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LEGAL ASPECTS OF FOOD SAFETY IN INDIA: A COMMENTARY ON NESTLÉ INDIA LTD. V. FOOD SAFETY AND STANDARDS AUTHORITY OF INDIA

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INTRODUCTION

Before 2006, food regulation in India was spread across the Prevention of Food Adulteration Act, 1954 and a set of separate orders issued under other statutes. The Food Safety and Standards Act, 2006 replaced them with a single framework and created the Food Safety and Standards Authority of India (FSSAI) as the central regulator.[1] The Act is built on the idea that food must be safe and wholesome, and it gives officials a wide range of tools to secure that end, from cancelling a licence to prohibiting a product altogether. What the Act does not spell out with equal clarity is how, and on what evidence, those tools may be used against a food business.

That question reached the Bombay High Court in *Nestlé India Ltd. v. Food Safety and Standards Authority of India*, decided on 13 August 2015 by a Division Bench of Justices V.M. Kanade and B.P. Colabawalla.[2] The case is remembered as the Maggi case, but its value lies elsewhere. The court was never asked to declare a popular noodle safe or unsafe. It was asked whether a regulator acting in the name of public health can ban a product within a day, without a hearing, on the strength of test reports of doubtful standing. This commentary looks at the decision, the reasoning behind it and what it left behind for food safety enforcement.

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[1]Food Safety and Standards Act, 2006, No. 34, Acts of Parliament, 2006 (India) [hereinafter FSS Act]; see also id. § 97 & Second Schedule (repealing the Prevention of Food Adulteration Act, 1954).

[2]*Nestlé India Ltd. v. Food Safety & Standards Auth. of India*, Writ Pet. (L) No. 1688 of 2015, 2015 SCC OnLine Bom 4713 (Bom. High Ct. Aug. 13, 2015) (India) [hereinafter *Nestlé*].

FACTS OF THE CASE

The trouble began in January 2015, when a Food Inspector in Barabanki, Uttar Pradesh, noticed a Maggi pack carrying the claim “No added MSG”. He sent it to the State Food Laboratory at Gorakhpur, which reported that MSG was present. At Nestlé's request the sample was re-tested at the referral laboratory in Kolkata, where it remained from January until late March. That laboratory's report recorded lead at 17 ppm against a permitted limit of 2.5 ppm.[3]

The Authority then collected samples from several States. Of 72 samples analysed, 30 showed lead above 2.5 ppm, although only three of the nine Maggi variants had been tested.[4] On 4 June 2015 Nestlé announced that it was withdrawing the product from shelves while insisting that it was safe. Its representatives were called to the FSSAI office the next day, and on that same day the Chief Executive Officer ordered the recall of all nine approved variants and a stop to their production and sale. The Commissioner of Food Safety, Maharashtra, passed a prohibitory order on 6 June, after testing four variants in that State.[5] Nestlé challenged both orders under Article 226 of the Constitution.

ISSUES AND CONTENTIONS

Nestlé's principal grounds were that no show cause notice or hearing had preceded the orders, that the laboratories were neither accredited by the National Accreditation Board for Testing and Calibration Laboratories (NABL) nor notified under section 43 of the Act, that the product had not been tested according to its intended use, and that its own accredited tests showed lead within limits.[6]

The respondents answered that the writ was premature because an appeal lay under section 46(4), that the order of 5 June was in substance only a show cause notice, and that a ban was justified in the public interest even if a single sample crossed the limit. The Authority went further. It argued that for proprietary food it was not bound by the numerical limits in the Regulations and could hold Nestlé to the lower lead figure stated in its own product approval application.[7]

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[3] *Nestlé*, ¶¶ 11–13.

[4] *Id.* ¶¶ 14–15.

[5] *Id.* ¶¶ 16–18.

[6] *Id.* ¶ 4; FSS Act § 43.

[7] *Nestlé*, ¶ 5.

JUDGMENT OF THE COURT

The court began with maintainability. The order of 5 June actually banned the product and only afterwards called for cause to be shown against cancellation of product approval, so it could not be called a mere show cause notice. And since the challenge rested on breach of natural justice, the availability of an appeal under section 46(4) did not shut the door on Article 226, in line with *Whirlpool Corporation v. Registrar of Trade Marks*.[8]

On the merits the Bench dealt firmly with the argument about unfettered discretion. Regulations framed under the Act and laid before Parliament have the force of law, and the Contaminants, Toxins and Residues Regulations, 2011 fix lead at 2.5 ppm for foods not specifically listed. If the Authority could set its own standard for proprietary food, that entry, and the proviso to section 22, would mean nothing. The Bench described the submission as preposterous.[9]

The more interesting part of the judgment concerns the source of power. The Authority had cited sections 10(5), 16(1), 16(5), 18, 22, 26, 28 and 29. The court went through them one by one and found no power to ban a product in any of them. Section 16(1) states a duty, section 16(5) permits directions to the Commissioner, section 18 lays down guiding principles, and sections 26 and 28 place obligations on food business operators.[10] The power to prohibit sits in section 30(2)(a), exercisable by the Commissioner of Food Safety, and in the emergency procedure of section 34, which itself requires prior notice to the operator. Even where a provision is silent on hearing, the court held, an opportunity to be heard must be read into it wherever adverse civil consequences follow, relying on *C.B. Gautam v. Union of India*.[11]

On the evidence, the court found that the samples had been analysed in laboratories that did not meet the accreditation the Act requires, and that a ban on all nine variants could not stand when only some had been tested. The orders were set aside as arbitrary. Nestlé could resume manufacture and sale subject to fresh tests, at three NABL-accredited laboratories, of the

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[8] *Id.* ¶¶ 38–39; *Whirlpool Corp. v. Registrar of Trade Marks*, AIR 1999 SC 22 (India).

[9] *Nestlé*, ¶¶ 48–50; Food Safety and Standards (Contaminants, Toxins and Residues) Regulations, 2011, reg. 2.1.1(2) (India); FSS Act § 22.

[10] *Nestlé*, ¶¶ 65–76.

[11] *Id.* ¶ 79; *C.B. Gautam v. Union of India*, (1993) 1 SCC 78 (India); FSS Act §§ 30(2)(a), 34.

samples it had preserved, to be completed within six weeks. The Bench also remarked that a food regulator is not expected to take an adversarial stand in matters of this kind.[12]

ANALYSIS

Two things need to be kept apart. The judgment did not hold Maggi safe, and it did not hold it unsafe. What the court decided was that the orders were bad in law: the Authority had no clear power for what it did, it skipped a hearing it owed, and it relied on reports that could not be safely trusted. Reading the decision as a vindication of the product, or as a licence to challenge every food safety action by writ petition, overlooks that distinction.

It is submitted that the reasoning on urgency deserves attention. The government's best reply to the natural justice argument was that unsafe food cannot wait for a hearing. Yet the record shows that the Kolkata laboratory held the sample for more than two months, that the Authority then spent time testing samples in other States, and that the order was finally made in a single afternoon.[13] A regulator that takes months to test can hardly claim that a few hours' hearing would have put the public at risk. The court's reading of sections 30 and 34 points the same way, since even the emergency provisions contemplate notice.

The emphasis on accredited laboratories is, in my view, the most durable part of the decision. The Act provides for the recognition and accreditation of food laboratories, and a Food Analyst's report is the foundation of both administrative action and prosecution. If that report comes from outside the statutory scheme, everything built on it is exposed. In February 2025 a single judge of the same High Court relied on this decision to quash a summary criminal case against Nestlé, holding that a Food Analyst's report from a non-accredited laboratory could not support the prosecution.[14]

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[12]*Nestlé*, ¶ 46; *Bombay HC Rules for Maggi: FSSAI Acted Arbitrarily*, LEGALLY INDIA (Aug. 13, 2015), https://www.legallyindia.com/the-bench-and-the-bar/bombay-hc-rules-for-maggi-fssai-acted-arbitrarily-20150813-6432.

[13]*Nestlé*, ¶¶ 12–13, 17, 79.

[14]FSS Act § 43; *Bombay HC Quashes Case Against Nestle India Ltd. for Allegedly Selling 'Sub-Standard' Maggie Noodles*, SCC ONLINE BLOG (Feb. 14, 2025), https://www.scconline.com/blog/post/2025/02/14/bomhc-quashes-case-against-nestle-for-allegedly-selling-sub-standard-maggie-noodles/.

The decision does have gaps. The court left open the meaning of section 22 and the question whether proprietary foods are prohibited until approved, saying the point did not arise because approval had already been granted to eight of the nine variants.[15] It also had no occasion to say how safety is to be balanced against procedure where the risk is real and immediate, beyond insisting that a hearing should be the norm.

SUBSEQUENT DEVELOPMENTS

The Union's Department of Consumer Affairs separately filed a complaint before the National Consumer Disputes Redressal Commission seeking about Rs 640 crore for unfair trade practices and false labelling. The Supreme Court revived that proceeding in January 2019, directing that the test report of the Central Food Technological Research Institute, Mysuru, would form its basis.[16] According to Nestlé's regulatory filing, the Commission dismissed the complaint on 2 April 2024.[17]

CONCLUSION

Nestlé v. FSSAI is best remembered as a decision about process. Public health is a legitimate ground for strong action, but the statute that the regulator itself administers says who may act, when, and after what notice. The Bombay High Court insisted on those limits without diminishing the regulator's duty to keep unsafe food off the market. For food business operators the judgment is a reminder to keep testing records and accredited results in order. For regulators, it shows that a well-founded concern can still fail if the procedure behind it does not hold.

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[15] *Nestlé*, ¶ 53.

[16] *SC Revives Govt's Case in NCDRC Against Nestle India*, THE WEEK (Jan. 3, 2019), https://www.theweek.in/news/biz-tech/2019/01/03/sc-revives-govts-case-in-ncdrc-against-nestle-india.html.

[17] *NCDRC Dismisses Govt Petition Seeking Damages from Nestle in Maggi Case*, OUTLOOK BUSINESS, https://www.outlookbusiness.com/news/ncdrc-dismisses-govt-petition-seeking-damages-from-nestle-in-maggi-case (last visited Sept. 28, 2026).