

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Public Interest Litigation No. 69 of 2014

Sachin Dharmdas Khobragde and another vs. Food Safety and Standard
Authority and others.

Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	<u>Court's or Judge's</u> <u>Orders.</u>
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Mr. N.B.Rathod, Advocate for the petitioners.
Mr. Rohan Malviya, Adv. with Mr. A.P. Wachasundar,
Adv. For R-1.
Ms Mugdha Chandurkar, Adv. For R-2.
Mr. M.K.Pathan, AGP for R-3
Mr. A.A.Naik, Adv.for R-4.

CORAM: B.R.GAVAI & PRASANNA B. VARALE, JJ
DATE : 8.10.2015

This petition has been filed by the petitioner praying for various reliefs, including a direction in the nature of mandamus directing respondents authorities to take appropriate and immediate action against the respondent no.4 for acting contrary to the provisions of Food Safety and Standards Act, 2006.

2. It is the contention of the petitioner that various products, which are found in the list at Annexure R-1 with the affidavit filed by the respondent no.1, do not conform to the standards and also are hazardous to the health of the citizen at large. The learned counsel for the petitioner relies on the advisory issued by the respondent no.1 dated 6.8.2012 and subsequent advisory dated 11.5.2013, which requires the manufacturers to seek approval of the products manufactured by them and the procedures for doing so. It is the contention of the petitioner that since the products manufactured by the respondent no.4 are not found to be in conformity to the various standards laid down by the Scientific Committee appointed by the respondent no.1, it is necessary that this court should direct the respondents authorities to prohibit the sale of such products.

3. This advisories in question were the subject matter of challenge before the Division bench of this Court at Principal Seat in Writ Petition No. 2746 of 2013. The two Judges of this Court differed in their views. Justice V.M.Kanade took a view that unless the regulations were not framed by following the procedures under Sections 92 and 93 of the Food Safety and

Standards Act, 2006, the same would not have binding force on the existing manufacturers. However, Justice G.S.Kulkarni differed with the said view. As such same was placed before the Hon'ble Chief Justice for referring it to the third learned Judge. As such the matter came to be referred to Justice Ranjit More.

4. The learned third Judge vide its Judgment and order dated 30th June 2014 held that the product approval advisory dated 11.5.2013 does not have force of law. It could, thus, be seen that Justice More has concurred with the view taken by Justice V.M.Kanade and as such majority view is that the advisory on which reliance is placed by the learned counsel for the petitioner, does not have force of law.

5. Though Mr. Rathod, the learned counsel for the petitioner has attempted to persuade us to make a different view, the judicial propriety and discipline would not permit us to do so. No doubt that the concern of the petitioner for safety of the citizens is appreciable. However, in view of the Judgment of the Division Bench in W.P.No. 2746/2013 it will not be permissible for us to grant the reliefs prayed in the petition. It

is further to be noted that the SLP challenging the said Judgment is also rejected by the Hon'ble Apex Court.

6. In any case the Act itself provides for various measures which permits the various authorities to take samples of the products to get them analyzed and if it is found that they are not in conform the standard or hazardous to the health of human being, to take various penal action as provided in the statute. The authorities, therefore, are having ample powers to take such steps as are permissible in law to prevent health hazardous to the citizens. The petition is, therefore, dismissed with the aforesaid observations.

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