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***IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 5902/2012 & CM APPL. 12151/2012

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Date of decision : 4th April, 2018

JAGJIT SINGH

..... Petitioner

Through : Mr. K.C. Mittal, Mr. Amit
Prakash and Mr. Yugansh
Mittal, Advs.

versus

UNION OF INDIA AND ORS

..... Respondents

Through : Mr. Vivek Goyal, CGSC with
Mr. Rajeev Ranjan Shahi and
Mr. Harsh Pandit, Advs. for
UOI.

Mr. Jagjit Singh, Ms. Preet
Singh and Mr. Narayan Dev
Parashar, Advs. for Railways.

Mr. Mehmood Pracha, Mr.
R.H.A. Sikander and Mr.
Prateek Gupta, Advs. for
FSSAI/R-4 & 5.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

1. This petition was filed by the writ petitioner on 11th September, 2012 seeking the following prayers :

“a. Issue a writ in the nature of mandamus directing the respondents to immediately issue notifications in compliance of Section 30, 36, 37, 43, 44, 45, 68, 70 & 90 of FSS Act 2006 for appointment of Commissioner of Food Safety, Designated Officers (Dos), Food Safety Officers (FSOs); for Recognition of Accreditation of laboratories, Food Analyst, Establishment of Research Institutions and referral Food laboratory; Recognition of Organisation and Agency; and to establish prosecuting and adjudicating agency and Food Safety Appellate Tribunal, at micro level to monitor and check the food adulteration, day and night, at various Railway stations, in passengers and goods trains, pantry cars, other food outlets in Railway area, operated by private contractors or IRCTC or food plazas including unauthorized vendors and canteens run by Railways.

b. Issue a writ in the nature of mandamus directing the respondents to implement all the recommendations and proposals emphasized by CEO in their meeting dated 20.09.2011 and also consider the representations and proposals sent by the petitioner and Railway Federations to create adequate infrastructure to deal with the menace of food adulteration at micro level commensurating to the mega nature of Railway network, which is widespread all over the country, details of which are mentioned in the petition.

c. Issue a writ in the nature of mandamus directing the respondents to notify local areas for purposes of implementation of the Act so as to confer power for lifting of samples, their analysis and for prosecution in accordance with law.”

2. The petitioner has impleaded the following as party respondents:

*“i) Union of India & Ors.
Through Secretary, Ministry of Railways
Rail Bhawan, New Delhi.*

- ii) *Chairman
Railway Board,
Ministry of Railways
Rail Bhawan, New Delhi.*
- iii) *Director General (Railway Health Services)
Railway Board
Ministry of Railways
Rail Bhawan, New Delhi.*
- iv) *Commissioner/Chief Executive Officer
Food Safety and Standards Authority of India
FDA Bhawan, Kotla Road
New Delhi.*
- v) *Director (Enforcement)
Food Safety and Standards Authority of India
FDA Bhawan, Kotla Road
New Delhi.*
- vi) *Union of India
Through Secretary, Ministry of Health
and Family Welfare
Nirman Bhawan
New Delhi.”*

3. Pursuant to the notice to show cause issued on 19th September, 2012, separate affidavits stand filed on behalf of the respondent nos.1 to 3 on the one hand and respondent nos.4 to 6 on the other.

4. The respondent nos.1 to 3 have filed a further affidavit dated 25th May, 2017 placing before this court a copy of the Catering Policy notified in the year 2017. This affidavit also states that the Food Safety and Standards Act, 2006 has been notified and implemented all

over the network of the Indian Railways w.e.f. 15th of August 2011 as also the rules and regulations (*'FSS Act, 2006 Rules and Regulations'* hereafter) regarding licensing, maintenance and up-keeping of food installations after detailed deliberations with the officials of the Food Safety & Standards Act. In this regard, these respondents have on affidavit stated as follows :

"2. The New Food Safety & Standard Act (FSSA) has been notified and already been implemented all over India Railways with effect from 05.08.2011, with all its the rules and regulations regarding licensing of food installations, maintenance and up-keeping at the places of foods implement after detailed deliberations with officials of Food Safety & Standard Act. As per said Act rules and regulations :-

a. Regular inspections of the food installation are carried out by the designated Food Safety Officers and samples are taken for laboratory test etc. and they send the samples to the notified National Accredited Laboratories for testing. The laboratories are notified by FSSA. Hygienic food preparation are being maintained at the licensed food installations.

b. The Food Safety Officers, in compliance to the instructions of FSSAI are ensuring implementation of FSSAI and are responsible for inspections and taking samples.

c. The designated officers supervises and directs the FSOs to look after the licensing work, organize training programmes as per the directions of Food Safety and Standards Authority of India and is responsible for communicating with the Commissioner.

e. Regular workshops cum conferences on Food Safety are being held wherein Joint Food Safety

Commissioners, Designated Officers and Food Safety Officers attended the same.

f. To bring total change in the Catering Services and Food Services provided by Railways, Catering Policy, 2017 has been framed and notified and important changes have been made to ensure good and hygienic food is served at Railway. Copy of Catering Policy, 2017 is being enclosed as ANNEXURE A-1

g. Strict provisions were made in the Standard Bid Documents, for award of various catering units, to comply with FSSAI and other statutory norms of food safety as prescribed from time to time.

h. A Steering Committee of senior level officers at Railway Board level including members of Food Safety Commissioner of Delhi Region and Director/Regulatory Compliance of Food Safety & Standard Authority of India has been formed.

i. It has been stated by Tourism & Catering Directorate of Railway Board that during 2016 from 01/01/2016 to 31/12/2016, out of the total complaints, 536 no. of complaints related to poor quality food have been registered in Catering Services Monitoring Cell, Railway Board, wherein a fine of Rs.1,72,13,199/- has been imposed on the licensee. During the same period a number of 41148 inspections have been carried out by the railways and IRCTC of catering services.

j. It has further been stated by Tourism & Catering Directorate of Railway Board that the kitchens set up/developed/refurbished by IRCTC shall be modernised and mechanized. IRCTC shall ensure that the kitchens acquire valid ISO certification within the specified fixed time period including compliance of all

statutory guidelines and food safety norms issued from time to time.”

(Emphasis supplied)

5. We find that the respondents have also placed on record a Commercial Circular No.20/2017 issued on 27th February, 2017 by the Ministry of Railways, annexed with the reply, wherein the respondents have made the following announcement regarding the management of catering services which have been introduced in a phased manner after the notification of the catering policy :

“Hon’ble MR during Rail Budget 2016-17 has announced as under :-

“69(i) IRCTC would begin to manage catering services in a phased manner. IRCTC would unbundle catering services by creating a distinction primarily between food preparation and food distribution.

69(iv) Adding 10 more IRCTC operated, mechanized, sophisticated base kitchens to ensure fresh and hygienic supply of food on trains.”

6. It is to be noted that the Catering Policy, 2017 and these Circulars are not the subject matter of any challenge by the writ petitioner.

7. So far as the respondent nos.4 and 5 are concerned, they have filed a status report on the 25th of May 2017 pointing out the essentiality for designating the officers under the Act. The respondent nos.4 and 5 have pointed out that several steps have been taken with regard to the notification of officers in the Indian Railways for implementation of the provisions of the ‘FSS Act, 2006 Rules and

Regulations’.

8. The respondent nos.4 and 5 in their counter affidavit have made detailed submissions with regard to not only the officers who stand notified but also reference to the National Accreditation Board for Testing and Calibration Laboratories (NABL), accredited laboratories referral laboratories which have been notified for discharging the functions and responsibilities under the Act.

9. In para 2 of the affidavit, the following notifications appointing the authorities have been pointed out :

*“(i) **Director (Health & Family Welfare), Indian Railways Order has been notified on 25th February 2016 as Joint Food Safety Commissioner for Indian Railways under sub-section (5) of Section (10) read with sub-section (3) of Section 30 of FSS Act, 2006. A copy of the order dated 25th February, 2006 is annexed herewith.***

*(ii) **Designated Officers under Sub-Section (5) of Section 10 read with Section 36 of the Food Safety and Standard Act, 2006 have been appointed for Southern Railways, Northeast Frontier Railways, South Western Railways, Northern Railways, East Central Railway, Western Railway, North Western Railway, North Central Railway. Copies of the orders dated 24.08.2015, 15.07.2015, 07.10.2015, 05.07.2016 and 07.09.2016 are annexed herewith.***

*(iii) **Food Safety and Standard Authority of India vide No.F.1(42) 2011/Railways/FSSAI (Part-1) dated 18th April, 2017 notified 56 Food Safety Officers for various zones in India under Section 37 of the FSS Act, 2006. A copy of the Notification bearing No.F.1(42)2011/Railways/FSSAI (Part-1) dated 18th April, 2017 is annexed herewith .***

*(iv) **Food Safety and Standard Authority of India has vide notification S.O.3648 (e) dated 6th December, 2016 under***

sub-section (1) of Section 43 of the Food Safety and Standards Act, 2006 notified 125 laboratories that have been accredited by the National Accreditation Board for Testing and Calibration Laboratories. A cop of the Notification bearing No.S.O.3648 (E) dated 6th December, 2016 is annexed herewith.”

(Emphasis by us)

10. Mr. K.C. Mittal, Id. counsel for the petitioner submits that the respondent nos.4 and 5 have addressed a letter dated 29th October, 2015 to the Railways pointing out certain shortcomings. He has submitted that the CAG report of 2017 has also pointed out certain shortcomings in the functioning of the Railways.

11. It is submitted by Mr. Jagjit Singh, Id. counsel for the Railways that all shortcomings which are pointed out by any authority are taken very seriously and are addressed by the Indian Railways. Mr. Jagjit Singh submits that in fact the Railway Policy of 2017 is a comprehensive document which has taken all aspects in consideration.

12. It is submitted that the Railways is regularly undertaking inspections, sampling, testing and regulation.

13. It is expected that the respondent nos.1 to 3 will promptly consider and address any other shortcomings which are noticed or pointed out.

14. We also find that apart from the general allegations premised on newspaper reports made in the writ petition, there are no specific incidents of malpractice which have been pointed out after the policy of 2017 came into force. In case, the petitioner points out any specific incident or shortcoming on the part of the Indian Railways, it is open

for the petitioner to inform the respondents who shall take action on the same.

This writ petition and pending application are disposed of in the above terms.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

APRIL 04, 2018

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