

## Navigating FSSAI Prosecutions

### A brief introduction

From festive-season sweeps for spurious *ghee* and *khoya* to investigating the use of plastic sheets for steaming *idlis*, hardly a week goes by without the Food Safety and Standards Authority of India (**FSSAI**) making news. The FSSAI is charged with ensuring compliance with the multilimbed Food Safety and Standards Act, 2006 (**Act**), and the Rules and Regulations framed thereunder. The objective of the law was to guarantee that the food available for human consumption was safe and wholesome. To achieve this goal, the FSSAI was instituted to formulate science-based standards for food and oversee the manufacturing, storage, distribution, sale, and import processes. After decades of struggle with a sprawling food regulatory network, the FSSAI was created with the critical objective of being the single reference point for food safety and standards, regulation, and enforcement in India. It is not surprising then that it features heavily in day-to-day life, and its purview spans every food-related aspect, including imports, labelling, packaging, advertising, and categorisation.

### Wide scope of the Act

The Act has been drafted to provide the widest possible import to the definition of “food”, and includes even items which do not necessarily have nutritional value and are not consumable or digestible – for instance, even chewing gum is “food” under the Act.<sup>1</sup> Section 3(1)(i) defines food as “any substance, whether processed, partially processed or unprocessed, which is intended for human consumption”, including primary foods, packaged drinking water, alcoholic beverages, and “any substance, including water



used in the food during its manufacture, preparation or treatment”. Specifically and statutorily excluded from the definition of food are animal feed, live animals not yet slaughtered, plants prior to harvesting, drugs, and cosmetics.

The judgment of the Supreme Court in *State of T.N. v. R. Krishnamurthy*, (1980) SCC 167 lends some guidance on the scope of the definition of “food”. The Supreme Court has held that “in order to be “food” for the purposes of the Act, an article need not be “fit” for human consumption; it need not be described or exhibited as intended for human consumption; it may even be otherwise described or exhibited; it need not even be necessarily intended for human consumption; it is enough if it is generally or commonly used for human consumption or in the preparation of human food.”

<sup>1</sup> Mohd. Yamin v. State of Maharashtra, 2021 SCC OnLine Bom 26 (Division Bench).

Thus, ingredients like flour, spices and oils qualify as food, as do alcoholic beverages,<sup>2</sup> protein powders,<sup>3</sup> and ayurvedic<sup>4</sup> and vegan foods,<sup>5</sup> for which separate regulations have been promulgated under the Act. In *Piyush Gupta v. State of U.P.*, turmeric powder in a sealed packet was treated as “food” for regulatory purposes.<sup>6</sup> The FSSAI has now increased its scrutiny with regards to the sale of unsafe nutritional supplements, particularly protein powders, filing over 40,000 cases against proprietors selling unsafe products in the wellbeing sector.<sup>7</sup> There have also been talks of implementing tighter regulations in this regard.<sup>8</sup>

## Applicability of the Act

### Who requires a license under the Act?

- ▮ Manufacturers of food
- ▮ Distributors of food
- ▮ Importers of food
- ▮ Producers of raw material for food
- ▮ FBOs involved in processing, packaging, storage or transportation of food
- ▮ Restaurants
- ▮ Online grocery or meal platforms
- ▮ Inventory-based quick-commerce players
- ▮ Marketplace-based e-commerce players

The Act applies to *all* participants in the food supply chain. Section 3(1)(n) broadly defines “food business” to include every undertaking involved in any stage of manufacturing, processing, packaging, storage, transportation, distribution, import, and sale of food. Further, the section includes within its purview all undertakings, irrespective of whether they are public or private, or for profit or not. By definition, a Food Business Operator (**FBO**) is “a person by whom the business is carried on or owned” and who ensures compliance with the Act.<sup>9</sup> In practice, an FBO includes raw material producers like palm-oil crushers,<sup>10</sup> grain mills<sup>11</sup> or spice makers<sup>12</sup> at the upstream end, and restaurants, dhabas or juice bars at the downstream end.<sup>13</sup>

Modern e-commerce and quick commerce platforms are likewise included within the ambit of the Act. FSSAI guidelines now treat online food vendors as FBOs: Clause 1.3 of the Guidelines for Operations of E-commerce Food Business Operators expressly defines an “E-commerce FBO” as any person carrying out food business activities (as defined under Section 3(1)(n) of the Act) through e commerce.<sup>14</sup> All online grocery or meal platforms, whether inventory led (own-stock model) or marketplace (platform only), must register as an FBO. Inventory-based quick commerce players are required to secure an FSSAI licence covering each warehouse or dark store where food is stored and dispatched.<sup>15</sup> Similarly, marketplace apps are required to ensure that each restaurant or seller on their platform holds a valid FSSAI licence, and display those licence numbers alongside listings.<sup>16</sup> In May 2025, the FSSAI increased its scrutiny of marketing claims by FBOs, advising FBOs to cease their use of “100%” on food labels, promotional material and packaging,<sup>17</sup> a move after Dabur, in April 2025, challenged an erstwhile regulation wherein FSSAI had issued an advisory against the use of “100%

<sup>2</sup> [https://www.fssai.gov.in/upload/uploadfiles/files/Compendium\\_Alcoholic\\_Beverages\\_Regulations\\_04\\_03\\_2021.pdf](https://www.fssai.gov.in/upload/uploadfiles/files/Compendium_Alcoholic_Beverages_Regulations_04_03_2021.pdf)  
<sup>3</sup> [https://fssai.gov.in/upload/uploadfiles/files/Compendium\\_Nutra\\_29\\_09\\_2021.pdf](https://fssai.gov.in/upload/uploadfiles/files/Compendium_Nutra_29_09_2021.pdf)  
<sup>4</sup> [https://fssai.gov.in/upload/notifications/2022/05/62789a20b54bdGazette-Notification\\_Ayurveda\\_Aahara\\_09\\_05\\_2022.pdf](https://fssai.gov.in/upload/notifications/2022/05/62789a20b54bdGazette-Notification_Ayurveda_Aahara_09_05_2022.pdf)  
<sup>5</sup> [https://fssai.gov.in/upload/notifications/2022/06/62ac3f9dba33cGazette-Notification\\_Vegan\\_Food\\_17\\_06\\_2022.pdf](https://fssai.gov.in/upload/notifications/2022/06/62ac3f9dba33cGazette-Notification_Vegan_Food_17_06_2022.pdf)  
<sup>6</sup> 2025 SCC OnLine All 599.  
<sup>7</sup> <https://www.cnbctv18.com/healthcare/over-40000-cases-filed-against-sale-of-unsafe-protein-powders-dietary-supplements-health-minister-17437521.htm>  
<sup>8</sup> <https://www.hindustantimes.com/business/fssai-cracks-down-on-protein-supplements-over-health-risks-and-misleading-claims-101719745511091.html>

<sup>9</sup> Section 3(1)(o)  
<sup>10</sup> *Bhadra Oil Mills v. Govt. of Kerala*, 2017 SCC OnLine Ker 41003.  
<sup>11</sup> [https://fssai.gov.in/upload/uploadfiles/files/Guidance\\_Document\\_flour\\_milling\\_sector\\_19\\_01\\_2018.pdf](https://fssai.gov.in/upload/uploadfiles/files/Guidance_Document_flour_milling_sector_19_01_2018.pdf)  
<sup>12</sup> <https://www.livemint.com/companies/post-spices-controversy-fssai-cancels-manufacturing-licences-of-111-spice-firms-11719732574495.html>  
<sup>13</sup> *Piyush Gupta v. State of U.P.*, 2025 SCC OnLine All 599.  
<sup>14</sup> <https://www.fssai.gov.in/upload/advisories/2018/02/5a968f14cc994189.pdf#:~:text=>  
<sup>15</sup> <https://fssai.gov.in/upload/advisories/2024/12/674efa161d756Adobe%20Scan%203%20Dec%202024.pdf>; <https://www.fssai.gov.in/upload/uploadfiles/files/Media%20Compendium%20-Action%20on%20Online%20Food%20Delivery.pdf>  
<sup>16</sup> <https://fssai.gov.in/upload/advisories/2024/12/674efa161d756Adobe%20Scan%203%20Dec%202024.pdf>  
<sup>17</sup> [https://fssai.gov.in/upload/advisories/2025/05/683854948c294Advisory%20-%20100\\_%20claim.pdf](https://fssai.gov.in/upload/advisories/2025/05/683854948c294Advisory%20-%20100_%20claim.pdf)

fruit juices”.<sup>18</sup> This challenge is pending before the Delhi High Court.

Importantly, courts have underscored that there has been no intention to create unlimited liability for mere intermediaries or consignees. A recent Allahabad High Court case held that a restaurant – while an FBO for food it prepares – could not be treated as liable for a sealed spice it purchased from a licensed manufacturer.<sup>19</sup> Section 3(1) (o) of the Act likewise places strict liability on the person in charge of the food business, rather than on an indirect participant. However, FSSAI’s position is that “food safety is a collective responsibility – from manufacturing to last mile delivery.”<sup>20</sup> Every link in the chain must therefore actively ensure compliance.



## Officers under the Act

The Act contemplates enforcement through a web of officers operating under the aegis of the FSSAI, set out below:

1. **Commissioner of Food Safety:** The Commissioner of Food Safety (**Commissioner**), appointed by the State Government, oversees efficient implementation of food safety and standards. The Commissioner appoints and supervises officials including Designated Officers, Food Safety Officers, and Food Analysts, who oversee the implementation of the Act at district and local levels. Empowered with wide-ranging powers, the Commissioner can conduct compliance surveys of industrial units in the State that manufacture or process food, organise training programmes, generate awareness on food safety, ensure implementation of the prescribed food standards, and sanction prosecution in case involving offences punishable by imprisonment under the Act. Moreover, in the interest of public health, the Commissioner may also prohibit, for a period not exceeding one year the manufacture, storage, distribution or sale of any article of food.

▮ **Insight: Whether permanent/indefinite prohibition can be imposed** – Courts have taken

different views on whether the Commissioner can impose a sort of permanent ban by issuing successive notifications year on year. This issue has particularly come up regarding prohibitions imposed on tobacco products.

- ▮ The Madras High Court and Patna High Court have held that this provision cannot be used for imposing a permanent ban by issuing successive notifications year on year. According to their rulings, the power is for imposing a temporary ban amid public health concerns; for instance, imposing a ban on poultry products during outbreaks such as bird flu.<sup>21</sup>
- ▮ The Delhi High Court, however, differed with this view in a recent judgment,<sup>22</sup> stating “Section 30(2) (a) embodies a power to prohibit a particular food article as well as regulate the nature of additives which may be permitted to be added in food articles. Therefore, the power to establish standards for food under the Act would include within its purview the power to prohibit the manufacture, sale, storage and distribution of scheduled tobacco products. The scheme of Section 30(2)(a) clearly stands on a pedestal distinct and different from other statutory provisions which empower authorities to prohibit

<sup>18</sup> [https://www.fssai.gov.in/upload/advisories/2024/06/665eb7e80327aAdvisory%20100\\_percent%20Fruit%20juices.pdf](https://www.fssai.gov.in/upload/advisories/2024/06/665eb7e80327aAdvisory%20100_percent%20Fruit%20juices.pdf)

<sup>19</sup> Piyush Gupta v. State of U.P., 2025 SCC OnLine All 599.

<sup>20</sup> <https://www.fssai.gov.in/upload/uploadfiles/files/Media%20Compendium%20Action%20on%20Online%20Food%20Delivery.pdf#:~:text=%E2%80%9CFood%20safety%20is%20a%20collective,ensure%20compliance%20at%20every%20stage>

<sup>21</sup> Food Safety & Drugs Control Dept v. Jayavilas Tobacco Traders LLP, 2023 SCC OnLine Mad 408 (Division Bench); Omkar Agency v. Food Safety and Standards Authority of India, 2016 SCC OnLine Pat 10175 (Division Bench)

<sup>22</sup> Commr. (Food Safety) v. Sugandhi Snuff King (P) Ltd., 2023 SCC OnLine Del 2003 (Division Bench)

*or ban for a temporary period of time. The powers conferred under Section 30(2)(a) are not emergency provisions per se. Consequently, as long as the interest of public health requires a prohibition being imposed with respect to the addition of tobacco or nicotine in food articles, the appellant would clearly be justified in continuing those orders till the situation is remedied or where it is ultimately established on empirical terms that such additives would not constitute any harm to public health.”*

- ⌋ However, as discussed subsequently, proceedings are pending in the Supreme Court challenging the judgments of the Madras, Delhi, and Patna High Courts on whether tobacco can be considered to fall under the purview of the Act. It will be interesting to note the Supreme Court’s observations on the scope of power under Section 30(2)(a).
- ⌋ **Insight: Interplay of Section 30 and Section 34:** Section 30 of the Act sets out the powers of the Commissioner, while Section 34 outlines the power granted to the Designated Officer to issue emergency prohibition notices and orders. In its judgment, the Patna High Court also considered in some detail how the Commissioner must exercise the powers under Section 30.<sup>23</sup> The Court held that in exercising these powers, the Commissioner must rely on objective evidence establishing that the food in question violates regulatory standards. It also emphasised that the Commissioner can only issue such a prohibition order if the Designated Officer’s report confirms the presence of a health risk at the food business.
- ⌋ The Court held therefore that Section 30(2)(a) must be read in light of Section 34. The process of imposition of an emergency prohibition by the Commissioner would thus be as follows: (i) on being satisfied of the presence of a health risk condition exists at the food business, the Designated Officer must first serve notice on the food business operator (referred to in the Act as an “emergency prohibition notice”); (ii) thereafter, the Designated Officer would apply to the Commissioner of Food Safety for

imposing the prohibition; (iii) if the Commissioner is satisfied with the Designated Officer’s report that a health risk condition exists with respect to the food business, the Commissioner would proceed to impose prohibition.

- ⌋ However, the Bombay High Court took a different view in a recent judgement, holding that the Commissioner can exercise powers in the entire state under Section 34, unlike the Designated Officer whose power, under Section 36, is circumscribed to the district. Further, the powers of a Designated Officer under Sections 31(3) and 4, 32, 33(4), 34, and 36(3) are independent of the powers conferred on the Commissioner under Section 30(2). Consequently, since a report issued by the Designated Officer would be limited to within the district, it would be fallacious to interpret that the Commissioner’s powers under Section 30(2)(a) are dependent on the Designated Officer’s report. The Court clarified that a Commissioner may exercise any power under Section 30(2) on the basis of independent research, medical reports, and scientific studies, without requiring the Designated Officer’s recommendation.<sup>24</sup>
- ⌋ As mentioned earlier, a challenge against the Patna High Court’s judgment in **Omkar** is pending in the Supreme Court. The Supreme Court’s findings on the manner and scope of powers under Section 30 is expected to have far-reaching implications.
- ⌋ **Insight: Principles of natural justice:** Courts have generally upheld a requirement of providing parties a fair chance of hearing before an order is passed that could result in adverse civil consequences for them, including in respect of Section 30.<sup>25</sup> However, the Court has recognised that an exceptional situation may warrant an immediate order prohibiting the manufacture or sale of food in the interest of public health. In such compelling and threateningly emergent situations, the principles of natural justice may not come into play.

<sup>23</sup> *Omkar Agency v. Food Safety and Standards Authority of India*, 2016 SCC OnLine Pat 10175 (Division Bench)

<sup>24</sup> *Mohd. Yamin v. State of Maharashtra*, 2021 SCC OnLine Bom 26 (Division Bench).

<sup>25</sup> *Nestle India Ltd. v. Food Safety & Standards Authority of India*, 2015 SCC OnLine Bom 4713 (Division Bench); *Sugandhi Snuff King (P) Ltd. v. State (NCT of Delhi)*, 2022 SCC OnLine Del 3149 (Division Bench)



2. **Designated Officer:** The Designated Officer, appointed by the Commissioner, heads the food and safety administration for each district and is responsible for several critical functions, including the issuance or cancellation of licenses of food business operators, receiving reports and samples of articles of food from the Food Safety Officers in the jurisdiction and facilitating their analysis, recommending to the Commissioner for sanction to launch prosecutions in case of contraventions punishable with imprisonment. The Designated Officer is also empowered with sanctioning or launching prosecutions for offences punishable with fine, maintaining a record of inspections made by Food Safety Officers, and investigating complaints on violations of the Act as well as grievances lodged against Food Safety Officers.

3. **Food Safety Officer:** Food Safety Officers are the building blocks of the enforcement mechanism under the Act. Appointed by the Commissioner of Food Safety for local areas, their responsibilities are defined through Regulations formulated under the Act. Within their designated jurisdiction, Food Safety Officers are empowered to enforce and execute the provisions of the Act, particularly in instances where responsibility is not explicitly or implicitly assigned to some other authority. These powers include inspecting places where food is manufactured or stored, seizing samples suspected of violating the Act or its associated rules and regulations and collecting and sending samples of food for analysis to a Food Analyst.

4. **Food Analyst:** Food Analysts are appointed by the Commissioner of Food Safety for local areas, with separate Food Analysts designated for different articles of food. Their primary responsibility is to analyse such samples sent by Food Safety Officers or other persons authorised under the Act. The Food Analysts may conduct these analyses at food laboratories and research institutions notified by the FSSAI.

## Actions that can be taken under the Act

Broadly, the actions that can be taken can be taken under the Act are as follows:<sup>26</sup>



1. *Suspension or cancellation of licence for the manufacture, sale, and supply of the food product:* A Designated Officer with reasonable grounds to believe that a food business operator has violated specified regulations under the Act may serve the operator with an “improvement notice”. This notice outlines *inter alia* the grounds for believing that the food business operator has failed to comply with the regulations and sets out the corrective measures the operator must take to secure compliance within the stipulated times. Should the operator fail to comply with the improvement notice, the Designated Officer may cancel the license, but after allowing the licensee an opportunity to show cause. In the interest of public health, the Designated Officer may also suspend any license, duly recording in writing the reasons for the suspension.
2. *Prohibition/ban on the manufacture, sale, and supply, etc. of food product, in terms of the exercise of powers under Section 30 and Section 34 discussed above.*
3. *Imposition of fines, in terms of the procedure under Section 68 discussed below.*
4. *Launch of criminal prosecution for violation of provisions under the Act and its rules and regulations, in terms of the procedure under Section 42 discussed below.*

<sup>26</sup> Nestle India Ltd. v. Food Safety & Standards Authority of India, 2015 SCC OnLine Bom 4713

## Criminal Liability

When a food business operator violates the FSSAI's regulations, he may be liable for civil or criminal consequences. In respect of offences where criminal penalties are contemplated, Section 42 of the Act sets out the procedure for launching prosecution, as follows:

1. The Food Safety Officer inspects the food business, draws samples, and sends them to the Food Analyst.
2. On receiving the sample, the Food Analyst analyses it and submits the analysis report detailing the methods of sampling and analysis within 14 days to the Designated Officer, with a copy to the Commissioner of Food Safety. As per Section 46(3), if the analysis report cannot be completed within 14 days, the Food Analyst must inform the Designated Officer and Commissioner of the reasons for the delay and specify the expected time for analysis completion.
3. After scrutinising the Food Analyst's report, the Designated Officer must decide whether the contravention is punishable with imprisonment or only fine. If imprisonment is deemed necessary, the Designated Officer must forward the recommendation within 14 days to the Commissioner for sanctioning prosecution. On the other hand, when the Designated Officer concludes that the contravention should be punishable with fine only, the amount of penalty would then be adjudicated before the Adjudicating Officer.

Notably, it has been held that in the absence of following the procedure for launching prosecution laid down under Section 42, a person would not be liable to be prosecuted for the offence under the Act.<sup>27</sup> Further, while the police does not play a part in launching prosecution under the Act, offences punishable by imprisonment must be tried before the Courts.

Chapter IX of the Act details penalties for various offences under the Act, with punishments ranging from imprisonment to fines depending on the nature and gravity of the offence. For instance, under Section 59, the punishment for the manufacture or distribution of unsafe food resulting in death may attract life imprisonment and a minimum fine of INR 10 lakh. On the other hand, under Section 61, providing false information may incur only a

fine capped at INR 10 lakh, without imprisonment. Under Section 33, if a food business operator is convicted and the Court is convinced that health risks exist in that food business, the Court may, after providing the operator an opportunity to be heard, issue prohibition orders preventing the food operator's participation in the management of any food business.

In respect of the launching of criminal prosecutions, the FSSAI has also issued a manual outlining the adjudication, prosecution, offences, and penalties under the Act, accessible [here](#).

## Civil Liability

Section 68 of the Act sets out the provisions for adjudication of cases where the Designated Officer determines that a contravention should be punished by fine only. In such instances, the State Government notifies an officer of the rank of Additional District Magistrate or above of the district where the alleged offence is committed to serve as the Adjudicating Officer, as prescribed by the Central Government. On deciding the offence is punishable only with fine, the Designated Officer authorises the Food Safety Officer to file an application before the Adjudicating Officer for adjudication of the alleged offence.

The Adjudicating Officer, after providing the offender a reasonable opportunity for defence, and if, satisfied upon inquiry that a contravention has occurred, may impose a penalty deemed appropriate under the provisions relating to that offence. The Adjudicating Officer has the powers of a civil court, and (a) all proceedings before the officer are deemed judicial under Sections 193 and 228 of the IPC (now Sections 229 and 267 of the Bharatiya Nyaya Sanhita, 2023); (b) the officer is deemed to be a court under Sections 345 and 346 of the Code of Criminal Procedure, 1973 (now Sections 384 and 385 of the Bharatiya Nyaya Suraksha Sanhita, 2023).

While determining the quantum of penalty, the Adjudicating Officer must follow the guidelines prescribed in Section 49. The order the Adjudicating Officer passes is challengeable before Food Safety Appellate Tribunal. Under Section 71(6), any appeal challenging the Order of Food Safety Appellate Tribunal must be a Civil Appeal. This appeal will be heard by a Single Judge of High Court by way of First Appeal. For

<sup>27</sup> *Sailen Ganguly v. State of W.B.*, 2016 SCC OnLine Cal 153

cases requiring further recourse, a Criminal Appeal under Section 76 will be heard by the Division Bench.<sup>28</sup>

Section 72 states that no civil court shall have jurisdiction over any matters that fall under the authority of the Adjudicating Officer or the Food Safety Appellate Tribunal, and no court or other authority can issue injunctions related to any action taken or intended to be taken under any power conferred by or under the Act.

Set out below is a brief overview of the penalties that may be imposed for various contraventions of the Act:

1. **Section 51 (Sub standard food)** – Selling any food that is “sub-standard” is punishable with a fine up to INR 5 lakh. Where an offence is only punishable by fine, but the FSSAI authorities have sought to prosecute offenders, Courts have quashed such proceedings. For instance, where prosecution was sought to be done under Section 51, 55 and 63, the Madras High Court noted that only Section 63 provided for imprisonment, and Sections 51 and 55 provided for fine. Hence, to that extent, the criminal proceedings were quashed and liberty was granted for proceedings to be initiated before the Adjudicating Authority for violation of Sections 51 and 55.<sup>29</sup>
2. **Section 52 (Misbranded food)** – Misbranding (false or misleading labeling of food) is punishable with a fine up to INR 3 lakh. In *Manik Hiru Jhangiani v. State of M.P.*,<sup>30</sup> the Supreme Court held that misbranding violations attract only the FSSAI penalty (fine up to INR 3 lakh) and not imprisonment. The Court quashed prosecutions pending under the erstwhile Prevention of Food Adulteration Act, 1954 which had been repealed. Section 52 of the FSSAI Act now prevails and for such a violation, imposes only a fine and not imprisonment.
3. **Section 54 (Food containing extraneous matter)** – Selling food containing “extraneous matter” (e.g. harmful or prohibited additives) carries a fine up to INR 1 lakh.
4. **Section 55 (Failure to comply with FSO directions)** – If a Food Business Operator wilfully disobeys a lawful direction of the Food Safety Officer, the penalty is up to INR 2 lakh.
5. **Section 59 (Unsafe food)** – Manufacturing or selling unsafe food is punishable by imprisonment and/or fine, depending on harm caused. Section 59 provides up to 6 months’ jail (with INR 1L fine) if no injury, up to 1 year (INR 3L) for non grievous injury, up to 6 years (INR 5L) for grievous injury, and 7 years–life (min. INR 10L fine) for death.
6. **Section 60 (Interfering with seized items)** – Tampering with or removing food or equipment seized by a Food Safety Officer is punishable by up to 6 months’ imprisonment and INR 2 lakh fine.
7. **Section 61 (False information)** – Knowingly providing false information or documents to authorities (e.g. FSO) is punishable by up to 3 months’ imprisonment and INR 2 lakh fine.
8. **Section 62 (Obstructing or impersonating FSO)** – Resisting or obstructing a Food Safety Officer in performance of duty (or impersonating one) attracts up to 3 months’ imprisonment and INR 1 lakh fine.
9. **Section 63 (Unlicensed business)** – Carrying on a food business without a required licence is punishable by up to 6 months’ imprisonment and INR 5 lakh fine.



<sup>28</sup> *State of Maharashtra v. Pankaj Gupta*, 2022 SCC OnLine Bom 7382  
<sup>29</sup> *Mohammed Yasith vs. Food Safety Officer* (2020) 3 MadWN (Cri) 290  
<sup>30</sup> 2023 SCC OnLine SC 1678

## Offences committed by companies

Under Section 66(1) of the Act, if a company is found to have committed an offence, both the company and every individual who was in charge of and responsible for its business operations at the time of the offence are deemed guilty and are liable to be proceeded against.

However, if a company operates through multiple establishments, branches, or units, the responsibility of food safety violations falls on the person nominated by the company to supervise the specific location, typically the head or the person in charge, according to the first proviso to Section 66(1). However, such person can avoid punishment by proving lack of knowledge about the offence or that all due diligence was exercised to prevent it.

Rule 2.5.1 of the Food Safety and Standards Rules, 2011, mandates companies with multiple establishments, branches, or units to formally nominate individuals for food safety compliance. These nominations must come with due certification that the said person has been so nominated for the purposes of Section 66 of the Act and Regulations. The company must inform the licensing authority in the prescribed form, identifying the accountable individuals for each location in relation to any potential contravention of the Act, rules/regulations, or directions.

Additionally, if proven that the company had committed an offence with the approval, cooperation, or because of the negligence of any director (or, in case of a firm, partner), manager, secretary, or other officer of the company, such individuals shall also be held liable and may be prosecuted and punished accordingly.

▮ **Insight:** The company as well as the nominated person, are to be held guilty of the offences and/or liable to be proceeded against and punished accordingly. The Prevention of Food Adulteration Act, 1954, which was the predecessor of the Act, similarly provided for punishment by the nominated person and the company for offences committed by companies. The Supreme Court has clarified that in the absence of the company, the nominated person cannot be convicted or *vice versa*.<sup>31</sup> Further, the Courts have emphasised that

merely holding the title of director of a company is not sufficient to make the person liable under Section 66 of the Act. Under Section 48 of the Act, knowledge is an essential for an act to be considered an offence.<sup>32</sup> Further, Section 66(2) of the Act clearly mandates that if the director, manager, secretary, or any other officer of the company is shown to be an accused in the complaint, the complainant must demonstrate that the offence occurred with the individual's consent, connivance, or due to negligence. Mere designation is not sufficient to establish the offence was committed with consent or connivance.<sup>33</sup>

## Quashing of criminal prosecution initiated under the Act

Courts have largely been strict with the application of procedural safeguards set out in the Act, including regarding requirements such as specified laboratories for sample analysis, timelines for analysis completion and submission of reports, deadlines for sanctioning recommendations for prosecution, etc. These lapses are closely scrutinised when considering petitions to quash criminal proceedings initiated under the Act.

▮ **Insight:** Following are some illustrative grounds on which criminal proceedings initiated under the Act were quashed by Courts on account of procedural lapses violating the Act/Rules/Regulations:

- Analysis samples from the Food Analyst can only be sent to laboratories (a) accredited and recognised by the National Accreditation Board for Testing and Calibration of Laboratories and (b) notified by the FSSAI under Section 43(1) of the Act. Reliance cannot be placed on the results of analysis done at laboratories that do not pass these twin tests.<sup>34</sup>
- The Food Analyst must submit the report within 14 days as prescribed in Section 42(2) of the Act. If delayed, the Designated Officer and Commissioner of Food Safety must be informed of the same, with reasons and a specific the timeline required for analysis, as per Section 46(3). The reasons for delay must be provided within the 14-day period.

<sup>31</sup> Hindustan Unilever Ltd. v. State of M.P., (2020) 10 SCC 751

<sup>32</sup> Ram Nath v. State of U.P., (2024) 3 SCC 502

<sup>33</sup> Hemant v. State of Maharashtra, 2017 SCC OnLine Bom 8230

<sup>34</sup> Nestle India Ltd. v. Food Safety & Standards Authority of India, 2015 SCC OnLine Bom 4713 (Division Bench); Shyamkumar Tulsilal Warnawal v. State of Maharashtra, 2025 SCC OnLine Bom 271, Ramamoorthi Rao v. State of Kerala, 2023 SCC OnLine Ker 11201



Considered mandatory provisions, the violation of which has been allowed as a ground for quashing;<sup>35</sup> however, courts have not always been consistent in the application of this principle.<sup>36</sup>

- Cases have been also quashed where the Designated Officer did not send the recommendation to the Commissioner for sanctioning prosecution within 14 days of receipt of the report, as required under Section 42(3).<sup>37</sup>
- Section 77 of the Act provides that notwithstanding anything contained in the Act, no court shall take cognizance of an offence under the Act after the expiry of the period of one year from the date of commission of an offence, unless the Commissioner of Food Safety approves, for reasons to be recorded in writing, prosecution within an extended period of up to three years. The date of commission of offence is the date on which the Food Analyst's report is received.<sup>38</sup> In cases where the extension beyond one year was approved without providing reasons, it was held to be violation of a mandatory provision and grounds for quashing.<sup>39</sup>
- The absence of specific allegations demonstrating vicarious liability of the director of a company or partner of a firm in terms of Section 66 has been considered ground for quashing proceedings against the said parties.<sup>40</sup>
- Where the provision alleged to have been violated required specific intent to commit the offence and sanction for prosecution was granted with total non-application of mind, without any reference to the relevant matter and material, and in a single-line order without recording any reasons, it was considered grounds for quashing.<sup>41</sup>
- In one case, tobacco products banned in Tamil Nadu were found in a shop. The FSSAI arrayed



the owner of the shop and the manufacturer as accused parties. However, as the manufacturer was in Karnataka, where the said products were not banned, and nothing on record demonstrated that the manufacturer was directly involved in the sale of the banned substance in Tamil Nadu, proceedings against the manufacturer were quashed.<sup>42</sup> On the other hand, where a restaurant had purchased turmeric from a registered manufacturer in a sealed packet with a proper invoice and the said food had been found to be unsafe, it was held that prima facie liability would be of the manufacturer or its distributor and not of the restaurant, and proceedings against the restaurant were quashed.<sup>43</sup>

## Import of articles of food

Under Section 25 of the Act, all imported articles of food are subject to the Act. The Central Government is also required to follow the FSSAI standards when regulating the food imports under the Foreign Trade (Development and Regulation) Act, 1992. Importing any unsafe, misbranded, or sub-standard food or food containing extraneous matter

<sup>35</sup> H.P. Gupta v. S. Selvaraj, 2023 SCC OnLine Mad 3293; Noufal N.K. v. Food Safety Officer, 2023 SCC OnLine Mad 3111

<sup>36</sup> Blue Planets Foods (P) Ltd. v. State, 2023 SCC OnLine Mad 8119

<sup>37</sup> Srilakshmi v. Food Safety Officer, 2022 SCC OnLine Mad 6564 (Division Bench); P. Panneer Selvam v. P. Jaganathan, 2022 SCC OnLine Mad 9019

<sup>38</sup> Kewal Dairy v. State of UP 2024 SCC OnLine All 7190; State of Rajasthan vs Sanjay Kumar (1998) 5 SCC 82

<sup>39</sup> P. Panneer Selvam v. P. Jaganathan, 2022 SCC OnLine Mad 9019

<sup>40</sup> K.T. Venkates Raja v. State, 2023 SCC OnLine Mad 4480; Ahammed Naseef v. State of Kerala, 2025 SCC OnLine Ker 1692

<sup>41</sup> Kaushik Keshavlal Lakhani v. State of Maharashtra, 2023 SCC OnLine Bom 2070

<sup>42</sup> S.S. Essence (P) Ltd. v. State of T.N., 2023 SCC OnLine Mad 5783

<sup>43</sup> Piyush Gupta v. State of U.P., 2025 SCC OnLine All 599

into India is prohibited. Imported food consignments are scrutinised and inspected by the officers authorised by the FSSAI and notified from time to time for this purpose. Such officers may draw samples and pass directions to ensure compliance with standards of packaging and labelling. Food articles shall be disposed of when not in conformance with the Act and the relevant rules and regulations.

- ▮ **Insight:** The High Court of Calcutta has underscored the scope of the FSSAI's powers under Section 25 of the Act in two judgments, refusing to interfere in exercise of its writ powers. In *R. Piyaarelall Import & Export Ltd. v. Union of India* (2012 SCC OnLine Cal 13245), it refused to intervene in a matter where samples of a food consignment failed to conform to parameters stipulated by the FSSAI for foreign matter and mineral matter. It held that discretion in customs-bonded area rests with the authorised FSSAI officer regarding allowing an importer facilities to improve the quality of foodgrains. To permit this, the authorised officer must be satisfied that the food can be brought in conformity with the stipulated standards.
- ▮ In another case,<sup>44</sup> the Calcutta High Court dealt with the import of food products that were safe for consumption but failed to meet the applicable labelling standards. It ruled that FSSAI is not obligated by law to permit the import of food articles merely because they are safe for consumption if they have not fulfilled labelling requirements, as it would defeat the provisions of the regulations. The Court emphasised that the Act and related regulations operated on a principle of strict compliance dictated by public interest.

## Overriding nature of the Act

The FSSAI's directions have been given due regard by Courts,<sup>45</sup> and the Act overrides conflicting provisions in other laws applying to the aspects covered by the Act,<sup>46</sup> including those prescribing more stringent penalties.<sup>47</sup> In some cases, Courts have even denied bail considering the

nature and gravity of accusations regarding contaminated/adulterated food.<sup>48</sup> The FSSAI, therefore, plays a central and powerful role in ensuring public health and safety in India.

- ▮ **Insight:** In *Ram Nath v. State of U.P.*, (2024) 3 SCC 502, the Supreme Court held that by virtue of Section 89 of the Act, the Act would override all other laws, not merely those related to food. The Court held that offences established under Section 272 and 273 of the IPC also met the criteria under Section 59 of the Act and as the Act contains comprehensive substantive and procedural provisions for addressing such offences, and since Section 89 of the Act provides overriding authority, Section 59 would take precedence over the provisions of Sections 272 and 273 of the IPC when such offences are committed, precluding simultaneous prosecution under both statutes.
- ▮ This is a notable departure from the Supreme Court's ruling in *State of Maharashtra v. Sayyed Hassan Sayyed Subhan*, (2019) 18 SCC 145, where it relied on Section 26 of the General Clauses Act, 1897 to hold that prosecution and punishment may be carried out under either or both enactments so long as the offender was not punished twice for the same offence.
- ▮ The Allahabad High Court in *Kewal Dairy v. State of UP*<sup>49</sup> also relied on the decision in *Ram Nath* to state that Section 77 of the Act, which provides for the time limit for prosecution under the Act, would override the provisions of Section 468 of the Criminal Procedure Code, 1973 – now Section 514 of the Bharatiya Nyaya Suraksha Sanhita, 2023 – which bars taking cognizance of an offence after the expiry of limitation.
- ▮ Thus, the decisions in *Ram Nath* and *Kewal Dairy* imply that the provisions of the Act would override any other law, insofar as the law pertains to the aspects within the domain of food in the Act.

<sup>44</sup> Food Safety and Standards Authority of India v. Heartland Trading Company Pvt. Ltd., 2014 SCC OnLine Cal 19348 (Division Bench)

<sup>45</sup> R. Piyaarelall Import & Export Ltd. v. Union of India, 2012 SCC OnLine Cal 13245

<sup>46</sup> Section 89 of the Act; Ram Nath v. State of U.P., (2024) 3 SCC 502

<sup>47</sup> Manik Hiru Jhangiani v. State of M.P., 2023 SCC OnLine SC 1678

<sup>48</sup> Sukadev Sahoo v. State of Odisha, 2021 SCC OnLine Ori 680  
<sup>49</sup> 2024 SCC OnLine All 7190

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