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Role of Judiciary in Preventing Food Adulteration

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ABSTRACT

The judiciary plays a pivotal role in addressing food adulteration, particularly regarding the regulation of tobacco products in edible items. A significant case is the Hon'ble Supreme Court's review of the Food Safety Commissioner's ban on the manufacture and sale of gutkha and similar products in Tamil Nadu, imposed under the Food Safety and Standards Act of 2006. The notification aimed to protect public health by prohibiting the mixing of flavored tobacco with other foodstuffs, thereby preventing consumer harm. However, the subsequent ruling in Jaiswal Products vs. State of Tamil Nadu raised questions about the limits of executive power in enforcing such bans. The Division Bench of the Madras High Court expressed concerns regarding the legality of imposing long-term prohibitions on tobacco-infused products based solely on the provisions of the Act, thus quashing the Notification. This dialogue underscores the delicate balance between health protections and legal authority, highlighting the judiciary's essential role in scrutinizing government actions to ensure they remain within the scope of the laws set forth. Ultimately, the decisions reflect an ongoing discourse on regulatory limits and consumer rights in the context of food safety and public health.

I. INTRODUCTION

Before independence there were no special provisions which lead to food adulteration offences. Section 272 and 273 in the Indian Penal Code was majorly used for the offences of food adulteration along with the state laws. In the year 1954, the prevention of Food adulteration Act was enacted after which the special laws in the different states were consolidated under the PFA. Even still many drawbacks were found in the Act and therefore a need for special Act which consolidated all other food related offences arouse. Therefore in the year 2006, The food Safety and Standards Act, 2006 was passed by the legislature to improve the food standards of different product using the special legislative enactments. In this Article we will discuss the judicial pronouncements made by the courts and how the Food Safety and Standards Act ,2006 is effective in preventing food adulteration in India.

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II. BAN ON GUTKHA AND PAN MASALA

In *Ankur Gutkha v. Indian Asthama Care Society & Ors* in Special Leave to Appeal (Civil) No. 16308 of 2007, dated 03.04.2013, it was brought to the notice of the Hon'ble Supreme Court that to flout the ban on manufacturing gutkha and pan masala with tobacco or/and nicotine, the manufacturers have devised a subterfuge for selling gutkha and pan masala in separate pouches. Taking note of the above fact, vide order dated 03.04.2013, the Hon'ble Supreme Court directed the States and Union Territories to file affidavit within four weeks on the issue of total compliance of the ban imposed on manufacturing and sale of gutkha and pan masala with tobacco and/or nicotine.

Also in *The Hon'ble Supreme Court of India in Central ARECANUT Marketing Corporation and Others Vs. Union Of India* (Transfer case (c) 1 of 2010) in its order dated 23-09-2016 observed that to circumvent the ban on the sale of Gutkha, the manufacturers are selling panmasala (without tobacco) with flavoured chewing tobacco in separate sachets but often conjoint and sold together by the same vendors from the same premises so that consumers can buy the pan masala and flavoured chewing tobacco and mix them both and consume the same. Hence, instead of the earlier "ready to consume mixes", chewing tobacco companies are selling Gutkha in twin packs to be mixed as one".

After the notification sent by the respective state governments and obtaining reports, the Hon'ble Supreme Court held that Therefore in exercise of the powers conferred by clause (a) of sub-section (2) of **Section 30** of the Food Safety and Standards Act, 2006 (Central Act 34 of 2006), the Commissioner of Food Safety of the State of Tamil Nadu, in the interest of public health, hereby prohibits the manufacture, storage, transport, distribution or sale of all food products chewable or otherwise which is either flavoured or scented or mixed with any of the said additives, and whether going by the name or form of gutkha, panmasala, flavoured or scented food products or chewable food products by whatsoever name called, whether packaged or unpackaged and/or sold as one product, or though packaged as separate products, sold or distributed in such a manner so as to easily facilitate mixing by the consumer and any other food products containing tobacco and/or nicotine as ingredients, by whatsoever name it is available in the whole of the State of Tamil Nadu for a further period of one year with effect from 23-05-2018."

III. WHETHER THE FOOD SAFETY COMMISSIONER'S NOTIFICATION TO ISSUE BAN ON TOBACCO PRODUCTS IS EXCEEDING ITS POWERS:

This was also discussed by the Hon'ble court in *Jaiswal products Vs state of Tamilnadu* where

it was discussed by the Division Bench that “At the same time, the Hon'ble Division Bench has expressed its doubt regarding power of the executive to issue Notification periodically imposing an almost permanent ban on tobacco product with nicotine used as an ingredient to any food product. Therefore, quashed the ban Notification on the ground that it is in excessive power conferred under Section 30(2)(a) of the Food Safety and Standards Act.

For ease reference, the relevant portion of the Hon'ble Division Bench of the Madras High court and the interim order of the Hon'ble Supreme Court is extracted below:

(i) Designated Officer, the Food Safety and Drugs Control Dept. Office of the Food Safety and Standard Authority vs. Jayavilas Tobacco Traders LLP rep.by its Partner, Mr.A.Prabaharan reported in [2023/MHC/259], "13. We are therefore constrained to conclude that the successive notifications issued by the Commissioner of Food Safety relying upon Regulation 2.3.4 are not within the powers of the Commissioner and the Commissioner, Food Safety has exceeded its powers in issuing such successive notifications. We therefore quash the notifications on the ground that they are in excess of the powers of the

Two Division Bench of this Court in (1) J.Anbazhagan case (cited supra) and (2) The Designated Officer, the Food Safety & Drugs Control Department (cited supra), had consistently held that the tobacco with or without any additives is a "food product" as defined under Section 3(j) of Food Safety and Standards Act.

Thus, from the line of judgments discussed above, there can be no doubt regarding the power of the Government to issue Notification to ban tobacco product with nicotine used as an ingredient to any food.

The manufacturer of the banned product is liable to face the prosecution since their product which is a chewable tobacco with nicotine is a food and the Hon'ble Supreme Court in its interim order dated 25.04.2023 has given liberty to the respondent (chewing tobacco manufacturers) to seek redressal before the appropriate forum if they have a case that their acts or operations are not covered by the Notification issued under Section 30(2) of the FSS Act.

In *Godawat Pan Masala Products I.P. ... vs Union Of India & Ors*³ the notification issued by the state government of Maharashtra banning the tobacco was challenged by way of writ petition before the division bench of Bombay Highcourt which held that “the ban was valid and an appeal before the Supreme court held that the local authority like the Food authority cannot issue a ban for food articles. If such a power is given, then the authority may misuse

³ AIR 2004 SUPREME COURT 4057

such power. The power of the Food (Health) Authority under the rules is only of transitory nature and intended to deal with local emergencies and can last only for short period while such emergency lasts. The power of banning an article of food or an article used as ingredient of food, on the ground that it is injurious to health, belongs appropriately to the Central Government to be exercised in accordance with the rules made under Section 23 of the PFA Act, particularly, sub-section (1A)(f).

Moreover the provisions of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 are directly in conflict with the provisions of Section 7(iv) of the Prevention of Food Adulteration Act, 1954. The former Act is a special Act intended to deal with tobacco and tobacco products particularly, while the latter enactment is a general enactment. Thus, the Act 34 of 2003 being a special Act, and of later origin, overrides the provisions of Section 7(iv) of the Prevention of Food Adulteration Act, 1954 with regard to the power to prohibit the sale or manufacture of tobacco products which are listed in the Schedule to the Act 34 of 2003; The impugned notifications are ultra vires the Act and, hence, bad in law” therefore the court held that the food authority issue long term ban by way of notification and such a ban is not valid.

IV. INVESTIGATION CONDUCTED BY CENTRAL BUREAU IN TOBACCO CASES

The then Member of Legislative Assembly of the opposition party filed a PIL to direct the Government to take necessary steps to eradicate the banned product and to order CBI enquiry. In the said Writ Petition, in *J. Anbazhagan v. The Union of India and others*⁴, in 2018, the Hon'ble Division Bench of Madras High Court Court issued the below direction:-

"Investigation by a centralized agency like the CBI would be more comprehensive and cover all aspects of the illegal manufacture, import, supply, distribution and sale of banned chewable tobacco items, including the detection of all those involved in such illegal import, manufacture, supply, distribution and sale, as also the detection of corruption and complicity of public servants and/or government servants in this regard. As observed above, there is no conflict between CBI investigation and investigation by the State machinery. Investigation can be carried out more effectively with the CBI and the Vigilance Department working in cooperation.

The underground gutkha business is a crime against society which needs to be curbed. We, therefore, deem it appropriate to direct the CBI to investigate into all aspects of the offence of

⁴ W.P.No.19335 of 2017 dated 26.04.2018.

illegal manufacture, import, supply, distribution and sale of gutkha and other forms of chewable tobacco which are banned in the State of Tamil Nadu and the Union Territory of Puducherry, including detection of and action against those involved in the offence as aforesaid, whether directly or indirectly, by aiding abetting the offence or interfering with attempts to curb the offence.

V. BURDEN OF PROOF

The petitioner in Jaiswal products case, submitted that the products even though manufactured by him he did not know about the product being sold in the respondents shop and that he had no access.

In Jaiswal products it was held that “It is pertinent to note that soon after the seizure, the manufacturer been put to notice by the Food Safety Officer regarding the seizure and called for his explanation. Being the manufacturer of the product, the petitioner has the exclusive knowledge and information about the manner in which the product was cleared from their manufacturing unit. Being a registered dealer under GST and Excise Act, they are supposed to maintain register for their product including Batch No./Lot No./Code invoice number for the sale etc. These informations which are within the exclusive knowledge of the manufacturer were not disclosed, when the Food Safety Officer sought for explanation through a show cause notice. Without disclosing the information, which are within his exclusive knowledge, he cannot take a plea that there is no nexus between them(manufacturer and stockist).”

The Hon’ble madras Highcourt also relied on section 109 of BSA, "109. Burden of proving fact especially within knowledge:- When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him." In all these cases, the manufacturer, who is supposed to disclose about the detail to whom they sold the product, had kept silent and the silence leads to statutory presumption that the product was knowingly distributed in a State, where there is a ban.

VI. WHAT IS NOXIOUS FOOD

Noxious to food was discussed in Ram Dayal and Ors Vs Emperor⁵ the Allahabad Highcourt held that there was no direct evidence that the accused intended to sell the mixture of pig’s fat mixing it with ghee although this might be inferred from the circumstance that they do sell ghee.' They have been convicted under Section 272 of the Indian Penal Code for adulterating an article of food so as to make such article noxious as food intending to sell it as food or

⁵ 83IND. CAS.1004

knowing it to be likely that it will be sold as such. It is true that the mixing of pig's fat with ghee and selling the mixture would be noxious to the religious and social feelings of both Hindus and Muhammadans but I am of opinion that such an act would not come within the meaning of the expression "noxious as food" which occurs in Section 272 of the Indian Penal Code. That expression obviously means "unwholesome as food or injurious to health and not repugnant to one's feelings." The word "noxious" had it stood by itself, might have had a wider meaning but what I have to consider is the expression "noxious as food," and not merely noxious.

VII. WHETHER FSSA, 2006 OVERRIDES THE PROVISIONS UNDER IPC

In *M/s Pepsico India Pvt Ltd and Anr Vs state of UP*⁶ it was held "that is crystal clear that nothing in the Penal Code shall affect any provisions of any Special Act and when for any act or omission in a particular subject, a special set of rules have been framed, in that situation, the provisions of the IPC have to be ignored or overlooked. In the cases at hand FIRs have been registered under sections 272 and 273 IPC pursuant to the impugned Government Order although adulteration of Food Stuff is covered by a Special Act i.e. The Food Safety and Standards Act, 2006.

It is pertinent to add that the PFA Act was enacted for the prevention of adulteration of food, being a special Act, it eclipsed sections 272 and 273 of IPC. In other words, the said Act made sections 272 and 273 of IPC redundant as punishment provided under the PFA Act was much more stringent than what was provided under Sections 272 and 273 IPC. Therefore, invoking Sections 272 and 273 of the Indian Penal Code in the matter relating to adulteration of food pursuant to the impugned government order is wholly unjustified.

The MAGGI Case

In *Nestle India Ltd Vs food safety and standards authority of India*, the petitioner's company was ordered to stop manufacturing, distribution of 9 variants of noodles manufactured by the Nestle Company. The court expressed that the principles of natural's justice was not followed. The company prior to the impugned order recalled all the products of its company till the authorities were satisfied with the safety of the product. It was realised that the laboratories where the products were tested were not accredited and recognised under the Act and therefore relying on their test would be unjustified.

⁶ 2012 Latest Caselaw 2152 Del

VIII. CONCLUSION

Therefore, the Food Safety and standards Act, 2006 plays a very important role in reducing food adulteration and its menaces and strongly criminate those who cause food adulteration in whatever means for wrongful gain, thereby causing wrongful loss to the consumers and thereby to the society at large. The passing of the Food safety and Standards (Amendment) Bill, 2020 to bring in new amendments in the Act has been welcomed by many activists and law makers. This amendment aims to upgrade and improve the functioning of the Act. The implementation of the bill is still in its initial stage and once implemented, it would make the Act very effective in curbing the Food adulteration in India.
