

SWAMI ACHYUTANAND TIRTH & ORS.

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v.

UNION OF INDIA & ORS.

(Writ Petition (C) No. 159 of 2012)

AUGUST 05, 2016

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**[T.S. THAKUR, CJI, R. BANUMATHI AND  
UDAY UMESH LALIT, JJ.]**

*Food Safety and Standards Act, 2006 – ss.3/16/19/23/31/50/89/91/92/97 – Growing menace of adulterated and synthetic milk – Report released by Foods Safety and Standards Authority of India (FSSAI) that on a national level 68.4% of milk being sold is adulterated – Writ of mandamus sought against respondents alleging inaction and apathy to take appropriate measures to curb sale of synthetic /adulterated milk and milk products – Held: Food Safety and Standards Act, 2006 alongwith the rules and regulations framed thereunder constitutes a vigorous regulatory regime taking care of various situations of contraventions – Hence, apprehensions raised by petitioners could be taken care of by the authorities under the Food Safety and Standards Act – However, considering the seriousness of the matter and alarming state of affairs various directions passed for Union of India and State Governments – Food Safety and Standard Rules, 2011 – Food Safety and Standards (Licencing and Registration of Food Businesses) Regulations, 2011 – Part III – regn. 2.1.13 – Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011 – regns. 1.2 & 2.1.1.*

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**Disposing of the writ petition and de-tagging the connected SLP and Criminal Appeals, the Court**

**HELD: 1.1** Petitioners relied on a report titled “*Executive Summary on National Survey on Milk Adulteration, 2011*” released by Foods Safety and Standards Authority of India (FSSAI) which concluded that on a national level, 68.4 per cent of milk being sold is adulterated and it is alleged that the worst performers in the survey were Bihar, Chhattisgarh, Odisha, West Bengal, Mizoram, Jharkhand and Daman and Diu, where adulteration in milk was found up to 100%. In the States of Uttarakhand and

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A Uttar Pradesh, 88% of milk samples were found adulterated. Petitioners pleaded inaction and apathy on part of the respondents to take appropriate measure to rule out sale and circulation of synthetic milk and milk products across the country which according to the petitioners resulted in violation of fundamental rights of the petitioners and public at large guaranteed under Article 21 of the Constitution of India. [Para 2] [852-H; 853-A-C]

C 1.2 In compliance of various orders passed by this Court, all the States have filed affidavits stating that ever since Food Safety and Standards Act, 2006 (for short “the FSS Act”) came into force with effect from 5.8.2011, the provisions of the Act are being sincerely implemented by the States and also indicating action taken by the States, number of prosecutions launched and status of those cases. [Para 3] [853-E]

D 2.1 On behalf of Union of India, it was submitted that a fair mechanism for dealing with food safety and standards and for checking adulteration is in place. [Para 5] [853-G]

E 2.2 As per Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011, the Dairy establishment in which dairy based food is handled, processed, manufactured, stored and distributed and ultimately sold by Food Business Operator should conform to the sanitary and hygienic requirements, food safety measures and other standards as laid down in Part-III of FSS Regulations, 2011. As per Part III of the said FSS Regulations, 2011, specific hygienic and basic sanitary measures are required to be followed by such Food Business Operators. It is compulsory for the milk business operator to submit half yearly return for milk and milk products in form D-2 as provided in Regulation 2.1.13 of Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011. Chapter 2 of the said Regulations deals with Food Product Standards. As per 2.1.1, the standards of different classes and designation of milk shall conform to both the parameters for milk fat and milk solids-not-fat for various States as indicated in the table thereon. [Paras 10 and 11] [857-D-F; 859-G]

H 2.3 Sections 50 to 65 of FSS Act deal with punishment for contravention of the provisions. Section 59 of the Act provides

for punishment for unsafe food. As per Section 89 of the Food Safety and Standards Act, 2006, provisions of the Act shall have overriding effect over all other food laws. Section 97 (2) repeals any other law for the time being in force in any State at the time of commencement of the Act. [Para 12] [860-A-B] A

3.1 Food Safety and Standards Act, 2006 alongwith the rules and regulations framed thereunder constitutes a vigorous regulatory regime which takes care of the various situations of contraventions. Apprehensions raised by the writ petitioners could be taken care of by the authorities under the provisions of the FSS Act as well as the rules and regulations framed thereunder. [Para 13] [860-H; 861-A] B  
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4. Consumption of adulterated milk and milk products is hazardous to human health and the state of affairs is alarming. Since in India traditionally infants/children are fed milk, adulteration of milk and its products is a concern and stringent measures need to be taken to combat it. Considering the seriousness of the matter and in the light of various orders passed by this Court, the writ petition is disposed of with directions and observations. [Paras 18, 20 and 22] [863-D; 864-E, H; 865-A] D

CIVIL APPELLATE JURISDICTION: Writ Petition (c) No. 159 of 2012. E

[UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA]

WITH

SLP (Crl.) No. 1379 of 2011

Crl. A. No. 472 of 2012 F

Crl. A. Nos. 476-478 of 2012

Crl. A. No. 479 of 2012.

Ms. Pinky Anand, ASG, Suryanarayana Singh, Sr. AAG, Shiv Mangal Sharma, Sanjay Kumar Tyagi and Ajay Bansal, AAG, L. N. Rao and Pramod Swarup, Sr. Advs., Rameshwar Prasad Goyal, Anurag Tomar, Sarwesh Chauhan, Varinder Kumar Sharma, K. P. Singh, Ashwin Vaish, Vinod Pandey Ambhoj Kr. Sinha, Irshad Ahmad, Sudeep Kumar, Abhish Kumar, Ambhoj Kumar Sinha, Rauf Rahim, Rishabh Jain, Akash Jindal, Ms. Sunita Sharma, D. S. Mahra, R. R. Rajesh, Rajiv Singh, Ms. Binu H

A Tamta, R. K. Rathore, G. M. Kawoosa, Sunil Fernandes, Ms. Pragati  
 Neekhra, Shrey Kapoor, Milind Kumar, Mehmud Pracha, Shadan Farasat,  
 Ritesh Dhar Dubey, Mansoor Ali, Sapam Biswajit Meitei, Ashok Kr.  
 Singh, Dinesh Kumar Garg, Dhananjay Garg, Edward Belho, K. Enatoli  
 Sema, K. Loikang Michael, Amit Kumar Singh, Tapesh Kumar Singh,  
 B Kumar Anurag Singh, Mohd. Waqvas, Dr. Ashish Kumar Sharma, Gaurav  
 Yadava, Kuldeep Singh, D. P. Singh, B. Balaji, K. Venkataramani,  
 Muthuvel Palani, A. P. Mayee, A. Selvin Raja, Ms. Vandana Anand,  
 Dheeraj Nair, Ms. Aruna Mathur, Ms. Anuradha Arputham, Yusuf Khan,  
 Ranjan Mukherjee, K. V. Jagdishvaran, Mrs. G. Indira, Gopal Singh,  
 Rituraj Biswas, Aditya Raina, T. L. V. Ramachari, Hitesh Kumar Sharma,  
 C K. V. L. Raghvan, P.V. Yogeswaran, Naveen Sharma, Mishra Saurabh,  
 Soumitra G. Chaudhuri, Parijat Sinha, B. Y. Kulkarni, Deepa Kulkarni,  
 Mrs. Jyotika Kalra, V. G. Pragasam, S. Prabu Ramasubramanian, Ms.  
 Hemantika Wahi, Ms. Puja Singh, Vibhu Tiwari, Abhinav Kumar Malik,  
 Ravi Prakash Mehrotra, Ms. Vandana Anand, Dheeraj Nair, Ms.  
 D Kankana Anandhara, Pragyana Sharma, Shikhar Garg, Satyendra Kumar,  
 Ms. Sunita Bhardwaj, M. R. Shamshad, Ms. Vikrant Yadav, Vaibhav  
 Yadav, Anil Shrivastav, Debasis Misra, Kamal Mohan Gupta, Tapesh  
 Kumar Singh, Ms. Asha Gopalan Nair, M/s. Corporate Law Group, Ms.  
 Sharmila Upadhyay, Ms. Sushma Suri and Mohan Singh Ahluwalia, Advs.  
 the appearing parties.

E The Judgment of the Court was delivered by

**R. BANUMATHI, J. 1.** The present writ petition is filed in public  
 interest by the petitioners highlighting the menace of growing sales of  
 adulterated and synthetic milk in different parts of the country. The  
 F petitioners are residents of the State of Uttarakhand, Uttar Pradesh,  
 Rajasthan, Haryana and NCT of Delhi and have accordingly shown  
 concern towards the sale of adulterated milk in their States. However,  
 the issue of food safety being that of national importance, Union of India  
 has also been made a party-respondent. The petitioners allege that the  
 concerned State Governments and Union of India have failed to take  
 G effective measures for combating the adulteration of milk with hazardous  
 substance like urea, detergent, refined oil, caustic soda, etc. which  
 adversely affects the consumers' health and seek appropriate direction.

2. The petitioners have relied on a report dated 02.01.2011 titled  
 H "*Executive Summary on National Survey on Milk Adulteration, 2011*" released by Foods Safety and Standards Authority of India

(FSSAI) which concluded that on a national level, 68.4 per cent of milk being sold is adulterated and it is alleged that the worst performers in the survey were Bihar, Chhattisgarh, Odisha, West Bengal, Mizoram, Jharkhand and Daman and Diu, where adulteration in milk was found up to 100%. In the States of Uttarakhand and Uttar Pradesh 88% of milk samples were found adulterated. According to the petitioners, milk is the only source of nourishment for infants and a major part of the diet for growing children in tender age and if no effective measure is taken to ensure the purity of milk, health of the children will be adversely affected. The petitioners pleaded inaction and apathy on the part of the respondents to take appropriate measure to rule out sale and circulation of synthetic milk and milk products across the country which according to the petitioners has resulted in violation of fundamental rights of the petitioners and public at large guaranteed under Article 21 of the Constitution of India. The petitioners, therefore, seek for a writ of mandamus directing Union of India and the concerned State Governments to take immediate effective and serious steps to rule out the sale and circulation of synthetic/adulterated milk and the milk products like ghee, mawa, cheese, etc.

3. In compliance of various orders passed by this Court, all the States have filed affidavits stating that ever since Food Safety and Standards Act, 2006 [for short “the FSS Act”] came into force with effect from 5.8.2011, the provisions of the Act are being sincerely implemented by the States and also indicating action taken by the States, number of prosecutions launched and status of those cases. States have further stated that after the National Survey on Milk Adulteration by FSSAI in 2011, comprehensive action is being taken by the State Governments to check whether milk is being adulterated with chemicals and stringent action is being taken in accordance with FSS Act and penal laws.

4. We have heard the learned counsel appearing for the petitioners, Union of India and counsel appearing for various States.

5. On behalf of Union of India, it was submitted that a fair mechanism for dealing with food safety and standards and for checking adulteration is in place. As the Parliament has enacted Food Safety and Standards Act, 2006 and Regulations, 2011 which are effective in taking care of the food safety and standards, it becomes, therefore, important to firstly refer to the legislative efforts made by the Union of India. The

- A Parliament has enacted Food Safety and Standards Act, 2006 which is exhaustive on laws relating to food and repeals two other earlier laws relating to prevention of food adulteration. Preamble of the FSS Act, 2006 reads as under:-
- B “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.”
- C 6. Some of the objectives of the Food Safety and Standards Act, 2006 are as follows:
- D i. To consolidate the laws relating to Food.
- ii. To establish Food Safety and Standards Authority of India for laying down science based standards for articles of Food.
- E iii. To regulate their manufacture, storage, distribution, sale and import.
- F iv. To ensure availability of safe and wholesome food for human consumption.
- G The Act, apart from making more stringent provisions (e.g. prescribing higher penalties etc.) to curb food adulteration, also ushers in new concepts such as putting in place Food Safety Management Systems and Food Safety Audit to realize its ultimate goal of ensuring availability of safe and wholesome Food for human consumption. In order to ensure food safety, effective food safety systems implementation and to ensure that food producers and suppliers operate responsibly and supply safe food to consumers, the Act further stipulates:-
- H i. Licensing for manufacture of food products, which is presently granted by the central agencies under various Acts and orders, would stand decentralized to the commissioner of Food Safety and his officer.
- ii. Single reference point for all matters relating to Food Safety and Standards, regulations and enforcement.
- iii. Shift from mere regulatory regime to self compliance through Food Safety management systems.

iv. Responsibility on Food Business Operators to ensure that Food processed, manufactured, imported or distributed is in compliance with the domestic Food laws. A

7. Exercising power under the Act, Central Government constituted the Food Safety and Standards Authority of India (FSSAI). Duties and functions of the Food Safety and Standards Authority have been elaborately dealt with in Section 16 of the FSS Act, which states that it shall be the duty of the Food Authority to regulate and monitor the manufacture, processing, distribution, sale and import of food, and shall specify, by regulations, the standards and guidelines in relation to articles of food, mechanisms and guidelines for accreditation of certification bodies engaged in certification of food safety management systems for food businesses and notify the accredited laboratories, etc. In exercise of powers conferred by Section 91 of the FSS Act, the Central Government framed the Food Safety and Standard Rules, 2011 which came into force on 05.08.2011. In exercise of powers conferred by Clause (o) of Sub-section (2) of Section 92 read with Section 31 of FSS Act, Central Government framed regulations viz. Food Safety and Standards (Licencing and Registration of Food Businesses) Regulations 2011. Under the said Regulation by virtue of Regulation 2.1, all food business and food operators are required to obtain licence and get themselves registered as per the provisions of FSS Regulation, 2011. The definition of the Food Operator, Food business and food are laid down under Section 3(o), 3(n) and 3(j) respectively of FSS Act, 2006. Likewise in exercise of powers conferred by Clause (k) of Sub-section (2) of Section 92 read with Section 23 of FSS Act, Regulations insofar as they relate to Food Safety and Standards (Packaging and Labeling) Regulations, 2011 were made. B  
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8. Chapter III of the Food Safety and Standards Act, 2006 deals with the general principles of food safety. The Central Government, the State Governments, the Food Authority and other agencies while implementing the provisions of the Act shall be guided by the principles indicated in Chapter III of the Act, which read as under:- F

“CHAPTER III G

GENERAL PRINCIPLES OF FOOD SAFETY

18. *General principles to be followed in administration of Act.*—The Central Government, the State Governments, the Food Authority and other agencies, as the case may be, while H

- A implementing the provisions of this Act shall be guided by the following principles namely:—
- (1) (a) endeavour to achieve an appropriate level of protection of human life and health and the protection of consumers' interests, including fair practices in all kinds of food trade with reference to food safety standards and practices;
- B (b) carry out risk management which shall include taking into account the results of risk assessment, and other factors which in the opinion of the Food Authority are relevant to the matter under consideration and where the conditions are relevant, in order to achieve the general objectives of regulations;
- C (c) where in any specific circumstances, on the basis of assessment of available information, the possibility of harmful effects on health is identified but scientific uncertainty persists, provisional risk management measures necessary to ensure appropriate level of health protection may be adopted, pending further scientific information for a more comprehensive risk assessment;
- D (d) the measures adopted on the basis of clause (c) shall be proportionate and no more restrictive of trade than is required to achieve appropriate level of health protection, regard being had to technical and economic feasibility and other factors regarded as reasonable and proper in the matter under consideration;
- E (e) the measures adopted shall be reviewed within a reasonable period of time, depending on the nature of the risk to life or health being identified and the type of scientific information needed to clarify the scientific uncertainty and to conduct a more comprehensive risk assessment;
- F (f) in cases where there are reasonable grounds to suspect that a food may present a risk for human health, then, depending on the nature, seriousness and extent of that risk, the Food Authority and the Commissioner of Food Safety shall take appropriate steps to inform the general public of the nature of the risk to health, identifying to the fullest extent possible the food or type of food, the risk that it may present, and the measures which are taken or about to be taken to prevent, reduce or eliminate that risk; and
- G (g) where any food which fails to comply with food safety
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requirements is part of a batch, lot or consignment of food of the same class or description, it shall be presumed until the contrary is proved, that all of the food in that batch, lot or consignment fails to comply with those requirements. A

9. The general principles referred to above are to be followed in the administration of the Act, by the Central Government, the Food Authority, the State Governments and other agencies, while implementing the Regulations and specifying food safety standards or while enforcing or implementing the provisions of the FSS Act. The Food Authority, while discharging its functions, shall take into account the prevailing practices and conditions in the country, including agricultural practices and handling, storage and transport conditions, including international standards and practices. The Food Authority shall be guided by the general principles of food safety, such as, risk analysis, risk assessment, risk management, risk communication, transparent public consultation, protection of consumers' interest, etc. B C

10. As per Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011, the Dairy establishment in which dairy based food is being handled, processed, manufactured, stored and distributed and ultimately sold by Food Business Operator should conform to the sanitary and hygienic requirements, food safety measures and other standards as laid down in Part-III of FSS Regulations, 2011. As per Part III of the said FSS Regulations, 2011, specific hygienic and basic sanitary measures are required to be followed by such Food Business Operators. It is compulsory for the milk business operator to submit half yearly return for milk and milk products in form D-2 as provided in Regulation 2.1.13 of Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011. D E F

11. Section 19 of the Act stipulates that no article of food shall contain any food additive or processing aid unless it is in accordance with the provisions of the Act and regulations made thereunder. In exercise of its powers conferred under clause (e) of sub-section (2) of Section 92 read with Section 16 of the FSS Act Food Authority made the Food Safety and Standards (Food Products, Standards and Food Additives) Regulations, 2011. The same is intended to regulate and monitor, manufacture, processing, distribution, sale and import of food so as to ensure safe and wholesome food. Regulation 1.2 defines various categories of milk products as under:- G H

- A 1.2.1. "BOILED MILK" means milk which has been brought to boil;
- B 1.2.3. DOUBLE TONED MILK means the product prepared by admixture of cow or buffalo milk or both with fresh skimmed milk, or by admixture of cow or buffalo milk or both that has been standardized to fat and solids-not-fat percentage given in the table below in 2.1.1:1 by adjustment of milk solids. It shall be pasteurized and shall show a negative Phosphatase Test. When fat or dry non-fat milk solids are used, it shall be ensured that the product remains homogeneous and no deposition of solids takes place on standing;
- C 1.2.5. Flavoured Milk, by whatever name called, may contain nuts (whole, fragmented or ground) chocolate, coffee or any other edible flavor, edible food colours and cane sugar. Flavoured milk shall be pasteurized, sterilized or boiled. The type of milk shall be mentioned on the label;
- D 1.2.6. Full Cream Milk means milk or a combination of buffalo or cow milk or a product prepared by combination of both that has been standardized to fat and solids-not-fat percentage, given in the table below in 2.1.1:1, by adjustment/addition of milk solids, Full Cream Milk shall be pasteurized. It shall show a negative phosphatase test. It shall be packed in clean, sound and sanitary containers properly sealed so as to prevent contamination;
- E 1.2.10. MILK is the normal mammary secretion derived from complete milking of healthy milch animal without either addition thereto or extraction therefrom unless otherwise provided in these regulations. It shall be free from colostrum. Milk of different classes and of different designations shall conform to the standards laid down in the Table below in 2.1.1:1
- F Total area content in the milk shall not be more than 700 ppm;
- G 1.2.11. MIXED MILK means a combination of milk of cow, buffalo, sheep, goat or any other milch animal and may be a combination of any of these milk which has been made and conforms to the standards given in the table below in 2.1.1:1;
- H 1.2.12. MILK PRODUCTS means the products obtained from milk such as cream, malai, curd, skimmed milk curd, chhenna,

skimmed milk chhenna, cheese, processed cheese, ice-cream, milk ices, condensed milk-sweetened, and unsweetened, condensed skimmed milk-sweetened and unsweetened, milk powder, skimmed milk powder, partly skimmed milk powder, khoa, infant milk food, table butter and desi butter. A

Milk products shall not contain any substance not found in milk unless specified in the standards; B

1.2.16. RECOMBINED MILK means the homogenized product prepared from milk fat, non-fat-milk solids and water. Recombined milk shall be pasteurized and shall show a negative Phosphatase test; C

1.2.19. SKIMMED MILK means the product prepared from milk from which almost all the milk fat has been removed mechanically;

1.2.21. STANDARDISED MILK means cow milk or buffalo milk or sheep milk or goat milk or a combination of any of these milk that has been standardized to fat and solids-not-fat percentage given in the table below in 2.1.1:1 by the adjustment of milk solids. Standardised milk shall be pasteurized and shall show a negative Phosphatase Test; D

1.2.24. TONED MILK means the product prepared by admixture of cow or buffalo milk or both with fresh skimmed milk; or by admixture of cow or buffalo milk or both that has been standardized to fat and solids-not-fat percentage given in the table below in 2.1.1:1 by adjustment of milk solids. It shall be pasteurized and shall show a negative Phosphatase Test. When fat or dry non-fat-milk solids are used, it shall be ensured that the product remains homogenous and no deposition of solids takes place on standing. E  
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Chapter 2 of the said Regulations deals with Food Product Standards. As per 2.1.1, the standards of different classes and designation of milk shall conform to both the parameters for milk fat and milk solids-not-fat for various States as indicated in the table thereon. As noticed earlier, Part III of the Food Safety and Standards (Licensing and Registration of Food Business) Regulations, 2011 prescribes specific hygienic and basic sanitary measures to be followed by the Food Business Operators. G

A 12. Sections 50 to 65 of FSS Act deal with punishment for  
contravention of the provisions. Section 59 of the Act provides for  
punishment for unsafe food. As per Section 89 of the Food Safety and  
Standards Act, 2006, provisions of the Act shall have overriding effect  
over all other food laws. Section 97 (2) repeals any other law for the  
B time being in force in any State at the time of commencement of the  
Act. Taking note of the seriousness of the offence, State of Uttar Pradesh  
has amended Section 272 of the Indian Penal Code by enhancing the  
sentence to imprisonment for life and also fine. Similar amendment has  
been made by the States of West Bengal and Orissa. State of Madhya  
Pradesh in its counter affidavit has stated that it has also decided to  
C amend Section 272 of IPC by enhancing the sentence to imprisonment  
for life with or without fine and consequential amendments to Schedule  
II to the Criminal Procedure Code. Considering the seriousness of the  
offence, the Supreme Court vide its orders dated 05.12.2013 and  
30.01.2014 has directed similar amendments be made in other States as  
well. Vide its order dated 10.12.2014, this Court directed Union of India  
D to come up with necessary amendments in Food Safety and Standards  
Act, 2006 and also in the Indian Penal Code to make penal provisions at  
par with State Amendments.

13. In its counter affidavit filed on 19.02.2014 FSSAI has stated  
that the High Court of Judicature at Allahabad in Writ Petition No.8254  
E of 2010 vide judgment dated 08.09.2010 held that invoking of Sections  
272 and 273 IPC in a matter relating to adulteration of food is not justified  
and that the authorities can take action only under Food Safety and  
Standards Act, 2006. In the said case by an order dated 11.05.2010  
Government of Uttar Pradesh had directed all the Divisional  
F Commissioners, District Magistrates, Deputy Inspector General of Police,  
Senior Superintendent of Police and Superintendent of Police to lodge  
FIR under Section 272/273 IPC in case of adulteration of any article or  
drink. High Court of Allahabad, vide its judgment dated 08.09.2010 has  
quashed the said Government order against which State of Uttar Pradesh  
has preferred appeals before this Court in Criminal Appeals No.476-478  
G of 2012 which, as indicated hereunder, are ordered to be delinked. As  
the question of invoking Sections 272/273 IPC for violation under Food  
Safety and Standards Act, 2006 is *sub judice* in the said criminal appeals,  
we are not inclined to go into the said question. Suffice to note that Food  
Safety and Standards Act, 2006 alongwith the rules and regulations framed  
H thereunder constitutes a vigorous regulatory regime which takes care of

the various situations of contraventions. Apprehensions raised by the writ petitioners could be taken care of by the authorities under the provisions of the FSS Act as well as the rules and regulations framed thereunder. A

14. In 2011, Food Safety and Standards Authority of India (FSSAI) conducted National Survey on Milk Adulteration (snap shot survey) to ascertain the quality of milk and identify different types of adulteration in liquid milk throughout the country. The survey was carried out by the Regional Offices of the FSSAI located at Chennai (Southern Region), Mumbai (Western Region), Delhi (Northern Region), Guwahati (North Eastern Region) and Kolkata (Eastern Region) with the following objectives:- B C

1. To identify the common adulterants in milk in rural and urban areas of different states.
2. To find out the non conforming samples in loose and packed milk. D

The samples were collected randomly and analysed from 33 States. The samples were sent to various Govt. laboratories namely, Department of Food and Drug testing, Government of Puducherry, Central Food Laboratory, Pune, Food Research and Standardization Laboratory, Ghaziabad, State Public Health Labaoratory, Guwahati and Central Food Laboratory, Kolkata for analysis. The following parameters were analysed such as Fat (%), SNF (%), Neutralizers, Acidity, Hydrogen Peroxide, Sugar, Starch, Glucose, Urea, Salt, Detergent, Skimmed milk powder, and Vegetable fat to ascertain the presence of adulterant. E

15. The Summary of National Survey on Milk Adulteration on "FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA" (FSSAI) National Survey on Adulteration of Milk-An Overview. Dated: 02.01.2012, reads as under:- F

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3. The total conforming samples to the FSSA standards were 565 (31.5%). The total non-conforming samples were found to be 1226 (68.4%). G
4. The non-conformity of samples in rural areas were 381 (31%) out of which 64 (16.7%) were packet samples and 317 (83.2%) were loose samples and in urban areas the total non conforming H

A samples were 845 (68.9%) out of which 282 (33.4%) were packed and 563 (66.6%) were loose samples.

B 5. The deviations were found highest on account of Fat and SNF content in 574 samples (46.8%) of the total non-conformity, which included 147 samples with detergent and two samples with neutralizers respectively. Detergent was also found in 103 samples (8.4%). Perhaps the reason may be dilution of milk with water. The second highest parameter of non conformity was the Skim Milk Powder (SMP) in 548 samples (44.69%) which includes presence of glucose in 477 samples. Glucose would have been added to milk probably to enhance SNF. The presence of Skim Milk Powder indicates the reconstitution of milk powder.

C 6. The non-conforming samples in the descending order of percentage with respect to total samples collected in different states were as follows: Bihar (100%), Chhattisgarh (100%), Daman and Diu (100%), Jharkhand (100%), Orissa (100%), West Bengal (100%), Mizoram (100%), Manipur (96%), Meghalaya (96%), Tripura (92%), Gujarat (89%), Sikkim (89%), Uttrakhand (88%), Uttar Pradesh (88%), Nagaland (86%), Jammu and Kashmir (83%), Punjab (81%), Rajasthan (76%) Delhi (70%), Haryana (70%), Arunachal Pradesh (68%), Maharashtra (65%), Himachal Pradesh (59%), Dadra and Nagar Haveli (58%), Assam (55%), Chandigarh (48%), Madhya Pradesh (48%), Kerala (28%), Karnataka (22%), Tamil Nadu (12%) and Andhra Pradesh (6.7%).

F All the samples in Goa and Puducherry conformed to the standards.”

G 16. News of “*National Survey on adulteration of Milk*” was reported in various newspapers including ‘The Hindu’, ‘Business Line’, ‘Times of India’, ‘Indian Express’ and other newspapers, the clippings of which are filed in IA No.2 of 2012, an application for impleadment filed by one Manisha Shah. The result of the above survey confirms that the samples of milk were diluted with water or found to have been adulterated with chemicals. Nutritional value of milk is compromised by mixing water and other harmful agents. Adulteration of milk with water is used to increase the volume of milk and brings down the nutritional value, and contaminated water in adulterated milk can cause

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gastroenteritis, stomach ailments, etc. Adulteration of milk with chemicals like caustic soda and detergents etc. is very serious. Prolonged consumption of milk adulterated with chemicals may affect vital body organs and may pose health risk to the infants, children and also adults. A

17. To safeguard infants/children and general public from dangers of adulteration of milk, FSSAI mandates an upper limit for certain micro organisms in pasteurized milk, these norms are necessary because it is stated that even milk from healthy cows and buffalos is vulnerable to bacterial contamination once it is stored for sometime at normal temperature. It is stated that besides minor skin infections, some bacteria can cause life endangering diseases such as pneumonia and diarrhea. B

18. In the interim order dated 05.12.2013, this Court has expressed concern on adulteration of milk and milk products by unabated use of synthetic and harmful materials sold in the market. The consumption of adulterated milk and milk products is hazardous to human health and the state of affairs is alarming. Taking note of the seriousness of the matter vide order dated 30.01.2014, this Court directed Union of India and the States to file affidavits indicating the steps taken for curbing the adulteration of milk and indicating the number of cases identified where milk was adulterated with hazardous chemicals and details of prosecution launched and the result thereof. In compliance of those orders, all the States have filed their responses indicating the inspection done, number of prosecutions launched and status of those cases. C D E

19. Considering the seriousness of the offence and referring to the amendment to Section 272 Indian Penal Code made by States of Uttar Pradesh, West Bengal and Odisha, wherein the punishment for adulteration of food and products is enhanced to imprisonment for life and also fine, by order dated 05.12.2013, this Court observed that "*similar amendments are to be made in other states as well.*" The same direction was reiterated by this Court vide order dated 30.01.2014 and this Court also directed Union of India to consider bringing in suitable amendments to FSS Act. On 13.03.2014, counsel appearing for the Union of India produced a letter dated 12.03.2014 of the Ministry of Health and Family Welfare wherein it has been stated that under the chairmanship of the Chairman of FSSAI, it has been decided to seek approval of the Government for initiating the process of amendment of the Food Safety and Standards Act 2006 in the light of the observations made by this Court. Vide order dated 11.11.2014, this Court observed that Union of F H

A India and State Governments must come out with suitable amendments in the Act or with a new legislation to stop adulteration and production of synthetic milk which is consumed by the infants/children and by the public at large. When the matter came up for hearing on 10.12.2014, Union of India submitted that the bill seeking to amend FSS Act by inserting a new section 'Section 7A' was withdrawn and the Parliamentary Standing Committee on Health and Family Welfare recommended that the Government of India may re-look into all the aspects of the matter and come up with a comprehensive Bill at the earliest. In the light of the said statement, vide order dated 10.12.2014, this Court observed as under:-

C "We reiterate that the respondent-Union of India shall take up the matter seriously and come up with all possible amendments in the Food Safety and Standards Act, 2006. ...

D It goes without saying that while making necessary amendments in the Food Safety and Standards Act, 2006, the respondent-Union of India shall also make penal provisions at par with the provisions contained in the Indian Penal Code and the States Amendments made therein."

E 20. Since in India traditionally infants/children are fed milk, adulteration of milk and its products is a concern and stringent measures need to be taken to combat it. The consumption of adulterated milk and adulterated milk products is hazardous to human health. As directed by this Court by order dated 10.12.2014, it will be in order that the Union of India come up with suitable amendments in the Food Safety and Standards Act, 2006 and the respondent-Union of India shall also make penal provisions at par with the provisions contained in the State amendments as indicated above.

G 21. As observed by this Court in the orders dated 05.12.2013 and 10.12.2014, it will be in order, if the Union of India considers making suitable amendments in the penal provisions at par with the provisions contained in the State amendments to the Indian Penal Code. It is also desirable that Union of India revisits the Food Safety and Standards Act, 2006 to revise the punishment for adulteration making it more deterrent in cases where the adulterant can have an adverse impact on health.

H 22. Considering the seriousness of the matter and in the light of various orders passed by this Court, the Writ Petition is disposed of with

the following directions and observations:-

i. Union of India and the State Governments shall take appropriate steps to implement Food Safety and Standards Act, 2006 in a more effective manner.

ii. States shall take appropriate steps to inform owners of dairy, dairy operators and retailers working in the State that if chemical adulterants like pesticides, caustic soda and other chemicals are found in the milk, then stringent action will be taken on the State Dairy Operators or retailers or all the persons involved in the same.

iii. State Food Safety Authority should also identify high risk areas (where there is greater presence of petty food manufacturer/business operator etc.) and times (near festivals etc.) when there is risk of ingesting adulterated milk or milk products due to environmental and other factors and greater number of food samples should be taken from those areas.

iv. State Food Safety Authorities should also ensure that there is adequate lab testing infrastructure and ensure that all labs have/obtain NABL accreditation to facilitate precise testing. State Government to ensure that State food testing laboratories/district food laboratories are well-equipped with the technical persons and testing facilities.

v. Special measures should be undertaken by the State Food Safety Authorities (SFSA) and District Authorities for sampling of milk and milk products, including spot testing through Mobile Food Testing Vans equipped with primary testing kits for conducting qualitative test of adulteration in food.

vi. Since the snap short survey conducted in 2011 revealed adulteration of milk by hazardous substances including chemicals, such snap short surveys to be conducted periodically both in the State as well as at the national level by FSSAI.

vii. For curbing milk adulteration, an appropriate State level Committee headed by the Chief Secretary or the Secretary of Dairy Department and District level Committee headed by the concerned District Collector shall be constituted as is done in the State of Maharashtra to take the review of the work done to curb

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- A the milk adulteration in the district and in the State by the authorities.
- viii. To prevent adulteration of milk, the concerned State Department shall set up a website thereby specifying the functioning and responsibilities of food safety authorities and also creating awareness about complaint mechanisms. In the website,
- B the contact details of the Joint Commissioners including the Food Safety Commissioners shall be made available for registering the complaints on the said website. All States should also have and maintain toll free telephonic and online complaint mechanism.
- ix. In order to increase consumer awareness about ill effects of milk adulteration as stipulated in Section 18(1)(f) the States/Food Authority/Commissioner of Food Safety shall inform the general public of the nature of risk to health and create awareness of Food Safety and Standards. They should also educate school children by conducting workshops and teaching them easy methods for detection of common adulterants in food, keeping in mind indigenous technological innovations (such as milk adulteration detection strips etc.)
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- x. Union of India/State Governments to evolve a complaint mechanism for checking corruption and other unethical practices of the Food Authorities and their officers.

E 23. The Special Leave Petition (Crl.) No. 1379/2011, Criminal Appeals No.472/2012, 476-478/2012 and 479/2012 are ordered to be de-tagged.

Divya Pandey

Writ petition disposed of.

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