

SUPREME COURT OF INDIA

Centre for Public Interest Litigation

Vs.

Union of India

Writ Petition (Civil) No. 681 of 2004

(K. S. Radhakrishnan and Dipak Misra JJ.)

22.10.2013

JUDGMENT

K. S. RADHAKRISHNAN, J.

1. The writ petition was preferred for constituting an independent Expert/Technical Committee to evaluate the harmful effects of soft drinks on human health, particularly on the health of the children, and also for a direction to respondent No. 1 – Union of India – to put in place a regulatory regime which could control and check the contents in a particular chemical additive in foods, including soft drinks. Further, direction was also sought for against respondent no. 1 to make it mandatory for the soft drinks manufacturers to disclose the contents and their specific quantity on the labels of soft drinks, including appropriate warnings, qua a particular ingredient, and its harmful effects on the people. Petitioner has also sought for a direction to respondent no. 1 to check and control the misleading advertising of soft drinks, particularly advertisements targeted at children, unwary uneducated and illiterate people.

2. The Union of India and other respondents have maintained the stand that the Food Supply and Standards Act, 2006 (the FSS Act), along with its Rules and Regulations framed thereunder, constitute a vigorous regulatory regime, which takes care of all the above mentioned situations and provisions of the FSS Act and the Rules and Regulations are being enforced scrupulously and meticulously. Over and above, it was pointed, in pursuance to the orders passed by this Court on 8.2.2011 and 15.4.2011, the Food and Safety Standards Authority of India (for short “the Food Authority”) examined the various grievances raised by the petitioner and passed the order on 12.9.2012. The findings recorded in the order dated 12.9.2012 passed by the Food Authority would allay all the fears and

apprehensions raised by the writ petitioner and in any view the same could be taken care of by the authorities functioning under the provisions of the FSS Act as well as the Rules and Regulations framed thereunder. Further, it was also pointed out that if the petitioner or any other citizen has any grievance, he can always approach the statutory authorities functioning under the FSS Act and, hence, no further directions are called for from this Court under Article 32 of the Constitution of India.

3. We have gone through the various provisions of the FSS Act, the Food Safety and the Standards (Food Products Standards and Food Additives) Regulations, 2011, the Food Safety and Standards (Packaging and Labelling) Regulations, 2011, Prevention of Food Adulteration Act and the Rules framed thereunder, etc. In our view, by and large, the various grievances raised by the petitioner are seen covered by the above mentioned legislations, but the question is only with regard to their enforcement by the authorities functioning under these legislations.

4. We have already indicated that the main apprehension of the petitioner is that there is no proper regulatory regime in place to evaluate the harmful effects of soft drinks on human health, particularly on the health of children and also there is no mechanism to control and check the contents in particular chemical additive in food, including soft drinks. Petitioner also submitted that, though two separate scientific panels for additives, labelling and advertising were constituted on the basis of the directions given by this Court, the petitioner's grievances regarding the ingredients of soft drinks were considered by the scientific panel on labelling and advertising and not by the scientific panel on food additives. Petitioner submitted that the issue could have been considered by the scientific panel for food additives only and not by the panel which has been constituted to consider issues of labelling and advertising. The petitioner also submitted that even the recommendations made by the Ganguly Committee were not followed by the above mentioned committees. Ganguly Committee has recommended for a "well controlled studies to assess effects of consumption of carbonated water on health" and also an independent cell for "risk analysis". Petitioner has pointed out that consumption of large amount of Caffeine (methylated xanthine) can cause diseases and disorders, such as, insomnia, nervousness, anxiety and so on, which has been used as an additive in soft drinks and is harmful to human life. In support of this contention, reference has been made to various research papers which have highlighted the harmful effects of consumption of Caffeine.

5. Petitioner has also highlighted the harmful effects on children created through misleading advertising, for which reference has been made on the study conducted

by the World Health Organisation (WHO) and also on various study papers published in the several International journals, highlighting the impact of advertising on children and its harmful effects.

6. We have already indicated that on the basis of the orders passed by this Court on 8.2.2011 and 15.4.2011 and in exercise of powers conferred under Section 13(4) of the FSS Act, the Food Authority, constituted an expert Scientific Panel on Labelling and Claims/Advertising and that Panel, after examining the various grievances raised by the petitioner and giving an opportunity of being heard, passed an order on 12.9.2012, the operative portion of the same reads as under:

“a) Soft drinks as referred in the representation (Petitioner’s representation dated 18.03.2011), are regulated as carbonated water in accordance with the standards under Food Safety and Standard Regulation, 2011.” “(W)ith the existing consumption pattern prevalent in the country as reported in the above referred data, the ingredients present in the beverage do not appear to pose any health hazard.”

b) The labelling of soft drinks is governed by the Food Safety and Standards (Packaging and Labelling) Regulations, 2011. “(T)he labelling provisions of carbonated beverages is in compliance with the Food Safety and Standards (Packaging and Labelling) Regulations, 2011.”

c) The advertisement of carbonated beverages is governed inter alia by the Prevention of Food Adulteration Act, 1954, Food Safety and Standards (Restriction of Advertisement) and Regulation, 2011 and the Advertising Standards Council of India (ASCI) Code. The advertisement of carbonated beverages complies with the provisions of the Prevention of Food Adulteration Act, 1954, the Food Safety and Standards (Restriction of Advertisement) Regulation 2011 and the ASCI Code.”

7. We find that the scientific panel consists of eminent food scientists, chemical engineers, nutritionists, public health experts, toxicologists etc. Petitioner raised the contention that the objection raised by it was considered by the Committee whose title is the Scientific Panel on Labelling and Claims/Advertising, even though the Food Authority has a panel with the words “Food Additives” in its title. We find not much force in this contention, when we examine the credentials of the members of the scientific panel on labelling/advertising. Further, we notice that the grievances were examined by the experts who are scientific experts, not by the members of the panel chosen, who are only conversant with labelling/advertising

etc. In any view, we notice that the Act provides for a machinery for examining the grievances and if a citizen has got any complaint with regard to the ingredients of any soft drinks, he can approach the machinery. Section 40 of FSS Act also enables the purchaser of any article of food to get analyzed such food from the Food Analyst after informing the food business operator at the time of purchase of his intention to have such article so analyzed. The Statute also provides penal provisions in case there is a contravention or non-compliance of the regulations framed.

8. FSS Act has been enacted to consolidate laws relating to food and to establish the Food Safety and Standards Authority in India for laying down science based standards for articles of food. The Act is also intended to regulate the manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption. The Act is based on international legislations, instrumentalities and Codex Alimentarius Commission (CAC). CAC was created in 1961/62 by the Food and Agricultural Organization of United Nations (FAO) and WHO to develop the food standards, guidelines and related texts such as codes of practice under the Joint FAO/WHO Food Standards Programme. The main purpose this programme is to protect the health of consumers, ensure fair practices in the food trade, and promote coordination of all food standards work undertaken by international governmental and non-governmental organizations. “Codex India” the National Codex Contact Point (NCCP) for India, coordinates and promotes Codex activities in India in association with the National Codex Committee and facilitates India’s input to the work of Codex through an established consultation process.

9. The Act empowered the Central Government to constitute the Food Safety and Standards Authority of India (hereinafter being referred to as “the Food Authority”) under Section 4 of the FSS Act. The Food Authority is also authorised to constitute a Central Advisory Committee, so also Scientific Panels. Section 13 of the FSS Act states that the Food Authority shall establish scientific panels which shall consist of independent scientific experts with representatives of industry and consumer organisations in its deliberations. The Food Authority may also establish as many scientific panels, as it considers necessary, in addition to panels on food additives, flavourings, processing aids and materials in contact with food; pesticides and antibiotics residues. The Food Authority, under Section 14 of the FSS Act, can also constitute Scientific Committee consisting of Chairpersons of Scientific Panels and six independent scientific experts not belonging to any of the scientific panels. The Committee shall be responsible for providing the scientific opinions to the Food Authority and shall have the powers for organising public

hearings. The Scientific Committee shall provide opinion on multi- sectoral issues falling within the competence of more than one Scientific Panel and set up working groups on issues which does not fall under scientific panels. The duties and functions of the Food Authority have been elaborately dealt with in Section 16 of the FSS Act, which states that it shall be the duty of the Food Authority to regulate and monitor the manufacture, processing, distribution, sale and import of food, and shall specify, by regulations, the standards and guidelines in relation to articles of food, mechanisms and guidelines for accreditation of certification bodies engaged in certification of food safety management systems for food businesses and notify the accredited laboratories etc.

10. Chapter III deals with the general principles of food safety. The said provisions are extracted hereunder for an easy reference:

“ CHAPTER III

GENERAL PRINCIPLES OF FOOD SAFETY

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 consumers' 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;

(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 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.”

11. The general principles referred to above are to be followed in the administration of the Act, by the Central Government, the Food Authority, the State Governments and other agencies, while implementing the regulations and specifying food safety standards or while enforcing or implementing the provisions of the FSS Act. The Food Authority, while discharging its functions, shall take into account the prevailing practices and conditions in the country, including

agricultural practices and handling, storage and transport conditions, including international standards and practices. The Food Authority shall be guided by the general principles of food safety, such as, risk analysis, risk assessment, risk management, risk communication, transparent public consultation, protection of consumers' interest, etc. Section 19 of the Act stipulates that no article of food shall contain any food additive or processing aid unless it is in accordance with the provisions of the Act and regulations made thereunder.

12. Section 21 is of paramount importance and is extracted hereunder for an easy reference:

“21. Pesticides, veterinary drugs residues, antibiotic residues and micro-biological counts.-

(1) No article of food shall contain insecticides or pesticides residues, veterinary drugs residues, antibiotic residues, solvent residues, pharmacological active substances and micro- biological counts in excess of such tolerance limits as may be specified by regulations.

(2) No insecticide shall be used directly on article of food except fumigants registered and approved under the Insecticides Act, 1968.

Explanation.- For the purposes of this section,-

(1) "pesticide residue" means any specified substance in food resulting from the use of a pesticide and includes any derivatives of a pesticide, such as conversion products, metabolites, reaction products and impurities considered to be of toxicological significance and also includes such residues coming into food from environment;

(2) "residues of veterinary drugs" include the parent compounds or their metabolites or both in any edible portion of any animal product and include residues of associated impurities of the veterinary drug concerned.”

The above mentioned section provides that no article of food shall contain insecticides or pesticides, veterinary drugs residues, antibiotic residues, solvent residues, pharmacological active substances and micro- biological counts in excess of such tolerance limit as may be specified by the regulations. It also provides that no insecticide shall be used directly on

articles of food except fumigants registered and approved under the Insecticide Act, 1968.

13. Section 24 of the FSS Act deals with restrictions of advertisement and prohibition as to unfair trade practices and reads as follows:

“24. Restrictions of advertisement and prohibition as to unfair trade practices.-

(1) No advertisement shall be made of any food which is misleading or deceiving or contravenes the provisions of this Act, the rules and regulations made thereunder.

(2) No person shall engage himself in any unfair trade practice for purpose of promoting the sale, supply, use and consumption of articles of food or adopt any unfair or deceptive practice including the practice of making any statement, whether orally or in writing or by visible representation which-

(a) falsely represents that the foods are of a particular standard, quality, quantity or grade- composition;

(b) makes a false or misleading representation concerning the need for, or the usefulness;

(c) gives to the public any guarantee of the efficacy that is not based on an adequate or scientific justification thereof:

Provided that where a defence is raised to the effect that such guarantee is based on adequate or scientific justification, the burden of proof of such defence shall lie on the person raising such defence.”

The above mentioned Section provides for restrictions on advertising of any food which misleads or contravenes the provisions of the FSS Act or the rules and regulations framed thereunder. It also provides for prohibition as to any unfair trade practice for the purpose of promoting sale, supply, use and consumption of articles of food or adoption of any unfair or deceptive practice to mislead the public regarding the standards, quality, quantity, usefulness or giving of any guarantee of the efficacy that is not based on an adequate or scientific justification thereof.

14. The Food Authority, in exercise of its powers conferred under clause (e) of sub-section (2) of Section 92 read with Section 16 of the FSS Act, made the Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011. The same is intended to regulate and monitor the manufacture, processing, distribution, sale and import of food so as to ensure the safe and wholesome food. The contents of soft drinks, in particular, are regulated by Regulation 2.10.6 of the Regulations under the title “Carbonated Water”. Food Authority is also conferred with the powers under clause (k) of sub-section (2) of Section 92 read with Section 23 of FSS Act and in exercise of those powers it framed the Food Safety and Standards (Packaging and Labelling) Regulations, 2011. Section 23 read with the above mentioned regulations provides that no person shall manufacture, distribute, sale or expose for sale or despatch or deliver to any agent or broker for the purpose of sale, any packaged food products which are not marked and labelled in the manner, as may be specified. It further provides that every food business operator shall ensure that the labelling and presentation of food does not mislead the consumers. Section 24, which we have already referred to earlier, provides for restriction on advertisement of any food which misleads or contravenes the provisions of the FSS Act or the rules and regulations made thereunder. Advertisements for carbonated beverages are being monitored by the Advertisement Standards Council of India (ASCI), as per the above mentioned regulations as well as the ASCI Code.

15. We may indicate that most of the situations have already been taken care of by the above mentioned provisions of the FSS Act as well as the regulations mentioned hereinbefore, so as to achieve an appropriate level of protection of human life and health and protection of consumers’ interest, including fair practices in all counts of food trade with reference to food safety standards and practices.

16. The manufacture and sale of carbonated soft drinks is regulated by the Prevention of Food Adulteration Act, 1954 (PFA Act), the PFA Rules and the Fruit Products Order, 1955 issued under the Essential Commodities Act, 1955. Section 3 of the PFA Act provides for constitution of a Committee called the Central Committee for Food Standards (CCFS) and the same is already constituted which has very wide powers, to deal with all matters relating to food items and to advise the Central Government and the State Governments on all matters relating to Food and to carry out the other functions assigned to it under the Act. Section 23(1) of the PFA Act enjoins a duty upon the Central Government, after consultation with the CCFS, to make rules which, inter alia, prescribes standards of quality for 340 food items in Appendix B and the labelling requirements for all foods in Part VII.

Under Rule 44 in Part VIII of the PFA Rules, notifications have been issued from time to time regulating or prohibiting the sale of various ingredients/foods keeping in view the specific nature of those ingredients/foods based upon scientific study. CCFS and its sub-committees on various issues are not only seized of the process of implementing the standards but are also involved in regularly reviewing the standards and various additives that are used in the manufacture/processing of any article of food.

17. The PFA Act, the PFA Rules and the FPO already control and check the contents, in particular chemical additives in food including soft drinks. Section 2(v) of the Act defines “food”. This definition also includes in itself any flavouring matter or condiments. The Central Government has been given the power to notify any other articles which having regard to its use, nature, substance or quality to be declared as food for the purposes of this Act. The Central Government has the power under Section 23 of the Act to take steps under Part VII of the PFA Rules to prohibit and regulate the sale of certain foods.

18. Adequate provisions have already been made and Rules and Regulations are in force for prescribing labelling requirements as per Rule 32 to Rule 44 of PFA Rules, 1955. As per Rule 32 of PFA Rules, as amended vide notification GSR (E) dated 19.9.2008, declaration of all the ingredients of the food products and in particular soft drinks, is required to be made in the descending order and Nutritional Information is also required to be declared.

Adequate provisions are also in place under PFA together with the Rules and Regulations made in that behalf to deal with misleading advertisements. Reference may also be made to Rule 43A of PFA Rules, 1955.

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 (e) 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.

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. But the fact remains, many of the food articles like rice, vegetables, meat, fish, milk, fruits available in the market contain insecticides or pesticides residues, beyond the tolerable limits, causing serious health hazards. We notice, fruit based soft drinks available in various fruit stalls, contain such pesticides residues in alarming proportion, but no attention is made to examine its contents. Children and infants are uniquely susceptible to the effects of pesticides because of their physiological immaturity and greater exposure to soft drinks, fruit based or otherwise.

24. We, therefore, direct the Food and Safety Standards Authority of India, to gear up their resources with their counterparts in all the States and Union Territories and conduct periodical inspections and monitoring of major fruits and vegetable markets, so as to ascertain whether they conform to such standards set by the Act and the Rules.

25. Penal provisions are also provided in the Act. It is, therefore, of utmost importance that the provisions of the Acts are properly and effectively implemented so that the State can achieve an appropriate level of human life and health, safeguarding the right to life guaranteed under Article 21 of the Constitution of India.

26. The Writ Petition is disposed of with the above directions, leaving its respondents, as already indicated, to strictly follow the provisions of the FSS Act as well as the Rules and Regulations framed thereunder.