions must be satisfied before action can be taken against any person. Thus it was meant that the primary condition precedent for taking action under section 4 was that the person against whom action was proposed to be taken is a goonda and it is precisely in regard to this condition it was held that the section suffers from a serious infirmity. The section did not provide that the District Magistrate must first come to a decision that a person against whom he proposes to take action is a goonda, and gives him no guidance or assistance in the said matter. It is in this context, the observations in paragraph 10 were made by the Supreme Court which reads thus :

PVR 98 wp477-227-12=115-13-ghntefinal.doc "10. Having regard to the two infirmities in Sections 4, 4-A respectively we do not think it would be possible to accede to the argument of the learned Advocate General that the operative portion of the Act can fall under Article 19 (5) of the Constitution. The person against whom action can be taken under the Act is not entitled to know the source of the information received by the District Magistrate; he is only told about his prejudicial activities on which the satisfaction of the District Magistrate is based that action should be taken against him under Section 4 or Section 4-A. In such a case it is absolutely essential that the Act must clearly indicate by a proper definition or otherwise when and under what circumstances a person can be called a goonda; and it must impose an obligation on the District Magistrate to apply his mind to the question as to whether the person against whom complaints are received is such a goonda or not. It has been urged before us that such an obligation is implicit in sections 4 and 4-A. We are however, not impressed by this argument. Where a statute empowers the specified authorities to take preventive action against the citizens it is essential that it should expressly make it a part of the duty of the said authorities to satisfy themselves about the existence of what the statute regards as conditions precedent to the exercise of the said authority. If the statute is silent in respect of one of such conditions precedent it undoubtedly constitutes a serious infirmity which would inevitably take it out of the provisions of Article 19(5). The result of this infirmity is that it has left to the unguided and unfettered discretion of the authority concerned to treat any citizen as a

goonda. In other words, the restrictions which it allows to be imposed on the exercise or the fundamental right of a citizen guaranteed by Article 19 (1) (d) and (e) must in the circumstances be held to be unreasonable. That is the view taken by the High Court and we see no reason to differ from it."

Mr.Anturkar has relied on the above observations to submit that if the statute is silent in respect of one of such conditions precedent, it undoubtedly constitutes a serious infirmity which would inevitably take it out of the provisions of Article 19 (5) and that a result of such infirmity is that it has left to the unguided and unfettered discretion of the authority to treat any citizen as a goonda. We are of the opinion that these observations of the Supreme Court in no manner are of any assistance to the petitioners, the reason being that the context in which the PVR 99 wp477-227-12=115-13-ghntefinal.doc Supreme Court had come to a conclusion simply cannot be made applicable to the facts of the present case. We have observed above that the terms as used in Food Safety Act are required to be read in the context to which they are used and these terms cannot be read in isolation and are required to be read along with the other provisions of the Act. They are required to be given a ordinary and natural meaning and in the context in which they are placed in the scheme of the Act.

The petitioners cannot in abstract place reliance on the observations of the Supreme Court.

66. Mr.Anturkar's reliance on the decision of the Supreme Court in "Kartar Singh Vs. State of Punjab, (1994(3) SCC 569)" is also of no avail to the petitioners as the same is wholly inapplicable in the facts of the present case.

In paragraph 130 of this judgment the Supreme Court has categorically held that basic principle of legal jurisprudence is that an enactment is void for vagueness if its prohibitions are not clearly defined. A perusal of the detailed provisions which the petitioners have assailed read with the licensing regulations, leave no manner of doubt that they are clear, plain and unambiguous.

67. Before we conclude, we may observe that the FSS Act has been enacted for the benefit and welfare of the citizens and has direct nexus to the right to life as enshrined under Article 21 of the Constitution. This is a social legislation and provides for solution to the problems which would be a creation of nobodyelse but the members of the society. In upholding the validity of the PVR 100 wp477-227-12=115-13-ghntefinal.doc provisions of the FSS Act, we have adopted the principles of interpretation which would further the social interest and the object of the legislation. As a Constitution Court, we cannot loose sight of the evil which is sought to be remedied by this enactment. The mischief which is sought to be remedied is nothing but sheer creation of we humans who have the tendency to indulge and deal in food products which would not be safe for human consumption and/or likely to cause a grave impact on human health. Every person even the person dealing in such unsafe food is likely to be the victims. We may observe that it would be the fundamental duty of every citizen to nurture such morals, ideals, qualities, habits and discipline so as to bring about a situation that the indulgence and dealing in hazardous and unsafe food is eliminated in totality as a matter of social responsibility of every citizen and bring about a situation that penal actions under these social legislation are minimized sheerly by inculcating these virtues of

honesty and morality in dealing with food as a duty towards every citizen and this Country. These are the principles which are enshrined as one of the fundamental duties in Article 51A sub-clauses (h) and (j) of the Constitution which read as under:-

51A. Fundamental duties It shall be the duty of every citizen of India

(a)

(h) to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i);

(j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement."

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68. It is for these reasons that we have construed the provisions of the FSS Act to make it effective and operative on the principles of *ut res majis valeat quam periat*. It may not be out of place to observe that nobody can be oblivious of the evils that are caused to the Society at large on account of unsafe food being traded. The Court is required to take into consideration matters of common knowledge, the history of recent times in considering the importance of legislation and more particularly when it is required to decide the constitutional validity of the provisions. The Legislature in its wisdom understands and correctly appreciates the need of its own people and its laws which are directed to resolve the problems made manifest by sheer experience. If the object of the Act is to achieve science based standards for articles of food and to regulate, manufacture and storage, distribution, sale and import so as to ensure availability of safe and wholesome food for human consumption, in that case it would be the duty of the Court to further the object of the Act in interpreting the provisions.

We may observe that the legislation which pertains to food safety serves a pivotal role in securing the citizens a minimum degree of purity in the articles of food and to protect and preserve the public health. It is aimed at preventing fraud on the consumers and those who are guilty of endangering human life by indulging and dealing with the unsafe food are required to be dealt with iron hands. If the provisions intend to curb such social evil, we are of the considered opinion that the challenge as raised by the petitioners on every count ought to fail. We may also observe that those who are entrusted with the solemn duty of enforcing the provisions of the Act are equally under an obligation to discharge PVR 102 wp477-227-12=115-13-ghntefinal.doc the duties in the method and manner as the FSS Act, rules and regulations framed thereunder would provide. As on discharge of these duties the health of the citizens at all levels of life would rest. The persons who are dealing in foods as also the authorities responsible for implementing the provisions of this Act, therefore, have an onerous responsibility to the welfare of the citizens and directly affecting the valuable constitutional guarantee as enshrined under Article 21 of the Constitution. In no circumstance the standard of

safety as would be laid down under the Act, the Rules and Regulations can be compromised by not adhering to, implementing the same by all the stakeholders.

In this context we may usefully refer to the recent decision of the Supreme Court in the case of "Centre for Public Interest Litigation Vs. Union of India & Ors., (AIR 2014 SC 49)" wherein the Supreme Court in dealing with the issue arising under the FSS Act has held that any food article which is hazardous or injurious to public health is a potential danger to the fundamental right to life guaranteed under Article 21 read with Article 47 of the Constitution of India. It is held that the provisions of FSS Act and the Rules and Regulations framed thereunder are required to be interpreted and applied in the light of the Constitutional principles and an endeavour has to be made to achieve appropriate level of protection of human life and health. It is held that considerable responsibility is cast on the Authorities as well as other officers functioning under the Act to achieve the desired results. It is also held that the parties are also obliged to maintain a system of control and other activities as appropriate to the circumstances, including public communication on food safety and risk, food safety surveillance PVR 103 wp477-227-12=115-13-ghntefinal.doc and other monitoring activities covering all stages of food business. It would be profitable to reproduce the relevant paragraphs of the said judgment of the Supreme Court in the present context:-

"19. Article 21 of the Constitution of India guarantees the right to live with dignity. The right to live with human dignity denies the life breach from the Directive Principles of the State Policy, particularly clauses (3) and (f) of Article 39 read with Article 47 of the Constitution of India.

Article 47 reads as follows:-

"47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

20. Article 12 of the International Covenant on Economics, Social and Cultural Rights, 1966 reads as follows:-

"12-(1) The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

(2) The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the still birth-rate and of infant mortality and for the healthy development of the child;

- (b) The improvement of all aspects of environmental and industrial hygiene;
- (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
- (d) The creation of conditions which would assure to a medical service and medical attention in the event of sickness."

21. We may emphasize that any food article which is hazardous or injurious to public health is a potential danger to the fundamental right to life guaranteed under Article 21 of the Constitution of India. A paramount duty is cast on the States and its authorities to achieve an appropriate level of protection to human life and health which is a fundamental right guaranteed to the citizens under Article 21 read with Article 47 of the Constitution of India.

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22. We are, therefore, of the view that the provisions of the FSS Act and PFA Act and the rules and regulations framed thereunder have to be interpreted and applied in the light of the Constitutional Principles, discussed above and endeavour has to be made to achieve an appropriate level of protection of human life and health. Considerable responsibility is cast on the Authorities as well as the other officers functioning under the above-mentioned Acts to achieve the desired results. Authorities are also obliged to maintain a system of control and other activities as appropriate to the circumstances, including public communication on food safety and risk, food safety surveillance and other monitoring activities covering all stages of food business.

23. Enjoyment of life and its attainment, including right to life and human dignity encompasses, within its ambit availability of articles of food, without insecticides or pesticides residues, veterinary drugs residues, antibiotic residues, solvent residues, etc.

--- ----" ig (emphasis supplied) The above observations of the Supreme Court thus leaves no manner of doubt that dealing in food articles which are hazardous and injurious to public health is a potential danger to the fundamental right to life guaranteed under Article 21 of the Constitution. In our above discussion, we have observed that the Legislature was mindful of the importance of the subject and in its wisdom taking into con-

sideration all the parameters on the subject has enacted the FSS Act. As also the rule making authorities have framed the rules and regulations concerning differ-

ent aspects pertaining to food and to achieve the objects of the enactment. We have considered the scope of the Rules under challenge and as assailed and we have noted that none of these rules and regulations in any manner go contrary to the provisions of the Act or are rendered illegal for any other reasons. This is definitely not a case where the rule making authority has exceeded its power

un-

der the FSS Act in framing these rules and regulations.

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69. We may also usefully refer to the decision of the Division Bench of this Court in the case "Dhariwal Industries Ltd. and Anr. Vs. State of Maha-

rashtra and Others, ((2013) 1 Mah LJ 461)". In this case the Court was consid-

ering the challenge to the validity of the Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011 and Regula-

tion 3.1.7 of the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 and the order passed by the Commissioner of Food Safety passed under Section 30(2)(a) of the FSS Act in the interest of public health prohibiting manufacturing, storing, distributing or selling of Gutkha or Pan Masala. The Division Bench while considering the provisions of the Act has succinctly made the following observations:-

"23.These provisions require all the above authorities which in-

clude the other agencies implementing the provisions of the Act to identify the possibility of harmful effects on health on the basis of assessment of available information. If the possibility of harmful effects on health is identified but scientific uncertainty persists, provisional risk management measures necessary to ensure appropriate level of health may be adopted. In cases where there are reasonable grounds to suspect that a food may present a risk for human health, the Food Authority and the Commissioner of Food Supply shall inform the general public about the food, risk to health and measures being taken to prevent or eliminate that risk. Section 18(2)(a) also requires that the Food Authority shall, while framing regulations and specifying standards under the Act, ensure prevention of unsafe or contaminated or substandard food. It is, thus, clear that the authorities entrusted with the duty of implementing the Food Safety Act, 2006 are not merely to perform the negative duty of preventing food adulteration, but are required to play a very pro-active role for ensuring safe and wholesome food and to prevent and eliminate risk to health caused by unsafe food. It is, therefore, clear that Food Safety and Standards Act, 2006 is the comprehensive single special leg-

PVR 106 wp477-227-12=115-13-ghntefinal.doc islation for all food products on the subject of safety and standards.

55. The impugned statutory regulations as well as the impugned statutory order dated 19 July, 2012 are in furtherance of Article 47 of the Con-

stitution which reads as under:--

"47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health. - The State shall re-

gard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health."

ig (emphasis supplied)

70. The Constitution Bench of the Supreme Court in the case of "Municipal Corporation Ahmedabad vs. Jan Mohammed, (AIR 1986 SC 1205)", in laying down the principles of interpretation which would be applicable in testing a challenge to a legislation on the ground that it violates the fundamental rights guaranteed under Article 19(1)(g) to practice any profession, or to carry on any occupation, trade or business and the rights guaranteed under Article 14 which enjoins that the State shall not deny to any person equality before the law or the equal protection of law within the territory of India, has observed thus:-

"15. Before proceeding to deal with the points urged on behalf of the appellants it will be appropriate to refer to the well-

established principles in the construction of the constitutional provisions. When the validity of a law placing restriction on the exercise of a fundamental right in Article 19(1)(g) is challenged, the onus of proving to the satisfaction of the court that the restriction is reasonable lies upon the State. If the law requires that an act which is inherently dangerous, noxious or injurious to the public interest, health or safety or is likely to prove a nuisance to the community shall be done under a permit or a licence of an PVR 107 wp477-227-12=115-13-ghntefinal.doc executive authority, it is not per se unreasonable and no person may claim a licence or a permit to do that act as of right. Where the law providing for grant of a licence or permit confers a discretion upon an administrative authority regulated by rules or principles, express or implied, and exercisable in consonance with the rules of natural justice, it will be presumed to impose a reasonable restriction.

Where, however, power is entrusted to an administrative agency to grant or withhold a permit or licence in its uncontrolled discretion the law ex facie infringes the fundamental right under Article 19(1)

(g). Imposition of restriction on the exercise of a fundamental right may be in the form of control or prohibition. But when the exercise of a fundamental right is prohibited, the burden of proving that a total ban on the exercise of the right alone may ensure the maintenance of the interest of general public lies heavily upon the State. In this background of legal position the appellants have to establish that the restriction put on the fundamental right of the respondents to carry on their trade

or business in beef was a reasonable one. The court must in considering the validity of the impugned law imposing prohibition on the carrying on of a business or a profession attempt an evaluation of its direct and immediate impact upon the fundamental rights of the citizens affected thereby and the larger public interest sought to be ensured in the light of the object sought to be achieved, the necessity to restrict the citizen's freedom, the inherent pernicious nature of the act prohibited or its capacity or tendency to be harmful to the general public, the possibility of achieving the object by imposing a less drastic restraint, and in the absence of exceptional situations such as the prevalence of a state of emergency, national or local, or the necessity to maintain necessary supplies or the necessity to stop activities inherently dangerous, the existence of a machinery to satisfy the administrative authority that a case for imposing restriction is made out or a less drastic restriction may ensure the object intended to be achieved.

17. Clause (6) of Article 19 protects a law which imposes in the interest of general public reasonable restrictions on the exercise of the right conferred by sub-clause (g) of clause (1) of Article 19. Obviously it is left to the court in case of a dispute to determine the reasonableness of the restrictions imposed by the law. In determining that question the court cannot proceed on a general notion of what is reasonable in the abstract or even on a consideration of what is reasonable from the point of view of the person or persons on whom the restrictions are imposed. The right conferred by sub-clause (g) is expressed in general language and if there had been no qualifying provision like clause (6) the right so conferred would have been an absolute one. To the persons who have this right any restriction will be irksome and may well be regarded by them as unreasonable. But the question cannot be decided on that basis. What the court has to do is to consider whether the restrictions imposed are reasonable in the interest of PVR 108 wp477-227-12=115-13-ghntefinal.doc general public. In the State of Madras v. V.G. Row [AIR 1952 SC 196 : 1952 SCR 597 : 1952 Cri LJ 966] this Court laid down the test of reasonableness in the following terms:

"It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract stan-

dard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

20. The tests of reasonableness have to be viewed in the context of the issues which faced the legislature. In the construction of such laws and in judging their validity, courts must approach the problem from the point of view of furthering the social interest which it is the purpose of the legislation to promote. They are not in these matters functioning in vacuo but as part of society which is trying, by the enacted law, to solve its problems and furthering the moral and material progress of the community as a whole. (See Jyoti Pershad v. Union Territory of Delhi [AIR 1961 SC 1602 : (1962) 2 SCR 125] .) If the expression 'in the interest of general public' is of wide import comprising public order, public security and public morals, it cannot be said that the standing

orders closing the slaughterhouses on seven days is not in the interest of general public.

23. It is now well established that while Article 14 forbids class legislation it does not forbid reasonable classification for the purposes of legislation and that in order to pass the test of permissible classification two conditions must be fulfilled, namely,

(i) the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) such differentia must have rational relation to the object sought to be achieved by the statute in question. The classification, may be founded on different basis, namely, geographical, or according to objects or occupations or the like and what is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration. There is always a presumption in favour of constitutionality of an enactment and the burden is upon him who attacks it, to show that there has been a clear violation of the constitutional principles. The courts must presume that the legislature understands and correctly appreciates the needs of its own people, that its laws are directed against problems made manifest by experience and that its discriminations are based on adequate grounds. It must be borne in mind that the legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed PVR 109 wp477-227-12=115-13-ghntefinal.doc to be the clearest, and finally that in order to sustain the presumption of constitutionality the court may take into consideration matters of common knowledge, matters of common rapport, the history of the times and may assume every state of facts which can be conceived to be existing at the time of legislation."

71. We may observe that our above discussion and conclusion is confined to the submissions as canvassed by the learned Counsel for the parties.

72. In the result of the above deliberation, we are of the considered opinion that the provisions as impugned in these writ petitions are legal, valid and intra vires Articles 14 and 19 (1) (g) of the Constitution of India and thus the challenge as raised in these Writ Petitions fails. The Writ Petitions are accordingly dismissed. In the facts and circumstances of the case, there shall be no order as to costs.

(G.S.Kulkarni, J.)

(S.C.Dharmadhikari)

1 CERTIFICATE

Certified to be true and correct copy of the original signed Judgment / Order.