

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3413 OF 2022

1. M/s.Pernod Ricard India Private Limited A company incorporated under the Companies Act, 1956 having its Registered Office at - Atelier, No.10, Level 1, Worldmark 2, Aerocity, New Delhi - 110 037

Local Office: Radico NV Disterlleries,
D.195, MIDC Shendra , 5 Star
Industrial Area, District Aurangabad,
Maharashtra - 422 202 through its
Senior Manager - Manufacturing and
constituted attorney and authorizedPetitioner
signatory, Rajendra Deshmukh (Org.Non
applicants No.5)

Versus

1. Food Safety and Standards Authority of India
FDA Bhawan, Kotla Road, Near Bal Bhawan, New Delhi, 110002 India
2. Shri D.D.Kamble
Food Safety Officer
Food and Drugs Administration
Having its office at Old passport office, Rd. No.16, Wagle Estate, Thane, (W) 400 604 Maharashtra
3. Adjudicating Officer & Jt. Commissioner (Food)(Kokan Div.)
Food and Drugs Administration
Having his office at Old passport office, Rd. No.16, Wagle Estate, Thane, (W), 400 604 Maharashtra
4. State of Maharashtra
Through the Ministry of

General Administration Department, Respondents
Mantralaya, Mumbai - 400 032.

WITH

WRIT PETITION NO.3416 OF 2022

1. M/s.Pernod Ricard India Private Limited A company incorporated under the Companies Act, 1956 having its Registered Office at - Atelier, No.10, Level 1, Worldmark 2, Aerocity, New Delhi - 110 037

Local Office: 126, Kadwa, Hahalungi, Taluka Dindori, District Nashik, Maharashtra - 422 202 through its Senior Manager - Manufacturing and constituted attorney and authorized signatory, Rajendra Deshmukh Petitioner

Versus

1. Food Safety and Standards Authority of India
FDA Bhawan, Kotla Road, Near Bal Bhawan, New Delhi, 110002 India
2. Shri A.R.Deshmukh,
Food Safety Officer
Food and Drugs Administration
Thane (W), 400 604
3. Adjudicating Officer & Jt.
Commissioner (Food) (Konkan Div.)
Food and Drugs Administration
Having his office at Old passport office, Rd. No.16, Wagle Estate, Thane (W) 400 604, Maharashtra
4. State of Maharashtra
Through the Ministry of

General Administration Department, Respondents
Mantralaya, Mumbai - 400 032.

WITH

WRIT PETITION NO.8003 OF 2021

1. M/s.Pernod Ricard India Private
Limited A company incorporated
under the Companies Act, 1956
having its Registered Office at -
Atelier, No.10, Level 1, Worldmark 2,
Aerocity, New Delhi - 110 037

Local Office: 126, Kadwa, Hahalungi,
Taluka Dindori, District Nashik,
Maharashtra - 422 202 through its
Senior Manager - Manufacturing and
constituted attorney and authorized
signatory, Rajendra Deshmukh Petitioner

Versus

1. Food Safety and Standards Authority
of India
FDA Bhawan, Kotla Road, Near Bal
Bhawan, New Delhi, 110002 India
2. Shri M.A.Jadhav
Food Safety Officer
Food and Drugs Administration
Thane, Maharashtra
3. Designated Officer,
Food and Drugs Administration
(M.S.), Thane, Maharashtra
4. State of Maharashtra
Through the Ministry of
General Administration Department, Respondents
Mantralaya, Mumbai - 400 032.

Mr.Rajesh Batra a/w Mr.Rajeev Talasikar for the Petitioner

Ms.S.S.Bhende, A.G.P for the State

**CORAM: S.V. GANGAPURWALA &
MADHAV J. JAMDAR, JJ.**

RESERVED ON: AUGUST 23, 2022

PRONOUNCED ON: SEPTEMBER 23, 2022

JUDGEMENT : (PER : S.V.GANGAPURWALA, J.)

1 All these Writ Petitions are based on similar set of facts and involve common question of law. As such to avoid rigmarole are decided by common judgment. For convenience, facts are culled out from Writ Petition No.3413 of 2012.

2 The Petitioner is engaged in manufacture, distribution and sale of alcoholic beverages throughout the country. The Petitioner is issued with the notice of adjudication proceedings on the ground that the Petitioner has contravened the provisions of section 26(2) (ii), section 26(2)(v) read with section 3(1)(zx) of Food, Safety and Standards Act, 2006 ("Act, 2006") read with Regulation 2.8 and Regulation 1.3.2 of Food, Safety and Standards (Alcoholic beverages) Regulations, 2018 ("Regulations, 2018") and other regulations. The Petitioner assails the said notice and adjudication

application.

3 The learned counsel for the Petitioner Mr.Talasikar strenuously contends that the samples drawn by the Food, Safety Officer were not tested and notified by accredited laboratory as required under the section 47 of the Act, 2006. Order dated 06.04.2020 issued by the FSSAI is against the mandate of section 3(p) and 43 of the Act, 2006. The laboratory in which the sample in question was tested was otherwise not accredited on the date of analysis. Its accreditation certificate expired on 22.10.2020 and the analysis report is 06.04.2021. As the sample is not tested by the accreditation laboratory, the report of the food analysis is bad in law and cannot be the basis for any proceedings / action against the Petitioners.

4 The learned counsel for the Petitioner further submits that in absence of valid food analysis report, Respondent nos.2 and 3 could not have sanctioned and filed adjudication application considering the mandate of rules 2.4.2 (2) and 3.1.1.1 of the Food Safety and Standards Rules, 2011 ("Rules, 2011"). Non-compliance of the statutory duty on the part of the Food Safety Officer vitiates the entire proceedings as the sampling of the product was done on

25.11.2020 and the Food Safety Officer did not send any notice under Rule 2.4.1(4) and Regulation 2.4.5 to the Petitioner. As the notice was not sent, the right of the Petitioners to get 4th sample tested from accredited laboratory is violated.

5 The learned A.G.P. submits that on 26.11.2020 sample was sent for analysis to the Food Analyst, Food and Drugs Administration Laboratory, Bandra (East), Mumbai who opined that the Food Sample does not conform to the standards as per the Regulation, 2018 vide report dated 05.04.2021. After receipt of the report, Designated Officer sent copies of the report to the Petitioner and intimated that if they are not satisfied with the report, they can file an Appeal as per section 46(4) read with Rule 2.4.6.1 of the Rules, 2011 for sending sample to Referral Food Laboratory for reanalysis. Neither the Petitioner, nor vendor or distributor availed their right under section 46(4) read with Rule 2.4.6.1 for sending samples to Referral Food Laboratory for reanalysis. The Food Safety Officer, thereafter submitted proposal to the Assistant Commissioner, Food (Zone-8) Food and Drugs Administration (M.S.) Thane for obtaining necessary sanction as required under section 42 of the Act, 2006. Sanction is granted on 09.11.2021 for filing adjudication. Food Safety Officer filed a case for adjudication against

the Petitioners for contravention of the relevant provisions of the Act, 2006 read with Regulation 2.8 and 1.3.1 of the Regulations, 2018 punishable under section 51 and 66 of the Act, 2006.

6 The learned A.G.P. further submits that the sample is drawn as per the procedure prescribed under the Act, Rules and the Regulations. The alleged sample should conform to the standards of Whisky as prescribed under the Regulations, 2018.

7 The learned A.G.P. further submits that the Laboratory in which the samples are tested is accredited by National Accreditation Board for Testing and Calibration Laboratories. All the provisions have been scrupulously followed. On 26.06.2020 the National Accreditation Board for testing and calibration laboratories vide Circular dated 26.06.2020 decided to extend the validity of accreditation for a period of one year to all conformity assessment bodies (CAB) where renewal of accreditation is to take place. The scope of the said laboratory is for chemical analysis. The validity of accreditation is extended upto 22.10.2021 and the samples in question were received by the laboratory on 26.11.2020. The samples were analyzed between 16.02.2021 to 26.03.2021. It was thus a accredited laboratory. The Petitioners failed to exercise their

right to get the sample reanalysed by the relevant food laboratory. No error has been committed in the entire process by the Respondents.

8 We have considered the submissions canvassed by the learned counsel. The fact that the Food Safety Officer visited the premises of Hotel Sadhana, wherein Mr.Yashwant Singh Hegde vendor of Hotel Sadhana was present, is not disputed. It appears that the Food Safety Officer drew samples of Imperial Blue Whisky and DSP Black Whisky. The Food Safety Officer sampled four bottles of Imperial Blue Whisky for analysis.

9 The FSI despatched the samples to Food Drug Administration Laboratory, Bandra, Mumbai 400 051 for analysis of the food sample. The arguments were advanced as to the accreditation of the State laboratory. According to the Petitioners, the FSSAI recognized laboratories along with the validity of NABL accreditation, scope of testing the contact details and published the list. Those laboratories which were not accredited were marked in red. According to the learned counsel for the Petitioner the Laboratory to which samples were sent is marked in red. It is sufficient to demonstrate that the said laboratory was not accredited

and or the license was not renewed.

10 The Respondent authorities have produced on record the letter dated 26.06.2020 issued by the National Accreditation Board for Testing and Calibration Laboratories wherein it took a decision of extending the validity of accreditation for one year. In view of the said letter, it cannot be said that the said laboratory was not accredited as on the date the samples were sent for deciding to it.

11 The next question that would arise is about the scope of accreditation. Section 2(1)(b) of the Regulations, 2018 defines 'accreditation' means third party attestation of the competence of the food laboratory to carry out its function effectively. Section 2(1)(f) of the Regulations, 2018 defines 'notified food laboratory' means a food laboratory notified by Food Authority under sub-section 1 of section 43. Rule 9 of the Regulations, 2018 deals with obligations of food laboratories. Sub rule 1(a) of Rule 9 of the Regulations, 2018 provides that the laboratory should perform all tests in the approved premises as per the valid scope of recognition. The broad scope and food categories are mentioned in the validity order.

12 The scope of accreditation of Food and Drugs Administrations

Laboratory, Bandra (East), Mumbai 400 051 is for the Food and Agricultural Products such as (A) Refined Groundnut Oil, (B) Refined Sunflower Oil (C) Refined Soyabean Oil, (D) Refined Palmolein Oil, (E) Groundnut Oil, (F) Mustard Oil, (G) Coconut Oil, milk and dairy products, ghee, water and packaged drinking water.

13 On perusal of the scope of accreditation issued to the Food and Drug Administration Laboratory, it does not appear that the whisky is a part of the scope of accreditation.

14 As observed, the food laboratory shall have the obligation to perform all tests in the approved premises as per the valid scope of recognition. The tests ought to be carried within the valid scope of recognition. Whisky was outside the scope of recognition of the Food and Drugs Administration Laboratory that had tested the samples.

15 It would appear that the Executive Director of Food Safety and Standard Authority of India has issued letters on 15.03.2021 to all the Commissioners of Food Safety of all States to the effect that the samples are being sent to the laboratories not capable of testing the product / parameter and he advised that the scope of testing of the laboratory may be checked, before sending any sample for analysis

for any purpose under the various provisions of this Act, so as to ensure that the analysis reports are legally and technically valid.

16 The Respondents could not demonstrate as to how the said laboratory was competent to test and analyze the alcohol beverage. It is further contended that even as per the Analyst Report, the finding in question conforms to the general requirements specified in Part 1 and the requirement specified in Table 1 of the Regulation, 2018. As per the Petitioner, the results are in the range as given in the Table 1 under Regulation 2.1.

17 The Respondents could not point out as to how the said laboratory was competent to test and analyze the samples of Whisky when the same was beyond the valid scope of recognition.

18 In light of the above, Writ Petitions are allowed. Rule is made absolute in terms of prayer clause (a).

(MADHAV J. JAMDAR, J.)

(S.V. GANGAPURWALA, J.)