

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of decision: 25th February, 2015

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W.P.(C) No.8568/2010

**UDAY FOUNDATION FOR CONGENITAL DEFECTS
AND RARE BLOOD GROUPS** **Petitioner**

Through: Mr. Amit Saxena, Adv.
Mr. Sanyat Lodha, Amicus Curiae.

Versus

UNION OF INDIA & ORS. **Respondents**

Through: Mr. Ruchir Mishra with Mr. Sanjiv Kumar Saxena, Mr. Mukesh Tiwari & Mr. Ramneek Mishra, Advs. for UOI.
Mr. Devendra Kumar & Mr. Anjum Javed, Advs. for R-2.
Mr. Dushyant Dave, Sr. Adv. with Arvind Varma, Mr. Ajay Kohli & Ms. Aditi Kochhar, Advs. for NRAI.
Mr. V.K. Gupta, Sr. Adv. with Mr. Bhumika Kapoor, Adv. for Halwai & Bakers Association.
Mr. Rajiv Virmani, Sr. Adv. with Mr. Mohit Bakshi, Adv. for R-7.
Mr. Ashok Desai & Mr. Rajiv Nayar, Sr. Advs. with Ms. Kanika Agnihotri, Adv. for R-8.
Mr. Mehmood Pracha & Mr. Rudro Chatterjee, Advs. for FSSAI.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This petition under Article 226 of the Constitution of India was filed in public interest flagging the issue of, easy availability of ‘junk food’ and ‘carbonated drinks’ to children and the harmful effects thereof and seeking a ban on ‘junk food’ and ‘carbonated drinks’ in schools and initiation of measures to develop a comprehensive school canteen policy with emphasis on health and nutrition.

2. The petition was entertained and a senior counsel of this Court appointed as Amicus Curiae to assist the Court. The Union of India (UOI) vide order dated 9th February, 2011 was directed, to in its counter affidavit state whether a policy keeping in view the global perspective had been framed in this regard.

3. The Assistant Director General of the Food Safety and Standards Authority of India (FSSAI) under the Ministry of Health and Family Welfare of the Government of India in or about July, 2011 filed an affidavit *inter alia* stating, i) that the term ‘junk food’ had not been defined under the Prevention of Food Adulteration Act, 1954 and the Rules framed thereunder; however the term ‘junk food’ is understood as food that is high in fat, sodium and / or sugar and lacking in micro-nutrients such as vitamins, minerals, amino acids and fiber; ii) such food is responsible for obesity, dental cavities, diabetes and heart

diseases; iii) efforts are being made by Ministry of Health and Family Welfare to make people aware of the harmful effects of increased consumption of junk food and to promote healthy eating habits; and, iv) the FSSAI, a statutory body under the Ministry of Health and Family Welfare is also undertaking a project for development of Guidelines for making available quality and safe food in schools and had already initiated the process thereof.

4. This Court vide order dated 5th October, 2011 expressed dissatisfaction with the steps as disclosed in the affidavit which UOI had stated it was taking and directed the UOI to take concrete and effective steps and file a further affidavit detailing the steps contemplated or going to be taken in this regard.

5. In compliance with the aforesaid order, an additional affidavit dated 10th January, 2012 was filed by the Director (PA) of the FSSAI stating, i) that with the objective to consolidate the laws relating to food and for laying down science based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import and to ensure availability of safe and wholesome food for human consumption, the Food Safety and Standards Act (FSS Act), 2006 was enacted and FSSAI established thereunder; ii) that in exercise of powers under Section 92 of the said Act, the Food Safety and Standards Regulations, 2011 had been formulated and had come into force with

effect from 5th August, 2011; iii) that vide Notification dated 4th August, 2011, the enactments and Orders mentioned in the Second Schedule of the Act including the Prevention of Food Adulteration Act and the Milk and Milk Products Regulations, 1992 had been repealed with effect from 5th August, 2011; iv) that the FSS Act had been made operational from 5th August, 2011 and wherefrom the food regulatory framework had moved from limited prevention of food adulteration regime to safe and wholesome food regime; v) that FSSAI has set up eight Scientific Panels and a Scientific Committee to prescribe standards for various items of food; these panels have prescribed / are in the process of prescribing standards including that of trans-fatty acid, residue limits of pesticides and chemicals etc. in food and fixation of level of caffeine in caffeinated drinks; vi) that the term 'junk food' has not been defined under the FSS Act and the Rules and Regulations made thereunder also; vii) that food items such as samosas, jalebees, pakoras, burgers, pizzas etc. come under the category of proprietary food; as per Explanation 4 to Section 22 of the FSS Act, 'proprietary and novel food' means an article of food for which standards have not been specified but is not unsafe; proprietary food however needs to conform to other requirements of the Act such as labeling requirements and other safety parameters as specified in the regulations, relating to pesticide

residues, poisonous metals and microbiological parameters; viii) that FSS Act does not empower the authorities for banning of any particular category of food; ix) that implementation of the FSS Act primarily rests with the State Governments and it is the responsibility of the State Food Safety Authorities to monitor and verify that the relevant requirements of law / food standards are complied with by the food business operators at all stages of food business / food items; such authorities are required to collect samples of food and take action on the findings of the test reports based on safety parameters prescribed by the FSSAI; x) that the decision to ban the sale of junk food in the canteens of schools and educational institutions is an administrative decision to be taken by the authorities in charge of running such institutions; xi) that the Ministry of Health and Family Welfare has already requested the Chief Ministers of the States and Ministry of Human Resource Development for taking steps to ban / restrict availability / withdrawal of such food items from canteens of schools and educational institutions; xii) that the guidelines for arrangements to be made for running the hostel mess in Navodaya Vidyalaya Samiti, an autonomous body under the Ministry of Human Resource Development, have already suggested daily hostel menu and which does not include any junk food; xiii) that the Kendriya Vidyalaya Sangathan also has issued circulars from time

to time highlighting problems of junk food leading to obesity and to promote healthy eating habits; xiv) the Central Board of Secondary Education (CBSE) had also written to all schools affiliated to it, highlighting the concern over the junk food and adulteration.

6. Applications were filed by All India Food Processors' Association, National Restaurant Association of India, Retailers Association of India, Halwais Bakers and Restaurant Association Ltd. for impleadment in the writ petition and were allowed.

7. Vide order dated 11th January, 2012 in this petition, FSSAI was directed to complete the process of framing the Guidelines for making available quality and safe food in schools within six months from that date and the newly impleaded parties also permitted to make representation to FSSAI and the said Guidelines were ordered to be submitted to the Court.

8. This Court on 29th August, 2012 was informed that Nielsen (India) Pvt. Ltd. had been awarded the following work:

- *“Review of present status of safety and quality of food, sanitary and hygiene conditions in the food made available to children in School premises.*
- *To study food habits of school children.*
- *Food handling and hygienic practices in school kitchens both public and private.*

- *Safety standards of ingredients in food prepared in school canteens, mess or under mid-day-meal scheme.*
- *Availability of infrastructure facility like kitchen, mess, canteen, cooking and serving vessels, water used etc. in schools and status of their sanitary and hygiene conditions.*
- *Collection of data on food safety and nutrition level of food served in schools.*
- *Incidents of food borne illness in schools and their causes.*
- *Suggest measures for improvement in the quality and safety of food served in schools. Adherence to the nutritional and safety norms laid down in this regard.*
- *Develop guidelines for improvement in safety and quality of food served in Schools.*
- *Pilot testing of guidelines in few selected schools comprising of rural, urban, tribal area schools, boarding schools with centralized kitchen as well as decentralized kitchen to assess whether the same are implementable.*
- *Organize 4 regional workshops for consultation with 40-50 stakeholders per workshop to get inputs / feedback on the draft guidelines.”*

Vide the same order, it was also hoped that the agency so engaged would also elucidate the views of the Restaurant Association, Retailers Association, All India Food Processors’ Association etc. impleaded as parties to this petition.

9. When the petition was listed on 20th March, 2013, noticing that Rule 43 of the Delhi School Education Rules, 1973 empowers the Administrator, Delhi to issue instructions in relation to any matter not covered by the Rules and

further noticing that Government of National Capital Territory of Delhi (GNCTD) had not filed any counter affidavit, GNCTD was directed to file an affidavit stating whether the instructions could be issued under Rule 43 or under any other provision, regulating the sale of food stuff and soft drinks inside the school premises.

10. No affidavit was however filed by the GNCTD. However the counsel for GNCTD on 17th April, 2013 informed that the Administrator, Delhi has power to issue such directions to the Schools. However the same was controverted by the Counsel for All India Food Processors' Association.

11. This Court on 17th April, 2013 was also informed that draft guidelines had been formulated and after consulting all the stake holders would be finalized.

12. Thereafter, from time to time, the time for finalizing the draft guidelines was extended.

13. Vide order dated 4th September, 2013, experts in public health and especially health of a child, adolescent and youth besides representatives of National Restaurant Association of India, Retailers Association, All India Food

Processors' Association were also directed to be associated in finalizing the guidelines aforesaid.

14. FSSAI, which till then was not formally and separately a party to this petition was formally impleaded as a respondent vide order dated 26th February, 2014.

15. We were on 12th March, 2014 informed that the Guidelines had been finalized and had also been approved by the Central Advisory Committee constituted under Section 11 of the FSS Act. Opportunity was given to all concerned including the Amicus Curiae to respond to the said guidelines.

16. The senior counsel / Amicus Curiae, upon being designated as Additional Solicitor General, was vide order dated 6th August, 2014 discharged and the counsel who had been appearing along with him appointed as Amicus.

17. The senior counsels / counsels for Restaurant Association, Retailers Association, All India Food Processors' Association etc. stated that though their respective clients were not fully satisfied with the Guidelines but considering the fact that the Guidelines are technical in nature and entail complex issues and that the Committee which has finalized the guidelines was broad based and comprised of eminent persons from all fields, they have

prevailed upon their clients to not seek modifications of or to object to the Guidelines.

18. We have perused the guidelines titled “Guidelines for Making Available Wholesome, Nutritious, Safe and Hygienic Food to School Children in India” placed before us. The said Guidelines,

- (i) state the background in which they have been drawn as well as the objective thereof and comprise of Part-I titled “Guidelines for Making Available Wholesome and Nutritious Food to School Children” and Part-II titled “Guidelines on Food Safety, Hygiene and Sanitation for Food Available in School Canteens”;
- (ii) define a healthy lifestyle and the World Health Organization (WHO) global strategy on diet, physical activity and health;
- (iii) identify foods, high in fat, salt and sugar (termed as HFSS Foods) as harmful to children and the harmful effects thereof and the diseases likely to result from high consumption thereof;
- (iv) restrict / limit the availability of most common HFSS foods in Schools and area within 50 meters;

- (v) list chips, fried foods, sugar sweetened carbonated beverages, sugar sweetened non-carbonated beverages, ready-to-eat noodles, pizzas, burgers, potato fries and confectionery items as most common HFSS foods;
- (vi) list samosa, chana bhatura etc. as non-standardised deep fried foods also required to be regulated, though data on nutrient composition of such food is not yet available;
- (vii) require formulation / development of a Canteen Policy, to provide nutritious, wholesome and healthy food in schools;
- (viii) require setting up of a School Health Team;
- (ix) require the schools to promote nutrition education and awareness through various tools such as posters;
- (x) provide for introduction of colour coding of foods;
- (xi) list sandwiches, fruit salad, fruits, paneer / vegetable cutlets, khandvi, poha, utthapam, upma, idlis and kathi rolls etc. as healthier menu options and low fat milk shakes with seasonal fruits, no added sugar, fresh fruit juice and smoothies with fruits, fresh lime soda, badam milk, lassi, jaljeera etc. as healthy beverage options;

- (xii) provide for regulation of promotion of HFSS food among school children by Advertising Standards Council of India (ASCI) and other relevant bodies;
- (xiii) suggest review of labeling regulation to enable disclosure of all relevant information;
- (xiv) suggest controlling of intake of Trans Fatty Acids (TFAs) used extensively in bakery, confectionery and deep fried cooking;
- (xv) provide for encouraging physical activity by school children;
- (xvi) suggest cut-off values for calories and nutrients in food items available to school children;
- (xvii) provide for regulation of and lay out for school canteens;
- (xviii) emphasize the requirement of hygiene and lay down the standards of hygiene to be maintained in the canteens and by the staffs employed therein.

The aforesaid is by no means intended to be exhaustive overview of the Guidelines which are detailed and run into tens of pages and is only to give a bird's eye view thereof, to enable appreciation of the objections of the learned Amicus Curiae.

19. The Amicus Curiae has made the following written submissions on the Guidelines aforesaid:

- (a) that the background in which the Guidelines have been framed and the objective thereof is not clearly spelt out and needs to be elaborated;
- (b) that the Guidelines should provide for the daily required intake in “servings” and ingredients with detailed description thereof, so as to be easily understood;
- (c) that “junk food” as a term should find mention in the Guidelines—the term “HFSS food” in the Guidelines should be replaced with “junk food” and which term has a definite connotation all over the world and which term has also found mention in the orders in this petition;
- (d) that the red colour foods i.e. HFSS foods / junk foods should be completely banned within the school premises as has been done in several countries and limitation should be put on the yellow colour foods and only green colour foods should be permitted in schools;
- (e) that the colour coding should be changed as red colour is identified with non-vegetarian foods and green colour with vegetarian foods;
- (f) that additions need to be made to the list of healthy foods;

(g) that the Guidelines are urban centric with no regard to the schools in rural areas who have a Mid-Day-Meal Scheme and the Guidelines should also provide for monitoring of the said Scheme;

(h) that the Guidelines should also contain a mechanism for implementation thereof.

The aforesaid, is again not exhaustive of the written objections / suggestions but only indicative of the tenor thereof.

20. However, the main emphasis of the learned Amicus Curiae as well as of the representative of the petitioner appearing in person is on the need for use of the term “junk food” in the Guidelines. Both contend that the erring marketeers of junk food are getting away with Guidelines avoiding the use of the said expression which is commonly understood. It is contended that the term “HFSS food” will not sufficiently warn the consumers of the dangers from consumption thereof.

21. Mr. Ashok Desai, learned senior counsel has contended that the objections / suggestions of the Amicus Curiae do not go to the root of the matter and are ornamental. Mr. Dushyant Dave, learned senior counsel has contended that the Guidelines having been prepared by an expert committee

constituted under an order of this Court, if at all are to be re-considered, in the light of the objections / suggestions made, will have to be remitted back to the same committee, rather than this Court, in the light of the said suggestions tinkering with the Guidelines.

22. We have enquired from the senior counsels / counsels the sanctity of the Guidelines so prepared and if accepted by us, the mechanism for enforcement thereof.

23. Our attention has been drawn to Section 16 of the FSS Act describing the duties and functions of the FSSAI constituted thereunder. Sub-section (1) thereof entrusts FSSAI with the duty to regulate and monitor the manufacture, processing, distribution, sale and import of food so as to ensure safe and wholesome food. Sub-section (2) of Section 16 empowers the FSSAI to, by regulations, *inter alia* specify, (i) the standards and guidelines in relation to articles of food; (ii) the limits for use of food additives etc.; (iii) the mechanisms and guidelines for accreditation of certification bodies engaged in certification of food safety management systems; (iv) the procedure and the enforcement of quality control in relation to food imported into India; (v) the method of sampling and analysis of food items; and, (vi) to conduct survey of enforcement and administration of the Act etc.

Sub-section (5) of Section 16 also empowers the FSSAI to 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. Section 48 of the said Act provides for offences under the FSS Act. The counsel for FSSAI states that the Guidelines shall either be given the shape of Regulations within the meaning of Section 16(2) or the shape of a direction within the meaning of Section 16(5) so as to be actionable / legally enforceable.

24. We have considered the matter, in public interest in which this petition is filed.

25. Though we appreciate the efforts of the learned Amicus Curiae but at the same time cannot be unmindful of the fact that the need for appointment of an Amicus Curiae in the matter was felt at an initial stage of this petition, when we were still grappling with the way forward. Thereafter, upon the Union of India in its affidavit stating that FSSAI constituted under the FSS Act and which we find comprises of a Chairperson and 22 members, of which 1/3rd shall be women and representatives from food industry, representatives from consumer organizations, three eminent food technologists or scientists, representatives of farmers and retailers organizations and with the functions aforesaid, had

already undertaken a project for development of guidelines for making available quality and safe food in schools, we merely by orders passed from time to time expedited the said process or ensured that proper consultations as provided for under the FSS Act are held. Though FSSAI was not impleaded as a respondent to this petition but was impleaded vide order dated 26th February, 2014 and has since been appearing through its counsel. We may also note that as per the provisions of Section 5 of the FSS Act, seven of the 22 members of FSSAI are not to be below the rank of a Joint Secretary to the Govt. of India with experience in agriculture, commerce, consumer affairs, food processing, health, legislative affairs and small scale industries and the criteria for appointment of the Chairperson and all the members of the FSSAI is to secure the highest standards of competence, broad range of relevant expertise and broadest possible geographic distribution within the country. The Guidelines brought before us have been prepared under the aegis of FSSAI and we have, to assure ourselves again asked the counsel for FSSAI, whether FSSAI is satisfied therewith. He has replied in the affirmative.

26. When an expert body constituted for this very purpose and in performance of its statutory duties has framed the Guidelines, without there being any specific challenge thereto, we do not consider appropriate on our part to tinker therewith.

27. However, we have nevertheless examined the objections / suggestions of the learned Amicus Curiae to the said Guidelines. Though undoubtedly the language or the form thereof could have been better as suggested, but it is not for this Court to substitute the language which it may deem appropriate for the language which a statutory authority exercising statutory powers has deemed it appropriate to use. After all, our perspective may be parochial in comparison to a broad base representation before the FSSAI. Qua the objections / suggestions as to the list of food items to be contained in the list of healthy foods, again we at least at this stage, respect the decision of the FSSAI and have no reason to make additions thereto. As far as the objection / suggestion qua Mid-day-Meal Scheme is concerned, the said Schemes have their own purpose and without hearing the framers of the said Scheme and who are not before us, the said objection / suggestion can in any case be not accepted. That brings us to the principal contention of the learned Amicus Curiae and the representative of the petitioner, qua non-mention of the term 'junk food' in the Guidelines. Though at least in Delhi, the food items which in the Guidelines have been described as HFSS foods are commonly referred to as 'junk food' and the expression also finds mention in nearly all the dictionaries of English Language but otherwise the meaning of the word 'junk' is given in Concise Oxford English Dictionary,

Tenth Edition as “informal useless or worthless articles, non-sense, the lump of oily fibrous tissue in a sperm whale’s head, a flat-bottomed sailing vessel with a prominent stem”. In several dictionaries the meaning of the word ‘junk’ in slang is also described as “heroin or male genitalia”. Seeing the diverse meanings of the word ‘junk’ in different regions, we do not find any merit in the said suggestion also, particularly when the Guidelines are not confined to Delhi but are to be applicable and in force throughout the country. We have already noticed that a mechanism exists under the FSS Act for enforcement of the Guidelines.

28. We therefore do not feel the need, either to ourselves make changes to the Guidelines, or to suggest the same to FSSAI and which axiomatically will have to consider the said suggestions by following the procedure as followed for framing the Guidelines.

29. We therefore direct the FSSAI to within three months herefrom give the said Guidelines the form of Regulations or directions and to further take appropriate steps for ensuring enforcement thereof.

30. We however clarify that the mere fact that the Guidelines have been formed during the pendency of the petition would not come in the way of

FSSAI, if at any time feels the need for adding to or subtracting therefrom, doing the same in accordance with law and / or from dealing with the representations, if any filed by any person, body or other authority seeking changes to the Guidelines, whether in the form of Regulations / directions of FSSAI. Similarly, FSSAI shall be entitled to, if feels the need therefor at any time from making changes to the said Guidelines or issuing any further directions / guidelines, as may be deemed appropriate. We reiterate that we have only gone by the factum of the Guidelines having been framed by an expert body and nothing contained herein should be construed as us having put an imprimatur thereto, so as to be an impediment of any manner whatsoever in achievement of the purpose and spirit of this petition.

31. Though we are confident of the enforcement of the said Guidelines, whether in the form of Directions or Regulations under the FSS Act but feel that as far as the city of Delhi is concerned, the Guidelines would be better enforced, if the Administrator, Delhi also issues instructions in exercise of powers under Rule 43 of the Delhi School Education Rules, 1973 for the schools to follow the said Guidelines, though once the same have been issued under the FSS Act, the schools in any case would be bound thereby. However, a direction from the Administrator, Delhi may also serve the purpose of

violation of the said Guidelines being actionable under the Delhi School Education Act, 1973 also and which in our view would go a long way in enforcement thereof. We accordingly direct the Administrator, Delhi to also on or before 30th April, 2015 consider the issuance of instructions under Rule 43 supra in this regard and if satisfied, issue directions for compliance by the schools of the Guidelines and to from time to time in exercise of supervisory powers over the schools in Delhi ensure that the Guidelines are abided by the schools. Any child / parent / teacher shall also be entitled to complain to the Administrator about non-compliance of the Guidelines or any part thereof. We clarify that the Administrator, Delhi need not to wait for the Guidelines to be given the force of a direction or regulation under the FSS Act.

32. As far as the schools outside Delhi are concerned and most of which are affiliated to CBSE, we feel that if it is possible for CBSE to impose abidance with the Guidelines as a condition for affiliation, the same may also go a long way in ensuring compliance with the said Guidelines. However since CBSE is not before us and since we have not examined whether it is possible for CBSE to include abidance with the said Guidelines and other Directions / Regulations issued from time to time by FSSA or by any other authority relating to making available wholesome, nutritious, safe and hygienic food to school children in

India as a condition for affiliation / continued affiliation, we refrain from issuing any such direction. We however direct CBSE to, on or before 30th April, 2015, consider the said aspect and take a decision thereon and if possible, include the condition aforesaid in the conditions for affiliation / continued affiliation prescribed by it.

33. With the aforesaid directions, the petition is disposed of.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

FEBRUARY 25, 2015

‘gsr/bs’

(corrected and released on 16th March, 2015)