

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR.HRISHIKESH ROY

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THE HONOURABLE MR. JUSTICE A.K.JAYASANKARAN NAMBIAR

MONDAY, THE 29TH DAY OF JULY 2019 / 7TH SRAVANA, 1941

WP(C).No.17046 of 2015

PETITIONER:

THAMPI SUBRAMANIAN
AGED 32 YEARS
S/O.SUBRAMANIAN,
18/1172(B) THAMPI NIVAS,
ESI ROAD, PALLURUTHY,
KOCHI-682006.

BY ADV. SRI.P.K.SEBASTIAN

RESPONDENTS:

- 1 STATE OF KERALA
REPRESENTED BY SECRETARY,
DEPARTMENT OF HEALTH AND FAMILY WELFARE,
GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM-695 001.
- 2 FOOD SAFETY COMMISSIONER
STATE OF KERALA,
DIRECTORATE OF FOOD SAFETY COMMISSIONERATE,
THYCAUD PO, THIRUVANANTHAPURAM-695 014.
- 3 ASSISTANT COMMISSIONER OF FOOD SAFETY,
ERNAKULAM DISTRICT, CIVIL STATION,
KAKKANAD, COCHIN-682 030.
- 4 UNION OF INDIA
REPRESENTED BY SECRETARY TO GOVERNMENT,
CONSUMER AFFAIRS DEPARTMENT,
MINISTRY OF CONSUMER AFFAIRS,
NEW DELHI-110 001.

5 MANAGING DIRECTOR
 NESTLE INDIA LTD.,
 NESTLE CONSUMER SERVICES,
 P.O. BAG NO.2,
 NEW DELHI-110 001.

BY ADVS.

R1-3 BY SR.GOVERNMENT PLEADER SRI.SURIN GEORGE

IPE

R5 BY SRI.BECHU KURIAN THOMAS (SR.)

SRI.M.RAJENDRA KUMAR, CGC

SMT.SURYA BINOY

SRI.PAUL JACOB (P)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29.07.2019,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J U D G M E N T

Hrishikesh Roy, CJ

The petitioner is unrepresented when the case is called. The 5th respondent is the Managing Director of M/S Nestle India Limited who are manufacturing and selling Maggi Noodles. They are represented by Sri. Bechu Kurian Thomas, the learned Senior Counsel.

2. This Public Interest Litigation has been filed referring to the report, which would suggest that Maggi Noodles contain Monosodium Glutamate and particles of lead in excess of permissible limits and therefore ban on sale of such product in the State should be ordered, by the Food Safety Commissioner, Kerala.

3. Even while the petitioner is absent, Sri. Bechu Kurian Thomas, the learned Senior Counsel would advert to the counter affidavit filed by the 5th respondent to point out that the very issue was being considered by the Bombay High Court in the W.P(C). No.1688 of 2015 and under the judgment dated 13.8.2015, the High Court set aside the order dated 5.6.2015 of the *Food Safety and Standards Authority of India* (FSSAI), which directed the 5th respondent Company to withdraw and recall the Maggi Instant Noodles from the market, and to stop further production.

4. Following the judgment of the Bombay High Court, the respondent company was permitted to re-commence the sale of Maggi Noodles and on that basis the product is being manufactured and marketed by the 5th respondent. The relevant averments to this effect are contained in the paragraphs 5 - 15 of the counter affidavit of the 5th respondent, as extracted below:

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5. In this context it is relevant to point out that M/S Nestle India Limited is a Public Limited Company incorporated under the Companies Act, 1956, inter-alia engaged in the manufacture and marketing of various food products in India for past over five decades, in full compliance with all the applicable laws, rules and regulations in India. Nestle India has eight factories spread across the country, which has been assessed and certified under Food Safety System Certification 22000 (FSSC 22000) as required under the Food Safety and Standards Act (FSSA), 2006.

6. The quality and safety of the food products manufactured by us are the top priority for the Company. We have in place strict food safety and quality controls at the factories manufacturing MAGGI noodles, including thorough quality checks at each stage of our raw material sourcing and manufacturing process. This includes comprehensive testing to ensure that MAGGI Noodles comply with all applicable food safety laws, as well as our high standards of quality and safety before they reach our consumers. The health and safety of consumers is of highest priority for the Company and it is committed to never compromise on the safety, compliance or quality of any product. The internal Quality Management System encompasses the whole value chain from "farm to fork", ensuring appropriate controls are in place at each step of the chain to ensure that the products are safe and compliant to applicable food regulations.

7. The 5th respondent company has established a number of comprehensive internal guidelines related to food chemicals contaminant monitoring and surveillance. These instructions define a risk-based strategy to manage chemical contaminants, i.e. different intrinsic risk levels, High, Medium, Low, Negligible, for the chemical hazard-material combination. These guidelines are mandatory and applied globally, without exception. 5th Respondent follows a very comprehensive and sustainable process of sourcing its agriculture raw material to meet its food safety and quality requirement.

8. the 5th respondent has been manufacturing and selling MAGGI Noodles for the past about 30 years in strict adherence to food safety and quality as mandated under the provisions of Food Safety and Standards Act, 2006 (FSSA) and the erstwhile Prevention of Food Adulteration Act, 1954 (PFA).

9. While so, 5.6.2015, an order was issued by the Food Safety and Standards Authority of India (FSSAI), directing the Company to withdraw and recall MAGGI Noodles from the market and to stop further production, and sale of MAGGI Noodles with immediate effect, along with certain other directions. True copy of the order dated 5.6.2015 issued by the Food Safety and Standards Authority of India is produced and marked as Exhibit R5(a).

10. Since concerns were raised about the health hazards of MAGGI Noodles that led to confusion amongst the consumers, the Company decided to withdraw their products from the market, despite the product being safe. A letter was issued by the Company to the 2nd respondent informing their decision to withdraw MAGGI noodles from the markets in Kerala. True copy of the letter dated 13.6.2015 issued by the 5th respondent to the 2nd respondent is produced and marked as Exhibit R5(b).

11. Ext.R5(a) order issued by the Food Safety and Standards Authority of India was challenged before the Hon'ble High Court of Bombay in Writ Petition No.1688/2015 and by judgment dated 13.8.2015, Ext.R5(a) was set aside *inter alia* on the following grounds:

a. The Food Authority should have given a proper opportunity to the Company to prove that its product of MAGGI Noodles was safe for human consumption, which is against the principles of natural justice. In any event, even prior to passing of the Order dated 5.6.2015, the Company had given a press release, stating that it was decided to withdraw the product off the shelves despite the product being safe. There was no risk analysis made by the authorities to determine the extent of damage which would be caused on the consumption of food.

b. Even the analysis of all the food samples was not done by the Food Analyst at the accredited laboratories, approved by National Accreditation Board for Testing and Calibration Laboratories ("NABL"). Even in the case where the tests were done by accredited laboratories, they were not accredited to make analysis in respect of lead in the samples.

c. Even the sampling for the tests was also not as per the provisions of Food Safety and Standards Act, 2006 ("FSS Act"). Thus the reports relied on by the FSSAI could not be relied upon.

d. In so far as the declaration of "No Added MSG", it is not the case of the Food Authorities that MSG was added by the 5th respondent Company. In any event, it is the admitted position that Glutamate is found in natural form in certain types of food and the 5th respondent company had agreed to remove the declaration from the packet that there was "No Added MSG".

12. The Hon'ble High Court also directed the samples collected from the Company to be tested in certified laboratories and if found to confirm with the standards prescribed under the Food Safety and Standards Act, 2006, the Company was permitted to manufacture and sell the products.

13. In compliance thereof, a total of 90 samples of MAGGI Noodles covering six different available variants were collected and sent to three independent accredited laboratories notified by FSSAI (30

samples to each laboratory) for testing. In the month of October, 2015, the test reports from the 3 accredited laboratories were received which showed that the lead levels were within the permissible limits.

14. Thereafter the 5th respondent by letter dated 16.10.2015 submitted the Test Reports to the FSSAI and also informed the FSSAI that in terms of the judgment dated 13.8.2015, it would commence manufacture of MAGGI Noodles. A true copy of the letter dated 16.10.2015 issued by the 5th respondent is produced and marked as Exhibit R5(c). Similar letter was issued to different States including the 2nd respondent. For the purpose of reference, a true copy of the letter dated, 20.10.2015 issued by 5th respondent to 2nd respondent is produced and marked as Exhibit R5(d).

15. Subsequently on 26.10.2015, random samples from the batches of freshly manufactured MAGGI Masala Noodles (a total of 15 samples) were once again collected by the Food Safety Officer and sent to the three accredited laboratories (5 samples to each laboratory), for testing of lead parameter as directed by the Bombay High Court. The results of the tests undertaken on the freshly manufactured MAGGI Masala Noodles once again revealed that the lead content was within the permissible limit. This resulted in giving the 5th respondent the right to continue manufacture and sale of MAGGI Noodles as per the Judgment of the Bombay High Court.

.....)

5. Having considered the above, as also the test reports annexed to the counter affidavit, which were produced before the *Food Safety and Standards Authority of India* (FSSAI), certifying the product to be in compliance with the statutory provisions, we deem it appropriate to order for closure of this PIL. It is ordered accordingly.

Sd/-
Hrishikesh Roy,
Chief Justice

Sd/-
A.K. Jayasankaran Nambiar,
Judge

APPENDIX

PETITIONER'S EXHIBITS:

- EXHIBIT P1 : TRUE COPY OF PAPER REPORT PUBLISHED
IN THE HINDU DAILY DATED 4-6-2015.
- EXHIBIT P2 : TRUE COPY OF PAPER REPORT PUBLISHED
IN THE TIMES OF INDIA DAILY DATED
5-6-2015
- EXHIBIT P3 : TRUE COPY OF JUDGMENT OF THE
HON'BLE SUPREME COURT OF INDIA IN
CENTRE FOR PUBLIC INTEREST LITIGATION
V. UNION OF INDIA AND OTHERS
[2013(4)KHC383]
- EXHIBIT P4 : TRUE COPY OF REPRESENTATION
SUBMITTED BY THE PETITIONER BEFORE
THE 2ND RESPONDENT DATED 5-6-2015.
- EXHIBIT P5 : TRUE COPY OF PROCEEDINGS OF FOOD
SAFETY COMMISSIONER, THIRUVANANTHA-
PURAM, KERALA DATED 7-10-2014.
- EXHIBIT P6 : TRUE COPY OF PAPER REPORT APPEARED
IN MATHRUBHOOMI DAILY ON 23-5-2015
WITH REGARD TO THE CONTAINING OF
PESTICIDES ON VEGETABLES TRANSPORTED
TO KERALA.
- EXHIBIT P6 (A) : TRUE ENGLISH TRANSLATION OF EXT. P6

RESPONDENT'S EXHIBITS:

- EXHIBIT R5 A TRUE COPY OF THE ORDER DATED
05.06.2015 ISSUED BY THE FOOD SAFETY
AND STANDARDS AUTHORITY OF INDIA
- EXHIBIT R5 B TRUE COPY OF THE LETTER DATED
13.06.2015 ISSUED BY THE 5TH
RESPONDENT TO THE 2ND RESPONDENT

- EXHIBIT R5 C A TRUE COPY OF THE LETTER DATED
16.10.2015 ISSUED BY THE 5 TH
RESPONDENT
- EXHIBIT R5 D A TRUE COPY OF THE LETTER DATED
20.10.2015 ISSUED BY THE 5 TH
RESPONDENT TO 2ND RESPONDENT
- EXHIBIT R5 E A TRUE COPY OF THE LETTER DATED
4-11-2015 ISSUED BY THE 5TH
RESPONDENT
- EXHIBIT R5 F A TRUE COPY OF THE LETTER DATED
05-11-2015 ISSUED BY THE 5TH
RESPONDENT TO THE 2ND RESPONDENT
- EXHIBIT R5 G A TRUE COPY OF THE ANALYSIS REPORT OF
CFTRI MYSORE DATED 16.3.2016 NO-SING
12 (8) *CFTRI*/2015
- EXHIBIT R5 H A TRUE COPY OF THE ANALYSIS REPORT OF
CFTRI MYSORE DATED 16.3.2016 NO-SING
12 (5) *CFTRI*/2015
- EXHIBIT R5 I A TRUE COPY OF THE ANALYSIS REPORT OF
CFTRI MYSORE DATED 16.3.2016 NO-SING
12 (4) *CFTRI*/2015