NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI

CONSUMER CASE NO. 870 OF 2015

1. UNION OF INDIA
(THROUGH SECRETARY), DEPARTMENT OF
CONSUMER AFFARIS, KRISHI BHAWAN,
NEW DELHI-110001 .....Complainant(s)

Versus

1. NESTLE INDIA LIMITED, NESTLE HOUSE
JACARANDA MARG, M- BLOCK, DLF CITY, PHASE-II,
GURGAON-122002-05,
HARYANA
2. .
.
.
. .....Opp.Party(s)

BEFORE:

HON'BLE MR. JUSTICE A. P. SAHI,PRESIDENT

FOR THE COMPLAINANT : MR.VIKRAMJIT BANERJEE, LD. ASG
MR. MUKUL SINGH, CGSC
MR. SIDDHARTHA SINHA, ADVOCATE
MS. IRA SINGH, ADVOCATE
MR. PRASHANT RAWAT, ADVOCATE

FOR THE OPP. PARTY : MR. HARISH SALVE, SR. ADVOCATE
MR. AMIT SIBAL, SR. ADVOCATE
MR. RAVINDER NARAIN, ADVOCATE
MR.RAJESH BATRA, ADVOCATE
MR.SIDDHARTH BANTHIA, ADVOCATE
MS. SMARIKA SINGH, ADVOCATE
MR. SAIFUR REHMAN, ADVOCATE
MR. SARIM KHAN, ADVOCATE
MS. SONIA KUKREJA, ADVOCATE
MR. ROHIT CHANDRA, ADVOCATE
MR. DARPAN SACHDEVA, ADVOCATE
MR.RISHABH SHARMA, ADVOCATE
MR. ARJUN RANA, ADVOCATE

Dated : 02 April 2024

ORDER

A. P. SAHI, J (PRESIDENT)

1. Espousing the cause of the Indian population comprising of millions of consumers, the Department of Consumer Affairs, Government of India has stepped out to institute this Complaint under the Consumer Protection Act, 1986 urging that the express misrepresentation, deceptive activities and utilisation of possibly hazardous substances in its products, the Opposite Party has indulged in the manufacturing and selling of its products which is not only unsafe from the point of view of the health of the citizens of this country, but is also a violation of the laws that are structured to protect consumers. The prayer is to prevent the OP from undertaking any unwanted or undesirable manufacturing activity of a commodity that is likely to jeopardize the general health conditions of the citizenry, who on extensive scale consume the products of the Opposite Party, namely, Maggi Masala Noodles with tastemaker, Maggi Oats Masala Noodles with alleged tastemaker and other variants with the alleged deceptive labelling of the product by reciting "No Added MSG" on such products.

2. The nature of the allegations made in the larger interest of consumers alleging deficiencies on the shortcomings have given rise to this Complaint lodged by the Sovereign Union Government of this country contending that the Opposite Party M/s Nestle India Limited is a subsidiary of Nestle S. A. of Switzerland and is engaged in the business of manufacturing and sale of food products in India. Maggi noodles and its variants are the products that are presently in question which according to the pleadings is consumed by a large population especially appealing to children.

3. The present Complaint is one of the pioneering efforts undertaken by the Government of India to secure the rights of the consumers in this country in order to avoid any adverse effects on the health of the consumers and at the same time prevent the carrying on of any such manufacturing activity of a food commodity which according to the Complainant is adverse to the well-being and health of the population of this country. The contention is that neither the product is healthy nor safe and therefore it cannot be treated as an enjoyable product which the population at large has been led to believe through deceptive labelling and misrepresentation. In essence the argument is that the products advertised, marketed and sold by the Opposite Party presently in question is no longer a fun food and is rather a hazardous food stuff that has been misbranded alluring the consumers, particularly children who having consumed the said product on being deceptively led to believe that the product is healthy and safe.

4. The background in which this entire controversy seems to have gained importance arose out of guidelines that issued by the Ministry of Health and Family Welfare, Department of Food Safety and Standards Authority of India, Government of India dated 11.05.2013 i.e. extracted hereinunder :

"Subject: Guidelines to be followed for product approval procedure

> *Advisories relating to procedure for obtaining Product Approval (PA) from FSSAI have earlier been issued including their hosting on the FSSAI website. Feedback on the same has been received from various stakeholders regarding the complexity and time lines for product approval. Therefore, to streamline the product approval procedure with due consideration to the safety of food and*

public health, in supersession of earlier advisories, food products for which the standards are not specified under FSS Act 2006, Rules & Regulations made thereunder will be granted product approval. The following procedure shall come into force with immediate effect,

***1 (a)** Food products where the safety of its ingredients present are known and are permitted under FSS Regulation, 2011/Codex and other regulatory bodies like EU/FSANZ/USFDA etc. and the food product does not contain plants or botanicals or substances from animal origin will be granted product approval. The application in form 1 (a) along with the affidavit to be submitted by the Food Business Operator*

(FBO) for the product approval shall be accompanied by following documents

i.Complete list of ingredients (specify the level of its use)

ii. Copy of the label for products in the market to be placed in the market

iii. Category number of the product as applicable under the Indian Food Category Code

After scrutiny of the application and documents and on the condition that the documents submitted by the FBO are satisfactory, Product Approval Division (PAD) shall grant the product approval.

***1(b)** Food products where the safety of its ingredients present are known and are permitted under FSS Regulation, 2011/Codex and other regulatory bodies like EU/FSANZ/USFDA etc. and the food product contain ingredients including plants or botanicals or substances from animal origin shall be considered for Product approval/NOC PA will be given to all products where safety assessment is completed. NOC will be granted to food products in market where license has been granted under previous Act/Orders. The application in form 1 (b) along with the affidavit to be submitted by the Food Business Operator (FBO) for the product approval will be accompanied by following documents:*

i.Complete list of ingredients (specify the level of its use)

ii. Copy of the label for products in the market/to be placed in the market

iii. Category number of the product under the Indian Food Category Code.

***1(c)** Food products falling under category 1 (b) above, prima facie where safety of the ingredients is insufficient to make a safety determination would be referred to respective Scientific Panels. Product approval shall be granted/ denied on the basis of risk assessment.*

***1(d)** Products for which the safety of its ingredients and their conditions of use as stated therein and published by FSSAI or products whose ingredients are standardized or permitted under FSSR 2011 will not require further safety assessment except for authorization of the ingredients contained therein The application in form 1 (d) along with the affidavit to be submitted by the Food Business Operator (FBO) for the product approval will be accompanied by following documents:*

i. Complete list of ingredients (specify the level of its use)

ii. Copy of the label for products in the market/to be placed in the market

iii. Category number of the product under the Indian Food Category Code

iv. Copy of PA/NOC issued by FSSAI

***2**. Safety data wherever required should be provided for all the ingredients.*

3. *The use of minerals/ vitamins/ proteins/ metals/amino acids/ their compounds should not exceed the Recommended Daily Allowance for Indians. In this regard FBO shall follow the guidelines issued by Indian Council of Medical Research (ICMR) / National Institute of Nutrition (NIN) / World Health Organisation (WHO) / Food and Agriculture Organisation (FAO).*

4*. In case of rejection of application under the approval procedure, the product under reference shall be recalled as per the provisions laid down in FSS (Licensing and Registration of Food Businesses) Regulations 2011.*

5*. This procedure shall not be applicable if the food products or its ingredients are from the prohibited or banned source.*

6. *This procedure shall ipso facto be applicable to imported food products.*

7. The terms used in the advisory will carry the meaning as defined in the FSS Act. 2006. Rules and Regulations made thereunder.

8. *Application Fee: -*

1. An application fee of Rs.25.000 (Non - Refundable) is payable in respect of each application. Since product approval is a safety assessment of ingredients. different permitted colours or flavours but having same composition shall be considered a single application.

ii. For cases wherein the application is forwarded to Scientific Panel additional fee of Rs.25.000 must be deposited for processing of the application.

iii. Application fee in the form of demand draft shall be in favour of "Senior Account Officer FSSAI" at New Delhi.

9. *Product approval application forms and the format of the affidavit are attached herewith."*

5. The Opposite Party M/s Nestle India Limited on the issuance of such advisory moved an application on 27.08.2014, which is extracted hereinunder, alongwith the Check List seeking Product Approval for its product Maggi Oats Noodles:-

"Dr Sandhya Kabra

Director (PA) Product Approval

Food Safety and Standards Authority of India

(Ministry of Health & Family Welfare) MCI Building. 5 Kotla Road.

Near Mata Sundn College. New Delhi-110002

Dear Madam

Subject Product Approval/NOC application- MAGGI OATS NOODLES

With respect to advisory of product approval (No P 15025/01/2013-PA/FSSAI) issued by FSSAI, we request consideration of our application for Product approval of MAGGI OATS NOODLES which is Instant Noodles.

The Product belongs to the category of 6.4.3: Precooked pastas and noodles like products as per Indian Food Code. For other variants of Noodles falling under the same category we have already received Product Approval (enclosed herewith Annexure D') dated 9 July 2013

Enclosed here are the following documents

1 Demand Draft number 084731dated 22 08 2014 drawn on Citibank for Rs. 25000/-

2 Affidavit on Rs 100 Stamp Paper

3 Application form in prescribed format 1(d) for approval of new product

We would be grateful if you could kindly consider our application and grant us product approval

Thanking you

Yours sincerely

NESTLE INDIA LIMITED

CORPORATE AFFAIRS DEPARTMENT

L. BALAJI

HEAD OF PUBLIC AFFAIRS

CHECKLIST FOR PRODUCT APPROVAL

NAME OF FBO *NESTLE INDIA LIMITED*

NAME OF PRODUCT ***MAGGI OATS NOODLES***

NUMBER OF PRODUCT *1 AMOUNT OF FEES : 25,000/-*

Sl. No.	*INFORMATION / DOCUMENTS*	*CHECK BOX IF SUBMITTED*	*REMARKS*
1	*PRESCRIBED FORMAT FOR APPLICATION*	*1a* ☑ ~~*1b*~~ --	*Form enclosed*
2	*ORIGINAL LABEL(IF PRODUCT EXIST IN THE MARKET)*	☑	*As annexure 'A'*

	~~*PROTOTYPE LABEL (IN CASE OF NEW OR NOVEL PRODUCT*~~		
3.	*NOTARISED AFIDAVIT ON 100 RUPEES STAMP PAPER*	☑	*Enclosed*
4	*LICENSE NUMBER AND PROOF*	☑	*As annexure 'I'* *Bicholim factory license copy*
5	*PRODUCT NAME AND CODE*	☑	*MAGGI OATS NOODLES (IFC No.6.4.3)* *INSTANT NOODLES (Precooked pasta and Noodles USG Products)*
6	*INGREDIENT LIST WITH QUANTITIES*	☑	*Mentioned in the application form*
7	*ADDITIVES LIST WITH QUANTITIES*	☑	*Mentioned in the application form*
8	***CERTIFICATE OF THE ANALYSIS FROM NABL LABORATORY***	☑	*Enclosed as annexure' B"*
9	*REGULATORY STATUS OF INDIVIDUAL INGREDIENT AND ADDITIVES (PERMITTED UNDER FSS REGULATIONS 2011 CODEX (INS NO. EFSA FSANZ USFDA)*	☑	*Enclosed as annexure '2' and annexure '4'*
10	*SAFETY DOCUMENTS*	☑	*Enclosing JECPA Evaluation of additives as annexure '3'*
11	*STABILITY DATA*	☑	*Enclosed as annexure 'C'*
12	*FEE PAID (DD ATTACHED)*	☑	*DD Number 084731 drawn on Citi Bank dated 22.08.2014*
13	*AGREEMENT LETTER WITH MANUFACTURER (IF ANY)*	x	*Not applicable*

DATE:

DAK STAMP

6. It is thus on record that the Opposite Party had applied on the prescribed format with all details as required and at Sl. No.8 had also included the Certificate of Analysis from NABL Laboratory.

7. The legal contest to the said advisory had already been raised before the Bombay High Court in Writ Petition No. 2746 of 2013 **Vital Nutraceuticals Private Limited and Anr. Vs. Union of India and Food Safety and Standard Authority of India**. The challenge raised was that issuance of such an advisory was beyond the ambit and scope of the powers conferred under the Food Safety and Security Act. Since there was a difference of opinion between the two Members of the Division Bench that had heard the matter finally, the issue was referred to a learned Third Judge, who answered the Reference on 30.06.2014 approving the view taken for quashing of the said advisory as being outside the scope and ambit of the powers conferred on the Food Authority under the Food Safety and Security Act. Finally, the Writ Petition was allowed vide judgment dated 01.08.2014 which is extracted hereinunder

> *"1. By an order dated 28/01/2014, we had requested the Hon'ble Chief Justice to refer the points of reference which were framed by us either before the larger Bench or before the third Judge of this Court. Following points of reference were framed by us:-*
>
> > *(1) Whether the impugned Advisories which have been issued by Respondent No.2 have the force of law and are within the ambit and scope of the power conferred on Respondent No.2 – Food Authority under the provisions of the said Act and Rules and Regulations framed thereunder ?*
> >
> > *(2) Whether Respondent No.2 – Food Authority had the power and authority to issue these Advisories under section 16(1) read with section 16(5) read with sections 18 and 22 of the said Act without following the procedure laid down under Sections 92 and 93 of the Act of placing the Advisories/Regulations before both the Houses of Parliament ?*
>
> *2. So far as point of reference No.(1) above is concerned, one of us viz. V.M. Kanade, J. had taken a view that these Advisories, particularly the Advisory dated 11/05/2013 pertaining to product approval does not have force of law. Similarly, so far as point of reference No. (2) above is concerned, it was held by one of us viz. V.M. Kanade, J. that Respondent No.2 – Food Authority did not have power and authority to issue these Advisories under sections 16(1) read with section 16(5) read with sections 18 and 22 of the Act without following the procedure laid down under sections 92 and 93 of the Act of placing the Advisories/Regulations before both the Houses of Parliament. Brother G.S. Kulkarni, J., however, did not agree with the view which was taken by one of us viz. V.M. Kanade, J. The matter was thereafter referred to the third learned Judge viz. Ranjit More, J. who was pleased to pronounce his view on 30/06/2014. Our brother the third learned Judge Mr. Justice Ranjit More has concurred with the view taken by one of us viz. V.M. Kanade, J. and has observed in para 32 of his Judgment as under:-*
>
> > *"32. In the light of the above discussion, I hold that the impugned advisory i.e. the product approval advisory dated 11th May, 2013 issued by respondent No.2 has no force of law and is not within the ambit and scope of the power conferred on respondent No.2 – Food Authority under*

the provisions of the FSS Act, the Rules and Regulations framed thereunder. Further it is held that respondent No.2 – Food Authority had no power and authority to issue the impugned advisory on Product Approval under Section 16(1), read with section 16(5), read with sections 18 and 22 of the FSS Act, without following the procedure laid down under Sections 92 and 93 of the Act of placing the Advisories/Regulations before both the Houses of Parliament."

3. In view of the said observation, our learned brother Mr. Justice Ranjit More has agreed with the view taken by one of us viz. V.M. Kanade, J.

4. Therefore, in view of the majority view, the point of reference No.(1) above is answered in terms of the views taken by one of us viz. V.M. Kanade, J. and the learned third Judge Ranjit More, J. who have held in their orders that ***the impugned Advisory viz. Product Approval Advisory dated 11/05/2013 issued by Respondent No.2 does not have force of law and is not within the ambit and scope of the power conferred on the Food Authority under the FSS Act and the Rules and Regulations framed thereunder.***

5. So far as point of reference No.(2) above is concerned, view taken by majority prevails and accordingly ***it is held that the Food Authority did not have power and authority to issue these Advisories under sections 16(1) read with section 16(5) read with sections 18 and 22 of the said Act without following the procedure laid down under Sections 92 and 93 of the Act of placing the Advisories/Regulations before both the Houses of Parliament.***

6. Petition is accordingly allowed and disposed of by virtue of majority view taken.

7. Parties to act on the copy of this order duly authenticated by the Registry of this Court."

8. The advisory having been quashed, any action or obligation under the said advisory was no longer permissible. The SLPs filed by the Food Authority against the above quoted judgment of the Bombay High Court were subsequently dismissed on 19.08.2015.

9. Inspite of the aforesaid pronouncement of the Bombay High Court quashing the advisory, it appears that some action for violation of the provisions of the Food Safety and Standard Regulations were sought to be taken against the Opposite Party on the basis of certain analysis made of the food products manufactured by the Opposite Party throughout the country. One of the reports is dated 06.04.2015 from the Central Food Laboratory Kolkata, intimating the Food Safety and Drug Administration at Barabanki in the State of U.P. indicating that the food sample of Maggi brand noodles (Merry Masala) had a Lead

content of 17.20 ppm. The test results were also received from GNCT Delhi, indicating similar results with variations in the level of led found. Other tests were received from the State of Gujarat, Tamil Nadu, Nagaland, Telengana, Meghalya, Punjab, Maharashtra, Uttrakhand, West Bengal and Punjab.

10. This led to the Food Safety and Standard Authority of India to pass an order on 05.06.2015 calling upon the Company to withdraw and recall all the 9 approved variants of its Maggi instant noodles from the market, carry out the rectification of the labelling of ("no added MSG") and to withdraw the food product Maggi Oats Masala Noodles with Tastemaker, which according to the Authority had been launched without the product approval under the provisions of Food Safety and Security Act, 2006 from the competent authority. The orders were to be carried out within 24 hours and directions were issued to the Commissioners throughout the country for necessary action at their end.

11. Simultaneously, the OP Company was called upon to show cause as to why the product approval of the other 9 variants of instant noodles with Tastemaker granted on 04/09.07.2013 be not withdrawn. Since the order bears a significance on the contentions raised in this complaint, the same is reproduced hereinunder (page 132-138):

Dated, the 5th June, 2015

Order

Subject: M/S Nestle India Limited's "Maggi Instant Noodles with Tastemaker and any other food products covered under Section 22 which have not been examined for risk/safety assessment-regarding.

M/S Nestle India Ltd. is aware of the currently ***on-going nation-wide concerns*** *regarding the safety of its food products cited under the above subject.* ***Pursuant to the sampling and testing*** *of the said product by the establishment of the office of Commissioner of Food Safety, Uttar Pradesh and* ***recognising the serious food safety concerns*** *arising there from, the FSSAI* ***had advised the Commissioners of Food Safety in various states to draw samples of the said Products and get the same tested from authorised laboratories.***

2. ***Three major violations*** *have been noted qua the subject cited products as of now, viz. (a)* ***presence of Lead detected in the product in excess of the maximum permissible levels of 2.5 ppm, (b) misleading labelling information on the package reading "No added MSG", and (c) release of a non-standardised food product in***

the market, viz. "Maggi Oats Masala Noodles with Tastemaker" without risk assessment and grant of product approval.

3. The Company representatives were given a hearing at 1.00 pm on 04.06.2015 by the Chairman, FSSAI and the undersigned at the office of the Food Authority with a view to seek their response in the matter and also to know as to what steps the Company had taken in terms of compliance of its obligations under Section 26 of the FSS Act, 2006. Mr. Paul Bulcke, global CEO of the Company, Mr. Etienne Benet, MD & CEO, Nestle (India), Mr. Sanjay Khajuria were present along with two more company officials. The Company representatives stated that they were committed to providing safe food for the consumers and that the whole controversy had been created on account of confusions created and lack of proper understanding of the issue. The Company's response on each of the above issues was as follows:

(a) The Company asserted that the ***testing protocols had not been followed and interpreted correctly.*** *According to them:*

(1) the Product contained two parts ie. the Noodle and the Tastemaker. The samples had been tested for each of the two components separately whereas it should have been tested as a combined end product, ie. the form in which it is finally consumed:

(2) The CFL Kolkata had also tested the product as a combined product but the results showed a very high level of Lead ***because the samples remained open for a*** *considerable period before being tested;*

(b) The ***"No added MSG" on the label was on account of lack of clarity in the regulation*** *and that the Company had followed the practice generally followed by the industry in this behalf. However, they were quick to add that the* ***Company would rectify the labels if it was interpreted as a case of mislabelling.*** *They added that the Company had already ordered printing of new labels* ***without mentioning "No added MSG thereon*** *and that their products would be packed in the re-printed packets after the current stock was exhausted. However, the* ***Company also finally agreed to pack all freshly manufactured food in the new packaging.***

(c) As regards the issue of release of one of the variants, viz. ***"Maggi Oats Masala Noodles with Tastemaker"*** *in the market without getting the product assessed for its risk/ safety and grant of product approval, the Company representative stated that* ***this product had been launched at a time when the Advisory dated 11.05.2013 was under stay granted by the Court.*** *The attention of the Company representatives was drawn to the provisions contained in Section 22 under which the food product as a* ***'Proprietary Food' was not at all allowed to be manufactured and placed in the market,*** *the Company representatives stated they would comply with the directions of the Food Authority in this behalf.*

4. Having heard the Company representatives on each of the issues, the observations of the Authority with regard to these issues are as under :

A. ***Presence of Lead in excess of the permissible safety limits:***

A1 The sample taken by the establishment of the Commissioner of Food Safety, UP and tested by the CFL, Kolkata found ***presence of lead at 17.2 ppm.*** *The test results received from the GNCT, Delhi in respect of* ***13 samples drawn from different batches*** *indicate the presence of Lead* ***in excess of the maximum permissible level of 2.5 ppm in case of 10 out of the 13 samples*** *tested (one of them being the product for which approval had not been taken). Similarly, a total of 40 samples are reported to have been drawn including the noodles of other brands. Having received the Test Reports in respect of 29 samples by last evening and found the presence of Lead in excess of the prescribed limits in 15 samples, the State of Gujarat has already issued a recall order. Further, the results of Test samples drawn and tested in the state of Tamil Nadu also confirm the presence of Lead in excess of the permissible limits, including in the Noodles of some other manufacturing companies. It is clear from the reports received from various states that there is* ***overwhelming evidence of the said food products being unsafe and hazardous for human consumption.*** *The maximum permissible level of Lead is 2.5 ppm as stated by the Company in its application dated 04.12.2012 submitted for the Product Approval for* ***'Instant Noodles with Tastemaker'****, of which Masala is one of the variants applied for. As per the Certificate of Analysis furnished by the Company with its application,* ***the Lead was 0.0153 ppm vide report dated 17.10.2012.***

A2 The arguments advanced by the Company as recorded under para 3(a) above have not been found tenable on the following grounds:

(i) The company manufactures the Noodles and the Tastemaker and markets the same in two separate packages (Tastemaker or Masala is always in a separate sachet placed inside the main packet). The prescribed Standards have to be applied in respect of each of these two components independently and have no linkage with the processing of the end product as it is consumed. Water is added to the preparation of the product before it is consumed and depending upon the source, water may also contain contaminants like lead, for which the Company may not be liable. Therefore, the final process of preparation has no linkage with the manufactured product as placed in the market and the compliance of standards has to be tested for each of two items;

(ii) It has been ascertained from CFL Kolkata that the sample was tested separately for the Noodle and the Tastemaker and it is wrong to say that the sample remained in open condition for about two months.

A.3 ***Detection of Lead in a food product as a Heavy Metal contaminant beyond permissible levels renders the food product unsafe and hazardous.*** *Reference is made to a document published by the Food Safety Authority of Ireland on Mercury, Lead, Cadmium, Tin and Arsenic in Food" (Issue No.1, May 2009 in Toxicology Factsheet Series) which succinctly brings out the adverse toxic effects of lead as under:*

> *"Short-term exposure to high levels of lead can cause brain damage, paralysis, (lead palsy), anaemia and gastrointestinal symptoms. Long- term exposure can cause damage to the kidneys, reproductive and immune systems in addition to effects on the nervous system. The most critical effect of low-level lead exposure is on intellectual development in young children and like mercury, lead crosses the placental barrier and accumulates in the foetus. Infants and young children are more vulnerable than adults to the toxic effects of Lead, and they also absorb lead more easily. Even short-term low-level exposure of young children to lead is considered to have an effect on neurobehavioural development. Consumption of food containing lead is the major source of exposure for the general population."*

A4 It is established from numerous scientific studies that presence of heavy metal ***(Lead in this case) as a contaminant beyond the permissible limits is a serious health hazard and cannot be allowed in any product in the market.***

B. ***Violation of labelling related Regulations:***

*B.1 It has been noted with concern that the **label of the said product specifically mentions thereon "No Added MSG" whereas the product is found to be containing Mono Sodium Glutamate (MSG).** The Company has stated vide its letter dated 2nd June, 2015 that its claim is regarding "Added MSG" which is a correct position since the **Company has not added any MSG (E621).** It has further stated that "it is a known fact that it is not possible to distinguish between **naturally occurring glutamate and added glutamate in foods".** The Company's aforesaid letter further reads "We have been declaring "No Added MSG" on Maggie Noodle Packs as **we do not add MSG (flavour enhancer- E621) as an additive in the product.** This is a common practice across the industry in many food products viz. instant noodles, ready to eat foods, soups etc." **Drawing support from the legal opinion taken from Mr. Justice V.N. Khare, former Chief Justice of India,** it has been further stated that "the declaration of "No Added MSG" on the labels of Maggie Noodles does not violate the Food Safety Standards Act, its rules and its regulations thereunder".*

*B.2 **The assertions made by the Company in its aforesaid letter dated 02.06.2015 have not been found acceptable.** Attention in this behalf is invited to **Regulation 2.2.1:1,** which reads as under:*

"1. Every pre-packaged food shall carry a label containing information as required hereunder unless otherwise provided, namely, ---

3. Pre-packaged food shall not be described or presented on any label or in any labelling manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character in any respect;"

*B.3 **It is amply clear that this sub-regulation prohibits any other information on the label other than what is otherwise provided for in the FSSR. It defies the common understanding as to why the Company has to make this assertion when it is not required to do so. The apparent reason for using such information on the label is driven by an undue commercial advantage/ benefit to create an erroneous impression in the minds of consumers regarding the character of the product.***

*B.4 As a matter of fact, the **USFDA** has placed a document titled **'Questions and Answers on Monosodium glutamate (MSG)'** on its website. The question framed in this behalf and the response thereto are reproduced below, being relevant and contextual:*

"How Can I know if there is MSG in my food?

FDA requires that foods containing added MSG listed in the ingredient panel on the packaging as monosodium glutamate. However, MSG occurs naturally in ingredients such as hydrolized vegetable protein, autolyzed yeast, hydrolysed yeast, yeast extract, soya extracts, and protein isolate. as well as in tomatoes and cheeses. While FDA requires that these products be listed on the ingredient panel, the agency does not require the label to also specify that they naturally contain MSG. ***However, foods with any ingredient that naturally contains MSG cannot claim "No MSG" or "No Added MSG" on their packaging.*** *MSG also cannot be listed as "Spices and flavouring."*

B.5 ***It is clearly established from the aforesaid that printing "No added MSG" on the label of the said Product is in violation of the FSS (Packaging & Labelling) Regulations. 2011.***

C. ***"Maggie Oats Masala Noodles with Tastemaker":***

C.1 M/s Nestle India Private Limited is aware that the said products, being ***proprietary food in nature, being non-standardised, are covered under Section 22 of the FSS Act, 2006*** *and* ***require risk/ safety assessment and approval before*** *these are manufactured and placed in the market.* ***The Company has applied for 'Product*** *Approval in respect of product titled* ***"Maggie Oats Masala Noodles with Tastemaker"*** *vide its application dated 27.08.2014. Certain clarifications were sought from the Company for Safety/ Risk assessment in respect of the said product vide FSSAI communication dated 25.02.2015. The Company did not respond to the clarifications within the prescribed time, and as such the* ***application already stands ordered to be closed being non-responsive.***

C.2. What is disturbing to note is ***that the Company had already released the said product in the market without completing the process of risk assessment and has been promoting its sales.*** *The argument that this product was launched when the Advisory dated* ***11.05.2013 was under stay holds no ground*** *in the face of legal provisions. This is illegal and a serious violation of the FSS Act, Rules and Regulations thereunder.* ***In the absence of safety/risk assessment and grant of Product Approval of a food product covered under Section 22 of the FSS Act, the Company has acted in violation of law.*** *As such, the product cannot be allowed to be intended for human consumption and has to be withdrawn from the market forthwith.*

*5. From the aforesaid, it is evident that the Company has also **failed to comply with its obligations laid down under section 26 of the Act** (reproduced as Annex-1) Further, the Company has violated the FSS Act, Rules and Regulations thereunder and **rendered itself liable to prosecution** under Sections 20, 22, 23, Section 24 read with Section 53, Section 26, 27, 48, 50, 52, 58 and Section 59 of the FSS Act, 2006, read with the applicable Rules and Regulations thereunder.*

*6 In the meantime, the **Commissioners of Food Safety of various states,** viz. the UP. GNCT of Delhi, Gujarat Tamil Nadu, J&K, Assam and a few others are reported to **have passed orders prohibiting the said products for varying periods within their respective jurisdictions.***

*7. Keeping the aforesaid in view, **without prejudice** to the rights of the respective Commissioners of Food Safety and the Food Safety establishments of various States and Union Territories and the consumers **to file prosecutions against the Company** for various violations, and in exercise of powers vested in the Food Authority under Section 16(1) of the FSS Act, read with the general principles enshrined under clauses (a), (b), (c) (f), and (g) of Sub-section (1) of Section 18, further read with the provisions contained in Sections 26 and 28 and the powers vested in me under Section 10(5) read with Section 29 of the FSS Act, 2006, **the Company is hereby directed to:***

*(i) **Withdraw and recall all the 09 approved variants of its Maggi Instant Noodles from the market having been found unsafe and hazardous for human consumption, and stop further production, processing, import, distribution and sale of the said product with immediate effect;***

*(ii) **As already agreed by the Company during** the hearing in respect of the rectification of label and **removal of "No added MSG",** the Company is directed to comply with the related labelling regulations in this behalf forthwith;*

*(iii) **Withdraw and recall the food product**, **"Maggie Oats Masala Noodles with Tastemaker"** for which risk/ safety assessment has not been undertaken and **Product Approval has not been granted**.*

(iv) In case any other food product falling under Section 22 of the Act is being manufactured and marketed by the Company, for which risk assessment has not been undertaken by way of grant of Product Approval/NoC by the FSSAI, the same be withdrawn from the market with immediate effect and the FSSAI be informed about such products within 24 hours of the receipt of this communication, and

(v) Take appropriate action to re-ascertain the safety of its products in compliance of the obligations cast upon the Company in terms of provisions contained in Section 26 of the Act under intimation to the FSSAI.

8. M/s Nestle India Private Limited ***is further called upon to show cause*** *within a period of 15 days from the date of issue of this communication as to why the Product Approval granted by FSSAI in respect of* ***"Instant Noodles with Tastemaker - (9 variants)" vide its letter dated 04.07.2013 be not withdrawn.***

9. The Company is further directed to submit a compliance report in this behalf within a period of three days and furnish progress reports on the recall process on a daily basis thereafter till the process is completed."

12. On the very same day, when the above quoted order was issued by the Authority, OP issued a press release withdrawing all its products off the shelves throughout the country despite the product being safe.

13. The OP also proceeded to challenge the order dated 05.06.2015 quoted above in Writ Petition No. 1688 of 2015 wherein on 12.06.2015 an interim order was passed by a Division Bench of the High Court which is extracted hereinunder :

"1. Heard Mr. Iqbal Chagla, the learned Senior Counsel appearing on behalf of the Petitioner, Mr. Anil Singh, the learned Advocate General appearing on behalf of Respondent Nos. 3 and 4 and Mr. Mehmood Pracha, the learned Counsel appearing on behalf of Respondent Nos. 1 and 2.

2. Issue notice to Respondents, returnable on 30th June, 2015. Mr. Anil Singh, the learned Advocate General waives service on behalf of Respondent Nos. 3 and 4. Mr. Pracha, the learned Counsel waives service on behalf of Respondent Nos. 1 and 2.

3. By this Petition which is filed under Article 226 of the Constitution of India, Petitioner is challenging the order dated 05/06/2015 passed by the Food Safety

and Standards Authority of India and also the order dated 06/06/2015 issued by the Commissioner of Food Safety, State of Mahararashtra.

4. Petitioner – Company is a subsidiary of NESTLE S.A. Of Switzerland and is carrying on business of manufacturing food products. The Petitioner has been manufacturing and selling food product which is known as 'MAGGI' for the last 30 years. Sometime in May, 2015, certain samples of the food products which were being sold were tested initially in Utter Pradesh and later on at Calcutta when an appeal was filed by the Petitioner and also at Delhi. According to the Respondents, in the products, presence of lead was found which was in excess of the maximum permissible level of 2.5 ppm (parts-per-million). Secondly, it was found that the Label which was affixed on the said product was misleading since it mentioned that it contained "No added MSG" and thirdly, the contention was that the release of non-standardized food product in market viz "Maggi Oats Masala Noodles with Tastemaker" was without risk assessment and without obtaining product approval from the concerned authority.

5. Mr. Iqbal Chagla, the learned Senior Counsel appearing on behalf of the Petitioner submitted that firstly both the impugned orders were passed without giving formal show cause notice. It was secondly submitted that the said order was passed by the authorities who had no jurisdiction to pass the said orders. Thirdly, it was submitted that, factually, when the products were tested, procedure which was required to be followed for testing these products was faulty and, therefore, the order passed on such improperly testing of products was liable to be set aside.

6. The learned Senior Counsel for the Petitioner then submitted that shelf life of these products is about 9 months from the date of manufacture. It was submitted that, in the present case, some of the products were manufactured in January 2014 and shelf life of the said products was upto 15th September, 2014. However, the products was tested between January 2015 and March, 2015. It was further submitted that during this entire period of three months samples were not sealed and, therefore, result of such product analysis was completely faulty and could not be relied upon. It was also pointed out that when the sample of the three products sent to Chemical Analyser in Delhi, the sample showed that the level was within the particular limits and in respect of the other products the levels varied. It was therefore submitted that the standard of testing which was done by the authority was not reliable and, therefore, on the basis of such analysis, a drastic order of banning the entire product was completely arbitrary, unconstitutional and, therefore, the said order was liable to be set aside. The learned Senior Counsel for the Petitioner invited our attention to the various provisions of the Food Safety and Standards, 2006 and more particularly sections 16, 18, 22 as also Section 30 and 34 amongst other provisions of the said Act in support of the said submission.

7. Lastly, the learned Senior Counsel for the Petitioner submitted that after having imposed the ban, Petitioner had been asked to show cause why product approval which was granted in respect of 8 of the 9 products should not be

cancelled. It was submitted that Respondents having prejudged the issue, the procedure of the inquiry in respect of cancelling the product approval was completely arbitrary. He then submitted that the Petitioners had already given a Press Release in which Petitioner in terms has stated as under:-

"PRESS RELEASE

NESTLE HOUSE , Gurgaon, 5th June, 2015, MAGGI Noodles are completely safe and have been trusted in India for over 30 years.

The trust of our consumers and the safety of our products is our first priority. Unfortunately, recent developments and unfounded concerns about the product have led to an environment of confusion for the consumer, to such an extent that we have decided to withdraw the product off the shelves, despite the product being safe.

We promise that the trusted MAGGI Noodles will be back in the market as soon as the current situation is clarified."

It was submitted that pursuant to the press release, Petitioners had started process of removing of the said products off the shelf, though, according to the Petitioner, the product was completely safe for human consumption. It was submitted that the Petition may be heard finally at the stage of admission.

8. Mr. Anil Singh, the learned Advocate General appearing on behalf of the State invited our attention to the various provisions of the Act and submitted that the question of giving a separate notice in such cases did not arise and the authorities in cases of emergency could pass the order of banning of product without giving personal hearing. He submitted that, in the present case, Representations were made by the Petitioner and they were considered and thereafter the impugned orders have been passed. He invited our attention to the order passed by the Central Authority – Respondents 1 and 2 and also the Commissioner of Food Safety – Respondent No.4. He also invited our attention to the judgment of the Bombay High Court in Dhariwal Industries Ltd and another vs. State of Maharashtra and others in support of his submissions.

9. Mr. Pracha, the learned Counsel appearing on behalf of Respondent Nos. 1 and 2 submitted that the Central Authorities were bound to take action without notice since the products contained levels of Lead which was in excess than the prescribed standard. He invited our attention to Section 22 of the said Act. He further submitted that the some of the Petitioners had challenged the Advisories which were issued by Respondent Nos. 1 and 2 by which the directions were given to all the manufacturers to obtain product approval. He submitted that Division Bench of this Court had held that the said Advisories did not have force of law since the provisions of sections 92 and 93 of the said Act had not been complied with since these Advisories/Regulations were not placed before the Parliament. He submitted that, however, the judgment and order of this Court

had been stayed by the Apex Court and the matter was posted for hearing in the month of July, 2015. He submitted that the question of granting stay to these orders does not arise.

10. After hearing all the Counsels on either side at length, we are of the view that the Respondents should file a detailed affidavit in reply in respect of the averments which are made in the Petition and point out the factual and legal submissions which they propose to make. In our view, since a statement has been made by the Petitioner that the Petitioner – Company has already decided to withdraw its product off the shelf despite their statement that product is safe for human consumption, the question of granting stay to the impugned orders at this stage does not arise.

11. Respondents, however, are at liberty to take all actions permissible in law against the Petitioner in the event they come to the conclusion that the said statement has not been followed. This they shall do after giving 72 hours' notice to the Petitioner. They are at liberty to seize the maggi product if found with the retailers or others.

12. In our view, since the products are being removed and are not being sold in the market, it would be advisable if the procedure regarding cancellation of production approval which has already been granted should not be continued till the next date of hearing. Respondents to file their reply within two weeks. Copy of the reply be given to the Petitioner two days in advance.

13. Place this Petition on board on 30th June, 2015

14. Parties to act on the authenticated copy of this order."

14. The said interim order also extracts the press release issued by the OP referred to herein above. The Division Bench also noted that since a statement had been made that the Petitioner Company had already decided to withdraw its product off the shelf despite that product is safe for human consumption, it was directed that the procedure regarding cancellation of the approval of the products, which had already been granted approval, should not be continued further.

15. As a consequence of the aforesaid voluntary act on the part of the OP in withdrawing the products, the process of cancellation of the approved products, therefore, was put in abeyance.

16. This legal contest was, therefore, being continued before the Bombay High Court, when the present complaint was drafted and filed by the Union of India through Secretary, Department of Consumer Affairs, Government of India as the Complainant on 11.08.2015. At this juncture, in order to clear any doubt about the status of this complaint, it is about goods being defective, deficient and hazardous for human consumption.

17. The Consumer Protection Act, 1986 was framed for the protection of the rights of consumers in respect of defects and deficiencies in the services which are hazardous or likely to be hazardous to the life and safety of the public when used and also to prevent unfair trade practices, for which it will be appropriate to refer to the definitions contained in the Consumer Protection Act, 1986. The relevant provisions for understanding the status of the complaint, are section 2 (b) (iii), 2 (c) (ii), (v), (vi), Section 2 (f) (g), (j), (r) together with (r), (1), (i), (ii), (vi), For the present, the definition of the word 'complainant' in Section 2 (b) (iii) is reproduced hereinunder :

"Complainant" means :

(iii) the Central Government or any State Government"

18. Consequently, the present Complaint can be maintained under the aforesaid statutory provision by the Central Government.

19. The Complaint spear heads the allegations with the categorical averments which are similar to that which have been reproduced hereinabove in the order passed by the Authority on 05.06.2015. In essence, the Complainant alleges presence of lead in the products of the Opposite party, deceptive labelling by printing "No added MSG" on the products of the OP prominently on all packaging of noodles which was an unfair trade practice and in contravention of the provisions of Consumer Protection Act apart from being violating the Food Safety and Security Act 2006 and the Rules and Regulations framed thereunder as well as Food Safety and Standard Acts, 2008 particularly Section 22 (4) thereof as well as Food Safety Packaging and Labelling Regulations 2011.

20. It is also alleged that "Maggi Oats Noodles" was launched without prior approval under the relevant provisions and hence action was taken for immediate withdrawal as also the issuance of the show cause notice for cancelling all the approvals granted in respect of other variants as well.

21. It may be pointed out that this Complaint was filed in the background when the Company had already withdrawn its products and had challenged the orders issued by the Authority before the Bombay High Court. Pending these proceedings, the present Complaint was filed and this Commission on 15.10.2015 appointed a Local Commissioner for collecting of the samples and then sending it for testing. This issue was considered again when orders were passed on 28.10.2015 and again on 23.11.2015. The report of the Commissioner was taken on record with a direction to the CFTRI Laboratory to send its report to the Commission in respect of said samples.

22. The Writ Petition filed by the OP WP No. 1688 of 2015 before the Bombay High Court was finally allowed on 13.08.2015 and the conclusion recorded in para 118 to 124 are extracted hereinunder :

> *"118. After examining the rival contentions in great detail, we have come to the conclusion that –*
>
> *(a) Principles of natural justice have not been followed before passing the impugned orders and on that ground alone the impugned orders are liable to be*

set aside, particularly when the Petitioner - Company, one day prior to the impugned orders, had given a Press Release that it had recalled the product till the authorities were satisfied about safety of its product.

(b) Secondly, we have held that the Food Laboratories where the samples were tested were not accredited and recognized Laboratories as provided under the Act and Regulations for testing presence of lead and therefore no reliance could be placed on the said results.

(c) We have further held that the mandatory procedure which has to be followed as per Section 47(1) of the Act and Regulations framed thereunder, was not followed.

(d) The impugned orders are held to be arbitrary and violative of Articles 14, 19(1)(g) of the Constitution of India.

119. Although we are setting aside the impugned orders, in public interest and in order to give an opportunity to the Petitioner to satisfy the Food Authority, we have directed that five samples from each batch cases out of 750 may be tested in three laboratories mentioned hereinabove and if the lead is found within permissible limits then the Petitioner would be permitted to manufacture all the Variants of the Noodles for which product approval has been granted by the Food Authority. These in turn would be tested again in the said three Laboratories and if the lead is found within permissible limits then the Petitioner would be permitted to sell its product. The three laboratories shall follow the procedure laid down under section 47 of the Act and Rules and Regulations framed thereunder.

120. Since the Petitioner – Company has already made a statement that it will delete the declaration made by it viz "No added MSG" on its product, no prejudice would be caused to the public at large and the allegation that product is misbranded also will not survive.

CONCLUSION:

121. Petition is accordingly disposed of in the aforesaid terms. Rule is made absolute in terms of prayer clause (a) and (b) along with what we have mentioned hereinabove.

122. We clarify that though in the judgment we have mentioned that the samples of 9 Variants of Maggi Noodles should be tested, we make it clear that the Variants which are available with the Petitioner may be tested. Those Variants which are not available with the Petitioner, they may be manufactured after positive report is given in respect of the Variants which are available. So far as "Maggi Oats Masala Noddles with Tastemaker" is concerned, the Petitioner will have to undergo the procedure of obtaining product approval and the Respondents may consider the application of the Petitioner again, after such an

application is made within a period of 8 weeks from the date of making of such application.

123. At this stage, Mr. Anil Singh, the learned Additional Solicitor General for Respondent No.1 and the learned Counsels for Respondent Nos. 2, 3 and 4 have submitted that the Judgment and Order passed by this Court may be stayed for a period of eight weeks.

124. In our view, since the Petitioner – Company has made a statement that it would not manufacture or sell the product, the question of granting stay to this Judgment and Order does not arise."

23. On a subsequent application moved pointing out certain typographical errors, the order was passed on 04.09.2015, whereby clarifications were issued, which have already been perused as they reflect upon the clarifications that were issued. It is stated that SLP has been filed which is pending before the Apex Court.

24. The order of the Bombay High Court against the judgment in the case of Vital Neutreceuticals Pvt. Ltd. (supra) came to be challenged in Special Leave to Appeal No. 23872-23874 of 2014 by the Food Safety and Standards Authority of India. The said SLP filed by the Authority was dismissed on 19.08.2015. The order passed by the Apex Court is quoted hereinunder :

"Heard learned counsel for the petitioner at length. No ground for interference is made out, in exercise of our jurisdiction under Article 136 of the Constitution of India.

The Special Leave petitions are dismissed.

In view of dismissal of the special leave petitions, the interlocutory applications for impleadment / intervention do not survive, and the same are also disposed of."

25. The Authority in compliance thereof issued an order on 26.08.2015 regarding the advisory dated 11.05.2013 that it has ceased to remain operative and the judgment of the Bombay High Court has attained finality. The said notification by the Food Safety Authority is extracted hereinunder:

"It is no longer possible for the FSSAI to continue with process of Product Approvals which was facilitated though the Advisory dated 11.05.2013 in view of the order dated 19.08.2015 of the Hon'ble Supreme Court whereby the judgment and order dated 01.08.2014 of the Hon'ble Bombay High Court has gained finality and the said Advisory has ceased to remain operative.

2. Every endeavour will be made to expedite the Regulations governing section 22 products.

3. We regret the inconvenience."

26. This matter was then again proceeded with and directions were issued by this Commission on the interim application on 09.12.2015.

27. The said order has relevance as it was carried further to the Supreme Court of India. Hence the same is extracted hereinunder :

"This is an application filed by the complainant, seeking testing of 50 samples of Maggi Noodles out of a large number of packets seized by Food Standards and Safety Authority of India (FSSAI), to an appropriate laboratory, to carry out the analysis / test for lead and MSG, separately for the noodles and taste maker in each such packet. It has been prayed that the samples be sent either to DFRL or to CFTRI to carry out the requisite analysis / test, with a direction to submit its report within fifteen days.

2. The application has been opposed by the opposite party, inter-alia on the ground that Section 13 (1) (c) of the Consumer Protection Act has no application, as the complaint is filed on the basis of certain laboratory reports and the samples subject matter of the present application are not even referred to in the complaint. It is also claimed in the reply that the sampling procedure prescribed in FSS Act and the rules framed thereunder are required to be followed, failing which the sample would become unreliable. It is stated that though the opposite does not add any MSG to Maggi Noodles, the regulations do permit its addition in various foods and in the seasoning for instant noodles and therefore, testing for MSG will be a futile exercise. It is also claimed that though it is possible to test the presence of the Glutamic acid and Glutamates, it is not possible to distinguish, through analysis, whether glutamate is in free form or bound with sodium or other salt, and since glutamic acid and salts of Glutamate are naturally present in the foods, the testing for the presence of Glutamate irrespective of whether it is in free or in bound form and other salts of glutamic acid, will be a futile exercise because the result will always show positive for the presence of glutamate. It is also stated that the prayer for directing FSSAI to release the samples for the purpose of testing cannot be granted by this Commission. It is informed that CFTRI has already tested the product sent for testing by FDO, Goa and found them compliant and therefore the request for further testing appears to be a fishing experiment, in an attempt to give life to a case which has no legs to stand. It is also stated that in terms of direction of Bombay High Court, 90 samples were collected covering six different available variants and were sent to independent accredited laboratories notified by FSSAI for testing of the lead parameter. It is also stated that a similar request for sending samples in possession of the Authority has already been rejected by the Bombay High Court.

3. This complaint has been filed by the Central Government, in terms of Section 12(1)(d) of the Consumer Protection Act, 1986 as a representative of the interest of the consumers in general. The case of the complainant in nut shell is that the Maggi noodles manufactured and sold by the opposite party are defective goods, as they contain excess quantity of lead and also contain MSG which is a health hazard and is not permissible. It is also claimed by the complainant that excess lead level can result in damage to the several organs of a human body particularly; infants and young children. The complainant is also alleging false labelling of Maggi noodles by the opposite party by stating that the product has no added MSG, despite its presence in the product. It is stated in the complaint that the results of the analysis carried out by several Laboratories in respect of the Maggi noodles had revealed presence of excess lead, besides revealing presence of Monosodium Glutamate.

4. When this complaint came up for hearing on 15.10.2015, 25 packets of Maggi noodles were produced by the complainant before this Commission. In view of the no objection from the opposite party, 13 out of those 25 samples were sent to CFTRI, Mysore to determine the quantity of lead, if any, as well as the quantity of MSG / Glutamate, if any, in the said samples. The samples were kept in a clean box and sealed by the Registrar of this Commission by his seal / seal of the Commission and under his signature. The representative of the parties were also permitted to sign the box containing the samples and the said box was sent to Director, CFTRI, Mysore, Karnataka through a special messenger. The report of the CFTRI is yet to be received. Since the learned Additional Solicitor General also pressed for analysis of samples out of the stock seized by FSSAI which was stated to be kept in a godown at Lucknow and constituted the packets recalled by the opposite party, while keeping the request pending, an officer of this Commission was appointed as the Local Commissioner to visit the godown where the packets seized by FSSAI have been stored and randomly note down 100 batch numbers from the aforesaid packets. He was directed to note down the batch numbers and date of expiry of different variants of Maggi noodles stored in the godown. The packets from which the batch numbers and date of expiry were to be noted by the Local Commissioner were directed to keep in separate cartons to be sealed by the Local Commissioner and signed by him as well as the parties. It was directed that the question as to whether one or more samples out of the packets kept in the custody of FSSAI should be sent to the laboratory or not, shall be decided after hearing the parties further on receipt of the report of the Local Commissioner.

5. The Local Commissioner has since submitted his report. In his first visit, the Local Commissioner noted batch numbers and date of manufacture of 31 batches, which incidentally were found to be of the same variant i.e. Maggi-2-Minutes-Noodles-Masala. Those 31 samples were kept by him in the two cartons, which were duly sealed and handed over to FSSAI. The cartons in which the samples were kept were also signed by the learned counsel for the parties before they were handed back to FSSAI. On visiting the second godown, the Local Commissioner noted down the particulars of as many as 69 more packets of Maggi noodles, thereby taking the total number of such samples to 100. Those samples were also kept in three cartons, which after sealing and signing by the parties, were delivered to FSSAI.

6. Section 13(1)(c) of the Consumer Protection Act, to the extent it is relevant, provides that where the complainant alleges a defect in the goods, which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainants and refer the same to the appropriate laboratory with a direction to make an analysis or test, with a view to find out whether the said goods suffer from any defect alleged in the complaint or from any other defect and to report its finding thereon to the District Forum.

It was pointed out by the learned senior counsel for the opposite party that this is not the case pleaded by the complainant that since the defect in the goods manufactured and sold by the opposite party cannot be determined without analysis or testing in a laboratory, the samples available with FSSAI should be sent to the laboratory for making the requisite test or analysis, the case of the complainant being that the samples of the said goods have already been analyzed by a number of laboratories and have been found to be defective on account of excess lead and MSG. He also contended that in the absence of a specific allegation in the complaint that the defect in the goods cannot be determined without proper analysis or test by a laboratory, the sample of such goods cannot be sent to the appropriate laboratory in terms of the aforesaid provision. In support of his contention that the complainant cannot be allowed to travel beyond its pleadings, the learned senior counsel for the opposite party has referred to the decisions of the Hon'ble Supreme Court in ***'Arikala Narasa Reddy Vs. Venkata Ram Reddy Reddygari & Anr. (2014) 5 SCC 312'****,* ***'Padam Sen & Anr. Vs. State of Uttar Pradesh (1961) 1 SCR 884'****, the decisions of Bombay High Court in '****Express Publications Madurai Limited Vs. Indian Express Newspapers Mumbai Limited & Anr.' 2012 SCC Online Bom-1053****, and '****M/s. Sanket Food Products Pvt. Ltd. Vs. Prabhakar Asaram Bhalerao'** *Writ Petition No. 8482 of 2009, decided on 18.12.2013 and the decision of this Commission in '****Kumari Mahua Daripa Vs. Dr. Anirudh Ghorai III (2015) CPJ 671'.***

Arikala Narasa Reddy (supra) *was an election petition and it was re-iterated by the Hon'ble Supreme Court that the court cannot go beyond the pleadings of the parties. It was also observed that as a rule, relief not founded on the pleadings should not be granted and in the absence of pleadings, evidence if any produced by the parties, cannot be considered. In* ***Padam Sen (supra)****, a Local Commissioner was appointed by the Civil Court to seize the account books of the appellant. The appointment was challenged on the ground that no such power vested with the Civil Court, its power being limited by the provisions contained in Section 25 and Order XXVI of the Code of Civil Procedure. Upholding the challenge, the Hon'ble Supreme Court held that substantive powers are required to be conferred on the courts and since the inherent powers of Section 151 of the Code of Civil Procedure are with respect to procedure to be followed by the court, the account books could not have been seized in exercise of the inherent powers of the court. It was observed that this is not the business of the court to collect evidence for a party or even to protect the liable party from the evil consequences of making forged entries in the account books. In* ***Express Publications Madurai Limited (supra),*** *relying upon* ***Padam Sen (supra)****, it was held that a Commissioner could not be appointed by the court to carry out scrutiny of the account books nor could the defendant be directed to produce books of accounts, vouchers etc. before the Commissioner for carrying out such a scrutiny. In* ***Sanket Food Products (supra)****, the High Court did not approve the order of the Labour Court for collecting of report from a Government Labour Officer and appointment of the Court Commissioner. In Kumari Mahua (supra), this Commission in a case of medical negligence inter-alia observed that the complainant has to stand on her own case and it is not important to show how the specific Act attributed to the opposite party amounted to negligence.*

There is no quarrel with the legal provision enunciated in the above referred cases. But, the strict rules of pleadings and procedure applicable to an election petition or to a Civil Court need not be applied to a consumer complaint which is not an adversarial litigation in its strict sense. In ***India Photographic Company Ltd. Vs. H.D. Shouri, Civil Appeal No. 5310 of 1990*** *decided on 03.08.1999, the Hon'ble Supreme Court inter-alia observed as under:*

" The Consumer Protection Act, 1986 has been enacted to provide for better protection of the interests of the consumers by making provisions for the establishment of consumer councils, other authorities for the settlement of Consumer Disputes and for matter connected therewith. The Act was enacted as a result of wide 'spread' consumer protection movement. On the basis of the report of the Secretary General on Consumer Protection dated 27th May, 1983, the United Nations Economic and Social Council recommended that the world governments should develop, strengthen and implement a coherent consumer protection policy taking into consideration the guidelines set out therein …… The reference to the consumer movement and the international obligations for protection of the rights of the consumer, provision has been made herein with the object of interpreting the relevant law in a rational manner and for achieving the objective set forth in the Act. Rational approach and not a technical approach is the mandate of law. "

Relying upon the above referred decisions, a Bench of this Commission headed by Hon'ble Mr. Justice M.B. Shah observed as under in ***Deepak Jaiswal, Ms. Astha Tyagi Vs. The Oriental Insurance Company, RP No. 1922 of 2004****:*

"It is to be remembered that proceedings before the Consumer Fora are inquisitorial and not adversary. The orders are required to be passed in accordance with justice and equity on the basis of the evidence available on record. The Act is for the protection of the consumers and matters are required to be decided by having rationale approach and not technical one."

In ***H.U.D.A. Vs. Smt. Kamaljit Kaur Ahluwalia & Ors., RP No. 1051 of 1999*** *decided on 02.06.2005, this Commission inter-alia observed as under:*

"We further reiterate that proceedings before the Consumer Fora are not adversary litigation but are inquisitorial and hence even if points were not highlighted by the parties, even then, it was a duty/function of the consumer fora to appreciate the evidence brought on record and to arrive at a just and proper conclusion."

In ***Consumer Education and Research Society & Anr. Vs. New India Assurance Co. Ltd. & Ors., RP No. 2721 of 2007 decided on 13.12.2007****, a Three Member Bench of this Commission inter-alia observed as under:*

"It is to be reiterated that under the Act, technicalities are not to be encouraged because the only procedure, which is prescribed under the Act is to follow the principles of natural justice and to decide the matter after hearing both the parties.

Repeatedly it has been observed that complaint alleging defects in goods or deficiency in service can be entertained on receipt of a letter stating sufficient facts and the cause of action. If required, it can be entertained after recording statement of the Complainant and if grounds are made out, notice is required to be issued to Opposite Party.

This is forgotten and we still erroneously try to adhere to the procedure prescribed under the C.P.C. or elsewhere."

Though this complaint is drafted by a counsel, every consumer complaint need not pass through the hands of a skilled counsel. A hyper technical approach in such matters therefore can adversely affect the interest of the consumer and weaken the objective behind enactment of a socially beneficial provision.

7. In any case, on a proper analysis of the aforesaid provision, it appears to us that where the complainant alleges a defect in the goods and the Consumer Forum, considering the nature of the goods and the alleged defect, is of the opinion that the question whether the goods are defective or not can be determined only by a proper analysis or test in a laboratory, it is under an obligation to obtain a sample of the said goods, get it sealed, authenticate it and then send the same to an appropriate laboratory with the requisite direction. In taking this view, we find support from the fact that the laboratory to which the goods are sent for the test or analysis is required to report not only the defect alleged in the

complaint but also any other defect found in the goods, irrespective of whether that defect is alleged in the complaint or not. The use of the expression " the District Forum shall obtain a sample of the goods" also indicates the mandatory nature of such a requirement, once the said Forum is satisfied that the allegations of the defect in the complaint cannot be determined without proper analysis or test of the goods. Therefore, in our opinion the reports already given by certain laboratories do not preclude this Commission from sending more samples to an appropriate laboratory, in terms of Section 13(1)(c) of the Consumer Protection Act.

8. The question as to whether the test to ascertain the presence of the MSG will be a worthwhile exercise as claimed by the complainant or a futile exercise as claimed by the opposite party is a question which needs to be addressed at the time of considering the reports of the laboratory since the complainant is seeking testing of the product not only for the presence of the MSG but also for the quantity of lead in the product and indisputably the presence of the excess lead if found in the sample will render it defective in terms of Section 2(1)(f) of the Consumer Protection Act.

9. It was next contended by the learned senior counsel for the opposite party that since Section 13(1)(c) provides for sending only the samples in possession of the complainant to the laboratory, it is not permissible to send the samples in custody of FSSAI for the proposed test/analysis.

Admittedly, the stock in custody of FSSAI was seized by it from the godown of the complainant, and not from the open market. The opposite party therefore cannot have a valid objection as to the source and genuineness of the said stock. Moreover, in our opinion, giving a liberal and consumer friendly interpretation to the expression "shall obtain sample of goods from the complainant", in a given case the samples taken from an authentic source specified by the complainant can also be said to be the sample taken from the complainant. A literal and hypertechnical interpretation in such a matter may result in seriously compromising the interests of the consumer, which a beneficial provision such as the Consumer Protection Act seeks to protect. For instance, in a given case an adulterated product may be seized by a law enforcement agency, and therefore technically, it may not be in possession of the complainant. If the interpretation propounded by the learned senior counsel for the respondent is given, a Consumer Forum will not be able to send such a product for analysis and in the absence of that, it may not be in a position to return an appropriate finding on the allegation that the product was defective. Even if two views are reasonably possible, a Consumer Forum must necessarily lean in favour of a view, which will advance and safeguard the interests of the consumer. Moreover, the samples which the opposite party sent to the laboratories in terms of the directions of the Hon'ble Bombay High Court were all along in its custody, whereas the samples now sought to be sent for analysis are in the custody of a statutory body.

10. It was contended by the learned senior counsel for the opposite party that since the Bombay High Court has already rejected the request of the FSSAI to send the samples from the stock of noodles in its custody to the laboratory for analysis, the complainant Union of India cannot be allowed to obtain the same order through the process of this Commission, particularly when it is competent to direct FSSAI to file a Special Leave Petition before the Hon'ble Supreme Court against the order of the Hon'ble High Court of Bombay declining the above referred request of FSSAI. The learned ASG on the other hand contended that Government of India not being a party to the Writ Petition filed before the Bombay High Court, it is not bound by the directions passed therein and in any case FSSAI has already filed a Special Leave Petition against the order passed by the Hon'ble Bombay High Court. It was also contended by the learned ASG that the order passed by the Hon'ble High Court cannot be construed in a manner that would relieve this Commission of its statutory obligation under Section 13(1)(c) of the Consumer Protection Act to get the sample of the alleged defective goods and tested or analyzed in an appropriate laboratory.

This complaint has been filed by the Central Government as a representative of the interest of the consumers in general. Admittedly, the consumers either individually or as a class were not parties to the Writ Petition filed before the Hon'ble High Court. Therefore, it would be difficult to dispute that they are not bound by a direction given in the proceedings to which they were not party in any capacity whatsoever. ***Hence, we are in agreement with the contention that the order passed by the Hon'ble High Court of Bombay does not preclude this Commission from sending samples to an appropriate laboratory in terms of aforesaid statutory provision.***

11. It was contended by the learned senior counsel for the opposite party that since a number of samples have already been analyzed by duly accredited and recognized laboratories in terms of the directions given by the Hon'ble Bombay High Court and this Commission has, on the concession given by the opposite party already sent thirteen samples to CFTRI, Mysore for carrying out the necessary test/analysis, there is no justification for sending further samples either to the same or to some other laboratory. He also submitted that if the request made by the complainant is granted, the process of testing/analysis will become an unending process which, in turn, will put a question mark on the safety of the product in the eyes of the consumers despite the same having been duly certified by the laboratories which are duly accredited by NABL and recognized by FSSAI in terms of Section 43 of the Food Safety and Standards Act, 2006. The learned Additional Solicitor General, on the other hand, stated that the complainant has no intention to make the said testing/analysis an unending process and in case this application is allowed, the complainant will not be seeking testing/analysis of any other sample of Maggi noodles from any laboratory. He also submitted that the stock in the custody of FSSAI being the stock which the opposite party itself had re-called, there can be no valid objection to the testing/analysis of the random samples identified by the Local Commissioner out of the said re-called stock. No doubt, the dispute with respect to safety or otherwise of the Maggi Noodles, needs to be set at rest, at the earliest possible, so that the consumers can be sure whether the product they were consuming was a safe product or not. It can also not be disputed that some doubt on the safety of the product will continue to persist till the issue involved is finally decided by way of an adjudication based on the laboratory reports. But, the product in question being a food product of mass consumption by almost every section of the society, it is imperative to test and analyze its ingredients in an exhaustive manner, before a clean chit can be given to it. This is more so, considering that a number of laboratory, though not accredited with NABL and not necessarily notified by FSSAI, have reported excess lead in the samples analyzed by them. The safety and interest of the consumer has to be the prime consideration in such matters.

Considering the undertaking given by the learned Additional Solicitor General and also the fact that the stock in the custody of FSSAI is the stock which the opposite party itself had recalled from the market, ***we are of the considered view that some randomly picked packs, out of the packs batch numbers and best before date of which were noted by the Local Commissioner, should be sent to an appropriate laboratory after the same are duly sealed and authenticated in the presence of the parties.***

12. It was submitted by the learned counsel for the opposite party that since no relief with respect to further testing of samples has been sought in the complaint, further direction for such a testing cannot be granted. We however, find absolutely no merit in the contention. The prayer made by the complaint for sending samples to an appropriate laboratory is an interim prayer, which can be made by way of an interim application, the purpose of the said prayer being to establish the case set out in the complaint.

It was also submitted by the learned senior counsel for the opposite party that this Commission having already sent thirteen samples to CFTRI, Mysore, it would only be appropriate to await the report of the said laboratory. We however, do not find it necessary to await the report of the CFTRI in respect of the samples sent to it for testing/analysis, as aforesaid samples had come from the custody of the complainant, whereas the samples now

sought to be sent to an appropriate laboratory are in the custody of FSSAI and form part of the stock which the opposite party had recalled from the market.

13. The next question which arises for our consideration is as to the laboratory to which the samples to be sealed and authenticated in terms of the order of this Commission should be sent for carrying out the requisite testing or analysis in terms of Section 13(1)(c) of the Consumer Protection Act. The learned senior counsel for the opposite party pointed out that the Hon'ble Bombay High Court has held that it is only a laboratory accredited by NABL and recognized by FSSAI to which the samples can be sent for the aforesaid purpose. The decision of Bombay High Court relates to testing and analysis of the samples for the purpose of Food Safety and Standards Act, 2006. Section 43(1) of the said Act provides that the Food Authority may notify food laboratories and research institutions accredited by National Accreditation Board, for the purpose of carrying out of analysis of samples by the Food Analysts under the said Act. Sub-Section (2) of the aforesaid Section enjoins upon the Food Authority to establish or recognize, by notification, one or more referral food laboratory or laboratories, to carry out the functions entrusted to the referral food laboratory by the Act or any rules and regulations made thereunder. Section 13(1)(c) of the Consumer Protection Act, on the other hand requires the Consumer Forum to send the samples to an 'appropriate laboratory', which in terms of Section 2(1)(a) of the said Act has been defined to mean a laboratory or organization (i) recognized by Central Government (ii) recognized by State Government, subject to the guidelines if any of the Central Government, or (iii) Laboratory or organization established by or under any law for the time being in force which is maintained, financed or aided by the Central Government or State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect. Therefore, a laboratory, if it is recognized by the Central Government or State Government or has been established by or under any law and is maintained, financed or aided by the Central Government or the State Government, need not necessarily be accredited by NABL and/or notified by FSSAI in terms of Section 43(1) of the Food Safety and Standards Act, 2006, in order to be termed as 'an appropriate laboratory'. In fact, the question as to whether the laboratory reports referred in the complaint can be considered for the purpose of this complaint or not is an open question, which needs to be addressed at an appropriate stage.

14. The complainant has submitted a list of the laboratories which FSSAI has notified vide its order dated 06.11.2015 and which are also accredited with NABL. Out of the aforesaid list, three laboratories i.e. Export Inspection Agency, Mumbai; Export Inspection Agency, Chennai and Export Inspection Agency Laboratory, Kolkata have been set up by the Government of India. In our opinion, it would only be appropriate that the samples in terms of this order are examined by a Government laboratory. ***We therefore, direct the samples sealed and authenticated in terms of this order to be tested and analyzed by Export Inspection Agency, Mumbai at E-3, MIDC Area, Marol, Andheri (E), Mumbai-400093.***

15. For the reasons stated hereinabove, the application is disposed of with the following directions:

i) Shri L.N. Arora, an officer of this Commission, shall on 14th December 2015, at 11:00 am, open the cartons containing the packs, the batch numbers and date of manufacture from which were noted by the Local Commissioner Shri S. Hanumantha Rao and shall randomly pick up (i) one pack bearing March 15/D (ii) one pack bearing April 15/D (iii) one pack bearing May 15/D (iv) one pack bearing 04.2015/H (v) one pack bearing 03.2015/H (vi) one pack bearing Feb. 2015, (vii) one pack bearing Feb. 15/D and (viii) one pack bearing 05.05.2015/B as the date of manufacture. He will also pick up the packs bearing Feb 15/A, March 15/A, 11.03.2015, 02.04.2015/B, 05.02.2015, March 15, 03.04.2015/B and May 2015/G as the date of manufacture. He will thus pick up 16 packs in all, out of the packs from which batch number and date of manufacture were noted by the Local Commissioner Mr. Rao.

ii) The packs picked up by the officer of this Commission shall be kept by him in a clean and dry box which shall be signed by him as well as the parties present at the time of his visit and then kept in a container which will be duly packed by him and also signed by him as well as the parties present at the time of his visit. He will carry a seal of this Commission and seal the box as well as the container with the said seal. The samples shall thus stand duly sealed and authenticated.

iii) The officer of this Commission shall also prepare a forwarding letter addressed to the Director of Export Inspection Agency, Mumbai, duly sign the same and obtain specimen signatures of the parties present at the time of his visit on the aforesaid forwarding letter, requesting him to get the aforesaid 16 samples tested and analyzed in terms of this order, within two weeks from the receipt.

iv) The officer of the Commission shall then carry the carton containing the box of samples to Export Inspection Agency, Mumbai alongwith the forwarding letter prepared by him and signed by the parties present at the time of his visit and deposit the said samples with the laboratory alongwith the forwarding letter, under due acknowledgment. The forwarding letter will also contain the request to the Director, Export Inspection Agency, Mumbai to compare and tally the signatures on the carton and the box containing samples with the signatures on the forwarding letter, and to carry out analysis in terms of this order, only if the signatures on the forwarding letter match with the signatures on the box and the carton.

v) Export Inspection Agency, Mumbai shall test and analysis the samples deposited by the officer of this Commission within two weeks of receiving the said samples and report the quantity if any of the Lead and MSG found in the Maggi noodles and/or the tastemaker kept in a small sachet, inside the pack of Maggi noodles and send its report to this Commission at the earliest.

vi) The officer shall get the entire proceedings videographed with the help of a Videographer to be arranged by the complainant. He shall prepare his report on the spot, obtain signatures of the parties present on the spot at the time of inspection on those proceedings and file the same along with his report. The officer shall be paid such fee as may be fixed by this Commission, after hearing the learned Additional Solicitor General. All the expenses to be incurred by the officer for compliance of this order including his boarding, lodging and transportation shall be borne by the complainant."

IN CONSUMER COMPLAINT NO. 870 OF 2015 WITH IA/5497/2015, IA/5900/2015, IA/6528/2015, IA/6684/2015, IA/6798/2015

List on 12.01.2016 awaiting the report of CFTRI, Mysore as well as report of Export Inspection Agency, Mumbai."

28. A modification was sought by the OP of the aforesaid order that was disposed of on 10.12.2015 extracted hereinunder :

"The matter has been taken up on being mentioned by the learned counsel for the opposite party. An application seeking modification of our order dated 09.12.2015 to the extent it specifies the laboratory at which the samples are to be tested, has been filed.

The learned counsel for the complainant admits that Export Inspection Agency, Mumbai is not accredited for testing the noodles and/or the taste maker for the presence of lead. She further states that Export Inspection Agency at Chennai is accredited for the purpose of testing the presence of

lead in a proprietary food which would include noodles and is also accredited for testing the presence of Lead Chromate in spices and condiments, which includes the taste maker kept inside the packs of Maggi noodles. She requests that while sending the samples to Export Inspection Agency, Chennai instead of Export Inspection Agency, Mumbai, as is prayed by the applicant, it may be clarified that the laboratory will test the noodles as well as the taste maker for presence of all salts of lead. Our order dated 09.12.2015 envisages testing of the samples of noodles and taste maker to find out the quantity of lead and MSG if any in the said products. This obviously would comprise lead in all its forms. We therefore, direct that the samples in terms of our order dated 09.12.2015 shall be sent to the Export Inspection Agency at Chennai and the said laboratory will test and analyze the samples of noodles as well as the taste maker for the presence of lead in any form whatsoever as well as for the presence of MSG, including their quantity in the said samples.

The learned counsel for the applicant/opposite party points out that the test method specified in the notification, for testing lead in respect of proprietary foods is AOAC (19th Edition) 999.10:2012 (EIA/CH/SOPC/30/38) whereas the test method specified for testing Lead Chromate in spices and condiments is EIA/CH/SOPC/30/125 and submits that the Export Inspection Agency at Chennai may not be accredited for the purpose of testing the presence of lead in forms other than Lead Chromate in spices and condiments and lead in all its forms in proprietary foods. In our opinion, the term 'lead' used in respect of proprietary foods would comprise lead in all its forms and therefore, it is not correct to say that the Export Inspection Agency at Chennai may not be accredited for the purpose of testing lead in all its forms. As far as the test specified for testing the presence of Lead Chromate in spices and condiments is concerned, in case the taste maker inside the pack of Maggi noodles is to be tested under the head 'Spices and Condiments' and not under the head 'Proprietary Foods', the Export Inspection Agency at Chennai will be entitled to adopt such test methods as it may deem appropriate for the purpose of testing the presence of lead in the forms other than Lead Chromate. Of course, if even the taste maker is to be tested/analyzed under the head 'Proprietary Foods', the test specified in the notification issued by FSSAI will be applicable to the testing of lead in all its forms. We also make it clear that if the test specified in the notification for testing lead in the proprietary foods is not appropriate to test lead in all its forms, the Export Inspection Agency, Chennai shall be entitled to adopt such test(s) other than the specified test, to the extent such adoption is necessary.

Another important aspect in this regard is that the term 'appropriate laboratory' having been defined in Section 2(1)(a) of the Consumer Protection Act, it is not necessary that the Export Inspection Agency at

Chennai should necessarily be accredited with NABL for the purpose of carrying out tests to find out the presence of lead in all its forms. So long as a laboratory is recognized by the Central Government or a State Government or has been established by/or under any law for the time being in force and is maintained, financed and aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect, such a laboratory will be competent to carry out the test and analysis in terms of our order dated 09.12.2015.

The application stands disposed of accordingly."

29. The aforesaid two orders were challenged by the OP before the Apex Court, wherein the interim order was passed on 16.12.2015 in Civil Appeal No.14539 of 2015. The order is extracted hereinunder :

"Issue notice.

As Mr. Mukul Rohtagi, learned Attorney General for India has entered appearance along with Ms. Anil Katiyar, learned counsel on behalf of the Union of India, they waive notice.

Heard Mr. Harish Salve and Mr. Nageshwar Rao, learned senior counsel for the appellant and Mr. Mukul Rohtagi, learned Attorney General for the respondent.

The present appeal is directed against the orders dated 9th and 10th December, 2015 passed by the National Consumer Disputes Redressal Commission, New Delhi. Grievance, as agoniously pyramided by Mr. Salve, learned senior counsel, is that once the Commission ***has directed to send the product for testing to the laboratory at Mysore vide order dated 15.10.2015,*** *there was no necessity or warrant to issue a further direction as per orders dated 9th and 10th December, 2015 for sending the samples to Chennai. It is urged by him that the laboratory at Chennai is not fully equipped to carry out all the tests required for the product, namely 'Maggi Noodles'.*

Mr. Mukul Rohtagi, learned Attorney General, resisting the aforesaid submissions, would contend that on consent being given by the appellant, the product has to be sent to Chennai in place of Mumbai.

In course of hearing, ***learned counsel for the parties, very fairly, agreed that the primary concern is health and the test has to meet the parameters of Food Safety and Standards Act, 2006. In course of the debate, a consensus was arrived at that the laboratory at Mysore is absolutely well equipped and of being a referral and notified laboratory,*** *the product should be sent there for testing.* ***Be it noted that this***

statement has been made by Mr. Salve, learned senior counsel appearing for the petitioner.

Be that it may. Regard being had to the aforesaid concession, ***it is directed that the samples earlier collected*** *by the Local Commissioner appointed by the National Consumer Disputes Redressal Commission, New Delhi,* ***shall be sent to the Mysore laboratory for testing. The test reports shall be produced before this Court.***

During the pendency of this appeal, the ***National Consumer Disputes Redressal Commission,*** *New Delhi* ***shall not proceed with the cases pending before it.***

Let this appeal be listed along with SLP (C) No.33251 of 2015 on 13.01.2016."

30. Consequently, the proceedings before this Commission remained pending while the matter was proceeded before the Apex Court. On contest, further orders were passed by the Apex Court on 13.01.2016, which is extracted hereinunder:

"Pursuant to our order dated 16th December, 2015, two communications have been received by the Registry of this Court. We think it appropriate to reproduce the letter dated 22nd December, 2015, the relevant part of which reads as under:

"This has reference to the letter dated 17.12.2015 from National Consumer Disputes Redressal Commission, New Delhi addressed to Director, CSIR-CFTRI, Mysuru forwarding 16 samples of Maggi Noodles of different lots/batches as per directions of Hon'ble Supreme Court of India's order dated 16.12.2015. ***Sixteen sample packets were received in a duly sealed box at CSIR – Central Food Technological Research Instituted, Mysuru on 18.12.2015.***

On opening the sample parcel it is observed that samples of different batches with different sample quantities ranging 35g to 280g were received (Annexure-I). It is herewith brought to your kind notice that the minimum sample quantity required for analysis is 500g per sample of same batch as per Sl.No.50 of Section 2.3.1. of Food Safety & Standards (Laboratory and Sample Analysis) Regulation, 2001 under food Safety & Standards Act 2006.

Quantities of samples received is just enough to carry out few parameters only. Hence, it is herewith requested that arrangements may please be made to send additional sample quantities of the same batches to take-up the samples for analysis as per requirements under the provisions of Food Safety & Standards Act 2006."

The Annexure-I to the said letter indicates the sample details. The said Annexure-I, for sake of convenience, is quoted hereunder:

Sample No	*Sample Name*	*Batch No. & Date of Manufacture*	*Weight of the Sample Received*
1	*Maggi Cuppa Mania Noodles*	*50740451AA MAR 15*	*70g*
2	*Maggi Cuppa Mania Noodles*	*50520451AB FEB 15*	*70g*
3	*Maggi 2 Minutes Noodles*	*50930455LC 03.04.2015*	*105g*
4	*Maggi 2 Minutes Noodles*	*50866640DC 03.2015*	*70g*
5	*Maggi 2 Minutes Noodles*	*51362814BC 05.02.2015*	*280g*
6	*Maggi Oats Noodles*	*50360455BC 05.02.2015*	*73g*
7	*Maggi Oats Noodles*	*50700455CC 11.03.2015*	*73g*
8	*Maggi 2 Minutes Noodles*	*50942814XB APR 15*	*70g*
9	*Maggi 2 Minutes Noodles*	*51280452DB MAY 2015*	*35g*
10	*Maggi 2 Minutes Noodles*	*50920455LB 02.04.2015*	*105g*
11	*Maggi 2 Minutes Noodles*	*50382814XB FEB 15*	*70g*
12	*Maggi 2 Minutes Noodles*	*50802814XC MAR 15*	*70g*
13	*Maggi 2 Minutes Noodles*	*51250455MC 05.05.2015*	*105g*
14	*Maggi Veg Atta Noodles*	*50490451PC FEB 15*	*80g*
15	*Maggi Veg Atta Noodles*	*50630451PD MAR 15*	*80g*
16	*Maggi 2 Minutes Noodles*	*51086640CA 04.2015*	*70g*

There is another communication dated 14th December, 2015, which indicates that thirteen samples of Maggi Noodles sent by the Registrar, National Consumer Disputes Redressal Commission, in sealed condition, were analyzed for lead and glutamic acid content. The results of the same are annexed with the communication.

We have perused the test report. We would like the competent authority of CSIR – Central Food Technological Research Institute, Mysore, Karnataka, to apprise this Court with regard to two aspects, namely, whether the results of the test report relating to lead and glutamic acid, are within permissible parameters or not. The Institute at Mysore shall also clarify whether the test relating to glutamic acid includes the test pertaining to Mono-Sodium Glutamate (MSG).

Additionally, if the Institute feels that more samples are necessary for the carrying out of these two tests, it may communicate to Mr. S. Hanumantha Rao, Joint Registrar, N.C.D.R.C., the Local Commissioner appointed by the National Consumer Disputes Redressal Commission, New Delhi, who shall collect the samples from the godown of Food Safety and Standards Authority of India (FSSAI) at Lucknow, in the presence of both the parties and send it to the

Institute at Mysore. The entire exercise shall be carried out within eight weeks from today.

Let the matter be listed on 5th April, 2016.

The communications received from the National Consumer Disputes Redressal Commission, New Delhi, be taken on record. The Registry is directed to supply the photocopy of the reports to the learned counsel for the parties."

31. These directions were with regard to the tests which were directed to be carried out by the Central Food Technological Research Institute Mysore, Karnataka.

32. The Institute submitted its report on 16.03.2016, which is extracted hereinunder

"Comments on the Test reports is herewith submitted for the kind perusal of Hon'ble Supreme Court of India with reference to Civil Appeal No. 14539 of 2015

(1) Record of Proceedings on Civil Appeal No. 14539 of 2015 dated 19th December, 2015

(2) Record of Proceedings on Civil Appeal No. 14539 of 2015 dated 137 January, 2016

1. CSIR-CFTRI, Mysore received a set of 13 samples of Maggi Noodles of various batches from Registrar, National Consumer Disputes Redressal Commission (NCDRC), New Delhi on 29.10.2015 requesting for the analysis of noodle sample for Lead and MSG/Glutamate content. The report on the content of Lead and Glutamic acid was submitted to Registrar, NCDRC (Communication dated 14.12.2015 and was quoted in the para-1 of page 4 of Hon'ble Supreme Court of India Record of Proceedings dated 13th January, 2016). Clarification sought by the Hon'ble Supreme court on the tests on Lead and Glutamic acid are as given below:

a Lead: ***Lead content of the 13 samples analysed were found compliant with the Food Safety and Standards (Contaminants, Toxins and Residues) Regulations 2011.***

b. Glutamic acid: Samples were analyzed for glutamic acid content and it ranged from 149 to 249 ppm (mg/kg) in noodles (cake) and from 6801 to 18279 ppm in taste makers. ***In the absence of an analytical method to distinguish between naturally present glutamic acid*** *from* ***the added MSG, it precludes us from rendering an opinion*** *on the label claim "No Added MSG". Moreover,* ***MSG is a permitted Food Additive*** *(flavour enhancer) for selected food commodities under Good Manufacturing Practice (GMP) as per Section 3.1.11 of the Food Safety & Standards (Food Product Standards & Food Additives) Regulation, 2011.*

i. *It is further clarified here that the available analytical procedures* ***estimate only L-glutamic acid.*** *The determination of MSG in food is invariably carried out by analysing* ***the free glutamic acid content by various methods and then converting it into MSG by multiplying with the factor*** *of 1.15 (970.37, ADAC 19th Edn 2005, FSSAI Lab Manual 8).* ***Hence, it may not be a true estimate of added MSG.*** *There is possibility to obtain higher values of glutamic acid if the product contains tomatoes, mushrooms, cheese, hydrolysed vegetable protein (HVP), hydrolyzed plant protein (HPP), hydrolyzed soy protein (HSP) soya sauce or autolysed yeast extracts or any other ingredients that are rich in glutamic acid/glutamate.*

ii. ***If the product contains any of the above listed ingredients,*** *claims pertaining to the absence or non-addition of monosodium glutamate such as "contains no MSG", "no MSG added" and "no added MSG"* ***must not be allowed as is being followed by USFDA and Health Canada.***

2 In addition to the above, as per the directions of Hon'ble Supreme Court of India on Civil Appeal No 14539/2015 and proceedings dated 16.12.2015, NCDRC. New Delhi sent 16 samples collected earlier by Local Commissioner, NCDRC New Delhi for analysis and the same was received by this Institute on 22.12.2015 The list of samples received with their batch No. and quantity was communicated to the Hon'ble Court with a request for sending additional quantity of samples of same batches to take up the samples for the analysis under the provisions of Food Safety & Standards Act 2006.

3. As per the directions of Hon'ble Supreme Court of India, proceedings dated 13:01 2016, additional samples (16 nos) from the same batch collected earlier were received by this Institute on 19.01.2016 from the Joint Registrar, NCDRC to carry out the analysis under the provisions of FSS Act 2006.

4. Received samples (16 nos) were tested separately for Cake (Noodle) and Taste maker (except two samples of Cup Noodles in which taste maker and noodles were pre-mixed) for different parameters under the provisions of Food Safety & Standards Act 2006 including glutamic acid content. Test reports have been annexed as Annexure-1.

5. Since the received samples were Proprietary article which falls under Section 22 of Food Safety & Standards Act 2005 and Regulation 2. 12 of Food Safety & Standards (Food Product Standards and Food Additives) Regulation 2011, they were tested for general quality and safety parameters as per FSS Act 2006 and its regulation 2011.

Opinion on the laboratory test results are as follows

a Lead: Lead content of the 16 samples analysed were found compliant with the Food Safety and Standards (Contaminants, Toxins and Residues) Regulations 2011.

b. Glutamic acid Samples were analyzed for glutamic acid content and it ranged from 86 to 213 ppm (mg/kg) in noodles (cake), from 3604 to 13890 ppm in taste maker and from 503 to 548 ppm in cup noodles (pre-mixed taste makers and noodles) In the absence of an analytical method to distinguish between naturally present glutamic acid from the added MSG, it precludes us from rendering an opinion on the label claim "No Added MSG" [Clarification provided under 1(b)]

6. With reference to deliberations in the Hon'ble Supreme court (Para 4 of Page 2 of Proceeding dated 16.12.2015) which is being quoted below:

"In course of hearing, learned counsel very fairly, agreed that the primary concern is health and the test has to meet the parameters of Food Safety and Standards Act, 2006",

Therefore, in addition to lead and glutamic acid content, the received 16 samples were also screened for other general safety parameters such as metal contaminants, crop contaminants, naturally occurring toxins, pesticide residues and microbiological safety for its conformity under FSS Act 2006

Analysis carried out for added synthetic colouring matter, Class II preservatives, other metal contaminant (Copper, Arsenic, Mercury Cadmium, Zinc), crop contaminant (Aflatoxin), naturally occurring toxic substances (Agaric acid and Hypericine) and microbiological parameter (Salmonella) were found to be within permissible limits under the provisions of Food Safety & Standards Act 2006."

33. While the matter was pending before the Apex Court, it appears that in the background of this legal contest that was on, the Food Safety and Standards Authority of India issued a clarification on 31.03.2016, which is extracted hereinunder :

Subject: Clarification on use of Monosodium Glutamate as flavour enhancer in seasoning for Noodles and Pastas.

Under Regulation 3.1.11 of the Food Safety and Standards (Food Product Standards and Food Additives), Regulations, 2011, Monosodium Glutamate (MSG), a flavour enhancer bearing INS number 621, may be added to specified foods as per the provisions of Appendix A. subject to Good Manufacturing Practice (GMP) level and under proper declaration as provided in 2.4.5 (18) of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011.

2 It is widely known that Glutamate is naturally found in several common foods such as milk, spices, wheat, vegetables, etc. MSG is the sodium salt of Glutamic acid and one of the many forms of glutamate. Presently, there is no analytical method to determine whether MSG was added to the product during its manufacture or was naturally present in the product. ***This can however be checked through inspection of the manufacturing premises.***

3. To prevent, both, avoidable harassment/ prosecution of Food Business Operators (FBOs) as well as to ensure that consumers are facilitated to exercise informed choices in respect of what they eat, ***proceedings may be launched against FBOs only when the labels state "No MSG or "No added MSG" and MSG is actually found in the impugned foodstuff Commissioners of Food Safety are advised*** *that specific enforcement/ prosecution may not be launched against the manufacturers of*

Noodles/Pasta on account of presence of MSG/ Glutamic Acid ***unless it is ascertained*** *by the department that Monosodium Glutamate flavour enhancer (INS E-621)* ***was deliberately added during the course of manufacture without required declaration*** *on the label as indicated in Para 1 above.*

4 This issues with the approval of the Competent Authority.

34. This was again clarified on 24.09.2018 referring therein the pending adjudication proceedings regarding misbranding particularly the labelling of packages of noodles and pastas with the phrase "no added MSG". The Clarification dated 24.09.2018 is extracted hereinunder:

"Dated, the 24th September, 2018

To

Commissioners of Food Safety,

All States/UTs.

Subject:- Adjudication proceedings against FBOs in States/UTs for "Mis-branding" due to the presence of the claim of "No MSG" or "No added MSG" on the packaging of Noodles and Pastas- regarding.

Sir/Madam,

This has come to the notice of the Food Safety and Standards Authority of India that there are pending adjudication proceedings against FBOs in States/UTs for "mis-branding" due to the presence of the claim of "No MSG" or "No added MSG" on the packaging of Noodles and Pastas.

2. Attention is invited to FSSAI's Order F.No.1(105) Maggi Noodles/2015/FSSAI (Part-1) dated 31st March, 2016 where it was mentioned that Glutamate was naturally found in several common foods and there was no analytical method to determine whether MSG was added to the product during its manufacturer or was naturally present and, therefore, could be checked only through inspection of the manufacturing premises. The State Authorities were advised that specific enforcement/prosecution processes might not be launched

against the manufacturers of Noodles/Pasta on account of presence of MSG/Glutamic Acid unless it was ascertained that Monosodium Glutamate flavor enhancer (INS E-621) was deliberately added during the course of manufacture without required declaration on the label. This Order directed the authorities to launch proceedings against FBOs only when the labels stated "No MSG" or "No added MSG" and it was ascertained by the department that MSG flavor enhancer (INS E-621) was added during the course of manufacture without required declaration on the label under Regulation 2,4,5(18) of the Food Safety and Standards (Packaging and Labelling) Regulations, 2011.

3. Thus adjudication proceedings launched against any FBO for the offence of 'mis-branding' due to a claim of "No MSG"/"No added MSG", on the label without determining whether MSG was added during the manufacturing process would be inconsistent with the orders issued by the FSSAI.

4. Commissioners of Food Safety, States/UTs are, therefore, advised that wherever adjudication proceedings have been initiated against FBOs for the present of the clam "No MSG/No added MSG" without ascertaining the stage at which the MSG was added to the product need to be examined and action taken in terms of FSSAI's Orders dated 31st March, 2016.

5. It is requested that the report on the action taken in this regard may please be communicated to this organization.

Yours faithfully,

Sd/-

(Daya Shankar)

Joint Direction (RCD)"

These clarifications virtually nailed the issue regarding such labelling by concluding that action cannot be taken without ascertaining and determining whether the MSG was added during the manufacturing process and the stage thereof. It was clarified that any proceedings initiated without indicating this process would be inconsistent with the orders issued by the Food Safety Authorities.

35. The Civil Appeal No. 14539 of 2015 filed by the OP assailing the orders of this Commission dated 09.2.2015 and 10.12.2015 was finally heard and was disposed off on 03.01.2019 by the following order :

"This appeal arises from the interim orders dated 9 December 2015 and 10 December 2015 of the National Consumer Disputes Redressal Commission ("NCDRC").

By the first of the above orders, the NCDRC issued the following interim directions for sampling the product "MAGGI Noodles" in nine variants for testing with reference to the quantity of lead and Mono Sodium Glutamate (MSG). The operative portion reads as follows:-

> *"i) Shri L.N. Arora, an officer of this Commission, shall on 14th December 2015, at 11:00 am, open the cartons containing the packs, the batch numbers and date of manufacture from which were noted by the Local Commissioner Shri S. Hanumantha Rao and shall randomly pick up (i) one pack bearing March 15/D (ii) one pack bearing April 15/D (iii) one pack bearing May 15/D (iv) one pack bearing 04.2015/H (v) one pack bearing 03.2015/H (vi) one pack bearing Feb. 2015, (vii) one pack bearing Feb. 15/D and (viii) one pack bearing 05.05.2015/B as the date of manufacture. He will also pick up the packs bearing Feb. 15/A, March 15/A, 11.03.2015, 02.04.2015/B, 05.02.2015, March 15, 03.04.2015/B and May 2015/G as the date of manufacture. He will thus pick up 16 packs in all, out of the packs from which batch number and date of manufacture were noted by the Local Commissioner Mr. Rao.*
>
> *ii) The packs picked up by the officer of this Commissioner shall be kept by him in a clean and dry box which shall be signed by him as well as the parties present at the time of his visit and then kept in a container which will be duly packed by him and also signed by him as well as the parties present at the time of his visit. He will carry a seal of this Commission and seal the box as well as the container with the said seal. The samples shall thus stand duly sealed and authenticated.*
>
> *iii) The officer of this Commission shall also prepare a forwarding letter addressed to the Director of Export Inspection Agency, Mumbai, duly sign the same and obtain specimen signatures of the parties present at the time of his visit on the aforesaid forwarding letter, requesting him to get the aforesaid 16 samples tested and analyzed in terms of this order, within two weeks from the receipt.*
>
> *iv) The officer of the Commissioner shall then carry the carton containing the box of samples to Export Inspection Agency, Mumbai alongwith the forwarding letter prepared by him and signed by the parties present at the time of his visit and deposit the said samples with the laboratory alongwith the forwarding letter, under due acknowledgement. The forwarding letter will also contain the request to the Director, Export Inspection Agency, Mumbai to compare and tally the signatures on the carton and the box containing samples with the signatures on the forwarding letter, and to carry out analysis in terms of this order, only if the signatures on the forwarding letter match with the signatures on the box and the carton.*
>
> *v) Export Inspection Agency, Mumbai shall test and analysis the samples deposited by the officer of this Commission within two weeks of receiving*

the said samples and report the quantity if any of the Lead and MSG found in the Maggi noodles and/or the tastemaker kept in a small sachet, inside the pack of Maggi noodles and send its report to this Commission at the earliest.

vi) The officer shall get the entire proceedings videographed with the help of a Videographer to be arranged by the complainant. He shall prepare his report on the spot, obtain signatures of the parties present on the spot at the time of inspection on those proceedings and file the same along with his report. The officer shall be paid such fee as may be fixed by this Commission, after hearing the learned Additional Solicitor General. All the expenses to be incurred by the officer for compliance of this order including his boarding, lodging and transportation shall be borne by the complainant."

Subsequently by its order dated 10 December 2015, NCDRC issued further directions. Aggrieved by these directions, the present appeal was moved before this Court.

Initially by an order dated 16 December 2015, directions were issued to the effect that the samples which had been collected by the Local Commissioner appointed by the NCDRC would be sent to the Mysore Laboratory of CFTRI for testing.

The order dated 16 December 2015 is extracted for convenience of reference:-

"Issue notice.

As Mr. Mukul Rohtagi, learned Attorney General for India has entered appearance along with Ms. Anil Katiyar, learned counsel on behalf of the Union of India, they waive notice.

Heard Mr. Harish Salve and Mr. Nageshwar Rao, learned senior counsel for the appellant and Mr. Mukul Rohtagi, learned Attorney General for the respondent.

The present appeal is directed against the orders dated 9th and 10th December, 2015 passed by the National Consumer Disputes Redressal Commission, New Delhi. Grievance, as agoniously pyramided by Mr. Salve, learned senior counsel, is that once the Commission has directed to send the product for testing to the laboratory at Mysore vide order dated 15.10.2015, there was no necessity or warrant to issue a further direction as per orders dated 9th and 10th December, 2015 for sending the samples to Chennai. It is urged by him that the laboratory at Chennai is not fully equipped to carry out all the tests required for the product, namely 'Maggi Noodles'.

Mr. Mukul Rohtagi, learned Attorney General, resisting the aforesaid submissions, would contend that on consent being given by the appellant, the product has to be sent to Chennai in place of Mumbai.

In course of hearing, learned counsel for the parties, very fairly, agreed that the primary concern is health and the test has to meet the parameters of Food Safety and Standards Act, 2006. In course of the debate, a consensus was arrived at that the laboratory at Mysore is absolutely well equipped and of being a referral and notified laboratory, the product should be sent there for testing. Be it noted that this statement has been made by Mr. Salve, learned senior counsel appearing for the petitioner.

Be that it may. Regard being had to the aforesaid concession, it is directed that the samples earlier collected by the Local Commissioner appointed by the National Consumer Disputes Redressal Commission, New Delhi, shall be sent to the Mysore laboratory for testing. ***The test reports shall be produced before this Court.***

During the pendency of this appeal, the National Consumer Disputes Redressal Commission, New Delhi shall not proceed with the cases pending before it.

Let this appeal be listed along with SLP (C) No.33251 of 2015 on 13.01.2016."

Subsequently, a letter was received from CFTRI, Mysore. ***Upon perusing the letter and the test report, this Court issued the following directions*** *on 13 January 2016:*

"We have perused the test report. We would like the competent authority of CSIR – Central Food Technological Research Institute, Mysore, Karnataka, to apprise this Court with regard to two aspects, namely, whether the results of the test report relating to lead and glutamic acid, are within permissible parameters or not. The Institute at Mysore shall also clarify whether the test relating to glutamic acid includes the test pertaining to MonoSodium Glutamate (MSG).

Additionally, if the Institute feels that more samples are necessary for the carrying out of these two tests, it may communicate to Mr. S. Hanumantha Rao, Joint CA 14539/15 5 Registrar, N.C.D.R.C., the Local Commissioner appointed by the National Consumer Disputes Redressal Commission, New Delhi, who shall collect the samples from the godown of Food Safety and Standards Authority of India (FSSAI) at Lucknow, in the presence of both the parties and send it to the Institute at Mysore. The entire exercise shall be carried out within eight weeks from today."

In pursuance of the above directions, on 5 April 2016 this Court recorded that the Report from CFTRI, Mysore is received. ***Copies of the Report***

have been made available to the learned counsel appearing on behalf of the parties. *The Court directed that the memory card which was received would be placed in safe custody.*

The matter has rested there.

The bone of contention in the present appeal is the correctness of the interim directions issued by the NCDRC on 9 December 2015 and 10 December 2015. In view of the interim directions that were issued by this Court, sampling and testing has been carried out under the auspices of CFTRI, Mysore.

During the course of the hearing, ***Mr. Vikramjit Banerjee, learned Additional Solicitor General has submitted that the Union of India would have no objection if the Report which has been received from CFTRI, Mysore is placed before the NCDRC, to form the basis of adjudication of the complaint.***

The Report which has been received from CFTRI ***should be duly evaluated by the NCDRC in the complaint pending at the behest of the Union of India.*** *Since the complaint is pending, it would be inappropriate for this Court to preempt the exercise of jurisdiction by the NCDRC which is vested adjudicatory authority under the Consumer Protection Act, 1986.*

Hence, we set aside the impugned interim directions of the NCDRC dated 9 December 2015 and 10 December 2015 and direct that ***the NCDRC would be at liberty to proceed further by evaluating the report which has been obtained in pursuance of the interim order which was passed by this Court.***

The appeal is, accordingly, disposed of. No costs. All the rights and contentions of the parties are kept open.

Pending application(s), if any, shall also stand disposed of."

36. The report received from CFTRI, Mysore, was available to the parties and neither the Complainant Union of India nor the Opposite Party has taken any objection to the contents thereof.

37. The Ld. Additional Solicitor General of India Mr. Vikramjit Banerjee advanced his submissions contending that even assuming that the said report dated 16.03.2016 is correct then in that event also the complaint deserves to be examined independently as directed by the Apex Court. He submits that if the scientific analysis as indicated in the report is concerned, still neither the judgment of the Bombay High Court in the case of the Opposite Party comes to its aid as the issue of a forensic analysis was left open. He contends that apart from the issues of the presence of Lead, the issue regarding MSG (Mono Sodium Glutamate)

is indeterminate and in such a situation he has pressed his submissions regarding deceptive labelling being violative of Section 22 of the Food Safety and Standards Act, 2006, referred to hereinabove. His concern is that since the product Maggi Oats Noodles was launched without any approval and even otherwise hazardous the depiction made are misleading about an unhealthy food and hence this is clearly an unfair trade practice under the provisions of the Consumer Protection Act, 1986. Hence the complaint deserves to be allowed. He has invited the attention of the Bench once again to the pleadings made in this regard in the complaint to urge that given the Food Safety and Standard Act, 2006, and the frame work thereunder any misbranding or mislabelling is a clear violation for which he has further invited the attention of the Bench to the averments made in paragraph 53 of the complaint onwards to substantiate his submissions. He has also referred to the standards at the international level published by the United States Food and Drugs Administration and also the publication of Health Canada to contend that the consumption of MSG is hazardous given the contents and presence of the said component in the samples of the Opposite Party. He has referred to the provisions of Section 2(c)(i), Section 2(r) of the Consumer Protection Act, 1986, read with the provisions of Section 14 of the said Act to urge that the burden of proof to establish facts to the contrary lay on the Opposite Party and that this Commission is empowered to issue directions for removal, discontinuance or withdrawal of any such hazardous item being an outcome of deficiency in service and unfair trade practice. He has then invited the attention of the bench to the provisions of Section 18, 20, 22, 23, 24, 26, 27 and 31 of the Food Safety and Standards Act, 2006 to explain the extent of regulation and control as well as fixing of liability in the event any of the provisions are violated. The contention is that on having received information from throughout the country the cause of action had arisen particularly with regard to allegation of presence of lead, the false labelling about MSG and also the launching of one of the product by the Opposite Party without approval. This was prima facie supported by laboratory tests and sufficient material on record. He submits that in view of the provisions of the Section 2(j) read with 22(4) of the Food Safety and Standards Act, 2006, the product launched by the Opposite Party, was a proprietary food which on account of its unhealthy component of MSG was an unfair trade practice. He pointed out towards the practice in America and Canada to contend that even there, there is a clear indication that it is absolutely not necessary to label such products with the phrase “no added MSG”.

38. Responding to the said submissions, Ld. Sr. Counsel Mr. Harish Salve, inviting the attention of the Bench to the findings recorded by the Bombay High Court in the case of answering Opposite Party as also in the case of **Vital Nutraceuticals Private Limited (Supra)** coupled with the clarifications issued by the Government itself in the notification dated 26.08.2015, the clear analytical report dated 16.03.2016 by the Central Food Technological Research Institute, Mysore, the clarification dated 31.03.2016 issued by the competent Food Safety Authority and finally the last clarification on 24.09.2018, contends that the present complaint does not survive for any adjudication as none of the issues raised even remotely amount to deficiency in service or unfair trade practice so as to warrant the grant of any relief as prayed for.

39. He further submits that on facts also the Complaint was founded on incorrect assertions particularly with regard to the issue of approval sought by the Opposite Party in respect of Maggi Oats Noodles and he has invited attention of the Bench particularly to the

checklist contained on the reverse of the letter of request seeking approval of the product dated 27.08.2014. He submits that once the advisory dated 11.05.2013 was quashed by the Bombay High Court in the **Vital Nutraceuticals Private Limited (Supra)** and the same was affirmed by the Apex Court on 19.08.2015, the Food Safety Authority itself declared that it had ceased to remain operative vide their own notification dated 26.08.2015. In that backdrop, firstly there was no shortfall regarding analysis from any laboratory for seeking approval of Maggi Oats Noodles which was clearly enclosed and declared in the checklist at item No.8 and secondly the said advisory had been stayed by the Bombay High Court and could not be enforced nor was it a compulsion on the date when the product was launched in July 2014. Even otherwise, apart from the stay having been granted prior to that on 13.06.2014, the same was quashed on 01.08.2014 by the Bombay High Court. As indicated, the said judgment has already been upheld by the Apex Court, and was also suitably notified on 26.08.2015 by the Food Safety Authority itself. The present complaint in spite of all this having taken place was filed taking this ground after the Bombay High Court had delivered its judgement. The premise seems to be that there was a stay by the Supreme Court on 13.08.2014 but even that position now stands cleared after the dismissal of SLP on 19.08.2015 and then the clarification issued by the authority itself on 26.08.2015.

40. Coming to the issue of mislabelling and presence of MSG, he has urged that firstly the report dated 16.03.2016 by the CFTRI, Mysore, clarifies the issue that the presence of MSG is dependent on various factors including the naturally present Glutamic Acid and also the contents of the food product. He has pointed out that the report therefore indicates that the analysis which is carried out by a laboratory may not be a true estimate of added MSG. He points out that the laboratory itself has clarified that in the absence of any analytical method to distinguish between the naturally present Glutamic Acid from the added MSG, it was not possible for the institute to render any opinion regarding the label claim of no added MSG. He further added that so far as Lead is concerned it was categorically found that the 16 samples analysed were found compliant with the Food Safety and Standards (Packaging and Labelling) Regulations, 2011.

41. Mr. Salve then pointed out that even otherwise in order to ascertain any such deficiency about the allegations, the clarificatory issued on 31.03.2016 and the second clarificatory dated 24.09.2018, leaves no option open to the Authority which itself has issued the clear advisory that unless it is found that such components were added during the process of manufacturing, any action taken would be inconsistent with the provisions of the Act and orders issued by the Authorities in this respect. He contends that there is no such material available to satisfy that any such component was added during the manufacturing process of the products of the Opposite Party and therefore for this added reason as well the complaint is unfounded without any proof in respect of allegations made as per the provisions and the regulations as well as notifications issued and referred to above.

42. Responding to the submission of the Ld. Additional Solicitor General Mr. Banerjee, Mr. Salve urged that in the absence of any violation or material to establish the same, the arguments advanced about protecting the citizens from the consumption of contaminated proprietary food does not arise at all. He submits that the said argument advanced is hypothetical and nowhere connected with any established facts or evidence in the present case. In essence, he submits that the said argument does not hold water as Section 22(4) of

the Food Safety and Standards Act, 2006 is nowhere attracted for any adjudication on the facts of the present case.

43. Mr. Amit Sibal, Ld. Sr. Counsel elaborated these submissions on behalf of the Opposite Party supplementing the arguments above by pointing out relevant paragraphs of the Judgement of the Bombay High Court. He has taken the Bench through the various contentions answered by the Bombay High Court and in respect of the findings recorded against issue No.3 framed by the High Court in Paragraphs 47 and 48 thereof the argument raised on the strength of Section 22(4) was clearly rejected. He then submits that clarification issued by the Food Safety Authority regarding labelling of MSG namely the clarifications dated 31.03.2016 and 14.09.2018 are binding and any results to the measures undertaken in the United States or Canada cannot be applied to advance the submissions in respect of added MSG. It is submitted by him that the report dated 16.03.2016 by the CFTRI, Mysore, has been given keeping in view of the direction of the Apex Court dated 16.12.2015 that the primary concern should be health and the test has to meet the parameters of the Food Safety and Standards Act, 2006. The report remains unchallenged and he therefore submits that the same should be accepted for the present case to adjudicate the present controversy and he prays that the complaint be accordingly dismissed.

44. Mr. Sibal has also invited the attention of the Bench in detail the Food Safety and Standard (Packaging and Labelling) Regulations, 2011, to point out the status of the laboratories and research institutions that are empowered under the regulations to conduct an inspection. He has then also invited the attention of the obligations of the declaration to be made on the packages as well as in particular the declaration to be made on a package as presently involved to contend that none of these provisions have been violated nor is there any evidence to that effect.

45. Ld. Counsel have assisted the Bench very ably and with the utmost clarity for which this Bench records its appreciation for the same. The other assisting Counsel have also prepared their compilations that has made it possible to conclude the hearing of this case comfortably and without any hassels.

46. Having heard the Ld. Counsel for the Parties and having perused the record, the complaint was made for the ultimate welfare of the citizens who have been and continue to consume the food products of the Opposite Party presently in question that are undoubtedly very popular. The very extensive consumption of such food products particularly by children therefore has to be safe and non-hazardous. From the initial facts that gave rise to the proceedings culminating in the judgement of the Bombay High Court, the orders passed by the Apex Court and the Authorities was clearly to say the least an attempt to secure the health and safety of consumers which was clearly expressed by the Apex Court on 16.12.2015 while calling upon the CFTRI, Mysore, to submit its report. The cause therefore undertaken through this complaint was a cause initiated for protecting the welfare of the citizens of this country. However, this is subject to the rule of law and a complaint cannot be or intended to be for causing any undue harassment to a product manufacturer. It is true that serious concerns were raised regarding the status of the products, but in order to proceed for its legal or judicial evaluation, it has to be seen as to whether the procedure prescribed and established by law has been followed by observing the due process. All administrative and penal actions are subject to judicial review and the procedure prescribed by law. When it

comes to a Consumer Complaint, it has to be viewed from the point of the purpose for which this legislation has been framed namely the protection of consumers. The regulations and the rules which have already been mentioned hereinabove are all designed to ultimately protect the consumers, against any deficiency in service or unfair trade practice. These terms are defined under the Act and which in the present context include the protection of consumers against any such deficiency in the products or its consequential hazards on consumption.

47. It is in this background, that the present complaint, which under the jurisdiction of the Consumer Protection Act, 1986, is practically an exercise of inquisitorial jurisdiction, and not necessarily adversarial that has to be assessed on the facts as unraveled during the course of hearing supported by the pleadings on record.

48. The background in which the present complaint was filed were laboratory tests, the proceedings initiated by the authorities, and the likelihood of consequences arising out of the consumption of the food products of the Opposite Party. This exercise was preceded by a challenge raised to the advisory dated 11.05.2013 which came to be stayed initially on 13.06.2014 by the Bombay High Court and was ultimately quashed on 01.08.2014 holding that there was no power vested in the authority to have issued the said advisory. The said order was confirmed by the Apex Court even though it had been initially stayed by the Apex Court on 13.08.2014. The SLP filed by the Food Safety Authority came to be dismissed finally 19.08.2015 thus confirming the judgment of the Bombay High Court 01.08.2014.

49. The other action taken for banning the products against the Opposite Party M/s. Nestle was based on laboratory reports in respect of its products, and so far as Maggi Oats Noodles was concerned, action was taken for non-compliance of the procedure of approval as per the advisory dated 11.05.2013. As noted above, challenge raised to the ban order dated 05.06.2015 was interfered with by the Bombay High Court with an interim order dated 12.06.2015. However, the Opposite Party had on the very day of the ban order issued a press release withdrawing all its products off the shelves throughout the country. The Writ Petition challenging the ban order came to be finally allowed on 13.08.2015. The Opposite Parties have resumed business and there is nothing on record as on date to indicate that there was any violation of the provisions of the Food Safety and Standards Act, 2006, regarding the said food products.

50. Nonetheless in the present complaint the correctness or otherwise of the laboratory tests was again pressed into service that resulted in the orders passed by this Commission on 09.12.2015. This was with regard to the examination of products that had been seized. The said order 09.12.2015 was further modified on 10.12.2015 that came to be challenged before the Apex Court in CA/14539/2015. The directions of Apex Court staying the proceedings before this commission were passed on 16.12.2015 with further directions to send the samples to CFTRI. Further directions were issued on 13.01.2016, and then the report was submitted on 16.03.2016 as noted by the Apex Court while finally disposing of the matter on 03.01.2019 leaving it open to the NCDRC to evaluate the said report and then proceed accordingly.

51. The report has already been extracted hereinabove, which categorically records that the content of Lead was within permissible limits. As already noted there is no challenge raised to the said report by the complainant. This issue of the alleged presence of lead in so far as it

relates to the present complaint, therefore will have to be closed, as this enquiry was made as agreed upon by the Ld. Counsel for the Complainant and the Ld. Counsel for the Opposite Party as recorded in the order of the Apex Court 16.12.2015. The second issue with regard to labelling of the product with “no added MSG” also stands answered by the said analytical report. Here it is relevant to mention the clarification issued by the Government on 31.03.2016 which states that presence of MSG or otherwise can be checked through investigation of the manufacturing premises, it is further been stated in paragraph No.13 thereof that proceedings may be launched against any food business operator only when it is actually found to be present in the food stuff establishing that MSG flavor enhancer was deliberately added during the course of manufacture. This was clearly in relation to the labelling of “no added MSG” on the packets. This is further fortified by the clarification dated 24.09.2018, that has already been brought on record.

52. Thus with the aforesaid clarifications it leaves no room for doubt that there was no exercise undertaken at the stage of the manufacturing process at the production unit for having proceeded against the complainant for any violation on that count. The report of the CFTRI, Mysore, coupled with the said clarifications, the arguments advanced on behalf of the complainant therefore are unsustainable. Mr. Salve and Mr. Sibal are correct in their submissions that without there being any material in the light of the aforesaid provisions there is no question of treating the product to have been rightly banned. There is therefore neither any deficiency nor any unfair trade practice established against the opposite party. This also cannot be a ground to raise a complain on the strength of the provisions of Section 22(4) of the Food Safety and Standard Act, 2006, which issue was raised and rejected by the Bombay High Court.

53. The entire preceding and intervening litigation regarding this contest, the quashing of the advisory dated 11.05.2013 by the Bombay High Court on 01.08.2014 and its confirmance by the Apex Court on 19.08.2015, the allowing of the Writ Petition on 13.08.2015 against the ban order imposed on the Opposite Party, the clarification of the competent authority on 26.08.2015 declaring that the advisory had ceased to operate, the report of the CFTRI dated 16.03.2016 submitted before this Commission with no objections by either side, and the clarifications issued by the Food Safety Authority on 31.03.2016 followed by the clarification dated 24.09.2018 cumulatively come to the advantage of the Opposite Party answering the issues raised by the complainant and rendering the complaint ineffective for any deficiency or unfair trade practice. The Provisions referred to hereinabove do not appear to have been violated by the Opposite Party and consequently the complaint cannot withstand the scrutiny of the procedure established by law.

54. Thus neither the violation of the advisory nor the violation of the provisions of either the Food Safety and Standard Act, 2006, or any ingredient under the Consumer Protection Act, 1986, appears to have been established for proceeding to grant any relief in this complaint. Once the scientific analysis and the clarifications issued by the Government itself do not and have not indicted the Opposite Party, there is no material to support the allegations made in the complaint for proceeding any further.

55. Consequently, for all the reasons herein above, the complaint is dismissed.

.....J

A. P. SAHI
PRESIDENT