

(2013) 10 DEL CK 0099

In the Delhi High Court

Case No : Writ Petition (C) 8568 of 2010

Uday Foundation for Congenital Defects and Rare Blood Groups

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 29-10-2013

Acts Referred:

Food Safety and Standards Act, 2006 — Section 11, 12, 13, 14, 16

Citation : (2013) 10 DEL CK 0099

Hon'ble Judges : Nuthalapati Venkata Ramana, C.J; Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Neeraj Kishan Kaul, Amicus Curiae, Mr. Amit Saxena, Mr. Kapil Rustagi, Ms. Shilpa Nair, Mr. Sanyat Lodha and Ms. Aakanksha Kaul, for the Appellant; Rajeeve Merha, ASG, Mr. Ruchir Mishra, Ramneek Mishra, Mukesh Kumar Tiwari, Advocates for UOI, Ms. Monika Garg, Advocate for R-5, Mr. Ashok Desai, Mr. Ajay Kohli, Ms. Ph. Sarvodaya Lakshi, Advocates for NRAI, Dr. A.M. Singhvi, Mr. Maninder Singh, Mr. Dheeraj Nair, Divyam Agarwal, Amit Bhandari, Advocates for R-7, Mr. Mukul Rohtagi, S. Ganesh, Rajiv Nayar, Ms. Kanika Agnihotri and Mr. Karan Minocha, Advocates for R-8/RAI, for the Respondent

Final Decision : Disposed Off

Judgement

Pradeep Nandrajog, J.

CM Nos. 13079/2013, CM No. 13080/2013 & CM No. 13081/2013

1. Aforenoted applications have been filed after this Bench had passed an order on September 04, 2013. The three applications have been filed: CM No. 13079/2013 by the Retailers Association of India, CM No. 13080/2013 by the All India Food Processors Association and CM No. 13081/2013 by the National Restaurants Association of India, seeking modification/clarification of the order dated September 04, 2013. Under the garb of modification/clarification what is actually sought is a review evidenced by the objection being raised to paragraph 8 of the order dated September 04, 2013, which reads as under:-

A perusal of The Food Safety and Standards Act, 2006 would reveal that the legislative concern is with respect to preservatives, additives, contaminants and other chemicals used in processed food. The legislative intent is to ensure that processed food should be of a kind where public health is not adversely affected. The Act does not contemplate regulation of what we may call is a "junk food".

2. It is pleaded in the application(s) that the observations in paragraph 8: "The Act does not contemplate regulation of what we may call is a "junk food" is contrary to the statutory framework of "The Food Safety and Standards Act, 2006". Thereafter, attention is drawn to Section 16 of the said Act to highlight that a Food Authority has been constituted with the duty to provide scientific advise and technical support to the Central Government and State Government in matters of framing of policies and rules in areas which have direct and indirect bearing on food safety and nutrition. It is pleaded that the Scientific Panel and Scientific Committee constituted under Sections 13 and 14 of the Act have been established to render opinion to the Government.

3. Prayer made in CM No. 13079/2013 seeks a clarification that there is no term such as " junk food" and the second prayer is that members of the applicant association may be invited to participate in framing guidelines at parity with other associations being "National Restaurants Association of India" and "All India Food Processors Association". The prayer made in CM No. 13080/2013 is that the Scientific Panel and Scientific Committee constituted u/s 13 and 14 respectively of the said Act should be directed to function as the expert body in supersession of the Committee constituted by this Court as per the order dated September 04, 2013. Similar is the prayer made in CM No. 13081/2013.

4. A perusal of the writ petition would reveal that the issue raised is of sale of, what is popularly known as "junk food" in the canteens of the schools, resulting in not only child obesity, but even other critical disorders and diseases. It is highlighted in the writ petition that various States in the United States of America have already banned junk food sale in schools until at least after lunch. There is a reference to a decision in England where fast food take away joints near schools were declared unlawful. A reference is also made to the Tenth Conference of Central Council of Health and Family Welfare, held on January 30, 2009, expressing concern on the increasing consumption of junk food by school children.

5. Taking note of the averments made in the writ petition, which we find is one in public interest, on December 22, 2010 notice was issued to the respondents and since then various orders have been passed intending to take the petition to its destination i.e. some guidelines to be framed for sale of junk food in canteens in schools.

6. The two applicants were subsequently impleaded as respondents.

7. Order dated January 11, 2012 passed by a Division Bench of this Court would reveal that the Union of India informed the Court that Food Safety and Standard

Authority of India, a statutory Authority constituted under the Act was looking into the matter to decide whether guidelines needed to be framed for making available healthy food in school canteens as also what efforts need to be made to promote healthy eating habits amongst children and to discourage the consumption of junk food. Order dated August 29, 2012 would reveal that the Union of India informed this Court that it had issued a notice inviting tender to carry out a survey and submit a report on the subject of junk food sold in schools and its adverse impact. The order records the scope of the proposed work intended to be entrusted to the agency. The proposed works are as under:-

? 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.

8. Neilson (India) Pvt. Ltd., a well-known company in the field of market survey was appointed to carry out the survey and submit a report. The report has been submitted.

9. Order dated September 04, 2013, clarification/modification whereof is prayed for notes that the petitioner wants a policy to be framed regulating sale of junk food in schools. The order records that u/s 11 of the Act a Central Advisory Committee is constituted. The order notes that the Food Safety and Standards Act, 2006 is a legislation which concerns preservatives, additives, contaminants and other chemicals used in processed food. The order notes that the legislative

intent was to ensure that processed food should be of a kind where public health is not adversely affected. The order notes that the Act does not contemplate regulation of what we may be called a "junk food".

10. The order highlights, in paragraph 9 that the issue pertaining to junk food was in the context of an eating habit i.e. consumption of junk food becoming a dietary habit. It was in this context that the observations, modification whereof is prayed for were made.

11. Therefore, in paragraph 12 we had required the Central Advisory Committee to consult experts in public health and especially health of the children, the adolescent and the youth.

12. Thus the contention of Sh. Mukul Rohtagi learned senior counsel which is seconded by Sh. Abhishek Manu Singhvi learned senior counsel that the Act as per the definition of food in Section 3(j) does not draw any distinction between different kind of foods and that this Court has carved out a category of food called "junk food" and hence has violated the statutory scheme of the Act which Act has been opined by the Supreme Court in the decision dated October 03, 2013 in CA No. 965-69/2008 Hindustan Coca-Cola Beverages Pvt. Ltd. Vs. Santosh Mittal & Ors. and the decision dated October 22, 2013 in W.P. (C) No. 681/2004 Centre for Public Interest Litigation Vs. UOI & Ors., to be a complete Act is misplaced because the argument overlooks the point that our decision does not carve out any exception to the definition of food under the Act. It only makes a reference to a specie of the food. Thus, if food is a genus, junk food would be specie thereof.

13. The second contention also merits rejection. The reason is that the scheme of the Act contemplates a Food Authority established u/s 4 of the Act. It is this body which performs the functions assigned to it under the Act. u/s 11 the Food Authority has to establish a Central Advisory Committee to advise the Food Authority on the subjects enumerated in sub-Section 2 of Section 12 of the Act. u/s 13 the Food Authority has to establish scientific panels with respect to subjects enumerated in sub-Section 3 of Section 13 and a Scientific Committee u/s 14 to provide opinion on multi-sectoral issues.

14. The order dated September 04, 2013 requires the Central Advisory Committee constituted u/s 11 to look into the report submitted by Neilson (India) Pvt. Ltd. and would prepare draft guidelines with respect to school children and excessive consumption of junk food.

15. Now, it is apparent that the Act envisages: (i) Central Advisory Committee to give advise to the Food Authority on the subjects enumerated in sub-Section 2 of Section 12 of the Act; (ii) Scientific Panel on the subjects enumerated in sub-Section 3 of Section 13 of the Act; and (iii) Scientific Committees to provide opinions on multi-sectoral issues.

16. We only need to highlight that our order dated September 04, 2013 brings

out that the concern in the writ petition is not with hazardous food or with a standard of food safety envisaged by the Act. The concern is with a dietary habit and promotion of what is popularly known as junk food amongst school children and thus it would be wrong on the part of the applicants to state that the Committee constituted u/s 11 i.e. the Central Advisory Committee cannot be directed to render an opinion. Any Committee could have been directed by us to render an opinion.

17. Thus we are of the opinion that no modification/clarification is warranted.

18. The interest of the applicants has been protected inasmuch as we have required participation of two representatives each from the relevant industry to be associated while framing the draft guidelines.

19. Due to oversight a reference has been made to representatives of only two associations: (i) "National Restaurants Association of India"; and (ii) "All India Food Processors Association". We clarify that two representatives of the Retailers Association of India would also be permitted to be associated while framing the draft guidelines.

20. CM No. 13079/2013, CM No. 13080/2013 and CM No. 13081/2013 are accordingly disposed of.

CM Nos. 13450/2013, 13451/2013 and 13452/2013

21. Vide these applications it is prayed that the scheduled meeting for September 25, 2013 by the Central Advisory Committee be deferred pending disposal of the three applications which we have disposed of above. Since the said date is already over, the applications stand disposed of as infructuous.

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

List as per roster on December 18, 2013.