

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.1093 OF 2018

1. The Seafood Exporters Association of India
(Goa Region),
having its office at Flat No.G-4,
Tarang Building, Opp. NSD,
Alto Dabolim, Goa.
Through its Secretary
Mr. M. V. Swamy
Son of late Shri Muni Swamy
Aged 62 years,
Resident of F-3, Sai Palace,
Sai Nagar, Marcela Goa 403 107
2. M/s Albys Agro Pvt. Ltd.,
A Company registered under the
Companies Act, 1956
having office at Plot No.2/1-2/6
Industrial Estate, Sanguem Xealopem,
Sanguem Goa 403 704,
Through its Director,
Shri R. S. Jari,
Son of late Mr. J. S. Jari,
Aged 67 years, businessman,
3. M/s Atlas Fisheries Pvt. Ltd.,
A Private Limited Company,
registered under the Companies Act, 1956
having office at 42/3A,
Dauji, Old Goa 403 402,
Through its Director,
Shri Elvis Benedict D'Souza,
Son of Mr. Steven D'Souza,
Aged 26 years, businessman,

4. M/s. Corlim Marine Exports Pvt. Ltd.,
A Private Limited Company,
(A company registered under the
Companies Act, 1956)
having office at Plot No.25-32,
Sanoale Industrial Estate,
Zuarinagar, Sanoale Goa 403 726,
Through its Director,
Shri R. S. Jari,
son of late Mr. J. S. Jari,
Aged 67 years, businessman,
5. M/s Goan Bounty
A Registered Partner Business,
Registered under the Indian Partnership Act,
having office at Plot No.51/B,
Dulapi, Corlim Goa 403 110,
Through its Authorised Signatory,
Shri Navjeet Poojary,
Son of Mr. Narasimha Poojary
Aged 26 years, Businessman,
6. M/s Indotech Ice and Cold Storage,
A Registered Partner Business
Registered under the Indian Partnership Act
having office at U-10, IDC Industrial Estate,
Salcete, Cuncolim Goa 403 703.
Through its Authorised Signatory,
Shri.
Son of
Aged years, Businessman
7. M/s Sagar Feeds and Food Processing Industries
A Registered Partner Business

Registered under the Indian Partnership Act
having office at Plot No.L-27,
Cuncolim Industrial Estate,
Salcete Goa 403703.
Through its Authorised Signatory,
Shri Mohammed Afroz Shabbir
Son of M. Shabbir Saheb
Aged 33 years, Businessman,

8. M/s. Seahath Canning Company
A Registered Partner Business
Registered under the Indian Partnership Act
Plot No.8, Margao Industrial Estate,
St. Jose De Areal,
Post – Curtorim
Salcete 403709 Goa
Through its Authorised Signatory,
Shri Mohammed Akif,
Son of M. Ismail Saheb,
Aged 31 years, Businessman

9. M/s. Quality Exports
A Registered Partner Business
Registered under the Indian Partnership Act
having office at Plot No.SB-64 to 67,
Cuncolim Industrial Estate,
Salcete, Cuncolim Goa 403703
Through its Authorised Signatory,
Shri Antinio Louis Felix Rodrigues
Son of late Joao Rodrigues
Aged 62 years, Businessman,

- 10.M/s Quality Foods
A Registered Partner Business
Registered under the Indian Partnership Act

having office at Plot No.SB-39
and SB-50A,
Cuncolim Industrial Estate,
Salcete, Cuncolim Goa 403703
Through its Authorised Signatory,
Shri Mohammed Zameer Ahmed
Son of late Mr. M. H. Ahmed
Aged 37 years, businessman,

- 11.M/s United Marine Products
A Registered Partner Business
Registered under the Indian Partnership Act
having office at Plot No.L28,
Cuncolim Industrial Estate,
Salcete, Cuncolim Goa 403703
Through its Authorised Signatory,
Shri Ayaz Unaize
Son of Basheer Ta
Aged 32 years, businessman. ... Petitioners

Versus

1. State of Goa,
Through the Chief Secretary,
Secretariat Complex,
Porvorim Goa.
2. Public Health Department,
Government of Goa,
Porvorim Goa.
Through the Under Secretary (Health)
3. The Directorate of Food and Drug Administration,
Dhanwantari,
Opp. Shrine of the Holy Cross,
Bambolim Goa.
Through its Director. ... Respondents

Mr. S. S. Kantak, Senior Advocate with Mr. G. Agni and Mr. R. Kantak, Advocates for the Petitioners.

Mr. D. Lawande, Advocate General with Mr. D. Shirodkar, Additional Government Advocate for the Respondents.

***Coram : M. S. Sonak &
Prithviraj K. Chavan, JJ.***

***Reserved on : 31st January, 2019
Pronounced on: 18th February, 2019***

ORDER (Per M. S. Sonak, J)

Heard Mr. S. S. Kantak, learned Senior Advocate with Mr. G. Agni and Mr. R. Kantak, learned counsel for the Petitioners, Mr. D. Lawande, learned Advocate General, State of Goa along with Mr. D. Shirodkar, learned Additional Government Advocate appearing for the Respondents.

2. The challenge in this petition is to the Corrigendum dated 29th October, 2018 to Government Circular No. 13/37/2018-1/PHD/2732 dated 26th October, 2018, which is marked as Exhibit P-1 to the memo of petition. According to the Petitioners, the impugned Corrigendum dated 29th October, 2018 imposes an onerous condition making it mandatory for vehicles transporting fish meant for export or processing to carry transporters licence under the Food Safety and Standards Act, 2006 ('FSS Act') and Food Safety and Standards

(Licensing and Registration of Food Businesses) Regulations 2011 ('FSS Regulations'). The Petitioners contend that the imposition of such an onerous condition violates the Petitioners' right guaranteed under Articles 14, 19 and 21 of the Constitution '*being in complete violation of principle of natural justice*'.

3. Mr. Kantak, learned Senior Advocate appearing for the Petitioners submits that the impugned Corrigendum came to be issued unilaterally, without application of mind and without any compliance with principles of natural justice. He submits that the impugned Corrigendum directly affects the Petitioners' fundamental rights to carry on their trade, occupation and profession. He submits that the impugned Corrigendum is *ex facie* arbitrary and if enforced will deprive of Petitioners of their rights to livelihood. For all these reasons, Mr. Kantak submits that the impugned Corrigendum violates Articles 14, 19(1)(g) and 21 of the Constitution of India.

4. Mr. Kantak submits that the communication dated 27th August, 2018 was in the nature of exemption granted to the Petitioners, thereby exempting the transporters vehicles carrying seafood to the export oriented units established by the Petitioners from the rigors of Circular dated 2nd August, 2018. He submits that if the impugned Corrigendum is now to be enforced, then, this would amount to rendering nugatory and ineffective, the exemption granted vide

communication dated 27th August, 2018 without, in fact, actually withdrawing the communication dated 27th August, 2018. Mr. Kantak submits that such an exercise is clearly impermissible, null and void.

5. Mr. Kantak submits that since the Petitioner Nos.2 to 11 are 100% export oriented units, their activities in the matter of export are entirely governed by the Export (Quality Control and Inspection) Act, 1963. Mr. Kantak submits that the standards prescribed under the said Act of 1963 are more stringent than FSS Act. Mr. Kantak submits that the standards prescribed by importing countries are also extremely stringent. Mr. Kantak submits that the Petitioner Nos.2 to 11 invariably transport the raw material i.e. seafood in transporters vehicles which have duly insulators and suitable for such transportation. Mr. Kantak submits that there is no question of finished product from the factory units of the Petitioner Nos.2 to 11 finding way into the domestic market. Mr. Kantak submits that in any case, the Petitioners have furnished necessary undertakings and are willing to abide by such undertakings. Mr. Kantak submits that all these aspects, which are most relevant and vital have been totally ignored by the Respondents while issuing the impugned Corrigendum. He therefore submits that this is also an additional ground to strike down the impugned Corrigendum.

6. Mr. Kantak submits that the State Government, in fact lacks executive competence to issue the impugned Corrigendum. He

refers to entry 52 of List I of Seventh Schedule of the Constitution of India to submit that the industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest, is a subject on which only the Union has legislative and consequential executive competence. He points out that Section 2 of the FSS Act clearly contains a declaration as to expediency of control by the Union. He therefore submits that it is only the Union which has legislative and consequential executive competence in the matters relating to the food industry. He therefore submits that the State has neither any legislative nor executive competence to issue any directions in relation to food industry. He submits that since the impugned Corrigendum directly relates to food industry, the same is *ultra vires* the executive competence of the State. He submits that on this ground itself the impugned Corrigendum is liable to be declared as *ultra vires* and struck down.

7. Mr. Kantak further submits that the impugned Corrigendum is nothing but an executive instruction in terms of Article 162 of the Constitution of India. He points out that it is for this reason that the Respondents have purported to comply with the mandate of Article 166 of the Constitution of India and express the Circular and Corrigendum thereto, in the name of the Governor. He submits that in terms of Article 162 of the Constitution of India, executive power of the State shall extend in the matters with respect to legislature of the State has power to make laws. He submits that since the State has no

power to make law in respect of the food industry, the State is denuded of the executive power in this regard as well. He therefore submits that this is an additional ground to declare the impugned Corrigendum as *ultra vires*, null and void.

8. Mr. Kantak without prejudice to the aforesaid contentions submits that the executive power can never be exercised, once entire field of the subject matter is covered by a legislation. He points out that FSS Act is a legislation which is holding field and therefore the State, has no power or authority to exercise the executive power in respect of the same occupied field. He submits that the impugned Corrigendum is in fact contrary to FSS Act. He submits that if there is a conflict between an executive instruction and a statute like FSS Act then obviously the statute has to prevail. Mr. Kantak submits that this is yet another ground to declare the impugned Corrigendum as *ultra vires*, null and void.

9. Mr. Kantak then refers to the definition of “*food*” under Section 2(j) of the FSS Act and the definition of “*food business*” under Section 2(n) of the FSS Act. He then points out to the various Authorities which the FSS Act contemplate and mandates. He submits that there is no provision under the FSS Act, on the basis of which it can be said that the transporters of food are required to obtain any licence under the FSS Act. In any case, Mr. Kantak submits that once a

licence is obtained under the FSS Act for either operating 100% export oriented units or for the purpose of manufacturer, import or export, there is no further requirement of obtaining a separate licence for transportation. He submits that in the present case, the Petitioner Nos.2 to 11 have admittedly been issued licences under the FSS Act. Such licences are all encompassing and the FSS Act does not require the Petitioners to obtain any separate licence for transportation. Mr. Kantak submits that FSS Act nowhere mandates that the Petitioner Nos.2 to 11, who are admittedly licence holders under the FSS Act transport their seafood only through the vehicles owned by them. Mr. Kantak submits that the Petitioner Nos.2 to 11 have absolute liberty to hire vehicles for transportation. He submits that in such a situation to insist with the vehicles hired by the Petitioners must have transporters' licence under the FSS Act is an insistence *dehors* the FSS Act. Mr. Kantak submits that apart from the basic averment that the State Government lacks executive competence to issue any such direction, such direction is *ex facie* contrary to FSS Act, its scope and import. For all these reasons Mr. Kantak submits that the impugned Corrigendum is liable to be declared as *ultra vires*, null and void.

10. For all the aforesaid reasons, Mr. Kantak submits that the impugned Corrigendum is *ultra vires*, null and void and accordingly the reliefs prayed for in this petition are liable to be made absolute.

11. Mr. D. Lawande, learned Advocate General for the State of Goa has at the outset questioned the *locus standi* of the Petitioners to institute the present petition. He submits that the impugned Corrigendum is directed against the those in the business of transportation of food and since, the Petitioners do not claim to be in the business of transportation of food, they have no *locus standi* to institute the present petition and question the impugned Corrigendum.

12. Without prejudice Mr. Lawande submits that the Petitioners have not raised the issue of legislative or executive competence in the petition. In the petition, the challenge was based only on the ground of alleged violation of Articles 14, 19 and 21 of the Constitution. Mr. Lawande submits that the ground of legislative or executive competence cannot be raised by merely filing an affidavit in rejoinder. He submits that such a serious issue cannot be gone into on the basis of casual averments in the rejoinder. He submits that serious prejudice will occasion to the State if such a plea is entertained on the basis of casual averments in the affidavit in rejoinder. He submits that the State would then to deprived of the opportunity of filing proper response and dealing with the issue of legislative or executive competence. For all these reasons, he submits that such an issue may not be gone into in the present petition.

13. Mr. Lawande without prejudice to the aforesaid

contentions submits, that in any case there are provisions under the FSS Act itself, which make it clear that the State Government is one of the main authorities enjoined to implement the FSS Act. He refers to the provisions of Section 18 of the FSS Act to support this contention. He submits that there is no merit whatsoever in the plea that the State lacks any executive competence in the matter. He submits that the Circular dated 26th October, 2018 and the impugned Corrigendum dated 29th October, 2018 thereto have been issued to exercise the power and duties of the State Government under the FSS Act. Again, he refers to Section 18 of the FSS Act and contends that the Circular and the impugned Corrigendum is relatable to exercise of power under Section 18 of the FSS Act.

14. Mr. Lawande thereafter made reference to the pleadings in the petition and submitted that on the basis of such vague pleadings, the Petitioners are not entitled to any reliefs. He submitted that the State had to deal with a serious issue arising out of apprehension of use of Formalin in fish and the Circular and the impugned Corrigendum thereto was issued only to remind the Authorities under the FSS Act of their duties and in order to urge the said Authorities to discharge their duties with due diligence. He submits that the impugned Corrigendum only provides the mechanism wherein the assistance is taken from the police authorities for limited purpose when the vehicles carrying seafood enter the State. He submits that in case the police authorities

detect anything amiss, ultimately it is for the Authorities under the FSS Act to initiate action as is permissible under the law. He submitted that the Circular as well as the impugned Corrigendum do not create any new right or liability and they only reiterate the legal position under the FSS Act. He submits that Circular and the impugned Corrigendum only remind the persons that in case provisions of the FSS Act are not complied with, the action under FSS Act will follow.

15. Mr. Lawande submits that since the Petitioners have no grievance against the impugned Circular dated 26th October, 2018, obviously they can make no grievance against the impugned Corrigendum and the Circular on the ground that the State has no competence to issue the impugned Corrigendum. He submits that the Circular as well as the impugned Corrigendum are not relatable to exercise executive power but in fact the same are relatable to exercise of power under Section 18 of the FSS Act.

16. Mr. Lawande submits that the Petitioners have made very vague averments in the petition as regards the status of the transporters which they use for the purpose of transporting seafood into the State of Goa. He submits that on the basis of such averments, if any relief is granted in favour of the Petitioners, then, there will be absolutely no control over the transporters. He submits that the State, would then, be failing to discharge its duties under the FSS Act. He submits that even

if it is assumed that there is some irregularities in the manner of issuance of impugned Corrigendum, since, the effect of the impugned Corrigendum is to promote substantial justice, this Court, may not exercise its writ jurisdiction under Article 226 of Constitution of India. He relied on rulings in *Gadde Venkateswara Rao Vs Government of Andhra Pradesh and others*¹ in support of this contention.

17. Mr. Lawande submits that the grant of any relief in terms as prayed for by the Petitioners was virtually amounts to permitting the person/entity for the business of food transportation and to operate in the State of Goa without obtaining licence under the FSS Act. He submits that this would virtually amounts to issuance of writ contrary to provisions of FSS Act. He submits that no such writ may be issued and he relied on *M/s Narinder Chand Hem Raj & Others Vs Lt. Governor, Administrator, Union Territory, Himachal Pradesh and others*².

18. Mr. Lawande submits that from the averments in the petition, it is quite clear that the Petitioners have suppressed the relevant vital facts in relation to licences obtained by them under the FSS Act. He submits that there are averments that the Petitioners are 100% export oriented units. However, the licences produced by the Petitioners along with the petition do not support this averment. Mr.

1 AIR 1966 SC 828

2 1971(2) SCC 747

Lawande submits that this is clear case of suppressing of vital and material particulars. In any case, he submits that this is a clear case of misrepresentation of true and correct fact. He submits that for this reason the equitable jurisdiction of this Court under Article 226 of the Constitution may not be exercised at the behest of such Petitioners.

19. Mr. Lawande submits that possibility of seafood/raw material transported into the State of Goa by or at the behest of the Petitioners finding its way to the local market cannot be ruled out. The undertakings furnished by the Petitioners, cannot, in such circumstances, be regarded as sufficient. Mr. Lawande submits that the Petitioners are not even clear as to whether the transportation is by them or at their behest. Mr. Lawande submits that under the Sale of Goods Act, there are different stages at which the sale can be said to be completed. He points out that the Petitioners have furnished no details in this regard and therefore in a given case the Petitioners, will be in a position to disclaim the liability by stating that they are not responsible for the seafood or raw material until it is actually delivered to their factory gate. Mr. Lawande submits that the State, faced with such a situation was justified in issuing the Circular dated 26th October, 2018 as well as the impugned Corrigendum. There is nothing illegal, arbitrary or unconstitutional in the impugned Corrigendum.

20. For all the aforesaid reasons, Mr. Lawande, learned

Advocate General submits that this petition may be dismissed.

21. The rival contentions now fall for our determination.

22. The challenge in this petition is restricted only to the impugned Corrigendum dated 29th October, 2018 and there is no challenge either to the Circular dated 26th October, 2018, to which, the impugned Corrigendum is issued, nor is there any challenge to the Circular dated 2nd August, 2018, which is also relevant to the issue raised in the present petition. This is clear from the pleadings in the petition. In any case, this position was made expressly clear by Mr. Kantak, learned Senior Advocate appearing for the Petitioners.

23. In paragraphs 2 to 7 of the petition, the Petitioners have explained their status. Petitioner No.1 is stated to be Sea Food Exporters Association of India, which is a registered association and Apex body for the entire country. The aim and objective of this Association is to promote the industry generally and the interest of the members of Association engaged in packing, freezing, canning of seafood by promoting cooperation and to communicate and represent the interest of the members with Government, semi Government departments, public bodies and such similar matters.

24. The Petitioner Nos.2 to 11 are stated to be members of

Petitioner No.1- Association engaged in the business of export of fish from Goa to far east countries like China, Thailand, Malaysia etc. In paragraph 5, the Petitioners have stated that Petitioner Nos.2 to 11 are “*export oriented units*”. In paragraph 6, there is an averment, that in Goa, there are 12 factories fully engaged in processing and export of fish earning precious foreign exchange close to thousand crores and giving employment to thousands of people. In paragraph 6, there is a specific averment that all these units are “*hundred percent export oriented*” which carry on business in accordance with law, with all licences and in compliance of export import norms of India and also the norms of international prescribed.

25. In paragraph 7, there is an averment that Petitioner Nos.2 to 11 carry on their trade, business and profession within the State of Goa and have obtained licenses such as SSI licence, factory license, EIC licence, MPEDA licence along with Goa State Pollution Control Board licence, FSSAI licence. This paragraph states that the copies of the licences of the various export units are annexed and marked as Exhibit P-3 Colly.

26. In paragraph 8 of the petition, there is an averment that the fish catch in Goa generated from mechanised and traditional fishing contributes not more than 10 to 15 percent of the raw material of the total exports of all the units. Nearly 80% of the raw material is

procured from the States of Maharashtra, Karnataka, Kerala and other States.

27. Regulation 2.1.2(3) of FSS Regulations provides that the licence for commencing or carrying on food business which falls under Schedule 1, shall be granted by the Central Licensing Authority. Schedule 1, as it presently stands, makes reference to 10 businesses. Entry VI of Schedule 1, reads thus :

“VI. 100 % Export Oriented Units”.

28. Schedule 1 appended to FSS Regulations, significantly, does not refer to the stand alone business of transportation of food items. Schedule 1 however, as noted earlier, makes specific reference to *“100% export oriented units”* for which, the application for licence has to be made to the Central Licensing Authority.

29. Now, FSSAI licences annexed by the Petitioners as Exhibit P-3 Colly to the memo of petition are perused, then, it is not as if the Petitioner Nos.2 to 11 or their units have been classified as 100% export oriented units. Rather, FSSAI licences issued to Petitioner Nos.2 to 11 are stated to relate to the following categories.

1	M/s Albys Agro Pvt. Ltd. (Petitioner No.2)	Manufacturer- Domestic & Exports
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2	M/s Atlas Fisheries Pvt. Ltd. (Petitioner No.3)	Manufacturer Importer
3	M/s Corlim Marine Exports Pvt. Ltd. (Petitioner No.4)	Manufacturer- Domestic & Exports
4	M/s Goan Bounty (Petitioner No.5)	-
5	M/s Sagar Feeds and Food Processing Industries (Petitioner No.7)	-
6	M/s. Seahath Canning Company (Petitioner No.8)	Manufacturer
7	M/s. Quality Exports (Petitioner No.9)	Manufacturer- Domestic & Exports & Importer
8	M/s Quality Foods (Petitioner No.10)	-
9	M/s United Marine Products (Petitioner No.11)	-

30. Therefore, averments made by the Petitioners in the petition to the effect that Petitioner Nos.2 to 11 or the factory units operated by them in Goa, are “*100% export oriented unites*” cannot be said to be accurate averments. It is true that as pointed out by Mr. Kantak that the Petitioners themselves had annexed their FSSAI licences as Exhibit P-3 Colly to the memo of petition and in that sense there was no intention to suppress any facts or material facts. However, annexing of copies of the licences, does not absolve the Petitioners from

making correct averments in the petition. In the present petition, it is obvious that the averments in the petition to the effect that the Petitioner Nos.2 to 11 or factory units set up by them in the State of Goa, are “*100% export oriented units*” are not backed by very licences produced by the Petitioners on record. Though as contended by Mr. Lawande, learned Advocate General, the misstatement or misrepresentation is a good ground to decline exercise of extraordinary and equitable jurisdiction under Article 226 of the Constitution, we do not propose to non-suit the Petitioners on this ground since the Petitioners, in the present petition, had actually annexed their licences as Exhibit P-3 Colly to the petition.

31. However, the further averments made by the Petitioners in the petition, to the effect that the seafood received by the Petitioners from outside the State of Goa is for the purpose of 100% export or that rejection due to “*damaged fish or low quality fish, (which is normally 2 or 3%) it is returned to the supplier in the same vehicle and such reject material is never distributed in the local market*” cannot, be accepted at the face value. In any case in the exercise of our jurisdiction under Article 226 of the Constitution of India, we will neither be equipped nor inclined to go into such disputed issues in the present state of pleadings. As noted earlier, we note that the foundation of Petitioners' case is that the Petitioner Nos.2 to 11 are 100% export oriented units. However, this does not appear to be an accurate

statement of fact, particularly, if reference is made to the licences produced on record by the Petitioners themselves. Be that as it may, we proceed to examine the Petitioners' contentions on merits.

32. The Petitioners, in paragraphs 19 and 20 of the petition have averred that some time in July, 2018 there were reports circulated in the media that formalin was detected in the fish supplied to one of the wholesale markets. The spot test had reported the use of formalin, however, the subsequent test reported that there was no trace of formalin or in any case, formalin, within permissible limit was detected in the samples of fish procured from other States and supplied to the local markets. The Petitioners have averred that it was also reported that Food and Drugs Administration (FDA) had submitted a negative report on the alleged use of formalin in fish. The Petitioners have then averred that there were no allegations nor report of any use of formalin in fish procured from other States and transported within the State of Goa, meant exclusively for export.

33. Under Secretary (Health – II) then issued a Circular dated 2nd August, 2018. This Circular states that in view of the suspected use of formalin in fish imported into Goa from other States and the resulting apprehensions treated in the minds of the consumers, the Food and Drugs Administration (FDA) had imposed a temporary ban on the import of fish from neighbouring States, into the State of Goa

for a period of 15 days vide Notification dated 18th July, 2018. Since, the ban period was expiring and import of fish from outside Goa is expected to resume, in order to ensure the availability of safe fish to the consumers, the FDA along with the assistance of the Goa police, Directorate of Transport and the Directorate of Fisheries would be carrying out the checks on incoming fish laden trucks at the State borders during the month of August, 2018.

34. Thereafter, clauses (iii) and (iv) of the Circular dated 2nd August, 2018 prescribe the modalities intended to be followed. The same read as follows :

“(iii) The fish traders from Goa, dealing with the import of fish from outside Goa, are to ensure that they have obtained the Licence/Registration under the Food Safety and Standards Act, 2006 from the FDA, within 15 days (fifteen) from the date of issue of this circular.

(iv) Fish Traders operating from outside the State, who are involved in transportation of fish to the State of Goa shall obtain licence/registration from the concerned state FDA or in the absence of which FDA, Goa, and the fish should be transported only through the insulated vehicles. After the end of 15 days period, vehicles brought in by traders without license/registration under Food Safety and Standards Act, will not be allowed to enter the State.”

35. The Petitioners have stated that they had no serious objections as such to the Circular dated 2nd August, 2018. However, according to them, since, the seafood which they were bringing into the

Goa, was intended to be processed and exported abroad, there was no reason to stop or check the trucks employed by the Petitioners for bringing the seafood into Goa. To that effect, the Petitioners addressed representations dated 8th August, 2018 and 20th August, 2018, to the Commissioner of Food/Secretary (Health), Government of Goa and the Superintendent of Police, North Goa, Panaji.

36. The Director of FDA, in response to the Petitioners representation dated 8th August, 2018 conveyed the decision of the Government to the Petitioners vide communication dated 27th August, 2018. In this, it is stated that the Government vide letter No.13/39/2017-1/PHD/2214 dated 24th August, 2018 has conveyed the decision of allowing the exemption to check fish laden trucks meant for processing and export purpose only subject to the following conditions which read thus :

“1) The vehicles importing fish into Goa, shall carry proper challan/records with details like the exporter's name and address, name and contact number of the exporter, the local importer's details by whom the consignment is imported, such as name and address, name and contact number of the importer, quantity and type of fish, etc.

2) Exporters to affix a seal to the trucks carrying fish.

3) Importers shall maintain proper stock registers of all the fish handled by them which shall be open for audit by the officials of this Directorates, as per Form – A, and details of fish consignments rejected as per Form-B.

4) Importers shall analyse the imported fish as per the

requirements enlisted by the FSSA 2006.

5) Importers shall get the consignments checked by the accredited laboratory periodically.

6) All the importers to provide an undertaking on their respective letterheads, stating that, the fish imported from other states shall be used for export purpose only and that, no part will be used/diverted for local sale.

If for any reason the consignments of Fish are rejected, the importer shall immediately inform the Directorate; all the details related to that consignment in Form -B and shall detain the consignment for further investigation by FDA.

You are directed to inform the contents of this letter to all the members affiliated to you and direct them to submit an affidavit (undertaking) as above with all the above mentioned points individually. Please note that, the aforementioned Government order will be put to effect only after submission of the above undertaking.”

37. Alongwith the aforesaid communication dated 27th August, 2018, the Form of undertaking to be submitted by the Petitioners/Members affiliated to Petitioner No.1 was also enclosed. The Petitioners state that the Petitioners were quite satisfied that the decision conveyed to them vide communication dated 27th August, 2018, Mr. Kantak, learned Senior Advocate for the Petitioners submitted that most of the Petitioners have also furnished the necessary undertakings as required of them.

38. Thereafter, the Under Secretary (Health), by order and in

the name of the Governor of Goa, issued Circular dated 26th October, 2018, the entire text of which, reads as follows :

“That Government post lifting of temporary ban imposed on fish import from other states vide Circular No.13/37/2018-1/PHD/2010 dated 02/08/2018 had chalked out certain modalities which the fish traders had to comply with.

The wholesale Fish Traders Association had requested for time to comply to certain requirements as stated in the said circular.

The Government has now decided to implement strictly the conditions mentioned in the said circular with immediate effect.

In view of the above, it is decided that :

- 1. No wholesale fish traders shall function without a valid license/registration issued by Directorate of Food and Drugs Administration under Food Safety and Standard Regulations.*
- 2. Goa Police and Transport Department officials shall ensure that the vehicles transporting fish entering the State for domestic market shall be carrying a Transporter's license for the vehicle in which the fish is transported; issued under the Food Safety and Standards Regulations for transporting of fish; issued either by the authority of the concerned State by Food and Drugs Administration, Goa.*
- 3. That the vehicles in which the fish is transported are insulated vehicles.*
- 4. The vehicles transporting fish meant for export or for processing at the fish meal shall comply to the requirements as communicated to them vide letter No. DFDA/FSSA/NG/SG/6(104)/Part-I/2018/3151 dated 27/08/2018 of Directorate of Food and Drugs Administration.”*

39. Mr. Kantak, learned Senior Advocate for the Petitioners states that the Petitioners had no grievance of issuance of Circular dated 26th October, 2018, particularly, since clause 4 of the said Circular dated 26th October, 2018, had made reference to the communication dated 27th August, 2018, in so far as the vehicles for transporting fish meant for export were concerned.

40. Mr. Kantak however submits that thereafter, the impugned Corrigendum dated 29th October, 2018 came to be issued substituting clause 4 of the Circular dated 26th October, 2018 by adding the requirement that the vehicles transporting fish meant for export and processing, in addition to compliance/standard with the requirement communicated vide letter dated 27th August, 2018, shall carry the transporters' license under the FSS Regulations.

41. The impugned Corrigendum dated 29th October, 2018 reads thus :-

“In the Circular read at preamble, the existing Point 4 shall be read as below:-

The vehicles transporting fish meant for export and processing in addition to the compliance of the requirement as communicated to them vide letter No. DFDA/FSSA/NG/SG/6(104)/Part-I/2018/3151 dated 27/08/2018 of Directorate of Food and Drugs Administration, shall carry the Transporters' License under the Food Safety and Standards Regulations.

In addition to the above, the following Points are added:-

5. The Goa Police and Transport Department shall check for the vehicles carrying fish at the following check posts/entry points:-

(i) Pollem

(ii) Patradevi

(iii) Mollem

(iv) Naibag

(v) Kiranpani

(vi) Querim

(vii) Any other entry points/check posts as deemed necessary by Police Department.

6. The Police Personnel posted at all the above Check posts shall stamp the challans/invoices/documents pertaining to the consignments carried by the above vehicles to indicate that they have entered the State of Goa only after Police verification.

This shall come into force with effect from tomorrow midnight 12.00 a.m.30/10/2018 (midnight)."

42. As regards the precise status of Circular dated 26th October, 2018 and the impugned Corrigendum dated 29th October, 2018, we had required the learned Advocate General to make the position of the State quite clear. Apart from the statement made by the learned Advocate General in the course of his arguments, he has stated that this position would be made clear in the synopsis of arguments which he may be permitted to submit at the conclusion of the oral arguments.

43. The learned Advocate General in the aforesaid context made the following statements, which he incorporated in paragraph 1 of synopsis of arguments tendered by him.

“At the outset, it is clarified that the Corrigendum dated 29.10.2018 issued to exercise the powers and duties of the State Government under the Food Safety and Standards Act, 2006 (hereinafter referred to as 'the Act'), more particularly referred to under Section 18, to implement the provisions of the Act. Secondly, the power to take action for any violations of the provisions of the Act or other instructions/directions issued in relation thereto vests in the authorities under the Act. The Corrigendum only provides a mechanism wherein assistance is taken from the police authorities for a limited purpose when vehicles enter the State. In the event the police authorities report any illegalities, the action in terms of the Act will be taken by the concerned statutory authorities under the Act. The Corrigendum does not create any new right or liability and only reiterates the position under the Act and informs persons that if the Act is not complied with, necessary action will follow.”

44. From the aforesaid, it is quite clear that the State does not propose to create any new right or liability in relation to the food industry by issuing Circular dated 26th October, 2018 and the impugned Corrigendum dated 29th October, 2018. The State's understanding about the Circular and the impugned Corrigendum is that the same is a reminder to the statutory authorities under the FSS Act to act or to take action when any violations of the provisions of the FSS Act are brought to their notice, *inter alia* by the police authorities.

The learned Advocate General has stated that the Circular dated 26th October, 2018 and the impugned Corrigendum dated 29th October, 2018 basically urge the Authorities under the FSS Act to implement the provisions of the said Act in view of the peculiar situation which had arisen.

45. The aforesaid statement of the learned Advocate General, is sufficient for not going into the issue of executive competence. In any case, we note that there are no pleadings in the petition questioning the executive competence of the State to issue the impugned Corrigendum. In fact, time and again, Mr. Kantak, learned Senior Advocate appearing for the Petitioners made it clear that the Petitioners have no issue with regard to Circular dated 26th October, 2018, to which the impugned Corrigendum has been issued. There is also no challenge to the Circular dated 2nd August, 2018, which is also on the very same issue though, the same, may not have condition imposed by the impugned Corrigendum. Therefore, on the basis of some averments in the affidavit in rejoinder, it will not be appropriate for us to go into the issue of executive competence of the State in such matters, even assuming that such an issue indeed arises in the present matter even after the aforesaid statement of the learned Advocate General.

46. In any case, we find that Section 18 of the FSS Act itself provides that the Central Government, State Government, Food

Authority and other Agencies as the case may be while implementing the provisions of FSS Act shall be guided by the principles enumerated in clauses (a) to (g) of sub section (1) of Section 18 of FSS Act. This means that *prima facie*, even the State Government has some role to play when it comes to the implementation of provisions of FSS Act. Besides, though, the Central Licensing Authority is the appropriate authority when it comes to licensing of 100% export oriented units, in some circumstances at least, the State Authorities can be regarded as competent to issue licences under the FSS Regulations. Therefore, it is not as if the State Government is an entirely alien Authority when it comes to the implementation FSS Act. No doubt, different roles have been assigned to the Central as well as the State Authorities and therefore the Central as well as the State Authorities are enjoined to exercise powers or jurisdiction within the limits assigned to them under FSS Act. All that we say is that this is not a case where the State Government or the State Authorities have no power whatsoever when it comes to the implementation of the FSS Act as was sought to be contended on behalf of the Petitioners.

47. In this petition, we find that the Petitioners are not at all clear as regards the status of the Petitioner Nos.2 to 11 as noted earlier. Similarly, the Petitioners are not at all clear as to the arrangement which they make for transportation of seafood from outside the State of Goa to their factory units in the State of Goa. The clarity on this aspect was

extremely essential, particularly, because the Petitioners purport to espouse the cause of transporters to transport the seafood from outside the State of Goa to the Petitioners' factory units in the State of Goa.

48. In paragraph 14 of the petition, this is what the Petitioners have averred in the context of transportation of raw material/seafood from outside the State of Goa to their factory units in the State of Goa.

“14. The Petitioners state that the export oriented units procure the raw material through various sources and agents at various ports in the neighbouring states. These agents are not necessarily transporters engaged in transport industry and many a times are individuals who only act as intermediaries/commission agents between the trawler owners and the exporters. They often do not have any transport vehicle for transportation of the raw material (fish catch) and the same are arranged by hiring vehicles who are willing to be paid remuneration on trip basis and on as and when available basis. This business difficulty makes the condition requiring procurement of transporters license under the food safety regulation onerous and unreasonable.”

49. The aforesaid averments do not give a clear idea as to the precise nature of arrangement which the Petitioners have with their transporters. From reading of the provisions of FSS Act, it cannot be said that those engaged in the business of transportation of food items are not required to have registration or licence under the FSS Act. In fact, Mr. Kantak, learned Senior Advocate for the Petitioners also did not seriously dispute that any person/entity engaged in the stand alone

business of transportation of food is required to have registration/licence under the FSS Act. However, Mr. Kantak contended that the Petitioners who already have licence for either manufacture, import or export under the FSS Act are not required to obtain any separate licence for transportation under the FSS Act.

50. In the absence of any clarity on the issue of arrangement which the Petitioners have with their transporters, we neither find it safe nor appropriate to decide the issue now raised by the Petitioners in the present petition. Some factual foundation regards the precise nature of the arrangement was extremely essential as otherwise, any order that we make, is very likely to be misused.

51. In the present case, there is absolutely no clarity as to whether the Petitioners themselves transport the seafood from outside the State of Goa or whether such transportation is by intermediaries/ commission agents. There is no clarity as to the point at which sale of seafood to the Petitioners is complete. There is no clarity as to whether the Petitioners engaged services of person/entity who are in the stand alone business as transporters of food items. Mere averment that the Petitioners use well insulated vehicles for the purposes of transportation of seafood, is not at all sufficient to persuade us to decide the issue now raised by the Petitioners in the present petition. Based upon such pleadings, the learned Advocate General is quite right in his contention

that there can be no guarantees that the seafood which is transported into the State of Goa allegedly by or at the behest of the Petitioners will not find its way into the domestic market. Since there is no clarity as to such foundational aspect, we do not deem it appropriate to consider the issue now raised by the Petitioners.

52. There is no merit in the contention that the impugned Corrigendum is in violation of the principles of natural justice. A Circular, which requires any party to comply with the provisions of law or urges the authorities to take action in case the violations are noticed is not required to be preceded by compliance with the principles of natural justice. Similarly, the Petitioners have not at all demonstrated how their fundamental rights to carry on their trade, occupation or business guaranteed by Article 19(1)(g) of the Constitution of India is infringed by the impugned Corrigendum. Admittedly, the Petitioners are not in the stand alone business of transportation of food items.

53. In any case, it is not even serious case of the Petitioners that the persons/entities engaged in the business of transportation of food items require no licence under the FSS Act or FSS Regulations. In this case, as was made clear by the learned Advocate General, there is no insistence that the transporters must have a licence issued by the State of Goa. The Transporters can have licences issued either by the Central Licensing Authority wherever applicable or by Licensing Authorities of

any other States. Therefore, no case of violations of Article 19(1)(g) of the Constitution of India can be said to have been made out.

54. Section 31 of the FSS Act provides that no person shall commence or carry on any food business except under a license. There is exemption granted to petty manufacturer, with which we are not concerned in the present matter. Section provides that any person desirous to commence or carry on any food business shall make an application for grant of a license to the designated officer in such manner containing such particulars and fees as may be specified by regulations. Section 2(n) of the FSS Act defines “*food business*” to mean any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution of food, import and includes food services, catering services, sale of food or food ingredients. Similarly, Section 2(o) defines “*food business operator*” in relation to food business to mean a person by whom the business is carried on or owned and is responsible for ensuring the compliance of this Act, rules and regulations made thereunder. Section 2(za) defines “*license*” to mean a license granted under Section 31 of the FSS Act.

55. Now, if the aforesaid provisions are considered in the context of absolute lack of clarity as regards the arrangement for

transportation of seafood in the present case, then, we cannot say that the impugned Corrigendum conflicts with any of the provisions of the FSS Act. As noted earlier, expression “*food business*” as defined under Section 2(n) of the FSS Act, undoubtedly includes transportation of food or food ingredients. Similarly, expression “*food business operator*” as defined under Section 2(o) of the FSS Act, in relation to food business means not only the person by whom the business is carried on or owned but also includes the person who is responsible for ensuring the compliance of this Act, rules and regulations made thereunder.

56. From the pleadings in the petition, it does not appear that the Petitioners are prepared to own up the responsibility for ensuring the compliance of this Act, rules and regulations made thereunder when it comes to transportation segment. The Petitioners, as noted earlier, are not at all clear as regards the arrangement for transportation of seafood from outside the State of Goa into the State of Goa. In fact, it is the case of the Petitioners that the transporters/transport vehicles keep changing since, they are hired through intermediaries or agents. There are no averments in the petition that the Petitioners assume the responsibility on behalf of the transporters when it comes to ensuring the compliance with the FSS Act, rules and regulations made thereunder. The mere statement that such transportation is undertaken through well insulated vehicles, is certainly not a statement indicating assumption of responsibility as contemplated under the FSS Act and

regulations made thereunder. Therefore, we are unable to accept the Petitioners' contention that the impugned Corrigendum is *ultra vires*, of the FSS Act or the FSS Regulations.

57. Mr. Lawande, learned Advocate General had in fact submitted that there can be no difficulty for those in the business of transportation of food items to obtain licences under the FSS Act and FSS Regulations from the respective competent Authorities. He points out that at no stage the State Government has insisted upon licences from the Authorities in the State of Goa alone. He also pointed out that the sister concern of the Petitioner No.3- Atlas Fisheries which operates from the same property as that of Petitioner No.3 has already applied for licence under Section 31 of the FSS Act for transportation of seafood. He points out that there are at least 10 other transporters who have already applied for and even obtained licences under the FSS Act and the FSS Regulations. He pointed out that there are several licence transporters from the other States who are transporting fish from outside the State of Goa into the State of Goa. He submitted that even most of the Petitioners were found to be transporting fish from outside the State into the State of Goa by using the services of such licenced transporters. If this is correct and we really have no reason to believe that this is not correct, then, the Petitioners' contention that the condition in the impugned Corrigendum is onerous or that such condition affect their fundamental rights to carry on trade, occupation,

business or their livelihood, cannot be accepted.

58. Similarly, this is not at all the case where the rights of the Petitioners to life or personal liberty can be said to have been infringed by the State so as to attract the provisions of Article 21 of the Constitution of India. On the basis of vague statement that the business of exporting seafood is the Petitioners' only source of livelihood, the Petitioners cannot routinely invoke the provisions of Article 21 of the Constitution of India and allege its violation.

59. Even the challenge on the basis of non application of mind or arbitrariness has really not been made out by the Petitioners. Admittedly, the State was dealing with a situation where some formalin was said to have been traced in supplies of fish in the local market. Taking into consideration the important position that fish enjoys in the Goan staple diet, the State was expected to take some steps to allay the apprehensions expressed. The Circular as well as the Corrigendum was the step in the said direction. Accordingly, it cannot be said that this is some case of non application of mind. Similarly, this is not a case of singling out the fish industry. In any case, the State is entitled to make a judgment, on the degrees of harm and steps reasonably required to allay the apprehensions affecting a particular industry. Such an exercise, unless demonstrated as grossly disproportionate, cannot be styled as some step without application of mind or arbitrary. Accordingly, we see

no merit in the challenge to the impugned Corrigendum on the ground that the impugned Corrigendum infringes the Articles 14, 19(1)(g) and 21 of the Constitution of India.

60. In the facts of the present case as well as in the state of pleadings in the petition, there is again, no necessity to go into the issue as to whether the impugned Corrigendum is an exercise relatable to Article 162 of Constitution of India or whether the same relates to exercise of powers under Section 18 of the FSS Act. As noted earlier, the learned Advocate General, has already made it clear that the actual power to take action for any violations under the provisions of the FSS Act or the other instructions/directions issued in relation thereto vests in the Authorities under the FSS Act. The Corrigendum only provides the mechanism wherein the assistance is taken from the police authorities for limited purpose and at the stage of vehicles enter the State. The learned Advocate General made it clear that in the event the police authorities report any illegality, the action in terms of FSS Act will ultimately have to be taken by the concerned authorities under the FSS Act. Accordingly, the impugned Corrigendum does not create any right or liability but only reiterate the position under the FSS Act and informs the persons that if the provisions of FSS Act is not complied with, necessary action will follow. Since, this is the manner in which the State understands and proposes to implement the impugned Circular, we cannot say that the impugned Circular is in conflict with the

statutory provisions in the FSS Act or in the FSS Regulations.

61. Mr. Kantak's contention that the impugned Corrigendum withdraws the exemption granted by communication dated 27th August, 2018, without actually withdrawing such exemption, according to us, lacks merit. The Petitioners, perhaps being conscious of the situation, themselves applied to the State Government for adoption of special procedure when it came to the Petitioners in the context of Circular dated 2nd August, 2018 applicable to persons/entities bringing the seafood in the State of Goa from outside the State of Goa. A special procedure was devised in so far as the Petitioners were concerned, which was made subject to certain terms and conditions. The Petitioners have made it clear that to this extent, the Petitioners had no objection in the matter.

62. Now, the impugned Corrigendum, at the highest, adds yet another condition, if the Petitioners wish to avail the special procedure. At least, *prima facie*, even this condition is not directed against the Petitioner Nos.2 to 11. The condition only provides that where the Petitioners transport the seafood by engaging the persons/entities involved in the business by transportation of seafood, then, such persons/entities must have a valid licence under the FSS Act. Such a condition according to us, can neither be described as onerous or *ultra vires* provisions of FSS Act or FSS Regulations.

63. In any case, such issue cannot be decided on the basis of sketchy pleadings as in the present case or on the basis of examples relating to transportation of eggs or chicken. According to us, unless a concrete case with appropriate pleadings is presented, it would not be safe to decide such issues. We have already made reference to the state of pleadings when it comes to the Petitioners arrangement for transportation of seafood into the State of Goa from outside the State of Goa.

64. The provisions of Export (Quality Control and Inspection) Act, 1963 and the provisions of FSSA operate in entirely different fields. The operation and object of two legislations is quite different. There is nothing pointed out to us either in the Export (Quality Control and Inspection) Act, 1963 to suggest that the application of FSSA was totally excluded. Section 18 of the Export (Quality Control and Inspection) Act, 1963 which provides that the said Act of 1963 is to override the other enactment was pointed out however, the same, only provides that as from the date on which a commodity is notified under clause (a) of Section 6, the provisions of 1963 Act or anything done or any action taken thereunder shall have effect in relation to that commodity notwithstanding any provisions (relating to quality control and inspection prior to the export of such commodity) contained in any enactment other than 1963 Act or any instrument having effect by virtue of any enactment other than 1963

Act. Clearly the provision of Section 18 of the 1963 Act, is not at all relevant to the issue involved in the present petition.

65. Before we conclude, reference is required to be made to the provision of Section 18 of the FSS Act which relates to the general principles to be followed by the Central Government, State Government, Food Authority and other Agencies as the case may be, while implementing the provisions of FSS Act. All such authorities shall be guided by the following principles, namely :-

(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) 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) 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) 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) 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) 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) where any food which fails to comply with food safety 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.”

(emphasis supplied)

66. The FSS Act was in fact enacted 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. The statement of objects and reasons also makes it clear that the bill which ultimately became FSS Act is contemporary, comprehensive and intends to ensure better consumer safety through Food Safety Management Systems and setting standards based on science and transparency as also to meet the dynamic requirements of Indian Food Trade and Industry and International trade.

67. The authorities under the State are therefore required to be conscious about guiding principles set out in Section 18 of the FSS Act and the object and reasons for enactment of FSS Act. 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 Authorities under the FSS Act are duty bound to 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.

68. Thus, for all the aforesaid reasons, we dismiss the present petition. There shall be however no order as to costs.

Prithviraj K. Chavan, J.

M. S. Sonak, J.

*at**