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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 09TH DAY OF NOVEMBER, 2012

PRESENT

THE HON'BLE MR.VIKRAMAJIT SEN, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

W.P.No.17713/2012 c/w W.P.Nos.24257-283/2012 &
47320-330/2012 c/w 17467-17498/2012(GM-RES-PIL)

W.P.No.17713/2012:

BETWEEN:

Lochamesh B. Hugar
President

Age 55 years

Prajaandolana Grahakara Horata

EWS 528, 3rd Cross,

Navarang,

Hubli.

... Petitioner

(By Sri.Jayakumar S. Patil, Sr. Advocate a/w Sri.
Pruthvi Wodeyar, Advocate;
Sri. Adithya Sondhi, Advocate)

And:

1. Union of India
Represented by its secretary
Ministry Health and family welfare department
New Delhi.

2. State of Karnataka
Represented by its chief secretary
Vidhana Soudha
Bangalore-01.
3. The State of Karnataka
Represented by its Chief Secretary
HUD, Vishveshwarayya tower
Ambedkar Veedhi
Bangalore-560 001.
4. The Deputy Commissioner
Bangalore Urban
Bangalore.
5. The Deputy Commissioner
Bangalore Rural
Bangalore.
6. The Deputy Commissioner
Bagalkot District
Bagalkot.
7. The Deputy Commissioner
Belgaum District
Belgaum.
8. The Deputy Commissioner
Bellary District
Bellary.
9. The Deputy commissioner
Bidar District
Bidar.
10. The Deputy Commissioner
Bijapur District
Bijapur.
11. The Deputy Commissioner
Chamaraj Nagar District
Chamaraj Nagar.
12. The Deputy commissioner
Chikkamagalur District

Chikkamagalur.

13. The Deputy Commissioner
Chikkaballapur District
Chikkaballapur.
14. The Deputy Commissioner
Chitradurga District
Chitradurga.
15. The Deputy Commissioner
Coorg District
Coorg.
16. The Deputy Commissioner
Davanagere District
Davanagere.
17. The Deputy Commissioner
Dharwad District
Dharwad.
18. The Deputy Commissioner
Gulbarga District
Gulbarga.
19. The Deputy Commissioner
Gadag District
Gadag.
20. The Deputy Commissioner
Hassan District
Hassan.
21. The Deputy Commissioner
Haveri District
Haveri.
22. The Deputy Commissioner
Kolar District
Kolar.
23. The Deputy Commissioner
Koppal District
Koppal.

24. The Deputy Commissioner
Mandya District
Mandya.
25. The Deputy Commissioner
Mangalore District
Mangalore.
26. The Deputy Commissioner
Mysore District
Mysore.
27. The Deputy Commissioner
Raichur District
Raichur.
28. The Deputy Commissioner
Ramanagaram District
Ramanagaram..
29. The Deputy Commissioner
Shimoga District
Shimoga.
30. The Deputy Commissioner
Tumkur District
Tumkur.
31. The Deputy Commissioner
Udapi District
Udapi.
32. The Deputy Commissioner
Uttara Kannada District
Uttara Kannada.
33. The Deputy Commissioner
Chikkodi District
Chikkodi.
34. The Deputy Commissioner
Yadgiri District
Yadgiri.

35. Bureau of Indian Standards
Represented by its Director
Bangalore Branch
Peenya Industrial Area,
Peenya 1st Stage,
Bangalore-58.
36. G. Tech Aqua
A Partnership concern
No.22, 25/1, 19th Main
9th Cross, Marenahallipalya
J.P.Nagar II Phase,
Bangalore-560 078
By one of its partners
Sri.B.Mahadev
S/o Sri.Billaiah
& Sri.K.Raju
37. Aqua Fin
Sri. Ganesh Marketing
No.3, 11th Cross, Maruthinagar
Bangalore-5600 068
By its proprietors Sri Manjunath
S/o Sri.Ramakrishna
38. Aqua Day
No.3, 14th Cross
Wilson Garden
Bangalore-560 029
By its Proprietrix
Smt. Manjula
39. Bell Drops
Bhuvaneshwari Nagar
Banashankari
By its Proprietor
Sri.B.V.Chandrashekar Gupta
40. Shankar Aquamin
No.1005, Kattriguppe
Near water tank
Hoskerehalli Main Road
50ft Road, B.S.K III Stage
Bangalore-560 039
By its proprietor

Sri.B.S. Venugopal
S/o Sri. Shankar Nair

41. Golden Aqua
No.27/A, new No.13,
2nd Cross, I.T.I. Layout
Katriguppe main road
Bangalore-560 085
By its proprietor
Sri.Umesh
42. Choice
No.244, B.S.K. III Stage
By its proprietor
Sri.B.Narasimhalu
43. Big Royal
No.30/4, 19th Main
A.G.S. Layout
Arali Main Road
Ittamadu, Bangalore-560 061
Represented by its proprietor
Sri.Basavaraju
S/o Sri. Nanjappa
44. Nandi Industries
No.50, 5th Cross
Kanaka Nagar
R.T.Nagar
Bangalore-560 032
By its proprietor
Sri.K.Raghavendra
45. Aqueous
No.77/57, 17th 1st cross
16th main, Mahadeshwara layout
B.T.M. II stage
M.S.Palya, Bangalore-560 076
By its proprietor
Sri. Raghavendra
46. Acque Dew
A proprietor Wilorn
No.36, Ramanjaneya layout
Chikkakallasandra,

Uttarahalli
Bangalore-560 051
By its proprietor
Sri.K.Murali
S/o Siddanaidu

47. S.R.Roopa
No.52, Banagiri Nagar
II Cross, Yellappa Garden
BSK III Stage
Bangalore-560 085
By its proprietor
Sri.Srinivas
S/o M Venkataswamy
48. Meenakshi Minerals (INDIA)
No.240/3, 1st cross NGR Layout
Roopena Agrahara
Bangalore-560 068
By its proprietor
Sri.C.G.Muralikrishna
S/o C.Gopalkrishna
49. Acqua Cool
No.38/2, 20th Main,
14th cross, Padmanabha nagar
Bangalore-560 070
50. Sri. Anugraha Industries
By its proprietor
S.Anil Kumar
S/o Srinivas
Aged about 39 years
Anugraha Nilaya
Anjani Extension
Chintamani-563 125
51. Davangere Zilla Suddikarishida Neeru
Utpadakara Mattu Maratagarara Sangha
'Gagan Shamiyana'
#222, Durgaambika Temple Road
Nittuvalli, Davanagere
by its Proprietor
Sri.A. Y.Prakash S/o A. Yellappa
Aged about 43 years

52. Sri.A.Y.Prakash
S/o a.Yellappa
Aged about 43 years
Durgaambika Temple Road
Nittuvalli
Davanagere-577 004
Proprietor Gagan Aqua Industries
Sy.No.234/3
Jayanagar B Block
Nittuvalli
Davanagere
53. Sri.T.S. Kiran
S/o Thippaswamy Setty
Aged about 32 years
#607, 'A'Block, DCM Township
P.B.Road
Davanagere
Proprietor
R.K.Marketing & Industries
#1857/2B, Opp. Shardaamba Temple
'B' Block, S.S.Layout
Ring Road
Davanagere
54. Sri.Mruthunjaya
S/o Irappa Bharamma
Aged about 35 years
Proprietor
Nandi Water
'C' 47, Industrial Area
Lokkere
Davanagere
55. Sri. Rakesh
Aged about 25 years
S/o Pandurangasa Rajoli
Proprietor, Rajoli Enterprises
(Silver Sky)
'H'Section Hamsagar Compound
Yanthpura post
Harihar Taluk
Davanagere.

56. Sri.Suresh Rao
Aged about 36 years
S/o Ananda Rao
Proprietor
Sudh Minerals
No16/17, Ward no.8
First cross, Vijayanagar Layout
Davanagere -577 006
57. Sri.B. Marulasiddappa
Aged about 28 years
S/o Revana Siddappa
Proprietor
Sri. Marulasiddeshwara Industries
Karur Village
Davanagere (dist)
58. Sri. Rajesh
Aged about 28 years
S/o Sri.B.Huligeppa
Partner
Unique Industries
Doddabathi post
Doggali, Harihar,
Davanagere Dist.
59. Smt. B.N.Yashoda
Aged about 40 years
W/o Lokesh K.G
Proprietor-Varsha Aqua
Indiranagar
Malebennur
Harihara Taluk
Davanagere.
60. Smt. T. Mahalakshmi
Aged about 37 years
W/o B.T. Siddappa
Proprietor S.L.V.S. Industries
Gopparahalli
Anajai post
Davanagere
Booster Processing Water

61. Chandana Enterprises
#3470, Sri Srinivasa complex
N.H.7, Hosur Bangalore Main Road
Near Attibele Border,
Anekar Taluk, Bangalore
Represented By its Proprietor
Sri.A.Satheesh Kumar
62. Kruthika Minerals
No.235/V, Bommasandra Indl. Area
3rd phase, Hosur Main Road
Bangalore
by its Managing Partner
Sri.C.Manjunatha
63. Amrutha Aqua
Sy.No.118 P5, TVS Road, Attibele Hobli
Balluru Village, Anekal Taluk
Bangalore-562 107
by its Proprietor
Smt. Saraswathamma
64. Bharath Mineral (India)
No.18, Vinayaka Layout
Doddathogur, Electronic City
Bangalore-560 100
Represented by its Proprietor
Sri.H.G. Sudarshan Reddy
65. Sinchana Enterprises
@Sinchana Enterprises
No.91/1, Mugalur Village
Chikka Thirupathi Main Road
Kugur Post, Sarjapura-562 125
Represented by its proprietor
Sri.N. Shivanna
66. Bhagyajyothi Enterprises
No. 45, Bhavani Road
Hebbagodi (VIII)
Bommasandra Indl. Area
Anekal Taluk, Bangalore-560 099
Represented by its proprietor
Sri.Baskar

67. Nanjundeshwara Aqua Industries
Sy.No. 12/3, Hennagara
Jigani Hobli,
Anekal Taluk
Bangalore-560 105
Represented by its Proprietor
M.Ragurama Reddy
68. Cavery Minerals
#259, Madapatna
Vaddarapalya Road
Jigani Hobli, Anekal Taluk
Bangalore-562105
Represented by its proprietor
Sri.S. Parameshwarappa
69. M/s. S.L.V.V Sneha Mineral Water Supply
#2688/88, Sainagar, 2nd phase
Neralur Village, Anekal Taluk
Bangalore-562107
Represented by its proprietor
Sri.T.Ramesh Babu
70. STP Minerals Pvt. Ltd.,
Sy.No.197, Behind Vijaya Bank
Yallamma Nagara
Hennagara Gate,
Bommasandra Post
Anekal Taluk
Bangalore-560 099
Represented by its proprietor
Sri.Prakash C.
71. Vinayaka Mineral Water
Venkatachalapathy Building
Gollahalli Village,
Electronics City post
Bangalore-560 100
72. Packaged Drinking Water
Manufacture Association
At 2nd Floor, Giriraj Annexe
Circuit House Road, Hubli
Represented by its President
Sri. I.S. Prashanth

S/o I.P. Somanath Aradhya
Aged about 43 years

73. Sri. Ganesh Minerals
Site No.32, Sarjapura Road
Near Mayura Bakery
A.P.Shamaiah Reddy Layout
Attibele Anekal Taluk
Bangalore-562 107
Represented by its proprietor
S. Manjunatha Reddy
74. R.U.H. Minerals
No.46, K.No.103, Malisandra Village
Nirmala Layout
Begur Road
Bangalore-560 068
Represented by its Proprietor
Rajappa ... Respondents

(By Smt. Sinchana, Advocate for Sri.Kalyan Basavaraj,
ASG for R1;
Sri.R.G.Kolle, AGA for R2 to R34
Smt.P.Anu Chengappa, Advocate for R35;
Sri.R.A.Devanand, Advocate for R36 & 49;
Sri.V.V.Gunjal, Advocate for R50;
Sri.V.Lakshminarayana, Advocate for R51to R60;
Sri.R.Bhadrinath, Advocate for R61 & R71& R73 to
R74;
Sri.Dayanand S.Patil, Advocate for R72)

This Writ Petition is filed under Articles 226 and 227 of the Constitution of India praying to direct the respondents to take all necessary steps to prevent manufacture/sale drinking water without 1st standard as prescribed Under Section 15 of The Bureau of Indian Standard Act.

W.P.Nos.24257-283/2012 & 47320-330/2012:

BETWEEN:

1. Sri. Anugraha Industries
By its Proprietor
S Anil Kumar
S/o Srinivas

Aged about 39 years
Anugraha Nilaya, Anjani Extension
Chintamani-563 125.

2. Goodlife Mineral Water
By its Proprietor
M.Byregowda
S/o Muniyappa
Aged about 34 years
R/at G.M. Circle
Vijayapura-562 135
3. Sri. Venkateshwara Industries &
Thirumala Packaged Mineral Water
By its Proprietor
T.Krishnappa
S/o Timmappa
Aged about 55 years
Gpalli Village,
Nandhaganapalli Post
Chintamani Taluk
Chickaballapura District-563 125
4. Vijayalakshmi Industries
By its Proprietor
T.Narayana Swamy
S/o G.Thippanna
Aged about 60 years
Gopasandra Village, SV Pur Road
Chintamani-563 125
5. ISTA Packaged Drinking Water
By its Proprietor
V.S.Champaka Dhama
S/o H.Seetharamaiah Setty
Aged about 38 years
N.R.Ext. Chintamani
Chickaballapur-563 125
6. Suguna Enterprises
By its Proprietor
R.N. Suguna
W/o Srinivas Reddy
Aged about 27 years
Kanapalli Village
Bangalore road, Chintamani
Chickaballapur-563 125

7. Zubeda Industries
By its Proprietor
Mohammed Shafeequlla
S/o Abdul Jabbar
Aged about 31 years
21st Ward, Masjid-e-Azam Road,
Bagepalli -561 207.
8. Nandini Aqua Mineral Water Factory
By its Proprietor
D.Mahadev
S/o N. Devaraj
Aged about 40 years
Sugama Nagar
Nandi Betta Road,
Vijayapura,
Devanahalli Taluk-563 125
Bangalore Rural District
9. Appaiah Enterprises
By its Proprietor
A.Srinivasa Appaiah Babu
S/o A.Adappa
Aged about 41 years
Kothapalli Road
Bagepalli-561 207
10. Aqua Star
By its Proprietor
Smt. Rehamatunnissa
W/o Mustak Ahmed
Aged about 51 years
Santhosh Nagar, Dubarhalli Road
Soilaghatta-562 105.
11. Thirumala Mineral Water Industry
By its Proprietor
Srinivas D.V
S/o Late Vedhamurthy
Aged about 48 years
7th ward, Near old S.R.S.I.T.I College
Kothapalli Road,
Bagepalli Taluka,
Chikkabalapur District-561 207.
12. Prakruthi Drinking Water
By its Proprietor
K.V. Subbireddy
S/o P.Venkatarayappa

Aged about 47 years
Chelur village & post
Bagepalli Taluka-561 207

13. Water Safe Solutions
By its Proprietor
R.Chandrashekar
S/o D.N.Ramakrishnappa
Aged about 30 years
Narayanahalli Village,
Patrenahalli Post
Chickaballapur-562 101
14. Pinakini Industries
By its Proprietor
Mir Mohammed Vasi
S/o Mir Turabat Hussain
Aged about 50 years
Mittenahalli,
Near Railway Gate,
Gowribidanur Taluk
Chickaballapur-560 101
15. Sri. Bhavani Drinking Water
By its Proprietor
N.R.Vijayanand
S/o M.Ramanand
Aged about 42 years
N.H 7, B.B.Road
Chickaballapur-562 101
16. Gangothri Packaged Drinking Water
By its Proprietor
B.Shobavathi
W/o N.Govindaraju
Aged about 47 years
No. 300, Prashantha Nagar
Chickaballapur-562 101
17. Gowthami Packaged Drinking Water
By its Proprietor
N.M. Chinnappa Reddy
Aged about 57 years
S/o N.Madanagopala Reddy
H.Nagasandra
Gowribidanur-561 208
Chickaballapur District.

18. M/s Chowdeshwari Water Plant
By its Proprietor
Ashwath Narayana Gowda
S/o H. Gangadharappa
Aged about 40 years
Alkapura Post,
Tondi Bavi Hobli,
Gowribidanur Taluk
Chickaballapur District-561 208
19. Mineral Water
By its Proprietor
Sridhar. D
S/o Ramaiah
Aged about 32 years
Alkapura Post, Tondi Bavi hobli,
Gowribidanur Taluk
Chickaballapur District
20. Tirumala Waters
By its Proprietor
Manjunatha N
S/o Narayanappa
Aged about 36 years
Vidyanagar, Gowribidanur
Chickaballapur District-561 208
21. Tirumala Mineral Water
By its Proprietor
Leelavathi
W/o M.Venkatesh Raju
Aged about 47 years
No.57/2, Behind St. Joseph Convent School
Nagajyothinagar,
Chickaballapur-562 101
22. S.V. Infrastructure
By its Proprietor
K.R.Gopal
S/o G.Ramaiah
Aged about 51 years
No.30/2, Chowdeshwari Layout
Near shetty Kitchen Work
Kodigehalli, Sahakarnagar Post,
Bangalore-560 092.
23. Good Times
Noor Pasha S
S/o S.Abdul Sattar

Aged about 53 years
No.5-216, 1st cross
HBR Layout, 1st Stage
Bangalore-560 043

24. Ice Bank
By its Proprietor
G.Srinivas Rao
S/o K.S.Annappaiah Hathwar
Aged about 49 years
No.362, 9th Main, 37th Cross
Jayanagar 5th block,
Bangalore-560 041.
25. Dolphin Aqua
By its Proprietor
Ramanjanappa
S/o Shyamanna
Aged about 52 years
Marnayakaanahalli
Chikkajala -562 157
26. S.M.A. Mineral Water
By its Proprietor
Mir Gulshan Abbas
S/o Mir Mukaram Ali
Aged about 35 years
Madhugiri Road, Alipur
Gowribidanur Taluk
Chickaballapur-561 224
27. Chitra Mineral Water
By its Proprietor
Smt. Parvathi
W/o.Banashankarappa
Aged about 35 years
Plot no. 61, Sy.No. 164,
Near Housing Board
Hosalli Road, Station Area
Yadgir-585 202
28. SMR Aqua Minerals
By its Proprietor
Munir ahmed
S/o Abdul Jabbar
Aged about 42 years,
R/o: Plot No.SM 9 AND 10,
KSSIDC Industrial Estate,

Old Madras Road,
Mulbagal,
District Kolar – 563 131

29. Gangothri Minerals
By its Proprietor
K.V.Manjunatha
S/o K.V.Chikka Venkatappa
Aged about 42 years,
Nandha Gokula Yadhava Sangha,
Virupakshi Road,
Mulbagal,
District Kolar – 563 131
30. A.S.Aqua Industries
By its Proprietor
Ansar Pasha
S/o Late Abdul Basheer
Aged about 46 years,
Shed No. 'D' 6,
Industrial Estate,
Chennai Road,
Mulbagal,
District Kolar – 563 131
31. Aqua Greenl Mineral
By its Proprietor
K.M.Ravi
S/o Muninarayana Swami
Aged about 46 years,
Sy.No.493/2,
Virupakshi Road,
Mulbagal,
District Kolar 563 131
32. Parishud Mineral Water
By Its Proprietor
S.Pawan Kumar
S/o P.G.Suraya Prakash
Aged about 26 years,
Near By -Pass Taylur Road,
Mulbagal,
District Kolar – 563 131

33. SLN Aqua Guard
By its Proprietor
Ravi Chandra Kumar
S/o Ramachandrappa
Aged about 35 years,
Pathapalaya Grama
Bagepalli,
Chikkaballapura – 561 207
34. Vittaldas Associates
By its Proprietor
Pramilabai Innani
W/o Vittaldas Innani
Aged about 49 years
5-2-2, Netajinagar,
Raichur District -584 103
35. Sadguru Industries
By its Proprietor
Santosh
S/o Mahanthappa Balekai
Aged about 31 years,
Main Bazaar,
Masaki Village,
Lingasuru Taluk,
Racihur – 584 124
36. Yantroddharaka Enterprises
By its Proprietor
H.S.Gururaja
S/o late H.S.Vedavysoo Achar
Aged about 43 years,
Near Shankaralinga Temple
Fort 32nd Ward
Hospet – 583 201
37. Sri.Vinayaka Minerals
By its Proprietor
R.Manjunath
S/o Ramanna
Aged about 39 years,
B.B.Road,
Devanhalli Town
Bangalore Rural- 562 110

38. M.S.Aqua
 By its Proprietor
 Kowsar Yasmin
 W/o Sheik Ahmed
 Aged about 47 years,
 No.45, AK Residency
 G Floor,
 BHEL Officers HBCS Layout
 Bannerghatta Road,
 Bangalore – 560 041 ...petitioners

(By Sri.V.V.Gunjaj, Advocate)

AND:

1. State of Karnataka
 Represented by its Secretary
 Dept. of Food & Civil Supplies
 MS Building, Vidhana Veedhi
 Bangalore-560 001
2. The Commissioner for Food Safety
 Health & Family Welfare Department
 Anandrao Circle
 Bangalore-560 009
3. Union of India
 Represented by its Secretary
 Dept. of Health & Family Welfare
 New Deihi-110001
4. Designated officer
 Food & Safety Standards
 Health & Family Welfare Service
 Bengalooru Rural District
 AR Circle, Bengaluru-560 009Respondents

(By Sri.R.G.Kolle, AGA for R1&R2)

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India praying to quash Annexure-E issued by the Commissioner for Food Safety and office of the Health Family Welfare, Anand Rao Circle, Bangalore dated.22.12.2011 vide Annexure-F No.136/12 dated.13.6.2012 as shown in the real seal. Annexure-G dated 7.3.2012 issued by the designated

officer. District Health Officer complex, Chickballapur dated 7.3.2012 and Annexure-H notice issued by the Food Safety Office, Yadagiri dated 9.7.2012 as illegal arbitrary and contrary to the Statutory Provisions.

W.P.Nos.17467-17498/2012:

BETWEEN:

1. Tumakuru District Purified Drinking Water Producers Association (Registered)
Shiva Krupa, Ist Main Road
Nrupathunga Extn. Shettihalli Road
Tumakuru,
Represented by its secretary
Udaya shankar
Aged about 35 years
2. G.Geetha
Aged about 32 years
Proprietrix,
Sri. Lakshmi Waters Santhepete,
Sira,
Tumakuru District.
3. Ranganatha
Aged about 36 years
Proprietor,
Honey package drinking water
Hanumanthanagar
Sira Town
Tumakuru District.
4. V.S. Manjula
Aged about 31 years
Proprietrix, Nandini Water
Vidyanagar, Sira
Tumakuru District
5. Rangaraju
Aged about 38 years
Proprietor
Druthi Waters
Geddalahalli Ring Road
Tumakuru

6. Satish Kumar
Aged about 32 years
Proprietor Spring Aqua
Near 80 Ft. road
Manjunathanagar,
Tumakuru
7. Meer Azeezuddin
Aged about 40 years
Proprietor
Crystal Aqua Packaged Drinking water
Plot # 76, Antarasanahalli Indl. Area
Ist phase, Tumakuru-572 106
8. S.J. Rajeshwari
Aged about 45 years
Proprietrix
Vinu Industries (Amruta Waters)
Halkurke road, Govindapura
Tiptur,
Tumakuru District.
9. Thippeswamy
Aged about 46 years
Proprietor
Suraksha Packaged Drinking Water
Uma Industries
Antarasanahalli Indl. Area,
Tumakuru.
10. K.S. Yashawini
Aged about 26 years
Proprietrix
Shivasai Minerals
Behind HP Petrol Bunk
Moodalapete Main Road
Koratagere,
Tumakuru District
11. K.V. Ramesh
Aged about 31 years
Proprietor
Royal Aqua Packaged Drinking Water
III Cross, Krishnanagar
Baddihalli,
Tumakuru
12. Radhamani
Aged about 30 years

Proprietrix
Shivaganga Waters
Nrupathunga Extn., Shettihalli Road
Tumakuru.

13. G.R. Vidyananda
Aged about 36 years
Proprietor
Vasantha Packaged Drinking water
Behind General Hospital
Sidilubasaveshwaranagara
Gubbi Town,
Tumakuru District.
14. Niranjan Murthy
Aged about 28 years
Proprietor
Cauvery Filter Water-Aqua Dew
V Cross, I Block, Kuvempunagar
Tumakuru.
15. M.Govindaraju
Aged about 42 years
Proprietor
Maruthi Minerals-7 Hills Aqua
Manchkallukuppe,
Hirehalli post
Tumakuru District.
16. Udayashankar C.S
Aged about 35 years
Proprietor
Gangashri Industries
Mylaralingeshwara Nilaya
III Cross, III Phase
Mahalakshminagar
Batawadi, Tumakuru
17. T.S. Paramashivamurthy
Aged about 46 years
Proprietor
Sri Ganga Water supply
Govindapura, Tiptur
Tumakuru District.
18. R.D. Jayalakshmi
Aged about 45 years
Proprietrix
Karanji Mineral Waters

Kundan Enterprises
IV Link Road, IX Left Road,
IV Main, Jayanagar West
Tumakuru

19. S. Sumathi
Aged about 38 years
Proprietrix
Idugunji Enterprises
Siddaganga Water Supply
217/1, Gottigere
CT Palya, Kunigal Taluk
Tumakuru District.
20. M.N. Geetha
Aged about 33 years
W/o Naveen
Proprietrix
Aqua Fresh Packaged Drinking Water
Opp: Hero Honda Show room
KSFC Industrial Area,
BH Road, Tumakuru.
21. Shivakumaraswamy
Aged about 40 years
Proprietor
Patel Waters Maaranagere
Thotadamane
Tiptur, Tumakuru District
22. Paramashivamurthy
Aged about 34 years
Proprietor
Best Choice Packaged Drinking Water
Maaranager, Tiptur
Tumakuru District
23. Bhadresh
Aged about 47 years
Proprietor
Gangajala Packaged Drinking water
Khadi Gangappa Sadana
Pavagada Road, Lingenahalli
Madhugiri, Tumakuru District.
24. Jaishankar
Aged about 30 years
Proprietor
Joy Water

Balaji Enterprises
Behind UCO Bank
Batawadi
Tumakuru

25. Dastagir
Aged about 49 years
S/o Ghouse Mohiuddin
Geddalahalli, Ring Road
Tumakuru
26. Lokeshwara Reddy
Aged about 41 years
Proprietor
Sai Chaitanya Industries
Sagar Packaged Drinking Water
Devaraj URS Extn
Behind Rajiv Gandhi Stadium
Madhugiri, Tumakuru District.
27. Hanumantha Reddy
Aged about 32 years
Proprietor
Maruthi Mineral Waters
ID halli, Madhugiri
Tumakuru District.
28. Nagaraju
Aged about 34 years
S/o Late Narasegowda
Nature Fresh Packaged Drinking Water
Vokkadi Road,
Heggere
Tumakuru District.
29. R. Bharathi
Aged about 28 years
Proprietrix
Nisarga Drinking water
Kottarahallipalya
Mallasandra,
Tumakuru District
30. Chidananda Swamy
Aged about 36 years
Proprietor
Panchami Packaged Drinking Water
Panchami Enterprises
Madihalli,

Tiptur
Tumkuru District

31. A.N. Vinayaka
Aged about 32 years
Proprietor
Chiranjeevi Waters
Nagannana Palya, Sira Gate
Tumakuru District
32. H.N. Renuka
Aged about 30 years
Proprietrix
Gangothri Packaged Drinking Water
III Phase, IV Cross, Mahalakshmi Nagar
Batwadi, Tumakuru District. ..Petitioners

(By Sri.G.S.Prasanna Kumar, Advocate)

AND:

1. Union of India
Represented by its Secretary
Dept. of Health & Family Welfare
New Delhi.
2. State of Karnataka
Represented by its Secretary
Dept. of Food & Civil Supplies
MS Building, Vidhana Veedhi
Bangalooru-560 001
3. Commissioner
Food Safety & Standards,
Health & Family Welfare Service
Bengalooru
4. Designated Officer
Food Safety & Standards
Health & Family Welfare Service
Tumakuru
5. Dy. Commissioner
Tumakuru District
Tumakuru. ..Respondents

(By Sri.Sinchana, Advocate for Sri.Kalyana Basavaraj,
AGA for R1;
Sri.K.Krishna, Advocate for R2 to R5)

These Writ Petitions are filed under Articles 226 and 227 of the Constitution of India praying to quash the final notices dated 18.4.12 vide Annexure-D1 to D31 issued by the R4 to the petitioners 2-32 and etc.,

These Writ Petitions having been heard and reserved for orders, coming for pronouncement this day, *ARAVIND KUMAR J.*, pronounced the following:

ORDER

ARAVIND KUMAR J.

“WATER, WATER EVERYWHERE, BUT NOT A DROP TO DRINK” are the words of celebrated English Poet Samuel Taylor Coleridge (1772.1834)

PREFACE

1. In these petitions, an important issue touching the lives of human beings has come up for consideration namely, **WATER** which is one of the basic necessities for human existence. Several debates, discussions, deliberations, seminars across the world is being held or conducted on this vital subject since it has effects on the very existence of the human race.

2. Water is considered a purifier in most religions. Major faiths that incorporate ritual washing (ablution) include Christianity, Hinduism, Islam, Judaism, Rastafari movement, Shinto, Taoism, and Wicca. Immersion (or aspersion or affusion) of a person

in water is a central sacrament of Christianity (where it is called baptism); it is also a part of the practice of other religions, including Islam (Ghusl), Judaism (mikvah) and Sikhism (Amrit Sanskar).

3. Water is a chemical substance with the chemical formula H_2O . Water covers 70.9% of the Earth's surface, and is vital for all known forms of life. On Earth, 96.5% of the planet's water is found in oceans, 1.7% in groundwater, 1.7% in Glaciers and the ice caps of Antarctica and Greenland, a small fraction in other large water bodies, and 0.001% in the air as vapor, clouds (formed of solid and liquid water particles suspended in air), and precipitation. Only 2.5% of the Earth's water is freshwater, and 98.8% of that water is in ice and groundwater. Less than 0.3% of all freshwater is in rivers, lakes, and the atmosphere, and an even smaller amount of the Earth's freshwater (0.003%) is contained within biological bodies and manufactured products.

4. Safe drinking water is essential to humans and other lifeforms. Access to safe drinking water has

improved over the last decades in almost every part of the world, but approximately one billion people still lack access to safe water. However, some observers have estimated that by 2025 A.D. more than half of the world population will be facing water-based vulnerability. A recent report by World Health Organisation (November 2009) suggests that by 2030, in some developing regions of the world, water demand will exceed supply by 50% and thereby water plays an important role in the world economy.

5. This natural resource is becoming scarcer in certain places, and its availability is a major social and economic concern. Currently, about a billion people around the world routinely drink unhealthy water. Most countries accepted the goal of halving by 2015 the number of people worldwide who do not have access to safe water. Even if this difficult goal is met, it will still leave more than an estimated half a billion people without access to safe drinking water. **The World Health Organization estimates that safe water could prevent 1.4 million child deaths from diarrhea each year.** Water, however, is not a finite resource, but rather

re-circulated as potable water in precipitation in quantities many degrees of magnitude higher than human consumption. Therefore, it is the relatively small quantity of water in reserve in the earth (about 1% of our drinking water supply, which is replenished in aquifers around every 1 to 10 years), that is a non-renewable resource, and it is, rather, the distribution of potable and irrigation water which is scarce, rather than the actual amount of it that exists on the earth.

6. Water being an integral part of living creatures is an inseparable part of human beings. On the one hand, the population of the country is increasing in manifold numbers and on the other hand, the water resources to cater to the needs of these populace is dwindling day-by-day and thus a balancing act is required to be maintained.

7. The Constitution of India gives every citizen of the country a fundamental right under Part-III, Article 21 protection of life and person, liberty which envisages that no citizen shall be deprived of his life except according to the procedure established by law.

Keeping this salutary principle enshrined in the Constitution bestowed by our forefathers for better living in this earth, the significant issue espoused by a public spirited citizen in W.P.No.17713/2012 which relates to providing safe drinking water to citizens is being considered by us in these petitions and hence this preface.

BRIEF BACKGROUND OF THE CASES:

8. In writ petition No.17713/2012, petitioner is seeking for a direction in the nature of mandamus to the respondents to take all necessary steps to prevent manufacture/sale of drinking water without ISI standard as prescribed under Section 15 of the Bureau of Indian Standards Act.

9. Writ Petition Nos. 24257-24283/2012 and Writ Petition Nos.17467-498/2012 have been filed by the petitioners who are carrying on the business of supply of potable drinking water questioning the notice issued by the Commissioner for Food Safety and notice issued by the designated officer, Food Safety and Standards calling upon them to furnish the certificate

obtained from Bureau of Indian Standards. Hence, all these writ petitions are clubbed together and they are taken up for consideration.

10. We have heard the arguments of Sriyuths Jayakumar S Patil, learned Senior counsel appearing for the petitioner in W.P.17713/2012, V.V.Gunjal, learned counsel appearing for petitioner in W.P.24257-283/2012, G.S.Prasanna Kumar, learned counsel appearing for petitioner in W.P.17467-498/2012, V.Lakshminarayana, R.Devanand, R.Badrinath and Dayanand S.Patil learned advocates appearing for impleading applicants, R.G.Kolle, learned Addl. Government Advocate, Ms.Sinchana appearing on behalf of Sri.Kalyan Basavaraj, Assistant Solicitor General of India, Ms.Anu Chengappa, learned counsel appearing for Bureau of Indian Standards and Sri Aditya Sondhi, learned Amicus curiae.

RANK OF PARTIES

11. Lochamesh B.Hugar in W.P.17713/2012 is hereinafter referred to as '**Petitioner**'; manufacturers – suppliers of packaged water are referred to as '**Manufacturers**'; Union of India and State of Karnataka

are referred to as **UOI & GOK respectively**; Commissioner for Food Safety is referred to as **'Commissioner'**; Designated Officer, Food and Safety Standards is referred to as **'Designated Officer'**; and, Bureau of Indian Standards is referred to as **'BIS'** in the course of the order for the sake of brevity and convenience.

CONTENTIONS/PLEAS RAISED

12. It is the contention of the Petitioner that large number of units in the State of Karnataka are selling packaged drinking waters by drawing water from the borewells or water supplied by the statutory Boards for selling the same as packaged drinking water to the public without adhering to BIS Standards which has resulted in unhealthy competition and thereby resulting in unsafe water being supplied to the citizens at the cost of their health. It is contended that under Section 15 of the Bureau of Indian Standards Act, (hereinafter referred to as 'BIS Act' for brevity) read with sub-rule (28) of Rule 49 of Prevention of Food Adulteration Rules, 2000 such Manufacturers are required to obtain permission/licence/certification from respective

authorities and same has not been obtained, and as such petitioner is seeking for writ of mandamus to the respondent-authorities to prevent sale of such water. It is also contended that representation was submitted by the petitioner – Trust to all the Deputy Commissioners in the State to prevent such illegal sale of packaged drinking water and no action was taken on the said representation and contends that these respondents have refused to discharge their statutory duties and prevent the manufacture and sale of drinking water contrary to law and as such petitioner has approached this court seeking directions to the authorities.

13. It is further contended that no person can manufacture or sell or exhibit to sell packaged drinking water except under certification from BIS and obtaining of such certification is mandatory. It is also the contention of the petitioner that sub-rule (28) of Rule 49 of Prevention of Food Adulteration Rules, 2000 as amended encompasses **‘packaged drinking water’**. Elaborating these contentions, petitioners contend that Manufacturers of packaged drinking water not having ISI mark or certification of BIS are avoiding payment of

Value Added Tax – VAT and thereby the revenue is being deprived to the State. On these grounds, petitioners pray for grant of relief sought for in the writ petition.

14. The Manufacturers who have filed Writ Petitions 24257 to 24283/2012 and W.P.Nos.17467-498/2012 would contend that Food and Safety Standards Act, 2006, (hereinafter referred to as “FSS Act” for brevity) is an enactment which came into force only with the objective of preventing and stoppage of Food Adulteration and it is an independent enactment and Section 31 of the FSS Act prescribes obtaining licence under the said enactment and it no where prescribes manufacturers of packaged water to obtain ISI certification under BIS Act. It is also contended that petty manufacturers who manufacture or sell any food article or a petty retailer/hawker, itinerant vendor or temporary staff holder or small scale or cottage or such other industry relating to food business are tiny food business operators like the petitioners are not required to obtain BIS certification; it is further contended that they are exempted from obtaining licence under the FSS

Act and the only obligation cast on the manufacturers like petitioners is to get themselves registered which they have done; it is also contended that under section 14 of the BIS Act only scheduled industries as specified therein are required to obtain licence and all manufacturers of packaged water do not come under the scheduled industries; some of the manufacturers who are into the business of packaged drinking water have contended that mineral water is not included in the definition 3(1)(j) of FSS Act. It is their further contention that under the Food Safety and Standard (Licensing and Registration of Food Businesses) Regulation, 2011 is required to get registered as provided to under section 31(2) of FSS Act and are required to follow the regulations and accordingly they have obtained permission from Directorate of Industries to carry on their industry and there is no violation of any statutory provisions; they also contend there is no violation of any provision of the regulations by the manufacturers and on these grounds they are questioning the notices issued to them by the Commissioner and seeks for quashing of the same and they also seek for further direction that respondents

should not insist on obtaining certificate under BIS Act in so far as manufacturers of petty food, cottage industries and small scale industries are concerned. On these grounds they seek for suitable writ/direction/order being passed/ issued.

15. Respondents who have got themselves impleaded are contending that they are carrying on small scale business in Reverse Osmosis Process (ROP) of water by using modernised equipments at Taluka and District Panchayat level and they are supplying water in a container to the public for religious and philanthropic purposes and sometimes for marriage functions or gatherings and there is no sealing of the bottle; it is also contended that State Government has introduced Water Distribution System through the Rural Development and Panchayat Raj Department in each village and Taluka Head quarters where drinking water is distributed on a nominal price; they also contend that the same container with ISI label as certified by BIS is being sold at a price of ₹60/- to ₹70/- per container as against the price of ₹10/- to ₹20/- supplied by the manufacturers; they also contend that

if certification is done through the labs maintained by the Department it will be more effective and regulatory in observing the standards laid down under BIS Act and contend that these acts and regulations would be applicable only when the water is sealed and being packed in a bottle and not in case of drinking water sold in a container and when it is not sealed or packed; Manufacturers contend they have obtained trade licence and invested substantial amounts on their units and they are depending upon the said avocation for the last several years and as such they pray for suitable orders being passed.

16. The BIS has filed its detailed objection statement in W.P.17713/2012 and have adopted the same to all other writ petitions. The gist of the contention of the BIS is as under:

- (i) BIS is apex body for preparing standards and implementation of the certification of marks, scheme for goods and services in the Union of India and it is empowered to grant certification marks, licence in respect of goods and services as also in

respect of quality system and management system;

(ii) It is vested with the power to grant, renew or cancel licence under the Act subject to various provisions and regulations made thereunder; no person shall use the BIS standard mark in relation to any article process except under a licence and also the standard mark should not be used in relation to any article or process unless it conforms to BIS standards;

(iii) It empowers the BIS authorities to conduct inspection to ascertain as to whether the product to which the standard mark has been used conforms to the Indian Standard Mark or whether it is improperly used with or without a licence.

(iv) Under Food Safety and Standards (Prohibition and Restrictions on Sales) Regulation -2011 clause 2.3.14(17) no person can manufacture, sell or exhibit for sale packaged drinking water except under the Bureau of ISI mark as per the

notification dated 01.08.2011 issued by the Ministry of Health and Family Welfare, Government of India in exercise of the power conferred by clause (1) of sub-section (2) of Section 92 read with Section 26 of FSS Act which is duly Gazetted and as such it is contended that irrespective of the nature, size or legal status of the production unit any individual or entity undertaking the manufacture/production of packaged drinking water has to mandatorily obtain licence as otherwise it is illegal ab initio;

- (v) The standards are prescribed as per Annexure-B to the above said notification has prescribed in IS 14543/2004 and in case of BIS mark being used without obtaining licence to misguide and cheating the consumers it empowers the 5th respondent to conduct search and seizure and deal seriously by booking cases under section 33 of BIS Act.

17. The State of Karnataka has filed the affidavit of the Commissioner on 26.07.2012 contending that all effective steps have been taken for proper implementation of the FSS Act and has furnished the steps taken in this regard.

18. BIS has filed additional statement enumerating the logistics and procedure for obtaining BIS certification for packaged drinking water and as to how the application would be examined, processed and certificate is being issued.

19. The learned advocates appearing for the parties have reiterated the contentions raised in their pleadings as concisely extracted herein above and have prayed for suitable orders being passed by taking into consideration:

- (i) the safety of the consumers of water;
- (ii) the interests of manufacturers catering to the rural populace by supplying processed water in containers at subsidised price;
- (iii) the interests of manufacturers carrying on the said activity from long number of years having

established their units after investing huge capital;

- (iv) And in the event of this Court coming to conclusion that even such Manufacturers are to obtain Licence from BIS then sufficient time be granted to enable such manufacturers to obtain BIS certification in a phased manner.

20. Having heard learned advocates appearing for the parties, we are of the considered view that the rival contentions are required to be considered in the background of the object of these enactments, statutory provisions of these Acts, analysis thereof, discussion and conclusion as also steps to be taken by way of remedial measures and accordingly we are proceeding.

21. At the outset we are of the view that it would be necessary to extract the statement of objects and reasons which necessitated the enactment of The Bureau of Indian Standards Act, 2006 which emphasizes the need and necessity to bring in such enactment for the benefit of developing the Indian

Standards not only in India but as well as across the frontiers. It reads as under:

**“STATEMENT OF OBJECTS AND REASONS” OF BIS,
ACT 1986**

1. The Indian Standards Institution was registered as a society under the Societies Registration Act, 1860 in January, 1947 to prepare and promote standards. The Indian Standards Institution (Certification Marks) Act, 1952 covers the operation of the certification marks scheme, while the formulation of standards and other related work is not governed by any legislation.
2. When the Indian Standards Institution was established, the industrial development in the country was still in its infancy. During the last 39 years, there has been substantial progress in various sectors of the Indian economy. The industrial and agricultural sectors have undergone structural and qualitative transformation under the Five Year Plans. In this context, a new thrust has to be given to standardisation and quality control. A national strategy for according appropriate recognition and importance of standards is to be evolved and integrated with the growth and development of production and export in various sectors of the national economy. The public sectors and private sectors including small scale industries have to intensify efforts to produce more and more standard and quality goods so as to help in

inducing faster growth, increasing exports and making available goods to the satisfaction of the consumers.

3. The organisation for formulating standards have to be given due recognition and status to enable it to discharge its functions effectively and efficiently in the acceptance and promotion of Indian Standards not only in this country but even abroad. Apart from the representations of the industry, such an organisation should also have adequate representation for users and consumer organisations, Central and State Governments, research organisations and regulatory agencies. For all these reasons, it is considered necessary to have the organisation for standards as a statutory institution which will have adequate autonomy and flexibility in its operations and will also ensure that priority is given to various aspects of its functions in line with national priorities.
4. To achieve these objectives, it is proposed to set up a Bureau of Indian Standards as a statutory institution.
5. The Bill provides that the Bureau of Indian Standards will be a body corporate and specifies its composition and the constitution of an Executive Committee to carry on the day-to-day activities of the Bureau. The proposed Bureau will take over the staff, assets and liabilities of the Indian Standards Institution and perform all

functions which are now being performed by the Indian Standards Institution. The Bill will provide access to the Bureau's Standards and Certification Marks to suppliers of like products originating in General Agreement on Trade and Tariff (GATT) code countries. The Bill also makes provision for the making of grants and the advancing of loans to the Bureau by the Central Government and the necessary provisions for the better administration of a body corporate like constitution of fund, accounts and audit, etc. The Bill provides for the repeal of the Indian Standards Institution (Certification Marks) Act, 1952".

**STATEMENT OF OBJECT AND REASONS FOR
THE FSS, ACT 2006**

STATEMENT OF OBJECTS AND REASONS

- 1 XXX
- 2 XXX
- 3 XXX
- 4 XXX
- 5 The Bill, inter alia, incorporates the salient provisions of the Prevention of Food Adulteration Act, 1954 (37 of 1954) and is based on international legislation, instrumentalities and Codes Alimentaries Commission (which related to food safety norms). In a nutshell, the Bill takes care of International practices and envisages on overarching policy framework and provision of single window to guide and regulate persons engaged in manufacturing, marketing, processing, handling, transportation, import

and sale of food. The main features of the Bill are:

- (a) movement from multi-level and multi-departmental control to integrated line of command;
- (b) integrated response to strategic issues like novel/genetically modified foods, international trade;
- (c) licensing for manufacture of food products, which is presently granted by the Central Agencies under various Acts and Orders, would stand decentralized to the Commissioner of Food Safety and his orders.
- (d) Single reference point for all matters relating to Food Safety and Standards regulations and enforcement.
- (e) Shift from mere regulatory regime to self compliance through Food Safety Management systems;
- (f) Responsibility on food business operators to ensure that food processed, manufactured, imported or distributed is in compliance with the domestic food laws; and
- (g) Provision for graded penalties depending on the gravity of offence and accordingly civil penalties for minor offences and punishment for serious violations.

6 The abovesaid Bill is contemporary, comprehensive and intends to ensure better consumer safety through Food Safety Management Systems and setting standards based on science and transparency as also to meet the dynamic requirements of Indian Food Trade and Industry and International trade.

The Bill seeks to achieve the aforesaid objectives.

22. Some of the provisions of the Food Safety and Standards Act, 2006, Regulations made thereunder

as well as the relevant provisions of The Bureau of Indian Standards Act, 2006 which has bearing on the issues in question are extracted herein below:

STATUTORY PROVISIONS

THE FOOD SAFETY AND STANDARDS ACT, 2006

3. Definitions

(1) In this Act, unless the context otherwise requires,-

(j) **“food”** means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food to the extent defined in in clause (zk), genetically modified or engineered food or food containing such ingredients, infant food, **packaged drinking water**, alcoholic drink, chewing gum, and any substance including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants prior to harvesting, drugs and medicinal products cosmetics, narcotic or psychotropic substances:

PROVIDED that the Central Government may declare, by notification in the Official Gazette, any other article as food for the purposes of this Act having regards to its use, nature, substance or quality;

(m) **“Food Authority”** means the Food Safety and Standards Authority of India established under section 4;

(n) **“food business”** means any undertaking, whether for profit or not and whether public or private, carrying out any of the activities related to any stage of manufacture, processing, packaging, storage, transportation, distribution of food, import and includes food service, catering services, sale of food or food ingredients;

(o) **“food business operator”** in relation to food business means a person by whom the business is carried on or owned and is responsible for ensuring the compliance of this Act, rules and regulations made thereunder;

(p) **“food laboratory”** means any food laboratory or institute established by the Central or a State Government or any other agency and accredited by National Accreditation Board for Testing and Calibration Laboratories or an equivalent accreditation agency and recognised by the Food Authority under section 43;

(za) **“licence”** means a licence granted under section 31;

(zc) **“manufacture”** means a process or adoption or any treatment for conversion of ingredients into an article of food, which includes any sub-process, incidental or ancillary to the manufacture of an article of food;

(zg) **“notification”** means a notification published in the Official Gazette;

(zh) **“package”** means a pre-packed box, bottle, casket, tin, barrel, case, pouch, receptacle, sack, bag, wrapper or **such other things** in which an article of food is packed;

4. Establishment of Food Safety and Standards Authority of India

- (1) The Central Government shall, by notification, establish a body to be known as the Food Safety and Standards Authority of India to exercise the powers conferred on, and to perform the functions assigned to, it under this Act.
- (2) The Food Authority shall be a body corporate by the name aforesaid, having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall, by the said name, sue or be sued.
- (3) The head office of the Food Authority shall be at Delhi
- (4) The Food Authority may establish its offices at any other place in India.

23 Packaging and labelling of foods

- (1) No person shall manufacture, distribute, sell or expose for sale or despatch or deliver any agent or broker for the purpose of sale, any packaged food products which are not marked and labelled in the manner as may be specified by regulations:

PROVIDED that the labels shall not contain any statement, claim, design or device which is false or misleading in any particular concerning the food products contained in the package or concerning the quantity or the nutritive value implying medicinal or therapeutic claims or in relation to the place of origin of the said food products.

- (2) Every food business operator shall ensure that the labelling and presentation of food, including their shape, appearance or packaging, the packaging materials used, the manner in which they are arranged and the setting in which they are displayed, and the information which is made available about

them through whatever medium, does not mislead consumers.

26. Responsibilities of the food business operator

- (1) Every food business operator shall ensure that the articles of food satisfy the requirements of this Act and the rules and regulations made thereunder at all stages of production, processing, import, distribution and sale within the businesses under his control.
- (2) No food business operator shall himself or by any person on his behalf manufacture, store, sell or distribute any article of food-
 - (i) which is unsafe; or
 - (ii) which is misbranded or sub-standard or contains extraneous matter; or
 - (iii) for which a licence is required, except in accordance with the conditions of the licence; or
 - (iv) which is for the time being prohibited by the Food Authority or the Central Government of the State Government in the interest of public health; or
 - (v) in contravention of any other provision of this Act or of any rule or regulation made thereunder.
- (3) No food business operator shall employ any person who is suffering from infectious, contagious or leathsome disease.
- (4) No food business operator shall sell or offer for sale any article of food to any vendor unless he also gives a guarantee in writing in the form specified by regulations about the nature and quality of such article to the vendor:
PROVIDED that a bill, cash memo, or invoice in respect of the sale of any article of food given by a food business operator to the vendor shall be deemed to be a guarantee under this section, even if a guarantee in the specified form is not included in the bill, cash memo or invoice.
- (5) Where any food which is unsafe is part of a batch, lot or consignment of food of the same class or description, it shall be presumed that all the food in that batch, lot or consignment is also unsafe, unless

following a detailed assessment within a specified time, it is found that there is no evidence that the rest of the batch, lot or consignment is unsafe; PROVIDED that any conformity of a food with specific provision applicable to that food shall be without prejudice to the competent authorities taking appropriate measures to impose restrictions on that food being placed on the market or to require its withdrawal from the market for the reasons to be recorded in writing where such authorities suspect that, despite the conformity, the food is unsafe.

43. Recognition and accreditation of laboratories, research institutions and referral food laboratory

- (1) The Food Authority may notify food laboratories and research institutions accredited by National Accreditation Board for Testing and Calibration Laboratories or any other accreditation agency for the purposes of carrying out analysis of samples by the Food Analysts under this Act.
- (2) The Food Authority shall, establish or recognise by notification, one or more referral food laboratory or laboratories to carry out the functions entrusted to the referral food laboratory by this Act or any rules and regulations made thereunder.
- (3) The Food Authority may frame regulations specifying-
 - (a) the functions of food laboratory and referral food laboratory and the local area or areas within which such functions may be carried out;
 - (b) the procedure for submission to the said laboratory of samples of articles of food for analysis or tests, the forms of the laboratory's reports thereon and the fees payable in respect of such reports; and
 - (c) such other matters as may be necessary or expedient to enable the said laboratory to carry out its functions effectively.

89 – Overriding effect of this Act over all other food related laws

The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.

92 – Power of Food Authority to make regulations

- (1) The Food Authority may, with the previous approval of the Central Government and after previous publication, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) to (v) xxx

97- Repeal and Savings

(1) With effect from such date as the Central Government may appoint in this behalf, the enactment and Orders specified in the Second Schedule shall stand repealed:

PROVIDED that such repeal shall not affect:-

- (i) the previous operations of the enactment and Orders under repeal or anything duly done or suffered thereunder; or
- (ii) any right, privilege, obligation or liability acquired, accrued or incurred under any of the enactment or Orders under repeal; or
- (iii) any penalty, torterture or punishment incurred in respect of any offences committed against the enactment and Orders under repeal; or

- (iv) any investigation or remedy in respect of any such penalty, forfeiture or punishment.

And any such investigation, legal proceedings or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed:

(2) If there is any other law for the time being in force in any State, corresponding to this Act, the same shall upon the commencement of this Act, stand repealed and in such case, the provisions of section 6 of the General Clauses Act, 1897 (10 of 1897), shall apply as if such provisions of the State law had been repealed.

(3) Notwithstanding the repeal of the aforesaid enactment and Orders, the licences issued under any such enactment or Order, which are in force on the date of commencement of this Act, shall continue to be in force till the date of their expiry for all purposes, as if they had been issued under the provisions of this Act or the rules of regulations made thereunder.

(4) Notwithstanding anything contained in any other law for the time being in force, no court shall take cognizance of an offence under the repealed Act or Orders after the expiry of a period of three years from the date of commencement of this Act.

23. In the order to ensure that articles of Food satisfy the requirements of the Act, Rules and Regulations made thereunder, the authorities are empowered to fix responsibilities and prevent Sale of such unsafe, misbranded, sub-standard article of Food and in this direction, the Food Authority with the previous approval of Central Government has made several regulations to prohibit sale of such food articles

and has imposed restrictions on sales of food products after publishing the same in Gazette of India extraordinary by inviting objections and suggestions. The following regulations would be relevant and necessary for the purposes of analysing the issues on hand and hence they are extracted herein below:

- (i) The Food Safety And Standards (Licensing and Registration of Food Businesses) Regulations, 2011**
- (ii) The Food Safety and Standards (Food Products Standards And Food Additives) Regulations, 2011**
- (iii) The Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011**
- (iv) The Food Safety and Standards (Laboratory and Sample Analysis) Regulations, 2011**

24. For the purposes of convenience they are hereinafter referred to as:

- (I) Registration of Food Business Regulation-2011;
- (II) Food Products and Additives Regulations-2011;
- (III) Restrictions on Sales Regulation –2011; and,
- (IV) Laboratory and Sample Analysis Regulations-2011.

25. The relevant Regulations of these above referred Regulations which has a direct bearing on the issues on hand are extracted herein below.

I. LICENSING AND REGISTRATION OF FOOD BUSINESS REGULATIONS, 2011

CHAPTER-2

2.1 Registration and Licensing of Food Business

All Food Business Operators in the country will be registered or licensed in accordance with the procedures laid down hereinafter.

II. FOOD PRODUCTS STANDARDS & ADDITIVES REGULATIONS, 2011

CHAPTER-1

GENERAL

1.1 Title and commencement

1.1.2 These regulations shall come into force on or after 5th August, (except regulations 2.1.6(1)(2)(3), 2.1.7(2)(3)(4), 2.1.12(1) and entries relating in table 14 of Appendix A and table 2 of Appendix B which shall come into force after six months from that date and in regulation 2.1.8(1)(3) and 2.1.12(1)(2) only relating entries in table which shall come into force after six months)

PROVIDED that wherever the standards given in these regulations are at variance with any of the provisions of the licenses already granted, Food Business Operator shall comply with the provisions of these regulations within six months from the date of commencement of the regulations.

CHAPTER-2

2.10 Beverages (other than Dairy and Fruits & Vegetables based)

2.10.8 Packaged drinking water (other than Mineral Water)

“Packaged drinking water (other than Mineral Water)” means water derived from surface water or underground water or sea water which is subjected to hereinunder specified treatments, namely, decantation, filtration, combination of filtration, aerations, filtration with membrane filter depth filter, cartridge filter, actiated carbon filtration, de-mineralisation, re-mineratlisatioj, reverse osmosis and packed after disinfecting the water to a level that shall not lead to any harmful contamination in the drinking water by means of chemical agents or physical methods to reduce the number of micro-organisms to a level beyond scientifically accepted level for food safety of its suitability:

PROVIDED that sea water, before being subjected to the above treatments, shall be subjected to desalination and related process.

The related packaging and labelling requirements are provided in regulation 2.1.2, 2.2.1 and 2.4.5 of Food Safety and Standards (Packaging and Labelling) Regulations, 2011.

III. RESTRICTIONS ON SALES REGULATIONS, 2011

CHAPTER-2

PROHIBITION AND RESTRICTIONS ON SALES

2.3.14 Restrictions relating to conditions for sale

- (1) To (16) XXX
- (17) No person shall manufacture, sell or exhibit for sale **packaged drinking water** except under the Bureau of Indian Standards Certification Mark.

IV. LABORATORY AND SAMPLE ANALYSIS REGULATIONS, 2011

CHAPTER 1

GENERAL

1.2. Definitions

1.2.1 In these regulations unless the context otherwise requires:

1. “Notified Laboratory” means any of the laboratories notified by the Food Authority under sub-sections(1) and (2) of section 43 of the Act.
2. “Referral laboratory” means any of the laboratories established and/or recognized by the Food Authority by notification under sub-section (2) of section 43 of the Act.

2.3.1 Quantity of sample of food to be sent to the Food Analyst/Director for analysis shall be as specified in the table below:-

TABLE

Sl. No.	Article of Food	Approximate Quantity to be supplied
1 to 46	xxx	xxx
47	Natural Mineral Water/ Packaged Drinking Water	4000 ml. in three minimum original sealed packs.

E BUREAU OF INDIAN STANDARDS ACT, 1986**CHAPTER-1****PRELIMINARY**

1 (1) xxx

2. Definitions. - In this Act, unless the context otherwise requires, -

(a) "article" means (as respects standardisation and marking) any substance, artificial or natural, or partly artificial or partly natural, whether raw or partly or wholly processed or manufactured;

11. Prohibition of improper use of Standard Mark. -

(1) No person shall use, in relation to any article or process, or in the title of any patent, or in any trademark or design the Standard Mark or any colourable imitation thereof, except under a licence.

(2) No person shall, notwithstanding that he has been granted a licence, use in relation to any article or process the Standard Mark or any colourable imitation thereof unless such article or process conforms to the Indian Standards.

33. Penalty for improper use of Standard Mark, etc.-

(1) Any person who contravenes the provisions of section 11, or section 12 or section 14 or section 15 shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to fifty thousand rupees, or with both.

- (2) Any court trying a contravention under sub-section (1) may direct that any property in respect of which the contravention has taken place shall be forfeited to the Bureau.

ANALYSIS OF STATUTORY PROVISIONS:

26. In order to converge all food laws and to have a single Regulatory Body the Food Safety and Standard Act was enacted by the Parliament by Act, 34 of 2006 published in the Official Gazette on 23.08.2006. The Statement of objects and reasons of the said enactment was to consolidate the laws relating to food and to establish the Food Safety Standards Authority of India for laying down Science Based Standards for Articles of Food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto. A statute or any enacting provision therein requires to be construed to make it effective and operative on the principles expressed in the maxim *'ut res magis valeat quam pereat'* namely the constitutionality of a statute start with a presumption in favour of constitutionality and the court should prefer construction which keeps the statute within the

competence of legislature in mind these Statutory Provisions are examined. At this juncture it would be apropos to note the judgment in the case of **Fawcett Properties Vs Buckingham County Council reported in (1960) 3 All ER 503** at page 516 whereunder it has been held as follows:

“But when a statute has some meaning even though it is obscure, or several meanings, even though it is little to choose between then, the courts have to say what meaning the statute is to bear, rather than reject it as a nullity”.

27. The courts would reject a construction which will defeat the plain intention of the legislature and if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation would be avoided in order to ensure that such legislation would be a futility and it would rather toe the line of acceptance of bolder construction. In other words the courts strongly lean against a construction which reduces the statute to a futility. In this regard the authority laid down by the Hon'ble Apex Court in the matter of Tinsukhia Electric Supply

Company Limited Vs State of Assam reported in AIR 1990 SC 123 at page 152 can be looked up.

28. Thus, keeping in mind the above principles the provisions of the Food Safety and Standards Act, 2006 as well as the Bureau of Indian Standards Act, 1986 are perused by us.

29. Section 3(j) of FSS Act, 'FOOD' has been defined to include packaged drinking water; Section 3(zc) defines 'manufacture' to mean a process or adoption or any treatment of conversion of ingredients into an article of food which includes any sub-process; Section 3(zh) package has been defined to mean pre-packed box, bottle, cascade, tin, barrel, case, pouch, receptacle, sack, bag, wrapper, or *such other things* in which article of food is packed. A food operator as defined under Section 3(o) would mean a person by whom the business is carried on or owned and would be responsible for compliance of provisions of the Act, Rules and Regulations made thereunder. In order to ensure that the '**Food**' so manufactured complies with the statutory provisions and to ascertain as to whether there is such compliance they are tested at the 'Food

Laboratory' established by the Central Government, State Government or any other agency and accredited by National Accreditation Board for Testing and Calibration Laboratories or an equivalent accreditation agency recognised by the Food Authority under section 43. Section 23 prohibits Manufacture, distribution and sale of any packaged Food Products which are not packed and labelled in the manner specified under regulations. Section 31 restricts carrying on any food business except under licence. Thus, the licence as defined under section 3(za) is required to be obtained by any person commencing or carrying on food business. Chapter VIII namely Section 43 to 47 provides for recognition and accreditation of laboratories, Research Institutions and Referral Food Laboratory, agency for Food Safety Audit, Food analysts and their functions which also includes sampling and analysis of the food. Chapter X of the FSS Act provides for adjudication of disputes by the authority not below the rank of additional District Magistrate to be notified by the State Government as the adjudicating officer who will have the powers of a Civil Court and would be deemed to be court for the purposes of Section 345 and 346 of Code

of Criminal Procedure. Section 69 provides for the Commissioner of Food Safety to empower the designated officer to compound the offence by petty manufacturers who sell any article of food, retailers, hawkers etc., on payment of such sum of money, having due regard to section 49 which relates to adjudging the quantum of penalty. Section 97 of the Food Act, 2006 is the repeal and savings clause whereunder the enactment and orders specified in Schedule II thereunder has stood repealed from such date as the Central Government may appoint in this behalf.

30. The Food Safety and Standards (Food Products Standards And Food Additives) Regulations, 2011 which was been brought into force with effect from 5th August 2011 mandates that all Licensees are to comply with the Standards given in the regulations, and if Licensees have been already issued with licenses then such business operators are required to comply with the provisions of these regulations within six months from 5.8.2011 i.e. on or before 5.2.2012. Under Regulation 2.10.8 of said Regulations Standards for packaged drinking water (other than Mineral water) has been

specified, which requires to be strictly complied by the Licensees. Proviso to Regulation 1.1.2 stipulates that even if such licence have already been issued and such Standards are at variance to the provision of Food Products and Additives Regulations, 2011. Such Licensees or manufacturers are required to comply with the standards prescribed under Food Products and Additives Regulations, 2011 within six months from the date of commencement of the Regulations.

31. It has to be further, noted that under Restrictions on Sales Regulations, 2011 an absolute bar or embargo has been placed which prohibits manufacturers, sale, exhibiting packaged drinking water except under the Bureau of Indian Standards Certification Mark.

32. At this stage itself, we would appropriate to delve upon the contention raised by some of the manufacturers that packing the processed water in a container or can would not come within the definition of 'packaged drinking water' and it would be outside the scope of Food Safety and Standards Act, 2006. While

interpreting a word in a statute particularly a statute which concern the safety of human beings as in the case on hand the words used in the statute have to be given liberal interpretation and not restrictive meaning. Merely because some of the manufacturers are supplying the processed water in containers and as such it would not become packaged drinking water as defined under section 3(zh) of FSS, Act has to be held absurd as it would result in stretching logic to an illogical end or in other words such proposition is to be construed as one of fallacy. As noticed from the words used in the definition clause of FSS Act, 2006 namely Section 3(zh) it has brought within its purview to mean and include the words used therein i.e., Pre-packed box, bottle, casket, tin, barrel, case, pouch, receptacle, sack, bag, wrapper or **such other things** in which an article of food is packed and the Parliament has consciously used the words **“such other things”** in which an article of food can be packed and it would necessarily mean to include the containers also. We are of the view that the Doctrine of *Noscitur a sociis* (the meaning of the word is to be adjudged by the company it keep), which rule is wider than the rule of *ejusdem generic*, would aptly to

the words "such other things" on hand. This rule according to Maxwell means when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take as it were their color from each other, i.e., the more general is restricted to a sense, analogous to a less general. It is only where the intention of the legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied. In the instant case it has been contended that the word 'container' is not to be found in the definition clause namely section 3(zh) which defines what a package means and as such these manufacturers are not exigible to the provisions of FSS Act. If such proposition is accepted then the very purpose of the Act gets truncated or negated, in as much as the legislature have consciously used the phrase '**such other things**' after the words pre-packed box, bottle, cascade, tin, barrel, case, pouch, receptacle, sack, bag, wrapper, which can only mean and include that the food article should hold in those items or which is capable of being packed and stored in any other form.

The word 'container' is of the genus of box, bottle, barrel, etc., and 'container' is of the same family and as such the word 'container' cannot be excluded from the definition clause. This doctrine has come up for consideration before the Hon'ble Apex Court and it has been held as under:

1. AIR 1997 SC 3297 – SAMATHA VS STATE OF ANDHRA PRADESH AND OTHERS –

“225. It is a cardinal rule of construction of statute that the statute must be read as a whole and construction should be put to all the parts together and not of anyone part only by itself. Every clause of a statute is required to be construed with reference to the context and other clauses of the Act so that so far as possible the meaning of the enactment of the whole statute would be consistent. When legislature uses the same word in different parts of the same Section or statute, there is a presumption that the word is used in the same sense throughout. It was so held by this Court in the following cases: Suresh Chand Vs Gulam Chisti, (1990) 1 SCR 186: (AIR 1990 SC 897); Mohd. Shafi Vs Seventh Additional District and Sessions Judge, Allahabad, (1977) 2 SCR 464: (AIR 1977 SC 836); Raghubans Narain Singh Vs Uttar Pradesh Govt., (1967) 1 SCR 489: (AIR 1967 SC 465). But the aforesaid presumption can easily be displaced by the context in which the particular word is used. In Farrell Vs Alexander, (1976) 2 All England Report 721 it was stated that where the draftsman uses the same word or phrase in similar context, he must be presumed to intend it in each place to bear the same meaning. Venkatarama Ayyar J., in the case of Shamrao Vishnu Parulekar Vs District Magistrate, Thana, 1956 SCR 644: (AIR 1957

SC 23) discussing the aforesaid rule has said “The rule of construction contended for is well settled but that is only one element in deciding what the true import of enactment is to ascertain which it is necessary to have regard to the purpose behind the particular provision and its setting in the scheme of the statute”.

2. AIR 2001 SC 4014 – CBI, AHD, PATNA VS BRAJ BHUSHAN PRASAD AND OTHERS -

“26. We pointed out the above different shades of meanings in order to determine as to which among them has to be chosen for interpreting the said word falling in Section 89 of the Act. The doctrine of noscitur a sociis (meaning of a word should be known from its accompanying or associating words) has much relevance in understanding the import of words in a statutory provision. The said doctrine has been resorted to with advantage by this Court in a number of cases vide Bangalore Water Supply and Sewerage Board Vs A.Rajappa, Rohit Pulp and Paper Mills Ltd., Vs CCE, Oswal Agro Mills Ltd., Vs CCE, K.Bhagirathi G. Shenoy Vs K.P.Ballakuraya and Lokmat Newspapers (P) Ltd., Vs Shankarprasad”.

Thus, it is seen from the dicta laid down by the Apex Court, the words accompanying the definition is to be looked into and when so examined with reference to the word “container” which is said to be used for holding or storing of the processed water it has to be necessarily held to fall within the definition clause and it would not get excluded from the purview of definition clause as defined under section 3(zh) namely Package.

Thus, the word 'container' should receive an interpretation in its broader sense and also with widest sense by judging from the colour of the words it keeps its company viz., bottle, cascade, tin, barrel etc., Hence, the contention of the learned counsel for the manufacturer stands rejected.

33. Section 23 of FSS Act mandates that no person shall distribute, sell or expose for sale or dispatch or deliver to any agent or broker for the purpose of sale any packaged food products which are not marked and labeled in the manner as may be specified by the regulation.

34. Section 92 of FSS Act enables the Food Authority to make regulations with the prior approval of the Central Government and after previous publication. In exercise of such power. The Central Government has brought in the Food Safety and Standards (Prohibition and Restrictions on Sale) Regulations-2011 with effect from 05.08.2011. Under Regulation 2.3.14 restrictions relating to conditions for sale have been imposed and under sub –regulation (17) no person can manufacture,

sell or exhibit for sale packaged drinking water except under the Bureau of Indian Standards certification mark. Annexure-B appended to the said regulation prescribes the standards at IS 14543/2004 which prescribes standards for packaged drinking water to ensure against adverse effects on public health.

35. It has been contended by some of the manufacturers that under sub-section (1) of section 31 of FSS Act they have to obtain licence for carrying on the food business and nothing contained in sub-section (1) would apply to a petty manufacturer and even otherwise the said enactment does not prescribe obtaining licence by manufacturers of packaged water by obtaining certification under BIS Act.

36. Section 2(a) of the BIS Act defines "article" to mean "any substance, artificial or natural, or partly artificial or partly natural, whether raw or partly or wholly processed or manufactured". 'Indian Standards' have been defined under Section 2(g) to mean "the standard (including any tentative or provisional standard) established and published by the Bureau, in relation to any article or process indicative of the quality

and specification of such article or process and includes (i) any standard recognized by the Bureau under Clause(b) of Section 10; and (ii) any standard established and published, or recognised, by the Indian Standard Institution and which is in force immediately before the date of establishment of the Bureau". Section 2(o) defines "process" to include any practice, treatment and mode of manufacture of any article".

37. Under section 14 of the BIS Act, if the Central Government is of the opinion that it is expedient so to do, it may by order published in the Official Gazette notify any article or process of any scheduled industry it shall conform to the Indian Standard and direct the use of the standard mark under a licence as "compulsory on such article or process".

38. The issue as to whether the provisions of BIS Act would overlap with Prevention of Food Adulteration Act, 1954 (PFA) as well as Food Safety and Standards Act, 2006 or whether one remedy would exclude the other came up for consideration before the High Court of Delhi in the case of Bottled Water Processors Association Vs Union of India and others in W.P.(C)

No.11672/2009 disposed of on 20.05.2010 whereunder

it was held as follows:

“16. The amendment of the PFA Rules by mention of Rule 49(28) makes the use of a BIS Mark for packaged drinking water mandatory. Therefore, it is also a mandatory requirement under Section 14 of the BIS Act. The words ‘Indian Standard’ under Section 2(g) of the BIS Act have been defined as under:

Indian Standard means the standard (including any tentative or provisional standard) established and published by the Bureau, in relation to any article or process indicative of the quality and specification of such article or process and includes-

- (i) any standard recognized by the Bureau under Clause (b) of Section 10; and
- (ii) any standard established and published, or recognized, by the Indian Standards Institution and which is in force immediately before the date of establishment of the Bureau.

17. Consequently, if packaged drinking water is sold without the usage of the BIS Mark, then the offence under Section 14 read with Section 33 of the BIS Act stands attracted. This prescribes the punishment for a terms which may extend to one year or a fine which may extend to Rs.50,000/-, or both. Under Section 34 “no court shall take cognizance of any offence punishable under this Act, save on a complaint made by or under the authority of the Government or Bureau or by any officer empowered in this behalf by the Government.....”.

19. This Court straightway rejects the plea of the PFA Department of the GNCTD that where a packaged drinking water is found to be sold without using the label as mandated under

Rule 43 (ZZZ)(13) of the PFA Rules or does not carry the BIS Mark in terms of Rule 49(28) PFA Rules, no action can be taken against manufacturer or seller as to packaged drinking water. This is indeed a complete misreading of the Rule. The whole purpose of having such an elaborate control mechanism is to ensure that there is no sale of packaged drinking water that is permitted except when it conforms to the PFA and the BIS Act.

21. Consequently, a fairly important responsibility lies with the BIS to take effective corrective action for violation of the BIS Act. If, as submitted by the BIS, there is a shortage of staff that prevents it from taking effective steps, that should appropriately be overcome by having additional staff and with better co-ordination among the authorities.

22. It is made clear that for violation of the relevant provisions of the BIS Act, there is an independent remedy available under that Act. The remedy for violation of the BIS is also available in terms of the PFA Act. One remedy does not exclude the other.

39. The above referred judgment in the case of Bottled Water Processors Association Vs Union of India came up for consideration before the Division Bench of the High Court of Delhi in LPA 612/2010 whereunder it was held as follows:

“2. Prevention of Food Adulteration Act, 1954 and Bureau of Indian Standards Act, 1986 are two separate enactments. Violation of the two enactments have to be dealt with separately and by the authorities who have been given duty and

responsibility to enforce the said enactment. However, at the same time, it cannot be denied that there is some inter-play between the enactments and need for coordination between the authorities who have been given the responsibility to enforce the enactments. Rule 49(28) of the Prevention of Food Adulteration Rules, 1955 makes the use of BIS mark for packaged drinking water mandatory. The said certification is given by the Appellant on being satisfied about the quality and on meeting the specifications stipulated by them. A fraudulent and wrong use of marks attracts Section 14 read with Section 43 of the Bureau of Indian Standards Act, 1986. Violation of the said section is punishable with imprisonment which may extend to one year and fine which may extend to Rs.5,000/- or both. Under Section 34 of the said Act, courts cannot take cognizance except on a complaint by or under the authority of the Government or the Bureau, any consumer or a recognized association. It is in these circumstances, that the aforesaid observations/directions have been given. The object and purpose is to ensure proper coordination between the two authorities. The object and purpose is not to ask the authorities under the Bureau of Indian Standards Act, 1986, to perform job or work of the authorities under the Prevention of Food Adulteration Act, 1954 or vice versa.

40. We are in complete agreement with the views expressed by the Division Bench of High Court of Delhi and would also supplement the said view for the foregoing reasons.

41. In W.P.24257-283/2012 Petitioners have sought for quashing of the notices Annexures-E, F, G & H issued by the Commissioner for Food Safety on the ground that several complaints have been received that there is manufacture and sale of packaged drinking water without certification from BIS and it would violate the FSS Act and regulation 2.1.2 and 2.3.14 (17) and for a further direction not to insist on BIS certification for manufacture and sale of packaged drinking water under the provisions of BIS Act and under section 31(2) of FSS Act and Regulations made thereunder. Likewise Petitioners in W.P.17467-498/2012 have sought for quashing of the Final Notices dated 18.04.2012, Annexures-D-1 to D-31 issued by the designated officer under Food Safety and Standards.

42. Section 3(h) defines "Designated Officer" means officer appointed under section 36 and Section

3(t) defines "Food Safety Officer" to mean officer appointed under section 37 of FSS Act. Section 29 prescribes that The Food Authority and the State Food Safety Authorities will be responsible for enforcement of the Act. Under section 30 the State Government is empowered to appoint the Commissioner of Food Safety for the State for implementation of Food Safety. A perusal of the affidavit filed by the State of Karnataka on 26.07.2012 would disclose that the State in exercise of such power vide Government Order No.HFW/31/FPR/2011, Bangalore dated 03.02.2012 has designated the Commissioner for Health and Family Welfare, Government of Karnataka as Food Safety Commissioner. At the same time vide order No.HFW/70(iv)/CGE 2010 dated 30.07.2011, 30 officers from the Department and one officer from the Bruhat Bangalore Mahanagara Palike. The Government has notified them as Designated Officers who would be the enforcing authorities at District level. Under Section 37 of the FSS Act the Commissioner of Food Safety would appoint such persons having the prescribed qualifications as Food Safety Officers for such local areas as he may assign to them for the purpose of

performing functions under the FSS Act, Rules and Regulations made thereunder. Under sub-section(2) of Section 37 the State Government may authorise any officer of the State Government having prescribed qualification to perform the functions of Food Safety Officer within a specified jurisdiction. Accordingly 106 Food Inspectors have been designated as Food Safety Officers at Taluka level for enforcement of FSS Act, Rules and Regulations made thereunder.

43. A conspectus reading of the above provisions would clearly establish the fact that various authorities have been vested with the power to implement the FSS Act effectively and have been assigned the duties thereunder. Section 36 of the FSS Act enumerates the functions to be performed by the designated officer. Under section 32 if the designated officer has reasonable ground for believing that any food business operator has failed to comply with any regulations to which the section applies is empowered to serve a notice on that food business operator which is called as “improvement notice” and if the food business operator fails to comply with an improvement notice the licence

can be suspended and if the operator still fails to comply with the improvement notice the designated officer can cancel the licence after extending an opportunity to show cause and proviso to sub-section(3) of section 37 empowers the designated officer to suspend any licence forthwith in the interest of public health after recording reasons thereof. Likewise Section 38 of the FSS Act enumerates the powers of the Food Safety Officer. Section 42 enables the Commissioner of Food Safety to communicate his decision to the designated officer and the concerned food safety officer to launch prosecution before courts of ordinary jurisdiction or special courts as the case may be after examining the recommendations made by the designated officer which would be based on the report of the food analyst who would send such report based on the sample forwarded by the Food Safety Officer. Under Chapter X of the FSS Act adjudication under the said chapter is to be made by an Additional District Magistrate and as per the affidavit of State of Karnataka the Additional Deputy Commissioners have been notified as adjudicating officers.

44. In exercise of the power conferred by clause (o) of sub-section(2) of Section 92 read with section 31 of the FSS Act as already noticed herein above various regulations have been brought into force and under Regulation 2.1.2 of Registration of Food Business Regulation 2011, every food business operator has to register themselves with the registering authority by submitting an application for registration and the petty food manufacturer is required to follow the basic hygiene and safety requirements provided in Part I of Schedule IV of the said regulation. Under regulation 2.3.14(17) of Restrictions on Sales Regulations, 2011 no person shall manufacture, sell or exhibit for sale packaged drinking water except under BIS certification which regulation is has come into force with effect from 05.08.2011 made in exercise of the power conferred by clause (1) of sub-section (2) of Section 92 read with section 26 of the FSS Act. Likewise under Food Product and Additives Regulations, 2011 the standards given under these regulations if they are at variance with any of the provisions of the licences already granted, such food business operator is required to comply with the provisions of these regulations within six months from

the date of commencement of the said regulations, which admittedly has come into force with effect from 05.08.2011. Under Chapter II of the said Regulation the Food Product Standards have been prescribed for various products which include mineral water as well as Packaged drinking water (other than mineral water) vide Regulation 2.10.8. Thus it is seen from these Regulations that manufacture, sale, labeling, meeting the standards prescribed with regard to Packaged drinking water would fall within the purview of the FSS Act, 2006. Hence it does not lie in the mouth of the manufacturers to contend that they would not be covered under the provisions of the FSS Act, 2006 or to contend that they can manufacture, sell or exhibit sale of packaged drinking water except under the certification mark issued by the Bureau of Indian Standards.

45. Now turning our attention to the contentions or the plea put forward by the manufacturers that they should be granted reasonable time to comply with the statutory requirement is to be examined in the light of the fact that these manufacturers have obtained

permission from the Department of Industries and Commerce, Government of Karnataka to run the factory for the purposes of manufacture of mineral water/package drinking water commencing from the year 2003 to 2012. A perusal of the pleadings would disclose that these manufacturers are carrying on the business of supply of drinking water by refilling the raw water in package claiming that the said packaging has been carried out in hygienic condition by purifying it and making the water suitable for human consumption. It is also an undisputed fact that these manufacturers are into the business of packaged drinking water (other than mineral water) as defined under Regulation 2.10.8 of Food Additives Regulations, 2011. As to whether this water is in conformity with the standards prescribed is to be examined by the authorities under the FSS Act, by having the said food product analysed by notified food laboratories and research institutions accredited by National Accreditation Board for Testing and Calibration Laboratories. The Food Authority can establish or recognize by notification, one or more referral food laboratory or laboratories to carryout the functions entrusted to the referral food laboratory by the FSS Act

and in this direction by exercise of the power conferred by clause (q) of sub-section(2) of section 92 read with section 40 and 43 of the FSS Act the Laboratory and Sample Analysis Regulation, 2011 has been made which has come into force with effect from 05.08.2011. Under Regulation 2.3.1 the quantity of sample of food to be sent to the Food Analyst/Director for analysis is as specified in the table given thereunder and at Sl.No.47 prescribes the approximate quantity to be supplied for analysis of Natural Mineral Water/Packaged Drinking Water to be 4,000/- ml in three minimum original sealed packs. Chapter II provides for notified laboratories under which the Central Food Laboratory, Mysore is having the jurisdiction over the local area specified thereunder which includes Karnataka. Under Regulation 2.2.2 the Food Authority has authorised certain laboratories to carryout the functions of referral laboratory for specified areas and to carryout such other functions as entrusted to it by the food authority under the Act. The Referral Food Laboratory, Pune, exercises its local areas/State jurisdiction in so far as State of Karnataka is concerned.

46. The State of Karnataka in its affidavit dated 26.07.2012 filed in W.P.17713/2012 which is sworn to by Food Safety Commissioner in Karnataka specifies that at present Public Health Institute has one laboratory at Bangalore and three more laboratories located at Mysore, Belgaum and Gulbarga in addition to one Food Testing Laboratory at BBMP. It is also stated in the said affidavit that the laboratories are well equipped though running shortage of manpower. The State has proposed to increase the capacity of testing at these laboratories by increasing the working strength from 30 to 65. In addition to it the State has identified the laboratories working under the control of Mines and Geology and Pollution Control Board for the purposes of Water Quality Testing, the list of which is at Annexure-R-2 which contains the names of six laboratories. It is also stated that they can easily test 150 samples every day which will be sufficient to have continuous monitoring of the quality of packaged drinking water being produced in the State of Karnataka. It is stated that there are 564 manufacturing units engaged in the manufacture of packaged drinking water which are not having BIS certification and only 224 production units

other than the said 564 units are having BIS certification. It is further stated in the said affidavit that no packaged drinking water plant can operate without BIS certification and as far as the units with BIS certification is concerned the Food Safety Commissioner has stated that samples will be collected to test the quality and regular monitoring will be put into force atleast twice in a year and undertakes to abide by such orders that would be passed by this Court. Thus, taking into totality of circumstances of the case including the fact that large number of manufacturers are running the units for manufacture and sale of packaged drinking water from long period of time without BIS certification it would be just and necessary to grant these manufacturers some breathing space or time to enable them to submit applications for obtaining such certification during which period the respondent authorities would not take any coercive steps.

For the reasons aforesaid, we pass the following:

ORDER

1. Writ Petition No.17713/2012 is allowed in part.
2. W.P.Nos.17467-17498/2012 and W.P.Nos.24257-283/2012 are hereby disposed of.
3. The respondent authorities are hereby directed to ensure that all necessary steps are taken to prohibit, prevent the manufacture and sale of packaged drinking water without certification from the Bureau of Indian Standards.
4. The respondent authorities are hereby directed to take action against the manufacturers of packaged drinking water if found to be running the units without certification from the Bureau of Indian Standards.
5. The manufacturers of packaged drinking water shall submit application as prescribed under the Food Safety and Standards Act, 2006 and the Regulations made thereunder and as provided under the Bureau of Indian Standards Act, 1986 for issuance of certification from the Bureau of Indian Standards for manufacture, sale or

exhibition of packaged drinking water within 15 days from today.

6. On such submission of application by the manufacturers the authorities concerned shall process the said applications within three months from the date of submission of such applications and notify the deficiency if any to be complied by such manufacturers by fixing such time as the authority may so decide taking into consideration the exigencies and not beyond four months.
7. The authorities shall dispose of the said applications submitted by the manufacturers accordingly keeping the time limit fixed herein above and if any of the manufacturers fail to comply with the directions or conditions imposed by the authorities to bring their units to the standards prescribed under the Act and Regulations, they will be at liberty to proceed in accordance with law.

8. Ordered accordingly.

This court would also like to place its appreciation to Sri.Aditya Sondhi, learned counsel who acted as Amicus Curiae and assisted the court by proper erudition of facts and law with his usual grace.

Sd/-
CHIEF JUSTICE

Sd/-
JUDGE

sp/SBN