

(2025) 06 KL CK 0898
In the High Court Of Kerala
Case No : Writ Appeal Nos.704, 707 Of 2023

Hisham Transports

APPELLANT

Vs

Food Safety Standards Authority Of India

RESPONDENT

Date of Decision : 24-06-2025

Acts Referred:

Food Safety and Standards Act, 2006 — Section 3(1)(j), 3(1)(n), 3(1)(o), 3(1)(zz),
16, 18, 26, 31, 42, 46(4)
Food Safety and Standards Rules, 2011 — Rule 2.4.2

Citation : (2025) 06 KL CK 0898

Hon'ble Judges : Nitin Jamdar, CJ;S. Manu, J

Bench : Division Bench

Advocate : Premjit Nagendran, Chithra P.George, Grashious Kuriakose

Final Decision : Dismissed

Judgement

Nitin Jamdar, CJ

1. These two appeals arise from the common order passed by the learned Single Judge dated 22 February 2023, by which the writ petitions filed by the Appellants/ Petitioners were dismissed.

2. In W.P.(C) No.24915 of 2022, from which W.A. No.704 of 2023 arises, the Petitioners/Appellants had challenged the communications dated 30 April 2020 and 17 March 2021 issued by Respondent No.4 – the Assistant Commissioner of Food Safety (Designated Officer), Ernakulam. In W.P.(C) No.15880 of 2021, from which W.A. No.707 of 2023 arises, the Petitioners/Appellants had challenged the letter dated 14 January 2021 issued by Respondent No.3 – the Assistant Commissioner of Food Safety (Designated Officer), Ernakulam.

3. The impugned communications/notices informed the Petitioners, who are dealing with drinking water, that as per the analysis report received from the Food Analyst under the Food Safety and Standards (Food Products Standards & Food Additives) Regulations, 2011 (Regulations of 2011), the drinking water

supplied by them does not conform to the prescribed standards for drinking water and is, therefore, substandard. The Petitioners were also informed that they can file an appeal under Section 46(4) of the Food Safety and Standards Act, 2006 (Act 34 of 2006) if they do not agree with the analysis report and, if no appeal is filed, the matter will be proceeded further as per Section 42 of the Act 34 of 2006. These notices were the subject matter of challenge in the writ petitions. Both the writ petitions were dismissed by the learned Single Judge by the impugned judgment.

4. We have heard Mr. Premjit Nagendran, learned counsel for the Appellants/ Petitioners, Ms. Chithra P. George, learned standing counsel for Respondent No.1 – the Food Safety and Standards Authority of India, and Mr. Grashious Kuriakose, learned Additional Director General of Prosecution for the State.

5. The primary contention of the Petitioners is that the Petitioners are dealing with water which does not fall under the Regulations of 2011, and this position is even accepted by the Respondent – State. Reliance is sought to be placed on a communication dated 7 February 2018 issued by the Assistant Director (Regulatory Compliance) of the Food Safety and Standards Authority of India. It is sought to be contended that no standards are applicable to the water supplied by the Petitioners. Even Section 26 of the Act 34 of 2006 does not provide for any standards for the water that is being supplied. Therefore, the Respondents have no jurisdiction to issue the impugned notices to the Petitioners.

6. The Food Safety and Standards Authority of India (FSSAI) has filed counter affidavit in which it is contended as follows. The standards for Mineral Water, Packaged Drinking Water, and Drinking Water (Purified) are mandated under sub-regulations 2.10.7, 2.10.8, and 2.10.9, of Regulations of 2011 respectively. The term “captive consumption” refers to water that is extracted, stored, and/or purified for use as an ingredient in food preparation, as well as for cleaning and washing purposes. The Petitioners had various options for getting the sample analysed while the samples were in the custody of the Designated Officer as per the provisions of the Act 34 of 2006, and the Rules and Regulations made thereunder, however, they have not taken recourse to the same. The Food Business Operator (FBO) would have to obtain BIS Certification for the product “Packaged Drinking Water”. The Petitioners are selling drinking water as per the licence dated 27 November 2011 and by registration certificate dated 6 May 2022, Petitioner No.2 in W.P.(C) No.24915 of 2022 holds “Drinking Water (Well)” licence. The Report of the Assistant Commissioner of Food Safety showed that Coliform was detected and also there is the presence of nitrate. Since the Petitioners are FSSAI licensees, the registration granted to them is subject to the provisions of the Act, Rules and Regulations which have to be complied with. Further, the Food Safety Officers are duty-bound to carry out inspection of the food business, drawing of the sample and sending for food analysis on the basis of the report of the food analysts. The water being supplied by the Petitioners does not conform to the standards prescribed for drinking water as per IS

10500:2012 of the Bureau of Indian Standards. As per the said standards, drinking water is the water intended for human consumption for drinking and cooking purposes from any source and it includes water supplied by any means for such consumption. Therefore, it is contended that the appeals are liable to be dismissed.

7. The Respondent Authorities have not launched any prosecution against the Petitioners and the impugned letters only called upon them for availing the remedy of appeal as prescribed under Section 46(4) of the Act 34 of 2006. It is at this stage, the Petitioners approached the Court.

8. The Food Safety and Standards Act, 2006 (Act 34 of 2006) is an Act to consolidate the laws relating to food and to establish the Food Safety and Standards 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 term "food" is defined under Section 3(1)(j) of the Act 34 of 2006 to mean any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food to the extent defined in clause (zk). Drinking water falls within the definition of "Food". The term "food business" is defined under Section 3(1)(n) of the Act 34 of 2006 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.

9. The term "food business operator" in relation to food business is defined under Section 3(1)(o) of the Act 34 of 2006 to mean a person by whom the business is carried on or owned and is responsible for ensuring the compliance of this Act, rules and regulations made thereunder. "Unsafe food" under Section 3(1)(zz) of the Act generally means an article of food whose nature, substance or quality is so affected as to render it injurious to health. The Petitioners are selling drinking water as per the licence dated 27 November 2011. Under Section 26 of the Act, the Food Business Operator has certain responsibilities which include not to manufacture, store, sell or distribute water which is unsafe or is substandard or contains extraneous matter. Licensing and registration of food business are provided under Section 31. Under the Act 34 of 2006, the Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011, are framed for the licensing and registration of food business. The prescribed formats for applying for registration are appended to the said Regulations.

10. In W.A. No.704 of 2023, Petitioner No.1 has applied for the grant of licence, wherein the nature of business is referred as trade, retail, and transportation. For Petitioner No.2, it is specified as retailer / drinking water (well). In W.A. No.707 of 2023, Petitioner No.1 has stated the nature of business as a distributor of well water, while Petitioner No.2 is stated as a transporter. The Petitioners in both the

writ petitions have asserted that they have taken the registration in respect of drinking water. It is stated that even the business is carried out in the name "drinking water supply". The Petitioners have registered under the Act 34 of 2006 in respect of drinking water and having registered under the Act 34 of 2006, they are bound by Section 26. It is, therefore, incumbent upon the Petitioners to assert the exact nature of the water being supplied, if they contend that they do not fall within the categories specified in the Regulations of 2011, and that no notices can be issued to them.

11. The Standard Regulations of 2011 regulate the categories; 2.10.7 – Mineral Water, 2.10.8 – Packaged Drinking Water, and thirdly 2.10.9 – Drinking Water (Purified). The Regulations of 2011 classify drinking water into three distinct categories. The first is Regulation 2.10.7, which pertains to Mineral Water. This includes all types of Mineral Water or Natural Mineral Water. The second category falls under Regulation 2.10.8 which relates to Packaged Drinking Water (other than Mineral Water). The third category is specified under Regulation 2.10.9 which deals with Drinking Water (Purified).

12. Assuming that the Petitioners did not fall under Regulations 2.10.7 and 2.10.8 of the Regulations of 2011, then Regulation 2.10.9 would arise for consideration. The emphasis of the Authority is on Regulation 2.10.9 of the Regulations of 2011, which reads thus:

"2.10.9 DRINKING WATER (PURIFIED).- (1) Means water, other than packaged drinking water and natural mineral water which is offered or sold through water vending machine.

(2) Drinking water (purified) shall be clear without any sediments, suspended particles and extraneous matter which shall also comply with the requirements of Indian Standards, IS:10500.

Explanation.- For the purposes of this sub-regulation, "water vending machine" means decentralised water purification systems that purify and dispense waters and does not include installation intended for use of water for captive consumption."

"Drinking Water (Purified)" refers to water, distinct from packaged or natural mineral water that is sold through a water vending machine. Such water has to be free from sediments, suspended particles and extraneous matter, as their presence renders it unfit for consumption. The use of the term "purified" in the context of Act 34 of 2006 does not mean that a specific purification process is mandated. It means that the drinking water has to meet the standard of cleanliness. "Purity" in the context of food indicates absence of contamination or degrading particles. Thus, the term "purified" under Regulation 2.10.9 refers to the quality of the water being potable and devoid of contaminants, and not the method of treatment. The plain language of Regulation 2.10.9 of the Regulations

of 2011 does not support the argument of the Petitioners that it applies only to water subjected to a purification process.

13. Under Regulation 2.10.9, as reproduced above, the term "Drinking Water (Purified)" refers to water that is free from any sediments, suspended particles and extraneous matter. The Petitioners do not assert that the water they supply is impure or unfit for drinking, nor do they assert that it requires additional treatment. Since they hold registration under the Act 34 of 2006, it is incumbent upon them to establish compliance with the relevant standards. There is no specific case in the writ petitions that the water supplied by the Petitioners is unpurified or unfit for drinking. On the contrary, the assertion is that they supply drinking water, which by definition, has to be fit for human consumption and free from sediments, suspended particles and extraneous matter. Accordingly, the burden lies on the Petitioners to establish the category of water being provided. There are no pleadings in the petitions to suggest that, despite holding registration as Food Business Operators dealing in drinking water, the Petitioners are supplying water that is unpurified or unsafe. There is nothing stated in the petitions as to why the Petitioners do not fall in the third Category 2.10.9 – Drinking Water (Purified).

14. The argument of the Petitioners that Regulation 2.10.9 of the Regulations of 2011 applies only to water vending machines is misplaced. This Regulation covers water, other than packaged drinking water and natural mineral water, which is sold through water vending machines. It is not the case of the Petitioners that the water supplied by them is dispensed through such machines. In view of this position, the contention of the Petitioners that notices could not have been issued to them is untenable.

15. As stated above, having taken registration under the Act 34 of 2006 and the Regulations of 2011 as Food Business Operators, the Petitioners had to specifically plead regarding the nature of the water being supplied by them and the concessions and stand of the learned Senior Government Pleader for the State are immaterial. What matters are the provisions of the statute and the pleadings on facts. This would also apply to the communication dated 7 February 2018 relied upon by the Petitioners. Even otherwise, the duties and functions of the FSSAI are listed under Section 16 of the Act 34 of 2006, which include the duty to regulate and monitor the manufacture, processing, distribution, sale and import of food so as to ensure safe and wholesome food. The Regulations specify the standards and guidelines in relation to articles of food and prescribe an appropriate system for enforcing various standards. The general principles of food safety to be followed are listed in Section 18 of the Act 34 of 2006, which include making an 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. Thus, what is material is the stand of the FSSAI, and it has contested the matter by contending that the Petitioners are subject to regulation.

16. The decision relied upon by the Petitioners in the case of *Hindustan Lever Ltd. v. Food Inspector and Another* (2004) 13 SCC 83 relates to the Prevention of Food Adulteration Act, 1954, arising from criminal prosecution and not under the Act 34 of 2006. Each enactment has a different object. The Prevention of Food Adulteration Act, 1954 contains a penal provision, and the matters before the Hon'ble Supreme Court arose from convictions recorded under the said Act. The judicial approach in respect of matters arising from penal convictions is different from those arising from a challenge to the notices issued pointing out that substandard water is being supplied.

17. As per the reports filed in these matters, toxic substances have been detected in the water, which is contrary to the stipulated levels. In W.A. No. 704 of 2023, the toxic substance identified is Coliform, while in W.A. No. 707 of 2023, the water has been found to be acidic with the presence of nitrate. As per the letter dated 17 March 2021 issued by the Assistant Commissioner of Food Safety (Designated Officer), the toxic substance of "Coliform" content was detected at a concentration of 240 MPN/100 ml., whereas it should be absent as per the Act 34 of 2006 and Regulations of 2011. The potential of Hydrogen (pH) content of the tested sample was detected as 5.1, contrary to the stipulated levels, showing that the water is acidic and the presence of nitrite, which should otherwise be absent, making the water unsafe. The notices impugned in the writ petitions informed the Petitioners that if they dispute these findings, they are entitled under the statute to have the sample analysed.

18. Under the scheme of the Food Safety and Standards Rules, 2011(Rules of 2011), the Food Business Operators have the opportunity to put forth their case. Rule 2.4.2 of the Rules of 2011 empowers the Food Analyst to analyse the food sample and Rule 2.4.5 confers upon the Food Business Operator the right to have the food analysed independently. Rule 2.4.5 of the Rules of 2011 states that in case the Food Business Operator from whom the sample has been taken or the person whose name and address and other particulars have been disclosed under Rule 2.5 of these Rules, desires to have the fourth part of the same analysed, he shall request the Food Safety Officer in writing to send the sample to any NABL accredited/FSSAI notified laboratory for analysis under intimation to the Designated Officer. The Food Safety Officer shall send the sample to a NABL accredited/FSSAI notified laboratory, under intimation to the designated Officer forthwith, in the manner prescribed under Rule 2.4.1.

19. Against the report of the Food Analyst, the Petitioners have a right of appeal, as provided under Section 46(4) of the Act 34 of 2006. In this context, Rule 2.4.6 of the Rules of 2011 states that when an appeal as provided under sub-section (4) of Section 46 is preferred to the Designated Officer by the Food Business Operator against the report of the Food Analyst, the Designated Officer shall decide the same within thirty days from the receipt of such appeal after considering the material placed before him and after giving an opportunity to Food Business Operator to be heard.

20. The communications issued to the Petitioners were intended to draw the attention of the Petitioners that the analysis report indicates that the water supplied by them is substandard, and if they disagree, they have the opportunity to contest the same. Even if Regulation 2.10.9 had not been mentioned in the impugned notices, their purpose was merely to inform the Petitioners that the water supplied by them is found to be contaminated and the Petitioners had an opportunity to file an appeal. Instead of filing an appeal, the Petitioners have straightaway rushed to the Court. If there is delay, it is the Petitioners who have contributed to the same.

21. Thus, having once taken registration as Food Business Operators dealing with drinking water, and it not being their case that the water supplied by them is unpurified or unfit for drinking, the Petitioners cannot now contend that their case is not regulated by the Act 34 of 2006 and the Regulations of 2011, and that no notice can be issued to them. If the report of the Authorities indicates the presence of impurities and toxic substances in the sample, the Petitioners had the remedy of questioning the sample and also filing an appeal under the Act 34 of 2006 and the Rules of 2011. We find no perversity in the view taken by the learned Single Judge in the impugned judgment in dismissing the writ petitions.

22. Accordingly, the Appeals are dismissed.