

Open Issues - Proprietary Foods and Product Approval

Mohan Vegulaparanan

19th August, 2016 ©

The contents in this presentation are author's personal views
All rights reserved. **Confidential**

Proprietary Foods - Definition

Section 22 of the Food Safety and Standards Act 2006

“Save as otherwise provided under this Act and regulations made thereunder, no person shall manufacture, distribute, sell or import any novel food, genetically modified articles of food, irradiated food, organic foods, foods for special dietary uses, functional foods, nutraceuticals, health supplements, proprietary foods and such other articles of food which the Central Government may notify in this behalf.”

So “only through the Act or regulation” can FSSAI permit manufacture / distribute / sale of above categories of foods;

.....

“**proprietary and novel food**” means an article of food for which standards have not not been specified but is not unsafe:

Provided that such food does not contain any of the foods and ingredients prohibited under this Act and regulations made thereunder”.



“2.12.1: For the purpose of these regulations,

-
- 1) **Proprietary food means** an article of food that has not been standardized under these regulations, but does not include any novel food, food for special dietary use, functional food, nutraceutical, health supplement and such other articles of food which the Central Government may notify in this behalf;
- 2) Proprietary food shall contain only those ingredients other than additives which are either standardised in these Regulations or permitted for use in the preparation of other standardised food under these Regulations.
- 3) Proprietary food shall use only such additives as specified for the Category to which the food belongs and such category shall be clearly mentioned on the label along with its name, nature and composition.
- 4) Proprietary food product shall comply with the food additives provisions as prescribed in Appendix A and the microbiological specifications as prescribed in Appendix B of these Regulations and all other Regulations made under this Act.
- 5) The Food Business Operator shall be fully responsible for the safety of the proprietary food;



What is Public Interest? What extent Transparency is relevant?

In this context it is important to emphasize that the absence of arbitrary power is the first essential of the rule of law upon which our whole constitutional system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be confined within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is. If a decision is taken without any principle or without any rule it is unpredictable and such a decision is the antithesis of a decision taken in accordance with the Rule of law. (Equality and arbitrariness were thus, declared "sworn enemies" and it was held that an arbitrary act would fall foul of the right to equality. Non-arbitrariness was equated with the rule of law about. Though Respondents have been shouting from roof top that their action was in public interest as they found that the food which was contaminated by lead beyond permissible limit was unsafe for human consumption, they promptly swung into action and banned the product. **The said tall claim has not been substantiated by them before us.**

Merely stating that the food was unsafe or that the action was in public interest is not sufficient as is observed by the Apex Court in Godawat Pan Masala Products I.P. Ltd vs. Union of India and Others¹. The Apex Court in the said case has observed in para 61, 68 and 77.5 as under:-

"61. We are unable to accept that the words "in the interest of public health" used in Clause (iv) of Section 7 of the Act can operate as an incantation or mantra to get over all the constitutional difficulties posited. In any event, the collocation of the words in the statutory scheme suggests not a matter of policy, but a matter of implementation of policy. For this reason also, we are of the view that the impugned notification must fail."

Section 22- prior approval for non-standardized products

Does section 22 enforce a complete ban on proprietary foods without prior permission of FSSAI?

We find that in number of cases which have come before us, this is a standard argument which has been advanced on behalf of the Food Authority, though we find that in support of the orders which are passed banning any food article or restraining the manufacturer from importing consignment after it has reached the customs warehouse, some other reason is given for not clearing the goods.

However, in the Court reliance is placed on [section 22](#) and this is the argument which is sought to be advanced in support of the action of the Food Authority. In our view, there is something fundamentally wrong in the approach of the Food Authority and in the interpretation which is sought to be given by it to several provisions of the Act, including [section 22](#) of the Act.



Thank you

